

ddletb
 Bord Oideachais agus Oiliúna Dublin and Dún Laoghaire
 Átha Cliath agus Dhún Laoghaire Education and Training Board

PROCUREMENT POLICY

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Bord Oideachais agus Oiliúna Dúblainn and Dún Laoghaire
Atha Cliath agus Dhún Laoghaire Education and Training Board

DDLETB Procurement Policy

Approved by Executive as at
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ETB Procurement Policy

1 PURPOSE

The purpose of this document is to set out the policy for the procurement of goods (also referred to as supplies), services and works by ETBs and to ensure that procurement throughout ETBs is carried out in accordance with National and European Union Public Procurement Regulations & Directives, Legislation, Policy and Guidelines. There is an onus on public bodies to ensure that the public procurement function is discharged ethically, honestly, and fairly in a manner that secures best value for money. This policy should be read in conjunction with relevant ETB financial policies.

2 DEFINITIONS

In broad terms, **‘Procurement’** is the overarching function that describes the activities and processes to acquire goods and services from an external source. As distinct from “purchasing” procurement involves all the activities involved in establishing requirements, market research, approach, supplier / tender evaluation, negotiation, and award of contracts through to contract management.¹

‘Public Procurement’ refers to the process by which public bodies purchase works, goods, or services 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.²

A **‘Public Contract’** is a contract for the provision of works, supplies or services to a contracting authority. It includes all procurements, not just those which are undertaken on the basis of a full tendering process and formal signing of a contract.³

For the purposes of clarity, in this policy **‘Tender’** and **‘Tendering’** is used to describe the procedures for above National Threshold procurements (€25k supplies and services; €50k works) and **‘quotations’** refers to the procedures used for below National Threshold procurements

Goods/Supplies: the purchase, lease or rental of a good or product (e.g.. vehicles, IT, stationery) **Service:** provision of services such as canteen, cleaning services, legal, professional etc.

Work: building / civil engineering design and execution

Framework Agreement: an agreement between one or more contracting authorities and one or more suppliers which establishes some or all of the terms on which contracts for supplies, works or services can be entered into during the period of the agreement without further advertisement.

Budget Holder: A budget holder includes Directors of Organisation Support & Development (OSD), Schools Services (SS) and Further Education and Training (FET), as well as School Principals, Directors of Further Education Colleges, Training Centre Managers, Adult Education Coordinator’s / Managers of Programmes, Outdoor Education Centre Managers and other Managers

¹ Guidance for Schools on Good Procurement Practices, (SPU; Jan 2017) [Click here for link](#)
² Office of Government Procurement Public Procurement Guidelines for Goods and Services [Click here for link](#)
³ S.I. No. 284 of 2016 European Union (Award of Public Authority Contracts) Regulations 2016 [Click here for link](#)

3 ABBREVIATIONS

MEAT: Most Economically Advantageous Tender	SRFT: Supplementary Request for Tender (sometimes referred to as 'mini-competition')
ITT: Invitation to Tender	RFQ: Request for Quotations
RFT: Request for Tender	RFI: Request for Information
PIN: Prior Information Notice	SLA: Service Level Agreement
OJEU: Official Journal of the European Union	PO: Purchase Order
DE: Department of Education	PMO: Public Service Reform Programme Office
TRD: Tender Response Document	OGP: Office Government Procurement

4 REGULATORY FRAMEWORK

ETB Procurement policies and procedures are governed by:

1. S.I. No. 284 of 2016: European Union (Award of Public Authority Contracts) [Regulations 2016](#). ⁴The EU Public Contracts Directive (Article 84) requires all contracting authorities to prepare a written report after every tender competition, other than mini competitions conducted under framework agreements. The details of what is required in this audit report can be found at [Appendix 4](#). All other EU related legislation and directives can be found [here](#).
2. [National Public Procurement Policy Framework / Guidance information](#) _____ 3. [OGP Public Procurement Guidelines for Goods and Services \(2019\)](#)
4. Departmental Circulars in relation to Procurement:
 - [DPER Circular 02/16](#) Arrangements for Digital and ICT related Expenditure in the Civil and Public Service
 - [DE Circular 0056/2015](#) Use of Central Procurement Arrangements put in place by the Office of Government Procurement. This circular should be read in conjunction with [DPER Circular 16/2013](#) & [DE Circular 60/2013](#).
 - [Circular Letter 0002/2019](#) Code of Practice for the Governance of Education and Training Board. The [Code of Practice](#) provides a framework for the application of good practice in corporate governance by ETBs. ETBs should demonstrate their commitment to achieving the highest possible standards of corporate governance.
 - [Circular Letter 003/2019](#) Good Practice Guidelines and requirements in relation to Contracts for the Provision of Goods and/or Service and Requirement for Department Approval before providing Non-Core Services for Legal Awards and Settlements and Other Matters.
 - [DPER Circular 10/14](#): Initiatives to assist SME's in Public Procurement
 - [DPER Circular 05/2013](#): Procurement of legal services and Managing Legal Costs
 - [DE Circular 39/2011](#): Good Practice Guidelines in relation to Contracts for the Provision of Goods and / or Services
 - [Capital Works Management Framework](#)
 - [Circular 20/2019](#): - Irish Government's circular on Promoting the use of Environmental and Social Considerations in Public Procurement. This demonstrates a commitment to promoting

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⁴ While the regulations require "records shall be maintained, by the authority concerned, for a period of at least 3 years from the date of award of the contract", it is recommended that ETBs adhere to their record retention policy which can range from 7 to 22 years (in the case of EU Funded programmes)

Green Public Procurement (or green purchasing) by asking Departments to consider the inclusion of green criteria in their procurement processes, the circular comes as part of the roll out of the Government's Climate Action Plan. Examples of best practice outlined in the National Action Plan – '[Green Tenders](#)'

- [FOI Code of Practice for Public Bodies](#). The Freedom of Information Code of Practice is a set of guidelines for the public authorities that are liable to respond to requests for information under the FOI Act. It advises these bodies on how to adhere to the law and what counts as best practice.
- The Public Spending Code: The Public Spending Code is the set of rules and procedures that ensure that these standards are upheld across the Irish public service.

In December 2019, this [circular](#) (Circular 24/2019) updated the Public Spending Code as it applies to capital expenditure, updated the Guidelines for the use of PPPs and consolidated the Public Spending Code guidance on this website.

5. Corporate Procurement Planning. As outlined in [Circular Letter 0002/2019](#) Code of Practice for the Governance of Education and Training Board, each ETB is required to "confirm that a Corporate Procurement Plan has been developed and is being implemented". To this end the ETB Sector agreed to adopt the Corporate Procurement Plan template, including MAPP ⁵(Multiannual Procurement Plan) and submit same each year to ETBI for sectoral collation and onward submission to the OGP/ EPS.
6. Case Law: Public Procurement is governed by EU Directives and legislation. EU Directives require that all purchase requirements (Tenders) above "Threshold Values" currently in force, are open to European Competition. Tenders with a value above the applicable Threshold Value must be published

4 in the supplement to the Official Journal of the European Union (OJEU) and a set process with _____prescribed timescales for tendering etc. need to be followed. Below EU Threshold Values, there needs to be competition to satisfy the Irish Government Procurement Rules and the general principles of Non-Discrimination, Equal Treatment, Transparency, Mutual Recognition and Proportionality must be adhered to, as per the EU Treaties.

5 PUBLIC PROCUREMENT PRINCIPLES

The Treaty of Rome on the functioning of the EU applies to all procurement activity regardless of value. The procurement of Goods/Supplies, Services or Works in the public sector must comply with the Treaty's fundamental procurement principles:

- **Transparency:** All procurement activities are open and transparent with necessary information provided to all. Procurement intentions and decisions should be advertised publicly.
- **Equal treatment and Non-Discrimination:** The same rules apply to all with equal rights of access. Decisions are to be based on objectivity and fairness.
- **Proportionality:** All measures used must be both necessary and appropriate in relation to the objective *i.e.* the award of contract. No excessive or disproportionate conditions, criteria, or rules are to be applied.
- **Mutual Recognition:** Equal validity is to be given to qualifications / standards applicable in other Member States.

⁵ See [Appendix 5 Templates: Corporate Procurement Plan & Below EU Threshold Tender Documents](#)

6 RESPONSIBILITY FOR PROCUREMENT

6.1 THE OFFICE OF GOVERNMENT PROCUREMENT (OGP)

The OGP has lead responsibility for sourcing goods, services and works on behalf of the public service. It is Government policy that public bodies, where possible, should make use of central procurement frameworks and contracts that are put in place by the Office of Government Procurement (OGP). These central procurement frameworks and contracts are designed to optimise benefits to the public service through the strategic aggregation of its power. Further information on OGP Central Frameworks and Contracts can be found [here](#). Under the government model, [local government](#) and [education](#) also procure goods and services for the public sector.

6.2 ETB BOARD⁶

ETB management and ultimately the Board, should ensure that there is an appropriate focus on good practice in purchasing and that procedures are in place to ensure compliance with procurement policy and guidelines. It is the responsibility of the Board to satisfy itself that Executive Management is fully conversant with the current value thresholds for the application of EU and National Procurement Rules and that the requirements for public procurement are adhered to. Where local procurement is necessary, competitive tendering should be standard procedure in the procurement of ETBs. The Board is ultimately responsible for ensuring that the Chief Executive has instituted an adequate and appropriate system of internal control, including risk management and corporate governance, in the ETB. The work of the Audit Committee will assist the Board in this function.

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Section 8.13 of the Code of Practice for the Governance of ETBs states: “The Board should satisfy itself that _____ procurement policies and procedures have been developed and published to all staff. It should also ensure that procedures are in place to detect non-compliance with procurement Procedures. Entities should have a contracts database/listing for all contracts/payments in excess of €25,000 with monitoring systems in place to flag non-competitive procurement. Non-competitive procurement should be reported in the Chairperson’s comprehensive report to the Minister.”

6.3 EXECUTIVE MANAGEMENT

The Chief Executive is the Accounting Officer for the ETB. Reporting to the Chief Executive, the Director of Organisation Support and Development is responsible for the Governance and Management of the ETB’s administration and oversees the management of the ETB’s resources across the Human Resources, Corporate Services, Finance, Procurement, Buildings and Property and ICT Functions.

6.4 ROLE OF MANAGER WITH RESPONSIBILITY FOR PROCUREMENT

The Manager who is responsible for the administration of Procurement reports to the Director of OSD⁷. The Manager is responsible for Procurement Policy, its review and management in conjunction with the Chief Executive, the Director of OSD and for the following:

- Development and implementation of a Corporate Procurement Plan (when financial systems are secured to capture the necessary purchasing data/trends required to develop same).
- Ensuring the availability and dissemination of appropriate national centrally negotiated OGP frameworks and contracts for use in the purchase of supplies and services by all departments,

⁶ From [Code of Practice for the Governance of ETBs](#)

⁷ Director of Organisational Support and Development

where aggregations of budget spend yields demonstrable VFM benefit and/or such a contract reduces legal or contractual risk to the ETB.

- Ensuring that all contracts entered into by ETB maintain and protect the best interests of the Education and Training Board.
- Provision of up to date guidance on legislation applicable to ETB Procurements.
- Management of the Procurement team and thereby delivery of a professional procurement Support Service.
- Co-ordination of training for staff involved in Procurement activities throughout the ETB.
- Liaison and active involvement with Government and public sector buying Agencies / consortia.

6.5 ROLE OF BUDGET HOLDERS

Budget Holders have authority to incur expenditure on behalf of the ETB within the limits of their notified budgets and the thresholds below. They have day to day responsibility and accountability for ensuring that the Procurement Policies and Procedures are applied to all purchases of goods and services within their defined authority. They must ensure:

- The use of OGP National Frameworks/and other Central Contracted Suppliers where available.
- That any potential purchase greater than €15,000 should be brought to the attention of the Manager responsible for Procurement in a timely manner. This will ensure the procurement process can be completed and the good/services delivered also in a timely manner.
- The Budget Holder must confirm that a budget is available in order for the tender process to be activated by the Manager responsible for Procurement _____
- For tenders with a value of €25,000, it is recommended to complete a tender request form. See [Appendix 2](#) for template.
- Following Tender Evaluation and recommendation and prior to Contract Award approval must be obtained from the relevant Director⁸ or Chief Executive as per approval levels on table 7 approval thresholds & timescales.⁹
- Procurement competitions relating to any Building Works are not undertaken without first liaising with the Buildings & Property Department / Designated Buildings & Property Officer.
- That procurement competition within authorised budgets is carried out in accordance with this policy.
- Training Centre purchasing and payments: Training Centres must comply with the ETB Procurement Policy. The Manager responsible for Procurement within the ETB has overall responsibility for the oversight and review of implementation of ETB Procurement policies and procedures in all areas within the ETB.

7 THRESHOLDS & TIMESCALES

A competitive process is the best method of securing value for public money and the thresholds below are the minimum standards required. The current thresholds for quotations and tenders are as follows:

⁸ i.e. Director of Organisation Support and Development, Director of Further Education & Training, Director of Schools

⁹ Approval from €25,000 to €215,000 at Director level and from €215,000+ Chief Executive level

SUPPLIES & SERVICES ¹⁰	Threshold ¹⁰¹¹	Procedure ¹²	Publish on ETenders?	Publish on OJEU ^{13?}	Procurement Authority Level
		€0 - €500	Proceed with PO		
€501-€5,000		One or more competitive quotation(s) - if verbal, document same. ¹⁵			
€5,001-€15,000		Seek 3 written quotations by specified closing date			
€15,001-€25,000		Seek 5 written quotations by specified closing date. Follow clear process e.g. specification, evaluate, notify.	Budget Holder in consultation with Procurement		
€25,000-€125,000		Open Procedure (single stage no prequalification) Choice of Procedure (e.g. open, restricted, competitive dialogue)	<input checked="" type="checkbox"/>		Director Approval required
€125,00-€215,000			<input checked="" type="checkbox"/>		
€215,000+ ¹⁶		Choice of Procedure		<input checked="" type="checkbox"/>	Chief Executive Approval
> €750,000	Title III Services ¹⁷¹⁸		<input checked="" type="checkbox"/>		
WORKS/CONCESSIONS ¹⁸	€0 - €500	As per supplies & services (above)	While publication not required, consider using E-Tenders is considered best practice		Capital Procurement Manager with Director approval
	€501-€5,000				
	€5,001-€15,000	Seek 5 written quotations by specified closing date.			Director with CE Approval
	€15,001-€50,000				
€50,000-€2,500,000	Open procedure	<input checked="" type="checkbox"/>		Director with CE Approval	
€2,500,000-€5,382,000	Large/ complex projects: Restricted Procedure. Smaller/ straight forward projects: Open Procedure	<input checked="" type="checkbox"/>			

¹⁰ Including ICT. Any new ICT- related expenditure or new ICT- related initiatives over €25,000 requires DPER approval as per [DPER Circular 02/16](#) Arrangements for Digital and ICT related Expenditure in the Civil and Public Service. ICT projects also require approval from DES via the dedicated email DPER0216@etbi.ie

¹¹ All thresholds exclude VAT

¹² A business case may also be required for non-routine purchases above 25k, those that are not utilising a centralised framework and the procurement of capital equipment.

¹³ Via [eTenders](#)

¹⁴ Socialisation: ETB schools and centres may take students with disabilities, such as students in an ASU, to shops to buy items as part of measures to assist in enhancing the social skills of those pupils. Similarly, in Youthreach students are taught basic cooking and life skills, as part of the curriculum 'learn how to shop' and 'how to prepare meals'. Notwithstanding that those shops may not have been procured by the ETB they would be deemed a preferred supplier under the following conditions: that the spend does not exceed the PO only threshold (€500) and it is an **accompanied, learnerfocused** activity (as opposed to the general supply of classroom materials which is subject to procurement rules). If cash transactions are part of the learning, the ETB's financial procedures for cash purchases should be applied.

¹⁵ As per DPER Public procurement [Guidelines for Goods and Services \(July 2019\)](#) Page 35) "contracts for goods and 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 3 quotes confirmed by e-mail)

¹⁶ EU Threshold as of January 2020. EU thresholds are updated every 2 years – current thresholds available [here](#)

¹⁷ Light touch services - the threshold applying to public contracts for social and other specific services listed in Annex XIV of Directive 2014/24/EU (commonly referred to as "light-touch" services) is unchanged and remains at €750,000. Particularly relevant for services such as security, training and restaurant services. See [here](#) for regime applied (page 178) and [here](#) for list of services/ CPV codes it applies to (Annex XIV).

¹⁸ See [here](#) for latest DES TGD Guidelines

€5,382,000+	Restricted Procedure		<input checked="" type="checkbox"/>
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7.1 GRANTS AND ETB PROCUREMENT

In light of the additional number of grants ETBs are securing from other Department bodies and outside agencies *i.e.* Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs/Department of Youth and Children, Dormant Accounts, SEUPB/PEACE it is prudent in order to adhere to procurement thresholds and competition requirements that you review, in addition to this policy, the grant conditions and guidance issued initially at application stage and also the grant approval correspondence from the relevant Department/Agency. In some instances, the procurement thresholds will be more onerous than the guide set out at Section 7 Guide to Thresholds (above). In other instances, the ETB will be acting as an intermediary for grant administration only to third party and adhering to this policy will be expected by the third parties at a minimum.

7.2

Procedure ²⁰	Receipt of Expression of Interest	Receipt of Tenders	+Standstill	+allow time for
NATIONAL (Non-OJEU tenders)				<ul style="list-style-type: none"> • Preparing specification
National – Open (recommended)	N/A	21 days	7	
National – Restricted (recommended)	21 days	21 days	7	<ul style="list-style-type: none"> • Evaluation of tenders
EUROPEAN (OJEU tenders)²¹				
Open – e sending notices/docs available	N/A	35 days	14	<ul style="list-style-type: none"> • Contract finalisation • Supply & delivery
Open – e sending & receiving tenders	N/A	30 days	14	
Open – PIN	N/A	15 days	14	
Restricted – e sending notices/docs available	30 days	30 days	14	
Restricted – e sending & receiving tenders	30 days	25 days	14	
Restricted - PIN	15 days	10 days	14	

TIMESCALES¹⁹

7.3 ESTIMATING CONTRACT VALUES "CONTRACT VALUE" - LIFE CYCLE COSTING

The "contract value" must first be determined in order to ascertain the correct "procurement process" to be followed. The real contract value can only be fully determined when the "Life Cycle Costing" (LCC) of the procurement is taken into consideration. LCC evaluates the total cost of ownership (for the working life of the item(s)) and not only includes purchase price, but also includes such costs as consumables, annual maintenance contracts, repairs/spares, warranty etc. The contract value for service contracts includes the full duration of the contract *i.e.* a three-year contract is the value over the three years.

- The estimated value of a contract is based on the total amount payable including any renewal options
- It is prudent to ensure that the estimated contract value is at least 10% less than the threshold
- The total value of subdivisions (*e.g.* Lots) must be taken into account

¹⁹ All expressed in Calendar days and relate to goods and services. For works related timescales go to [Section 9](#)

²⁰ For details of timeframes that apply to below EU Threshold works-specific procurements go to www.education.ie

²¹ In exceptional circumstances – a shorter time limit of 15 days is allowed "where a state of urgency duly substantiated by the contracting authorities renders the minimum impracticable"

7.4 TREATMENT OF VAT

Tenderers should be invited to express tender prices exclusive of VAT. VAT law provides for equal treatment in the supply of goods and services. Therefore, no competitive advantage or disadvantage should arise from the correct application of VAT rules. DPER's [Public Procurement Guidelines for Goods and Services](#) (2019) refers to below EU Thresholds in terms of "exclusive of VAT". Department of Finance and DE Circulars refer to contract values being "inclusive of VAT" for works-related contracts below EU thresholds. Latest guidance from DE PBU is available from [this link](#).

8 PROCEDURE GOODS/SUPPLIES AND SERVICES

8.1 VALUE OF CONTRACT BETWEEN €501- €5,000 (EXCL. VAT)

- One or more competitive quotation(s) - if verbal, document same
- These should be approved by the Budget Holder and retained in the school/centre for internal checking and audit purposes.

8.2 VALUE OF CONTRACT BETWEEN €5,001- €15,000 (EXCL. VAT)

- Minimum of three quotations should be sought from suitably qualified suppliers/providers.
- Brief specifications should be prepared and issued to the suppliers/providers.
- Closing date and time for return of quotes should be specified.
- Evaluation on lowest price meeting the specification unless MEAT was specified in the Request for Quote (RFQ).
- Appendix 1B should be completed by the Budget Holder and recorded locally in the school/centre

8.3 VALUE OF CONTRACT BETWEEN €15,001 - €25,000 (EXCL. VAT)

- Minimum of five quotations should be sought from suitably qualified suppliers/providers.
- Specifications for the goods/supplies/works should be prepared and issued to the suppliers/providers.
- Closing date and time for return of Request for Tender (RFQ) should be specified.

- Evaluation on Lowest price meeting the specification unless MEAT was specified in the Request for Tender.
- An RFQ Evaluation Form should be completed by the Budget Holder in consultation with Procurement before issuing notification of award of contract to suppliers and a Purchase Order being issued.¹⁹.

8.4 VALUE OF CONTRACT BETWEEN €25,000 - €215,000 (EX. VAT)

- All Request for Tenders for over €25,000 must be advertised on the government procurement website www.etenders.gov.ie. All such competitions should be conducted in consultation with by the Manager responsible for Procurement.

8.5 VALUE OF CONTRACT OVER €215,000 (EX. VAT)

- The EU directives applies to Contracts for Supplies and Services over €215,000. All such competitions must be advertised on the [ETenders](#) website and the [OJEU Journal website](#). All such competitions will be conducted by the Manager responsible for Procurement.

9 WORKS (BUILDING AND RELATED SERVICES)

Building Works can be defined as construction works wherein a material or structural element of the property is going to be repaired, replaced, upgrades or altered.²⁰ Building Works should not be undertaken by Schools/Centres without first consulting with the Buildings & Property Department in your ETB, as building works must comply with all statutory requirements including:

- Planning and Development Act 2000 and Planning and Development Regulations,
- Building Control Act 2007 and Building Control (Amendment) Regulations 2013
- Safety, Health and Welfare at Work Act 2005 and Safety Health and Welfare at Work (Construction) Regulations 2013 e.g. a Project Supervisor Design Process (PSDP) and Project Supervisor Construction Stage (PSCS) may need to be appointed.
- Building Regulations (A to L) incl. Fire Safety Certificate (B) and Disability Access Certificate (M)
- Code of Practice for the Management of Fire Safety in places of Assembly 2009
- Department of Education Technical Guidance Documents (TGDs) and Irish Standards f) Building Bulletin 100 (BB 100)

The [Capital Works Management Framework](#) (CWMF) is a structure that has been developed to deliver the Government's objectives in relation to public sector construction procurement reform. It consists of a suite of best practice guidelines, standard contracts and templates documents that form the four pillars that support the Framework.

However, as the Department of Education are the main funding body for building works to ETB

schools, the DE have taken the CWMF documents and tailored them to suit school building (Works) _____ projects. The following two guidance documents should be adhered to in terms of Procurement of Contractors to undertake minor works in schools where financed by the DE:

1. [TGD007 Design Team Procedures for Small Works](#)

¹⁹ Sample RFQ evaluation is included in Appendix 1A

²⁰ Public works contracts are contracts having as their object either the execution of works or the design and execution of works wherein a material or structural element of the property would be altered. Works are defined by reference to Schedule 1 of the [Procurement Regulations](#) and to the Common Procurement Vocabulary (CPV) Division 45

2. [Design Team Procedures – 2012 4th edition - Procurement of Contractors](#)

It should be noted that within the link DTP 2012 above, there is an extensive suite of guidance documents that directs the Design Team and ETB through each stage of the Project. Construction Procurement and Reform (CWMF) and the DE are continually updating their circulars and guidance documents, therefore you must refer to [construction procurement circulars](#) and the latest [Department of Education Technical Guidance](#) prior to issuing documentation.

Under the CWMF and DE procedures there are four Project Types

- **Type 1** – up to €1m – Small Works Contract – PWCF 06
- **Type 2(A)** – From €1m to €2.5m – Minor Works Contract – PWCF 05, use open procedure for appointment of the Design Team.
- **Type 2(B)** – from €2.5m to €7.5m – Minor Works Contract – PWCF 05, refer to DE prequalified Framework of DT Consultants for appointment of Design Team
- **Type 3** – From €7.5m upwards Major Capital Project PWCF 03

For further details refer to [Appendix 9](#).

All other capital funded works outside of the DE primary and post primary projects *i.e* Department of Youth & Affairs, SOLAS should be brought to the attention of the Capital

Management Department/Buildings & Property Officer within your ETB for direction.

Works-related Timescales:

Works Type	Receipt of Tenders
Small Works Consultants <€50k	10 working days
Small Works consultants €50k to €215k	15 working days (min)
Consultants >€215k	As per EU Directive
Works Contractors <€50k	No prescribed minimum
Works Contractors €50k to €1M (small works)	15 working days (min)
€1M to €5,382,000	20 working days (min)
> €5,382,000	As per EU directive

10 TIED OR SOLE SOURCE

It is ETB Policy not to engage in Tied or Sole Source supplier relationships as this would cause the ETB to be in breach of EU and Irish regulations. For exceptional circumstances please refer to [Appendix 10](#) for further guidance.

11 SPECIFICATIONS

In advance of seeking RFQ/RFT it is important that a clear and comprehensive list 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 suppliers.

Depending on the requirement the specification could be brief short statement but for more complex or costly requirements it should be a detailed specification. Preliminary consultation with potential suppliers may also be helpful in developing a specification and is permitted once it is sufficiently broad, does not create advantages for certain suppliers and is documented and kept separate from the tendering and award phase.²¹ The use of trade or brand names is not allowed without allowing for an 'equivalent'. Instead generic descriptions should be used, and if appropriate the EU Standard(s) should be quoted. Some additional information on Specifications is included at [Appendix 2](#). The Department of Finance has published guidelines on the use of generic technical specifications, with reference to the ICT (Information & Communications Technology) Sector. See information at [this link](#) for more information.

12 NATIONAL/ SECTORAL FRAMEWORKS & CONTRACTS

It is Government policy to use centralised contracts and this is reiterated in the Code of Practice for the Governance of Education and Training Board [Circular Letter 0002/2019](#)²² Where a National or Sectoral Contract or Framework exists for the supply of goods and services or works the contract will already have been subject to the necessary level of competition and should be used, once suitable to ETB requirements. In the case of a Single Party Framework, it is not necessary to obtain further competitive quotations and orders may be placed directly with the supplier. In the case of Multi Party Supplier Frameworks it will be necessary to conduct a 'mini-competition'. Guidance is available on the [OGP website](#) and / or from the Manager responsible for Procurement. Where a central procurement framework or contract is not used, a value for money justification, approved in advance by the Director of OSD, should be kept on file for audit purposes.

13 SELECTION/PRE-QUALIFICATION CRITERIA

Selection Criteria test financial, economic, and technical capacity of tenderers. They ensure a robust assessment of firms. The Selection criteria must be set in accordance with the type/risks of the contract being awarded. The criteria must also contain rules/minimum levels.

The European Single Procurement Document should be used as a self-declaration approach to compliance with Article 57 of the Directive. Evidence of compliance must be sought prior to the award of contract for all above -EU threshold procurements.

14 AWARD CRITERIA

It is ETB policy and best practice that Award should be on the basis of Most Economically Advantageous Tender (MEAT) unless there is a justification for choosing lowest price or the funding body sets out the criteria that must be used. Criteria other than price may be evaluated and could include:

Delivery time	Aesthetic and functional characteristics
Quality of supply / service	Technical merit

²¹ For additional guidelines on market engagement see page 30 of DPER [Public Procurement Guidelines for Goods and Services](#)

²² See Page 48

Fit for purpose / compliance with requirements specification	After-sales service / support and technical assistance
Maintenance / Support Costs	Environmental/social guidance
Upgrade path / compatibility with existing system	

When a contract is being awarded on the Most Economically Advantageous basis, the invitation to quote/tender must state all the criteria being applied in the award process, giving the relevant weightings for each criterion. A minimum of three relevant criteria should be selected.

The evaluation process must be carried out by at least two people and be approved by the authorised budget holder. The evaluation process must be demonstrably objective and transparent and based solely on the specified criteria notified to suppliers in the invitation to tender documentation. An evaluation/scoring sheet should be prepared to support the evaluation process. Examples are included in the ETB Suite of tender templates ([Appendix 5](#)). The marks awarded for price should be calculated as follows:

Total marks allowed X Lowest Price tendered	X 100 X % of Criteria
Price Tendered by Company Being Evaluated	

All suppliers whether successful/unsuccessful must be notified in writing of the outcome of the competition to include the mark awarded for each criterion if MEAT was used.²³ These are referred to as *Notification of Award Letters* and include the *Letter of Intent* and *Letter of Regret* (see [Appendix 5 and 6](#)).

15 RECEIPT AND OPENING OF RFQs/RFTs

The Procurement regulations effective from April 2016 required that electronic means of information and communication should become the standard means of exchange by October 2018²⁸ including transmission of notices, electronic availability of the documents and fully electronic communication at all stages.

- All RFQs/RFTs over €15,000 should be opened as soon as possible after the closing date by two people to include one member of the Management Team and a staff member. A formal Tender Opening Report should be completed²⁴. Each member of the Tender Opening Team should complete a Conflict of Interest and confidentiality Form.²⁵
- All ETBs must accept RFTs to be returned electronically via the e-tenders tender box facility and 13 adhere to electronic receipting protocols. RFQs must be accepted via a dedicated administrative _____email address, where more than one person has access.
- Ensure that a clear and formal independently vouched report of the tenders received is produced.

²³ This applies to requests for tenders as opposed to requests for quotations ²⁸

The limited exceptions are listed on p.68 section 200 of the [guidelines](#) .

²⁴ A template is included in the suite of ETB documents referenced at [Appendix 5](#).

²⁵ A template is included in the suite of ETB documents referenced at [Appendix 5](#).

16 EVALUATION

The evaluation process is a set of formal defined steps to be followed by an evaluation team – to conduct an objective assessment of the responses received in response to a Request for Tender. The objective of an evaluation process is twofold:

- To select the most appropriate proposal to meet the ETB’s stated requirements
- To provide an audit trail and set of supporting documentation that will support the evaluation process and final decision

The purpose is:

- To eliminate subjectivity as much as possible from the evaluation process
- To provide transparency in the evaluation process
- To ensure that all proposals are evaluated in the same fair manner
- To mitigate risk including that of a legal challenge

The steps involved in an evaluation process:

- In drafting the tender document, select award criteria *i.e.* the factors by which you will determine the suitability of one proposal over another
- Establish an evaluation team and de-brief them on their roles within the team. Each member of the evaluation team should complete a Declaration of Confidentiality and Conflict of Interest form ([see appendix 5](#))
- Upon opening of the tenders after the deadline has closed, first check each tender received for compliance – has it been received before the deadline for receipt of proposals and does it satisfy the qualification pass/fail criteria in every respect. Once this has been completed, compile a list of tenderers who have not passed the qualification stage. These need to be informed that their proposal has been deemed to be non-compliant and outline the reasons why.
- Thereafter, the team continue with the evaluation process and score the remainder of the proposals against the pre-prepared and published award criteria.
- Upon agreement and completion of this stage, the results issue, in writing, to all simultaneously. Their result should provide details of how they scored against each award criterion, giving them details of the scoring and specific reasons why they were successful and unsuccessful.
- For contracts with an overall value of €215,000 or greater, the standstill period days needs to be enforced, in order to allow any unsuccessful company, the opportunity to appeal the result. Only after the standstill period has expired without challenge, can a contract be signed with the preferred bidder.
- It is good practice to include a standstill period in below EU Threshold procurements (€25K-€215K). The [ETB Suite of templates](#) recommends 7 calendar days.

17 LEASING

All leasing requires Board and DE approval in advance of any lease agreement being entered into. Finance leasing is strictly prohibited. Operational leasing is commonly used to acquire equipment on a relatively short-term basis. Prior consultation with the Manager responsible for Procurement/ Finance Manager is required. Refer to [Circular Letter 0002/2019](#) Code of Practice for the Governance of Education and Training Board (pages 49-50) for information on Property Acquisition, Disposal of Surplus Property,

Disposal of State Assets and access to Assets by Third Parties as well as Acquisition of Land, Buildings or other Material Assets. You should also refer to [Circular 0003/2019](#) Good Practice Guidelines and requirements in relation to Contracts for the Provision of Goods and/or Services.

18 MANAGEMENT OF CONTRACT

It is the policy of the ETB to have a pro-active contract management process. Proper management of a contract especially for a high or medium value purchase will ensure your goods or services are supplied as requested, on time – every time, and help you monitor the overall performance of a supplier by:

- Keeping copies of all related documents and correspondence, filed together in a systematic way.
- Building a good relationship with the supplier²⁶; keeping lines of communication open through supplier business reviews (SBR's).
- Leaning on the supplier's expertise to build value-added measures into the relationship, while being particularly careful not to go beyond the scope of what is tendered for; resulting in having to pay more for services which were not tendered for in the first instance.
- Ensuring risks are identified and escalation procedures are in place for problems to be resolved, in a timely manner.
- Using supplier report cards / keeping a record of performance that can be reviewed with supplier when needed.
- Having a contingency plan should you be required to cancel the contract, or it is terminated early. Including a "runner up clause" in your procurement documentation may be helpful in this regard.
- Reviewing the contract's end-terms in advance to decide on the future for sourcing the goods or services in question.

In order to achieve the above, it is recommended to issue an SLA for all service contracts above €25K. See [Appendix 5 Below Threshold Tender Templates](#) for template SLA

19 ETHICS

All ETB employees involved in any way in the Procurement process shall act ethically and in particular should have regard to:

- i. Conflicts of Interest – it is the policy of this ETB to request that all evaluation team members, in advance of any evaluation process, document the consideration and declaration of possible conflicts of interest.²⁷
- ii. Confidentiality - Staff involved in the procurement process must also commit to maintaining the confidentiality of information²⁸
- iii. Hospitality
- iv. Inducements – ETB Employees must not accept inducements in any form from suppliers of goods and services. Inducements include special offers where the inference is that free items may be _____made available on a personal as opposed to business use basis.

²⁶ As signatories to the Payment Code, ETBs pledge to pay suppliers within the terms agreed at the outset of a contract, or 30 days, in accordance with legislation. Refer to ETB Prompt Payment Policy.

²⁷ A template is included in the suite of ETB documents referenced at [Appendix 5](#).

²⁸ A template is included in the suite of ETB documents referenced at [Appendix 5](#).

All ETB staff must adhere to '[Ethics in Public Procurement](#)' Policy ([see Appendix 8.](#))

20 RECORD KEEPING

- It is a legal requirement to hold files for seven years²⁹
- EU funded programmes may require files be held for up to 22 years
- It is recommended to retain all procurement files and copies of winning tenders for a period of seven years after the award of contract.
- Soft copies of documents may be maintained but only where the organisation has a clearly defined policy on documentation retention³⁰

All employees involved in Procurement on behalf of the ETB must comply with the requirements of all relevant and applicable legislation. This includes, but is not limited to, general duties imposed on the ETB as a public authority.

Specific legislation impacting ETB Procurement procedures includes (but is not limited to):

- Sale of Goods and Services Act 1980
- Protection of Employees on Transfer of Undertakings (TUPE) Regulations 2003
- Protection of the Environment Act 2003
- Safety, Health & Welfare at Work Act 2005
- Late Payments in Commercial Transactions Regulations
- Waste, Electrical and Electronic Equipment (WEEE) Regulations 2014
- Freedom of Information Act 2014
 - Directive 2014/24/EU on Public Procurement
- [Data Protection Act 1988 Act](#), as amended by the [Data Protection \(Amendment\) Act 2003](#) and [Data Protection Act 2018](#).

21 TENDER DOCUMENTATION

For goods and services, it is the policy of the ETB to utilise the **OGP template documentation** for above EU threshold procurement and the sectorally agreed **suite of ETB tender documents** for below EU threshold (national) procurement. [See Appendix 5 & 6](#) ³¹

22 IMPLEMENTATION AND REVIEW

This policy will be re-viewed triennially by the Senior Management Team in line with best practice, or in light of changes in legislation and guidance from sources such as OGP, Internal Audit, C&AG, the

²⁹ Statute of Limitations (Amendment) Act 2000 (as amended)

³⁰ Refer to ETB's Record retention Policy

³¹ For tender documentation relating to Building works go to <https://www.education.ie/en/School-Design/>

Department of Education and the Department of Public Expenditure & Reform. The date of implementation is 13th September 2021, which is the date of adoption by Executive.

APPENDIX 1 THE PROCUREMENT CYCLE



APPENDIX 1A - RFQ EVALUATION FORM (€15,000-€25,000)

ANALYSIS OF QUOTES RECEIVED

Quotes Analysis for the supply of goods/services to: _____
(School Name)

Quotes for the supply of: _____

Please note that **INCOMPLETE** forms will result in delay in processing your account for payment

Reply No.	Supplier Name & Address	Cost of Goods	VAT	TOTAL
1.				
2.				
3.				
4.				
5.				

Recommendation:

Reason:

<i>Supplier:</i>	
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I recommend that the purchase be made from the above supplier for the reason stated. The supplier meets the written specification drawn up by this school/centre.

I confirm that I have no conflict of interest in regard to the above quotation and will undertake the procurement process in accordance with ETB Procurement policy.

Approved by: Date: _____
Principal / Centre Manager / Budget Holder

Reviewed by: _____

Date: _____

Procurement Manager

Appendix 1B - RFQ EVALUATION FORM (€5,000-€15,000)

ANALYSIS OF QUOTES RECEIVED

Quotes Analysis for the supply of goods/services to: _____
(School Name)

Quotes for the supply of: _____

Reply No.	Supplier Name & Address	Cost of Goods	VAT	TOTAL
1.				
2.				
3.				

Recommendation:

Reason:

Supplier:	
------------------	--

I recommend that the purchase be made from the above supplier for the reason stated. The supplier meets the written specification drawn up by this school/centre.

I confirm that I have no conflict of interest in regard to the above quotation and will undertake the procurement process in accordance with ETB Procurement policy.

Approved by: Date:

Principal / Centre Manager / Budget Holder

APPENDIX 2 - TENDER REQUEST FORM (CONTRACTS ABOVE €25K)

Name of Department/ School/Centre	
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Name and Contact Details for Principal/Department or Centre Manager	
Description of the product/service to be procured	
Is there signed budget approval attached with this request? Yes/No	
What is the estimated contract value exclusive of VAT?	
Is there an existing contract in place? Yes/No	
Has the Incumbent been notified regarding this upcoming tender process? Yes/No	
What is the projected timeline for this requirement?	
Is TUPE likely to be an issue with the new contract? Yes/No	
Who will be leading the procurement process?	
Have you submitted a detailed specification of your requirements?	
Budget Holder Signature _____	Director/Chief Executive Signature of Approval _____
Date: _____	

Preparing a Specification of your School/Centre Requirements: A fully detailed specification must be submitted with this request for tender form.

The following elements may assist you in identifying those requirements:

1. Background information on the school/centre
 2. Contract commencement date
 3. Contract duration
 4. Indicative value of the contract
 5. What is your annual spend?
 6. Details of goods/services to be procured including:
 - Quantity
 - Pricing strategy (e.g. fixed fee; hourly/daily/ weekly rates; price per unit/ per head) and whether the breakdown of the total cost should include other costs (labour, delivery, disposal, retainer fee etc.)
 - Unique requirements for your school or centre
 - Do you have a list of suppliers/ Are there many suppliers of this product/service?
- Standards
 - Alternatives
 - Technical information where appropriate
 - Scope of the tender
 - Unique requirements for your school or centre
 - Child Protection Issues
 - Legislation
 - Environmental Considerations
 - Garda Vetting
 - Innovation
 - Site Visits
 - Site Access Issues

APPENDIX 3 PROCUREMENT CHECKLIST AND CONTRACT FILE

- Regulation 84 report (if applicable) A
- business case or cost benefit analysis (if required).
- 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
- The evaluation report
- The acceptance by senior management of the evaluation team's report The
- winning tender (or quotation)
- The Contract Award Notice
- Post Tender Clarifications
- 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
- Initial order to the contract holder for work packages/services
- All request 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
- **Contract Management**
- The post implementation review or reviews/reports by third parties

APPENDIX 4 EU PUBLIC DIRECTIVE (ARTICLE 84) AUDIT REPORT

This audit report should contain the following: The name of the buyer

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- The subject matter and value of the contract
- The results of the pre-qualification process *i.e* the names of the successful candidates with reasons provided for selection/non-selection
- Reasons for rejecting abnormally low tenders
- The name of the preferred bidder and the reasons for selecting their tender
- The name(s) of sub-contractors and the share of the contract to be sub-contracted
- Justification, where appropriate, for the use of the competitive dialogue/competitive procedure with negotiation
- Reasons for not awarding a contract or a framework
- An explanation for not using an electronic submission
- Measures taken to address potential conflicts of interest of the evaluators
- Reasons for not using lots

In addition, buyers must maintain records of internal deliberations, records of dialogue or other meetings and details about the preparation of the procurement documents, including the setting of selection and award criteria.

Over time these procurement audits will become an important source of insight for unsuccessful suppliers. These documents may be discoverable under the Freedom of Information Act.

APPENDIX

5 TEMPLATES: CORPORATE PROCUREMENT PLAN & BELOW EU THRESHOLD TENDER DOCUMENTS

The following are available from ETB Head Office and ETBI³².

1. **Corporate Procurement Plan template including MAPP 2.** RFQ templates (below 25k)
3. **Suite of ETB Templates for use in the procurement of goods and services below EU Threshold.**
This suite contains the following documents:

Contracts

Contract Tender Documents

- ETBTDRC-1 Contract Invitation to Tender Open Procedure 2020
- ETBTDRC-2 Contract Terms and Conditions Goods 2020
- ETBTDRC-3 Contract Terms and Conditions Services 2020
- ETBTDRC-4 Service Level Agreement Contract 2020
- ETBTDRC-5 Tender Response Document Contract 2020
- ETBVALC-1 Open Contract Tender Evaluation Sheet 2020

Contract Letters

- ETBLTRC-1 Request for Self-Declared Data - Open Tender 2020
- ETBLTRC-2 Invite to Clarification Meeting 2020 21
- ETBLTRC-3 Award Letter Contract 2020 _____
- ETBLTRC-4 Regret Letter Contract Admissible Tenders 2020
- ETBLTRC-5 Regret Letter Contract Inadmissible Tenderer – 2020

Framework Agreements

Framework Agreement Tender Documents

- ETBTDRF-1 Single FW Invitation to Tender Open Procedure 2020
- ETBTDRF-2 Multi FW Invitation to Tender Open Procedure 2020
- ETBTDRF-3 Single Operator Framework Agreement Terms 2020
- ETBTDRF-4 Multi Operator Framework Agreement Terms 2020
- ETBTDRF-5 Contract Terms and Conditions Goods 2020
- ETBTDRF-6 Contract Terms and Conditions Service 2020
- ETBTDRF-7 Service Level Agreement 2020
- ETBTDRF-8 FWA Tender Response Document OPEN 2020
- ETBTDRF-9 Declaration of Confidentiality and Conflict of Interest 2020
- ETBVALF-1 Open Procedure Tender Evaluation Sheet 2020

Framework Agreement Letters

- ETBLTR-9 FWA Multi Party - Regret Letter 2020

³² Available on both the ETBI Procurement Network Sharepoint and the log-in section of the ETBI [website](#)

- ETBLTR-10 FWA Multi Party under Mini Tender - Regret Letter 2020
- ETBLTRF-1 Request for Self-Declared Data - Open Tender 2020
- ETBLTRF-2 Invite to Clarification Meeting 2020
- ETBLTRF-3 Award Letter Contract - Single Party Framework 2020
- ETBLTRF-4 FWA Multi Party Admittance - Cascade First Ranked 2020
- ETBLTRF-5 FWA Multi Party Admittance - NOT First Ranked 2020
- ETBLTRF-6 FWA Multi Party Admittance Contracts via Mini Tender 2020
- ETBLTRF-7 Regret Letter Admissible Tenders 2020
- ETBLTRF-8 Regret Letter Inadmissible Tenderer - Open 2020

APPENDIX 6 ABOVE EU THRESHOLDS TENDER DOCUMENTS

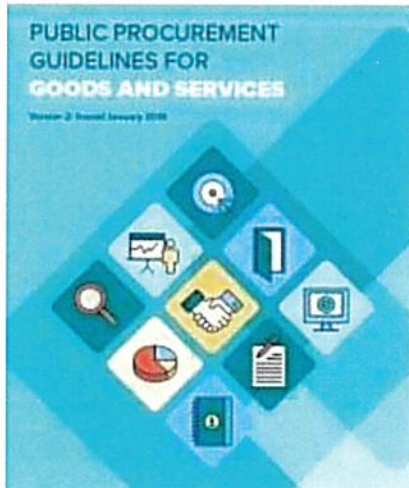
The following templates are available from the OGP website:

- RFT – Goods [Click here for link](#)
- RFT – Services [Click here for link](#)
- Goods Contract [Click here for link](#)
- Services Contract [Click here for link](#)

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APPENDIX 7 PUBLIC PROCUREMENT GUIDELINES FOR GOODS AND SERVICES

The following Guide is available from the OGP website [link here](#)



8 ETHICS IN PUBLIC PROCUREMENT³³

³³ Updated for ETBs from [Ethics in Public Procurement](#) (National Public Procurement Policy Unit, June 2005)

APPENDIX

1. INTRODUCTION

The purpose of this is to provide information to employees of the ETB in order for them to conduct purchasing/procurement in a way that satisfies probity and accountability requirements.

2. GUIDING PRINCIPLES

It is very important that all employees involved in the public procurement function discharge it with probity, transparency and accountability in a manner that secures best value for public money.

Probity requires the purchasing process to be conducted

- ethically;
- honestly; and
- with fairness to all participants

Transparency and accountability require that the basis for decisions is demonstrably clear and objective and that the purchaser is held to account for the conduct of the procurement process. Employees involved in the procurement function must ensure that they are cost effective and efficient in the use of resources while upholding the highest standards of integrity. 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.

3. PROBITY

In the context of procurement, the aim should be that the ETB as an organisation is trusted and respected by those with whom it deals and that business is conducted by employees not only efficiently but in a fair and reasonable manner. Some of the practical implications of ensuring probity in procurement are set out in the following sub-sections.

Legality

There is an obligation on employees involved in the procurement function to exercise their powers lawfully. Compliance with national and EU legal requirements is a duty owed to contractors, suppliers, and service-providers by the ETB. Contractors, suppliers, and service-providers who have been treated unfairly or whose rights have been infringed in the public procurement process have a right to legal redress under EU remedies Directives.

A Procurement Policy has been devised in order to ensure that employees are aware of their obligations in this regard and adherence to the policy will ensure that legal requirements are fulfilled. If employees are unsure of the legal, policy or procedural requirements, they must seek advice from their line managers.

Disclosure of Interest

Any form of personal interest which may impinge, or might reasonably be deemed by others to impinge, on an employee's impartiality in any matter relevant to his or her duties in relation to public procurement should be disclosed in writing to their line manager. Personal interest includes an interest of a relative or connected person. The Line Manager must then decide if the exercise should be dealt with by another member of staff or seek further advice.

4. TRANSPARENCY AND ACCOUNTABILITY

Procurement transactions and decisions must in all respects be fair, equitable and ensure value for money. The ETB must be able to justify decisions made and actions taken.

In organising the procurement function, the ETB will ensure appropriate separation of duties within the procurement cycle. In so far as possible, ordering and receiving goods and services should be distinct from payment for goods and services.

Accurate written records (including computer records) are essential in demonstrating that proper ethical standards have been observed. Therefore, appropriate records as identified should be maintained throughout the purchasing process. These records should provide an audit trail of the reasons for making a particular procurement decision. The Procurement Policy gives the type and detail of information that is recorded and depends on the complexity or sensitivity of the particular purchasing issue.

5. CONFIDENTIALITY OF INFORMATION

Employees involved in the procurement function must ensure that commercially sensitive information is kept secure and never used for personal gain or to prejudice fair competition. Information on individual contracts must not be given to the media or any other enquirer (except the individual contractor concerned), without the authority of the line manager.

Disclosure of supplier and tender information relating to the tender process prior to contract award, and in particular to another interested party, is strictly prohibited. After the award of contract, information may be provided in accordance with the detailed guidance on "Notifying Tenderers and Disclosure of Information" outlined in the booklet _____²⁴ "Public Procurement Guidelines - Competitive Process" and published in the general procurement guidance section of the eTenders.ie website. Some information on the tendering process may be disclosable under FOI legislation where invoked.

Gifts and Hospitality – please refer to ETB Gift and Hospitality Policy.

9 WORKS (BUILDING AND RELATED SERVICES)

9.1 Open or Restricted Tendering?

- (a) **Type 1 Projects < €1,000,000 (excluding VAT):**
 - (i) For Projects with a Construction value of less than €50,000 (excluding VAT) either the Restricted Procedure or the Open Procedure may be used.
 - (ii) For projects with a Construction value greater than €50,000 but less than €1m (excluding VAT) the Open Procedure must be used.
 - (iii) The advertising and tendering procedures set out below apply.
- (b) **Type 2(A) Projects > €1,000,000 (excluding VAT):**
 - (i) For projects with a Construction value less than €2,500,000 (excluding VAT) the Open Procedure should be used unless the prior agreement of the Department of Education [DE] to use the Restricted Procedure has been obtained.
- (c) **Type 2(B) & 3 Projects > €2,500,000 (excluding VAT):**
 - (i) For projects with a Construction value equal to or greater than €2,500,000 (excluding VAT) Contracting Authorities may use either the Open Procedure or the Restricted Procedure. In general, the Restricted Procedure should be used for

APPENDIX

larger and more complex projects. For smaller straight forward projects where the cost of Tendering will not be an undue burden on contractors the Open Procedure can be used.

- (ii) The procedure set out in the Design Team Procedures DTP 2012 Procurement of Contractors, Section 3 (available at www.education.ie) is applicable for projects 25 using the Open Procedure. _____
- (iii) The procedure set out in the Design Team Procedures DTP 2012 Procurement of Contractors, Section 4 (available at www.education.ie) is applicable for projects using the Restricted Procedure.

9.2 Public Advertisement

- (a) For projects with an estimated construction value of less than €50,000 excluding VAT, advertisement on eTenders or other national medium is not required (unless there is the possibility of cross-border interest).
 - (i) If the Open procedure is used, the School Authority and their Consultant/Design Team must put an advertisement in the local papers (including cross-border papers where appropriate) stating how to obtain the tender documents and the latest date for the return of tenders.
- (b) For projects greater than €50,000 an advertisement must be placed on eTenders.
- (c) For projects greater than €5,382,000 (excluding VAT) a Contract Notice must also be placed in the OJEU journal. This can be done simply through the eTenders web-site.

9.3 Tendering for Works under €50,000 (excluding VAT)

- (a) A minimum of at least 5 quotes³⁴ (in writing or by email) must be sought from suitable contractors. Where you do not get 5 responses, you should keep documentation for audit purposes as proof that you sought 5 Quotes.
 - (i) If using the Restricted Procedure, School Authorities and their Consultants/Design Teams are required to consider any Contractor who has expressed an interest in tendering for the project (*e.g.* by writing or emailing the school or consultant), and, where that Contractor meets the minimum standard required for the construction of the works, must include that contractor on the list of firms tendering for the project. There is no upper limit on the number of contractors permitted to tender for the project.
 - (ii) Where the Open Procedure is being used the School Authority and their Consultant/Design Team must put an advertisement in the local papers (including crossborder papers where appropriate) stating how to obtain the tender documents and the latest date for the return of tenders. In addition, the School Authority and their Consultant/Design Team must directly contact any Contractor who has expressed an interest in tendering for the project (*e.g.* by writing or emailing the school or consultant) informing them in a timely manner of the tender opportunity. In using the Open Procedure placing an advertisement does not guarantee an acceptable level of interest from contractors. It is permissible and prudent to contact suitable contractors in the general geographical area to alert them to the tender opportunity and invite them to respond to the advertisement.

³⁴ As outlined in the table on Page 7, this applies to works under €50,000 but more than €15,000. For €5,000 - €15,000 3 quotes must be sought, for €500-€5000 1 quote must be sought and for less than €500 can proceed with PO.

- (b) If fewer than five firms submit tenders, (whether under the Open or Restricted Procedure) the Contracting Authority should only proceed with an award if it considers that there has been genuine competition and that the tender being considered for acceptance represents value-for-money.
- (c) If there is the possibility that there could be interest from another jurisdiction (*e.g.*, Northern Ireland) it is important to ensure that the principles, under the Treaty of Rome, of transparency and non-discrimination are observed.

9.4 Tendering for Works > €50,000 and < €1,000,000 (excluding VAT)

Minimum Standards for Participation

- (a) Under the Open Procedure, all interested parties are permitted to submit tenders. This does not however mean that there are no minimum standards for participation.
- (b) For a tender to be deemed a valid tender, the tenderer must meet the minimum standards for participation published in the advertisement/Contract Notice and the Conditions for Award set out in the Tender Documents.
- (c) These minimum standards must be reasonable and should not exceed the requirements in the DE Suitability Declaration for Small Works available at www.education.ie under School Design > Procedures and Cost Plans > Design Team Procedures.
- (d) For Projects < €1,000,000 (excluding VAT) all tenderers should be required to sign the DE Suitability Declaration for Small Works and submit it with their tenders.
 - (i) By signing this declaration, tenderers are stating that they meet the minimum Standards for Participation and the Conditions for Award and confirming that (if they are the apparently successful tenderer) they will produce (within 7 calendar days) evidence of compliance with all sections of this declaration.

eTenders Advertisement

- (e) Once the Tender documents are complete an advertisement must be placed on eTenders (see Template eTenders advertisement).

- (f) The eTenders advertisement should state that the DE Suitability Declaration for Small Works is available at www.education.ie under *School Design > Procedures and Cost Plans > Design Team Procedures* and must be signed and submitted with their tenders.
- (g) The eTenders advertisement should contain the following wording under Additional Information:
- Important Notice:
- Tenderers are required to read the DE Suitability Declaration for Small Works carefully and to make sure that they meet the minimum standards stated therein. Tenderers who do not meet those requirements should not submit a tender as they will be excluded at award stage. All Tenderers are liable for their own costs of tendering.
- (h) In using the Open Procedure placing an advertisement on eTenders does not guarantee an acceptable level of interest from contractors. It is permissible and prudent to contact suitable contractors in the general geographical area to alert them to the tender opportunity and invite them to respond to the advertisement. **Tenders**
- (i) An adequate period of time must be allowed to tenderers for compiling and submitting their tenders. The minimum period to be allowed is 15 working days (except in the case of emergency works where a reduced period may be used).
- (j) Tender submissions should be in writing (not by email)
- Tender Assessment**
- (k) Tenders received on or before the due date and time should all be opened together after the closing date for receipt of tenders, and only by a nominated official of the School Authority 27 in the company of the Consultant(s). All details must be recorded, checked and signed by all _____ present.
- (l) A signed *DE Suitability Declaration for Small Works*⁴¹ must be included with each Tender submission. Any tenderer who has not submitted the signed suitability declaration and the signed Form of Tender with the price clearly stated (either in words or numbers) should be excluded.
- (m) The lowest qualifying tender (*i.e* not excluded at (k) above) is the apparently successful tenderer or preferred bidder.
- (n) The Preferred bidder's pricing document should now be opened and any arithmetical errors, low rates or un-priced items noted.
- (o) The preferred bidder should now be contacted and asked to provide (within 7 days) the information required in the *DE Suitability Declaration for Small Works*. (The template Letter of Intent at [Appendix D](#) should be used)
- (i) At the same time, if his/her Form of Tender has been modified in any way (*e.g.*, additions omissions or amendments, he/she should be given the opportunity (in writing) to withdraw those qualifications. (If any such qualifications are not withdrawn, the tender should be rejected.)
- (ii) Any arithmetical errors, low rates or un-priced items should be brought to the preferred bidder's attention and he/she should be given the opportunity (in writing) to stand over or to withdraw his tender. He should not be allowed to correct his tender.
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- (iii) Where a tender is so low that the Consultant(s) considers that viability may be compromised, detailed discussions with the contractor must take place. If the contractor is prepared to stand over his/her tender the Consultant(s) must be satisfied that the contractor has comprehensive knowledge of the extent, scope and nature of the works and of post contract cost control procedures, that he/she has demonstrated the adequacy of his/her tender and has the financial capacity to complete the project.
- (p) When the evidence of compliance with the *DE Suitability Declaration for Small Works* has been received, it should be examined and verified.
 - (i) The preferred bidder should not be excluded on a technicality (before excluding the preferred bidder clarification should be sought for such non-compliance items).
 - (ii) However substantive non-compliance items (*e.g.* complete failure to demonstrate H&S competence or no track record of projects of a similar size and complexity) are a basis for exclusion and are not matters of clarification).
 - (iii) If clarification is sought on any item and the issue is not resolved by return the preferred bidder should not be given a further chance.
- (q) If the preferred bidder is deemed to be non-compliant, that tenderer should be excluded and the next lowest tenderer should be deemed to be the preferred bidder. The process from 4.5(n) to 4.5(p) should be repeated until a qualifying preferred bidder is established
- (r) Except where a tender is withdrawn or deemed to be non-qualifying (as above) the Design Team must not pass over the lowest or any tender, due to any other reasons without prior consultation and agreement with the Planning and Building Unit.

9.5 Works > €1,000,000 (excluding VAT)

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- (a) For guidance on using the Open Tendering Procedure refer to the Design Team Procedures DTP 2012 Procurement of Contractors, Section 3 (available at www.education.ie).
In using the Open Procedure placing an advertisement on eTenders does not guarantee an acceptable level of interest from contractors. It is permissible and prudent to contact suitable contractors in the general geographical area to alert them to the tender opportunity and invite them to respond to the advertisement.
- (b) For guidance on using the Restricted Tendering Procedure refer to the Design Team Procedures DTP 2012 Procurement of Contractors, Section 4 (available at www.education.ie).

APPENDIX 10 SOLE/ TIED SUPPLIER REQUEST

Where it is necessary to deal with a tied/sole supplier, service provider or contractor, arrangements which provide best value for money should be negotiated. Care should be taken by an end user when they face a supplier, service provider or contractor with an exclusive right to provide a particular supply or service. Open-ended arrangements with these exclusive distributors should be avoided where possible as they reduce or hinder competition. These types of arrangements are in breach of both Government Guidelines and EU Directives. Appropriate marketing testing (*i.e.* open and competitive tendering) should be undertaken at appropriate intervals to ensure market openness and competition is maintained. Such Contracts should not roll over for more than three years.

Where it is necessary to deal with a sole supplier, this should formally be requested in writing and submitted to the Manager with Responsibility for Procurement who in turn will make a recommendation for approval to the relevant Director.

A template form is included at Appendix 12.

Awarding of a contract below the EU value threshold and without use of a competitive process should only be considered in the following instances: -

1. Where only a proprietary product will meet requirements, such as parts or components for equipment.
2. Where an agent, licensee or franchise holder has sole rights to supply a service or product;³⁵
3. Where there is only one suitably qualified specialist in the relevant field. 29
4. Where continuity of supply or service is required in order to ensure value for money. Such contracts require the prior approval of the Director of OSD.

APPENDIX 11 DEROGATION

A derogation may be granted in cases where due to urgency a competitive process cannot be undertaken in the time available. Factors giving rise to urgency must be serious, unforeseeable and, except in the most exceptional circumstances (for instance a matter of urgent public safety or the like) not due to action or inaction on the part of the contracting authority. Awarding of such contracts without a competitive process must be approved in writing by the relevant Director in the case of contracts less than €25,000 (supplies & services) and €50,000 (works) or the Chief Executive in the case of contracts above €25,000 (supplies & services) and €50,000 (works). Relevant proof/documentation must be held on file for auditing purposes.

³⁵ Some examples include City & Guilds, QQI, ECDL etc

APPENDIX 12 TEMPLATE SOLE/ TIED SUPPLIER REQUEST

- This form must be completed where the intention is to use a sole supplier obtain a single quotation or tender.
- This form must be completed in advance of the PO being issued to the supplier.

Suggested Supplier:

Please specify the type of purchase:

- Goods
- Services
- Works

Please specify the type of supplier

- Sole Supplier
- Tied Supplier

Full description of goods / services / works

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Estimated Value:

Reason:

Because it is contrary to achieving value for money through open and fair competition, single supplier action should normally be avoided. Please give full details of the reason why you believe that there is only one supplier for the item mentioned above and that no alternative is available:

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Request:

Name	ROLE/ POSITION	SIGNATURE	DATE

Recommendation/ Approval:

	BLOCK CAPITALS NAME	SIGNATURE	DATE

Procurement Manager			
Director			
Chief Executive Officer (where continuity of service/supply required)			

APPENDIX 13: BREXIT AND PUBLIC PROCUREMENT

The Office of Government Procurement has published an [Information Note](#) on Brexit and Public Procurement. It outlines a number of steps a public body should consider to prepare for the impact of Brexit. This information note is dynamic in nature and will be subject to amendments. To have the most up-to-date version, the Office of Government Procurement encourages officials to check their website ogp.gov.ie/information-notes/ for the most up-to-date version. The OGP has established a dedicated Brexit contact point. For Brexit related queries please email Brexit@ogp.gov.ie.

APPENDIX 14: EUROPEAN [E-LIBRARY](#) OF PUBLIC PROCUREMENT GOOD PRACTICES

This e-library is a collection of solutions and approaches for improving public procurement processes. The good practices in the e-library are primarily targeted at public procurement policymakers and public officials involved in designing and implementing public procurement systems. The e-library contains descriptive information designed to inform a decision about adopting the good practice into public procurement, including:

- A summary of the good practice; 31
- Description of its impact on public procurement objectives; _____
- Key success factors for good practice implementation; • Inputs needed for implementation;
- Case studies.