



Oifig um Sholáthar Rialtais
Office of Government Procurement

National Public Procurement Policy Framework

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Version 3 of the National Public Procurement Policy Framework published November 2019 with updates to formatting, links and references to recently published Information Notes and revision of content re Construction Procurement Policy

Version 2 of the National Public Procurement Policy Framework published June 2018 with amendments to two hyperlinks

Version 1 of the National Public Procurement Policy Framework published January 2018

National Public Procurement Policy Framework

1. Purpose of Document

The purpose of this document is to set out the overarching policy framework for public procurement in Ireland.

The National Public Procurement Policy Framework (NPPPF) consists of five strands:

1. Legislation (Directives, Regulations)
2. Government Policy (Circulars etc.)
3. Capital Works Management Framework for Public Works and Construction-related Services
4. General Procurement Guidelines for Goods and Services
5. More detailed technical guidelines, template documentation and information notes as issued periodically by the Policy Unit of the Office of Government procurement (OGP)

This document sets out the procurement procedures to be followed by Government Departments and State Bodies under national and EU rules. The NPPPF supports contracting authorities, including the OGP, four key sectors (Health, Education, Local Government and Defence), individual Departments, Offices, commercial and non-commercial State bodies, and private entities which are subsidised 50% or more by a public body, when awarding contracts for works, goods and services. It supports and enables public bodies to adopt procedures to meet their public procurement requirements and facilitates compliance with EU and National Procurement Rules.

The framework will be subject to amendment and review periodically and the most up-to-date version will be published on the OGP's website, www.ogp.gov.ie. The framework is not intended as legal advice or a legal interpretation of Irish or EU law on public procurement. Legal or other professional advice should be obtained if there is any doubt about the correct procedure to be followed.

2. Accountability

Procurement transactions and decisions must in all respects be fair, equitable and ensure value for money (VFM). Contracting authorities must be able to justify decisions made and

actions taken. Procurement practices are subject to audit and scrutiny under the Comptroller and Auditor General (Amendment) Act 1993, and the Local Government Reform Act 2014, and Accounting Officers are publicly accountable for expenditure incurred. Contracting authorities are responsible for establishing arrangements for ensuring the proper conduct of their affairs, including conformance to standards of good governance and accountability with regard to procurement.

3. Government Procurement Reform Programme

Procurement is a key element of the Government's Public Service Reform agenda. The State spends approximately €12bn every year on works, goods and services. In this context, it is essential that the public service operates in a co-ordinated and efficient way.

The OGP was established in 2013 and commenced sourcing operations in 2014 and, together with Health, Defence, Education and Local Government has responsibility for sourcing goods and services on behalf of the public service. In addition, the OGP also has responsibility for procurement policy and procedures for the entire public sector.

Through the central purchasing model, the public service speaks with 'one voice' to the market for each category of expenditure, eliminating duplication and taking advantage of the scale of public procurement to best effect.

This model has led to a shift from decentralised to a centralised model of procurement for sixteen categories of spend. The OGP is responsible for Framework Agreements (FWA) where it is the contracting authority. The OGP facilitates mini-competitions under these FWAs for both central and non-central government. It acts in an advisory role in this respect but the individual contracting authorities are accountable and responsible for the mini-competitions and also bespoke contracts.

Government policy is that public bodies, where possible, should make use of all such central arrangements. Where public bodies do not utilise central procurement frameworks they should be in a position to provide a VFM justification.

4. Legislation

4.1 Public Service Management Act¹

Responsibility for ensuring VFM outcomes rests with individual departments and offices. Under section 4(f) and (g) of the Public Service Management Act (PSMA), 1997², Departments and scheduled offices are required to provide cost effective public services, achieve better use of resources and comply with the requirements of the Comptroller and Auditor General (Amendment) Act, 1993. Similar rules, which require VFM outcomes, apply to bodies which are audited by the Comptroller and Auditor General.

4.2 EU Procurement Directives³

To create a level playing field for all businesses across Europe, EU law sets out minimum harmonised public procurement rules. These rules govern the way public authorities and certain utility operators purchase goods, works and services. The rules are set out in three principal EU Directives which are transposed into national legislation and apply to tenders for public contracts whose monetary value exceeds a certain threshold. For tenders of lower value, national rules apply. Nevertheless, these national rules also have to respect the general principles of EU law.

The current EU Directives are:

- Directive 2014/24/EU on public procurement (goods, services and works)
- Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors
- Directive 2014/23/EU on the award of Concession Contracts

The new Public Authorities Contracts Directive (2014/24/EU: the “Classical”) and the Utilities Directive (2014/25/EU: the “Utilities”) reflect the existing framework of procurement law. The reforms across both Directives are designed to improve the effectiveness of the regime and

¹ <http://www.irishstatutebook.ie/eli/1997/act/27/enacted/en/html>

² This states that Secretary Generals or the head of a Scheduled Office are, subject to the determination of matters of policy by the Minister of the Government, tasked with “... (f) ensuring that the resources of the Department or Scheduled Office are used in a manner that is in accordance with the Comptroller and Auditor General (Amendment) Act, 1993 with a view to enabling the matters referred to in paragraphs (a) to (d) of Section 19(1) of that Act to be appropriately addressed by the Department or Scheduled office; (g) examining and developing means that will improve the provision by the Department or Scheduled Office of cost effective public services ...”

³ <http://ogp.gov.ie/guidelines-sub-menu-procurement-legislation/>

to codify recent procurement case law. The incremental changes in these Regulations are intended to help streamline public procurement processes and embed more simplified and flexible rules for the selection of suppliers. This should allow public bodies to carry out procurement faster and with less 'red tape'. In broader economic terms, the new features can facilitate better VFM outcomes for the taxpayer from public procurement and facilitate greater SME participation and access to public procurement opportunities. These regulations provide for, among other things, the items listed below.

- There is scope to take account of economy-wide strategic policy goals in the areas of environmental, social and labour law compliance. These obligations can be included in clauses in public contracts with the proviso that the clauses are linked to the subject-matter of the contract in question.
- A Light Touch regime (LTR) is provided for covering mainly social, health and educational services (“services to the person”) for contracts above €750,000. The rules and procedures in the regime are intended to maximise flexibility in the conduct of procurement in these areas (designated CPV codes in the Directive) while adhering to the key procurement principles of transparency, equality of treatment etc. There are 14 broad categories of social and other services to which the LTR applies. For more details of the precise services falling within this regime, contracting authorities should refer to Annex XIV of the EU Classical Directive 2014/24/EU where the relevant CPV codes for these services are set out.
- Public bodies can be required to use OGP’s procurement arrangements (or those of another designated central purchasing body in the State) such as frameworks or dynamic purchasing systems.
- Changes intended to improve efficiency and effectiveness in the procurement process include the following:
 - electronic methods of communication are now mandated in parts of the award process (electronic submission of tenders and requests to participate by October 2018 – for Central Purchasing Bodies from April 2017),
 - use of a self-declaration (European Single Procurement Document) of compliance with selection and exclusion criteria by suppliers to reduce red tape,
 - reduction in the time limits for receipt of tenders by 30%; explicitly allowing prior discussion with suppliers and independent experts, with safeguards

against distorting competition or violating transparency and non-discrimination principles, and

- simplifying the use of dynamic purchasing systems (DPS): the main features of DPS include: no time limit on duration, no need to advertise call-off contracts, suppliers can be added at any time and an entirely electronic system.
- The Directives include provisions to encourage greater access to SME as well as to persons with disabilities including:
 - the discretion to divide public contracts into lots, with the proviso that opting not to lot contracts must be explained in the procurement documents,
 - provision for 'consortia bidding' to encourage SME involvement,
 - financial capacity criterion is now less demanding – it is generally limited to twice contract value,
 - reform of the rules for Sheltered Workshops to encourage greater take-up – reduction in the percentage of employees with a disability from 50% to 30% and the inclusion of 'disadvantage' in addition to 'disability', and
 - particular contracts can be ring fenced (reserved) for social enterprises under certain conditions.
- The current grounds for excluding suppliers (organised crime, corruption, fraud and money laundering) have been expanded to include terrorism, child labour and human trafficking.
- The Directives⁴ also provide for written reports documenting the procurement process. These reports record the decisions taken and the justification for same including the subject matter and value of the contract, the results of the pre-qualification process with reasons provided for selection/non-selection, reasons for rejecting abnormally low tenders, name of the preferred bidder and the reasons for selecting their tender, reasons for not using lots etc.

⁴ Article 84 - Individual reports on procedures for the award of contracts.

4.3 Irish Regulations implementing EU Procurement Directives

The EU Procurement Directives were transposed into Irish Law in 2016 and 2017 by way of national Regulations contained in Statutory Instruments as follows:

- S.I. No. 284 of 2016 (the “2016 Regulations”)
- S.I. No. 286 of 2016 (the “2016 Utilities Regulations”)
- S.I. No. 203 of 2017 (the “2017 Concessions Regulations”)

4.4 Remedies Regime

European public procurement law is governed by two strands of Directives covering:

- a. the procedures for conducting the award of public contracts (as set out in 4.2 and 4.3 above), and
- b. remedy procedures to ensure compliance with public procurement procedures and for review and remediation of infringements of those procedures.

The latter Remedies Regime allows tenderers or candidates who feel that a procurement process was not carried out in an open, fair and transparent manner the option of seeking recourse from the courts.

While EU public procurement legislation dates back over nearly 50 years, the provision of a remedies strand was only introduced in 1989. These provisions, as amended in 2007 were transposed into Irish law in 2010.

National Remedies Regulations provide a recourse option to tenderers or candidates, at High Court level, to challenge procurement processes which they may consider were not compliant with public procurement rules.

A plaintiff in such matters can seek review in relation to the specified aspects of procedural and contract award procedures. Upon application, the court may decide or act in accordance with the following:

- to set aside, vary or affirm a decision of the contracting authority,
- to declare the contract ineffective, impose alternative penalties on a contracting authority and make any necessary consequential orders,

- to make an order correcting an alleged infringement or preventing further damage,
- to set aside any discriminatory, technical, economic or financial specifications in any of the procurement documents,
- to suspend the operation of a decision or contract, and
- to award damages where a procedural infringement has occurred, after the conclusion of a contract but not where the contract has been declared ineffective.

Additionally, the Remedies Regulations provide:

- a formal standstill period between the award and the conclusion of a public contract,
- an automatic suspension of the contract award procedure,
- an obligation to inform all candidates and tenderers about the outcome of tender procedures and contract award decisions, and
- time limits for making court applications.

4.5 Remedies Directives

The EU Directives covering the provision of Remedies consist of a sequence of four Directives from 1989 to 2014. They sit alongside and in parallel to the main EU Public Procurement Directives which set out the rules for public procurement for contracts above the EU value thresholds. The set of Remedies Directives set out the provisions for redress of mis-application of the EU Public Procurement Directives in the course of the process and the award of a public contract.

The four Remedies Directives are:

- [Directive 89/665/EEC](#) Review Procedures for Public Contracts
- [Directive 92/13/EEC](#) Review Procedures for Utility Sector Contracts
- [Directive 2007/66/EC](#) Amending Directive to 89/665/EC and 92/13/EC
- [Directive 2014/23/EU](#)
 - Article 46 Amending Directive updating application of Review Procedures to the Procurement regimes covering Directive 2014/24/EU and 2014/23/EU – Public Contracts and Concession Contracts

- Article 47 Amending Directive updating application of Review Procedures to the Procurement regimes covering Directive 2014/25/EU – Utility Sector Contracts

4.6 National Remedies Regulations

There are several relevant regulations which implement the suite of EU Remedies Directives since 1989. The substantive regulations were published in 2010 with a number of amending regulations published since then.

The substantive regulations of 2010 which implement the relevant Directives (as listed above) from 1989, 1992 and 2007 are:

- [S.I. No. 130 of 2010](#) European Communities (Public Authorities' Contracts) (Review Procedures) Regulations 2010
- [S.I. No. 131 of 2010](#) European Communities (Award of Contracts by Utility Undertakings) (Review Procedures) Regulations 2010

There were two amending regulations in 2015 to regularise the procedures governing the automatic suspension provisions:

- [S.I. No. 192 of 2015](#) European Communities (Public Authorities' Contracts) (Review Procedures) (Amendment) Regulations 2015
- [S.I. No. 193 of 2015](#) European Communities (Award of Contracts by Utility Undertakings) (Review Procedures) (Amendment) Regulations 2015

There is a further set of three regulations published in 2017 to update the national remedies provisions and align them with the corresponding public procurement regulations:

- [S.I. No. 326 of 2017](#) EU Award of Concession Contracts (Review Procedures) Regulations 2017
- [S.I. No. 327 of 2017](#) EU Public Authorities' Contracts (Review Procedures) (Amendment) Regulations 2017
- [S.I. No. 328 of 2017](#) EU Award of Contracts by Utility Undertakings (Review Procedures) (Amendment) Regulations 2017

5. Government Policy on Procurement

Government policy on public procurement is set out in various documents issued by the Departments of Finance and Public Expenditure and Reform. The key policy instruments⁵ in this regard are summarised below.

5.1 Codes, Standards and Governance

Public Spending Code (Circular 13/13)⁶

The Public Spending Code: Expenditure Planning, Appraisal & Evaluation in the Irish Public Service: Standard Rules & Procedures, www.publicspendingcode.per.gov.ie is a comprehensive set of expenditure appraisal, VFM requirements and related guidance covering all public expenditure and combines. The code updates the previous components of the VFM framework and also includes additional modules. It sets out the oversight and approval process for public expenditure proposals including capital projects and includes procurement guidelines.

A review of the Public Spending Code is currently ongoing. As elements of the review are completed, the associated updated guidance will be published. The technical economic parameters for use in appraisal have already been updated. Work is ongoing on updating the requirements in relation to the different stages involved in the process of selection, appraisal, approval, and delivery of capital investment projects. The Project Ireland 2040 Capital Tracker will, going forward, capture information on projects at each stage of the project life cycle.

Corporate Governance Standard for the Civil Service⁷

The [Corporate Governance Standard for the Civil Service](#) is to be used by each Department and Office to guide the development of their individual governance frameworks. Good governance is central to the effective operation of Government Departments. It is vitally important in effectively discharging their statutory and policy obligations. It ensures that a framework of structures, policies and processes are in place to deliver on these obligations and it allows for an objective assessment of management and corporate performance. The

⁵ Note, additional circulars are available on the OGP website <http://ogp.gov.ie/goods/> for supplies and general services, and on the construction procurement reform website, <https://constructionprocurement.gov.ie/circulars/> for Works and Works-related Services

⁶ <http://circulars.gov.ie/pdf/circular/per/2013/13.pdf>

⁷ <http://www.per.gov.ie/en/corporate-governance-standard/>

Standard sets out a summary of good governance principles, and an adaptable governance framework including provisions to be used in documenting each Department's own arrangements. Departments and Offices are now to document and publish their governance arrangements in accordance with the principles set out in this Standard. The Standard includes procurement elements including compliance with the procurement Directives.

Code of Practice for the Governance of State Bodies⁸

The code provides a framework for the application of best practice in corporate governance by both commercial and non-commercial State bodies. State bodies should demonstrate their commitment to achieving the highest possible standards of corporate governance. State bodies and their subsidiaries are required to confirm to their relevant Minister that they comply with this Code of Practice for the Governance of State Bodies in their governance practices and procedures.

The code concerns both the internal practices of the State bodies and their external relations with Government, the relevant Minister under whose aegis they fall, the Minister for Public Expenditure and Reform and their respective parent Departments. Reference is made to ethics in public office obligations that apply to all designated board members and designated office holders. It is recognised, however, that all aspects of this code may not necessarily be appropriate for some smaller State bodies. Accordingly, the code makes provision for certain requirements to be applied proportionately in certain circumstances subject to the written agreement of the relevant Minister/parent Department. The provisions of this code do not override existing statutory requirements and other obligations imposed by the Companies Act 2014, Ethics in Public Office legislation, the specific statutory provisions relating to the State body itself and any other relevant legislation (for example, equality legislation, employment legislation).

The code identifies procurement as one of a number of activities requiring special attention in promoting good corporate governance including having a Corporate Procurement Plan.

⁸ <http://www.per.gov.ie/en/revised-code-of-practice-for-the-governance-of-state-bodies/>

FOI Code of Practice for Public Bodies⁹

FOI Bodies should publish on a quarterly basis details of public contracts awarded (including awards from mini-competitions under existing framework agreements) for values over €25,000 (exclusive of VAT).

Freedom of Information Model Publication Scheme¹⁰

FOI bodies are required to provide the following details in relation to public procurement under the Model Publication Scheme published by the Department of Public Expenditure and Reform in 2016.

- Procurement policies
- A link to all current tender competitions on the eTenders website. Details of current tender competitions over €25,000 (exclusive of VAT) are available on www.etenders.gov.ie
- Public contracts over €25,000 (exclusive of VAT) contracts awarded including contract type, contractor, value, award date, duration and brief description (tabular format)
- On a quarterly basis, details of public contracts awarded for values over €25,000 (exclusive of VAT) should be published including:
 - whether this is an award for a single contract or an award from a framework,
 - name of winning contractor and legal address,
 - value of the contract (exclusive of VAT),
 - type of contract (works, supplies, services),
 - contract award date,
 - duration of contract in months, and
 - brief description of contract.

⁹ <http://foi.gov.ie/code-of-practice/>

¹⁰ <http://foi.gov.ie/guidance/model-publication-scheme/>

5.2 Circulars

Note: Circulars are presented in chronological order based on year of publication with the most recent circulars first.

20/2019: Promoting the use of Environmental and Social Considerations in Public Procurement¹¹

The purpose of this Circular is to promote the wider use of environmental and social considerations in public procurement with specific regard to the [Climate Action Plan 2019](#).

Buyers are required to consider including green criteria in public procurement processes in specified circumstances and to incorporate relevant green procurement measures into their planning and reporting cycles.

10/2014: Initiatives to assist SMEs in public procurement¹²

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.

Buyers are required to publish all Contract Award Notices over €25,000 (exclusive of VAT) on the eTenders website on completion of the award.

16/2013: Revision of arrangements concerning the use of central contracts put in place by the National Procurement Service¹³

Government policy is that public bodies, where possible, should make use of all such central arrangements. Where public bodies do not utilise central procurement frameworks they should be in a position to provide a VFM justification.

05/2013: Procurement of legal services and managing legal costs¹⁴

The circular reminds public bodies of their obligations to ensure that their procurement of legal services complies with the rules and guidelines on public procurement and outlines appropriate competitive procedures that can be used in the engagement of legal services.

¹¹ <http://ogp.gov.ie/circular-20-2019>

¹² <http://ogp.gov.ie/990-2/>

¹³ <http://ogp.gov.ie/986-2/>

¹⁴ <http://ogp.gov.ie/995-2/>

40/2002: Public Procurement Guidelines – revision of existing procedures for approval of certain contracts in the central government sector¹⁵

Annual Report (signed off by the Accounting Officer) and submitted to the C&AG in respect of contracts above €25,000 (exclusive of VAT) awarded without a competitive process.

¹⁵ <http://ogp.gov.ie/997-2/>

6. General Procurement Guidelines for Goods and Services¹⁶

The General Procurement Guidelines for Goods and Services are intended to serve as a toolkit for practitioners, and a general reference document for suppliers. They have been written in accessible language with a view to providing a clear appreciation of the rules, procedures and best practice attached to the various stages of the public procurement process. The guidelines are aimed at demystifying some of the more complex rules and procedures and to promote and reinforce improved best practice, standardisation and consistency of approach among public procurement practitioners.

6.1 Key principles

- Procurement transactions and decisions must in all respects be non-discriminatory, fair, equitable and ensure VFM
- Contracting authorities must be able to justify decisions made and actions taken
- Generally, a competitive process carried out in an open and transparent manner delivers best VFM

6.2 Below EU Procurement Threshold Rules¹⁷

Less than €5k

Award on basis of verbal quotes from competitive suppliers.

€5 to €25k

Award on the basis of written/email responses to specifications sent to at least three suppliers or service providers.

€25k to EU Threshold

Award on basis of clear evaluation criteria in line with more detailed specifications and advertise on eTenders website.

¹⁶ <http://ogp.gov.ie/public-procurement-guidelines-for-goods-and-services-2/>

¹⁷ The EU Thresholds are revised every two years with the last revision on 01/01/2018. The current thresholds are available at https://ec.europa.eu/growth/single-market/public-procurement/rules-implementation/thresholds_en

6.3 Above EU Procurement Thresholds

In relation to above EU threshold public procurement, there are six types of procedures available to contracting authorities in awarding contracts and these are listed below.

- Open Procedure
- Restricted Procedure
- Competitive Dialogue Procedure
- Competitive Procedure with Negotiation
- Innovation Partnership Procedure
- Negotiated Procedure without Prior Publication

The choice of procedure will vary depending on the nature and circumstances of each contract. The Open Procedure is the most commonly used procedure. More detail is available in the Public Procurement Guidelines for Goods and Service published by the OGP and available at www.ogp.gov.ie.

7. Construction Procurement Policy

The construction procurement reform website, www.constructionprocurement.gov.ie, was specifically developed to implement the key outputs of the Government Decision of May 2004 in relation to the reform of public sector construction procurement. The main objectives of this reform initiative are:

- cost certainty at tender award stage,
- better value for money (VFM), and
- more efficient delivery of public works project.

Following the Government decision in 2004, a contract for Standardised Conditions of Engagement for Construction Consultants and a suite of Forms of Construction Contracts for Public Works were developed and implemented on a phased basis in 2007. Circular 33/06: Construction Procurement Reform sets out the revised arrangements for the procurement of public works projects and for the engagement and payment of construction consultants from 2007. Supporting guidance notes were also developed for use with these contracts. Both the

contracts and guidance notes forms part of the Capital Works Management Framework (CWMF).

7.1 Capital Works Management Framework

The CWMF is Strand 3 of the NPPPF. It is a structure that has been developed to deliver the Government's objectives in relation to public sector construction procurement reform. The CWMF 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 from inception to final project delivery and review. All the documents that make up the framework are available online¹⁸.

The CWMF is for use by contracting authorities involved in the expenditure of public funds on construction projects and related consultancy services. The use of the CWMF should result in a more cost effective delivery of public works projects because of the more systematic and detailed approach to, among other things, planning (both initial and detailed), capital budgeting as well as design and construction cost control. Circular 6/10 requires all public sector clients to comply with all aspects of the CWMF as they apply to public works projects.

The CWMF consists of a suite of best practice guidance, standard contracts and generic template documents that form the four pillars that support the framework as follows:

- Pillar 1 – Public Works Contracts
- Pillar 2 – Standard Conditions of Engagement
- Pillar 3 – Cost Planning & Control/Suitability Assessment
- Pillar 4 – Guidance Notes & Glossary

7.2 Review of the Public Works Contracts

The performance of the public works contracts was reviewed in 2014. The report¹⁹ recommended a number of interim amendments and the development of a medium-term

¹⁸ <https://constructionprocurement.gov.ie/capital-works-management-framework/>

¹⁹ <https://constructionprocurement.gov.ie/wp-content/uploads/Report-on-the-Review-of-the-Performance-of-the-Public-Works-Contract.pdf>

strategy for construction procurement. Circular 01/2016 sets out the revised arrangements for the procurement of public works contracts.

7.3 Medium Term Strategy

The development of the next generation of the CWMF²⁰ is currently underway, which will deliver significant changes to the CWMF over the coming years. The process will involve extensive engagement both with industry stakeholders and with the public bodies charged with the delivery of public works projects on a broad range of issues and will extend over 12-18 months.

7.4 Construction Procurement Circulars²¹

10/2018: Construction Procurement Reform

Amendment to the threshold for the procurement of public works projects using the Short Public Works Contract (PW-CF6).

08/2018: Construction Procurement Reform

Amendments to the CWMF to reflect the introduction of Sectoral Employment Orders in the construction sector and amend the Comparative Cost of Tender exercise.

01/2016: Construction Procurement – Revised arrangements for the procurement of public works contracts

Sets out interim measures introduced to amend the Public Works Contracts PW-CF1 to PW-CF5, inclusive.

07/2013: Reduction of the Current Level of Construction Performance Bonds for use with the Public Works Contracts

07/2010: Construction Procurement Reform

Construction Contracts and Conditions of Engagement Approval.

06/2010: Construction Procurement Reform

New Capital Works Management Framework.

²⁰ <https://constructionprocurement.gov.ie/21-march-2019-minister-donohoe-launches-review-of-procurement-policy-for-public-works-projects/>

²¹ <https://constructionprocurement.gov.ie/circulars/>

04/2008: Construction Procurement Reform

Additional measures to the revised arrangements for the procurement of public works projects, and for the engagement and payment of construction consultants.

33/2006: Construction Procurement Reform

Revision of arrangements for the procurement of public works projects and for the engagement and payment of construction consultants.

7.5 Below EU Procurement Threshold Rules for Works²²

Less than €50,000 (excluding VAT)

Direct Invitation: seek a minimum of five written tenders from interested and competent contractors.

€50,000–250,000 (excluding VAT)

Use Open Procedure and publish Contract Notice on eTenders.

€250,000–EU Threshold (excluding VAT)

Use Open or Restricted Procedure and publish Contract Notice on eTenders.

7.6 Below EU Procurement Threshold Rules for Works-related Services²³

Less than €50,000 (excluding VAT)

Direct Invitation: seek a minimum of five written tenders from interested and competent consultants²⁴.

€50,000–EU Threshold (excluding VAT)

Use Open Procedure and publish Contract Notice on eTenders.

²² See Section 3.2 'Advertising and Timeframes for the Tender' of GN 2.3 - Procurement Process for Works Contractors <https://constructionprocurement.gov.ie/wp-content/uploads/GN-2.3-v1.3-27-06-2018.pdf>

²³ The EU Thresholds are revised every two years with the last revision on 01/01/2018. The current thresholds are available at https://ec.europa.eu/growth/single-market/public-procurement/rules-implementation/thresholds_en

²⁴ See GN 1.6 – Procurement Process for Consultancy Services (Technical) <https://constructionprocurement.gov.ie/wp-content/uploads/GN-1.6-v1.2-17-1-12.pdf>

8. Published resources from the Policy Unit, OGP

8.1 Template Documentation

The OGP published a standard suite of templates in April 2016, to reflect the then new EU Procurement Directives. The templates were updated in July 2017 to reflect feedback received from contracting authorities mainly in relation to formatting. This has made them more user-friendly while still meeting the legal requirements. With the implementation of the General Data Protection Regulation in May 2018, they were once again revised to reflect the necessary changes. The most recent versions of the templates date from July 2019.

The OGP should be contacted in the first instance regarding procurement requirements. The templates, which are designed for above EU threshold tenders, are to be used by contracting authorities (Government Departments and State Bodies) for low to medium risk goods and services.

Contracting authorities are advised to read the revised templates carefully and to seek legal advice if required.

The Goods and Services Request for Tender Documents are to be used when initiating a tendering process, these can be found along with user guides at the following webpage:

- [Request for Tender Templates and User Guides](#)

8.2 European Single Procurement Document (ESPD)

All public bodies must now issue and accept the ESPD in its electronic form (eESPD) for all procurement exercises above the EU thresholds. It should make the process of bidding for a public contract easier by allowing bidders to self-declare that they meet selection and exclusion criteria, reducing the need to provide evidence at that stage. Guidance for contracting authorities on using the eESPD on eTenders is available [here](#).

- [European Single Procurement Document](#)

8.3 Standard Contract Documentation

These documents are to be used for the execution of the contract following the completion of the RFT stage and can be found, along with user guides, at:

- [Contract Templates and User Guides](#)

8.4 Confidentiality Agreement

These documents are to be used for the execution of a confidentiality agreement:

- [Goods Confidentiality Agreement](#)
- [Services Confidentiality Agreement Template](#)

8.5 Model Letters²⁵

Below EU Threshold

- Letter to the preferred tenderer (successful tenderer)
- Notice to unsuccessful tender at evaluation stage

Above EU Thresholds

Scenario	Model Letter to be used
Non-compliant tenders and tenderers who do not meet the selection criteria	Letters 1, 2 and 3
Contracting authority seeking documentary evidence from tenderers (ESPD documentation)	Letter 4
Tenderer fails to qualify on the evidence it has submitted	Letter 5
Unsuccessful tenderer	Letter 6
Successful tenderer	Letter 7

These letters are available on the OGP website <http://ogp.gov.ie/wp-content/uploads/Model-Letters-above-and-below-EU-Threshold-Open-Competition.docx>.

²⁵ <http://ogp.gov.ie/wp-content/uploads/Model-Letters-above-and-below-EU-Threshold-Open-Competition.docx>

Appendix 1

Procurement Provisions in the Code of Practice for the Governance of State Bodies

Public Procurement

It is the responsibility of the Board to satisfy itself that the requirements for public procurement are adhered to and to be fully conversant with the current value thresholds for the application of EU and national procurement rules. 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.

Procedures

Similarly, the Board should ensure that competitive tendering should be standard procedure in the procurement process of State bodies. 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.

Legal Obligations

EU Directives and national regulations impose legal obligations on public bodies in regard to advertising and the use of objective tendering procedures for awarding contracts above certain value thresholds. Even in the case of procurement which might not be subject to the full scope of EU Directives, such as certain 'non-priority' services or service concessions, the EU Commission and European Court of Justice have ruled that EU Treaty principles must be observed.

EU Treaty Principles

The essential Treaty principles include non-discrimination, equal treatment, transparency, mutual recognition, proportionality, freedom to provide service and freedom of establishment. There is a strongly implied requirement to publicise contracts of significant

value to a degree which allows parties in other Member States the opportunity to express an interest or to submit tenders.

Corporate Procurement Plan

The Office of Government Procurement Policy Framework requires that all non-commercial State bodies complete a Corporate Procurement Plan. This plan is underpinned by analysis of expenditure on procurement and the procurement and purchasing structures in the organisation. The plan should set practical and strategic aims, objectives for improved procurement outcomes and appropriate measures to achieve these aims should be implemented. The Chairperson should affirm adherence to the relevant procurement policy and procedures and the development and implementation of the Corporate Procurement Plan in the comprehensive report to the Minister.

Procurement Information

Information on procurement policy and general guidance on procurement matters is published by the Office of Government Procurement. This can be viewed or downloaded from the Office of Government Procurement website.

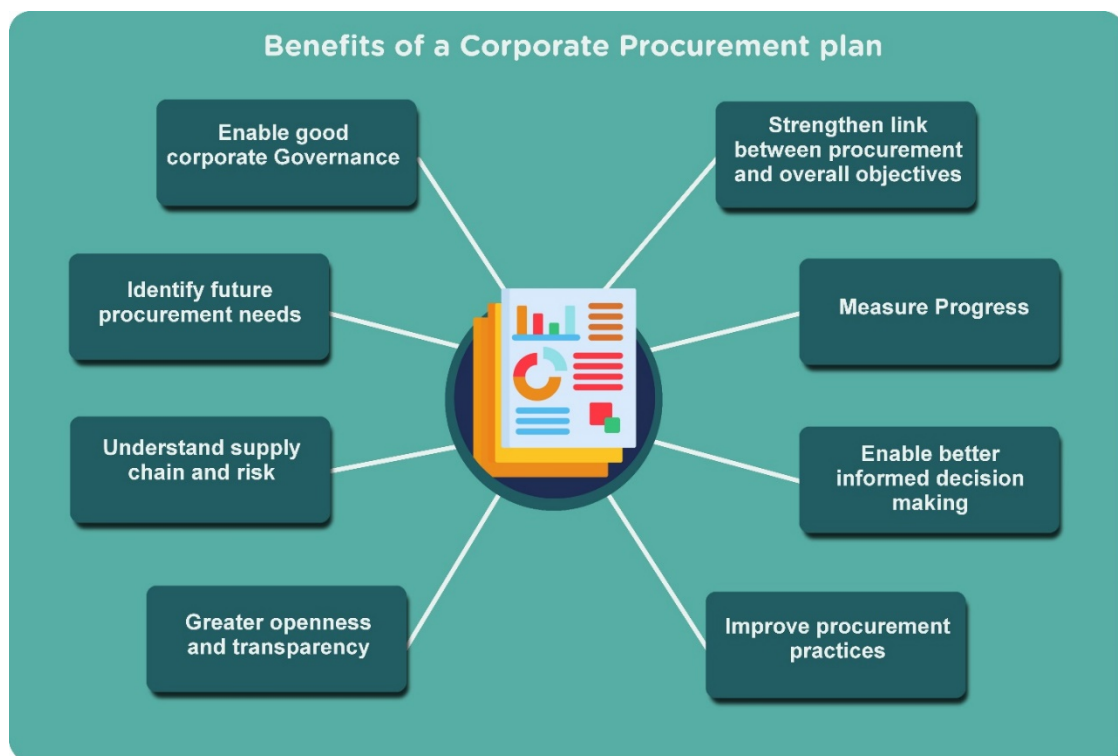
Appendix 2

Corporate Procurement Plans

Procurement planning is an integral part of business planning for contracting authorities. Completing a Corporate Procurement Plan (CPP) will help contracting authorities to benchmark their current procurement practices and identify future procurement needs. The OGP has published an [information note](#) to assist in the preparation of these plans.

The information note sets out why contracting authorities should complete a CPP, outlines what should appear in the plan, and supports consistency and a common approach and standard for CPPs produced by different contracting authorities. While a 'one-size fits all' approach is not appropriate for every organisation, the detail in a plan should be proportionate to the procurement-related spend available to that organisation and the level of associated risk.

There are clear benefits for any organisation that produces a CPP. These are summarised in the illustration below. A comprehensive, but not necessarily exhaustive, list of benefits to completing a plan can be found in the information note on CPPs.



Appendix 3

OGP Information Notes

[Brexit and Public Procurement Update](#)

[Corporate Procurement Plan](#)

[European Single Procurement Document](#)

[General Data Protection Regulation \(GDPR\)](#)

[Incorporating Social Considerations into Public Procurement](#)

[Procurement Officer Role](#)