



etb

Bord Oideachais agus
Oiliúna Dhún na nGall
*Donegal Education and
Training Board*

ETB Procurement Policy

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**Developed by the ETB Procurement Network
Procurement Policy Working Group**

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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 ETB purchasing and financial authorisation 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
DoES: Department of Education & Skills	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 [Click here for link](#). The 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 at [this link](#).
2. National Public Procurement Policy / Guidance information can be found at [this link](#).
3. OGP Public Procurement Guidelines for Goods and Services (2017) can be found at [this link](#)
4. Departmental Circulars in relation to Procurement:
 - [DPER Circular 02/16](#) Arrangements for Digital and ICT related Expenditure in the Civil and Public Service
 - [DoES 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](#) & [DoES Circular 60/2013](#).
 - [DoES Circular 18/2015](#) Code of Practice for the Governance of Education and Training Boards
 - [DPER Circular 10/14](#): Initiatives to assist SME's in Public Procurement
 - [DPER Circular 05/2013](#): Procurement of legal services and Managing Legal Costs
 - [DoES Circular 39/2011](#): Good Practice Guidelines in relation to Contracts for the Provision of Goods and / or Services
 - Capital Works Management Framework [Click here for link](#)
5. 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 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.

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](#).

6.2 ETB BOARD⁴

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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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 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 OSD⁵. 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).
- Management of all quotations over €15K for goods/supplies, services and works, subject to resources.

⁴ From Code of Practice for the Governance of ETBs – available [here](#)

⁵ Director of Organisational Support and Development

- 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, 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/service 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 Director⁶ for purchases with a value of €25,000 or more.
- Procurement competitions relating to any Building Works are not undertaken without first liaising with the Buildings Department / Designated Building Officer.
- That procurement competition within authorised budgets is carried out in accordance with this policy.

6.6 TRAINING CENTRE PURCHASING

Training Centre purchasing and payments are operated through SAP and these technical system processes will continue to operate in the immediate future. The purchasing teams in Training Centres will continue to report to Training Centre Managers and Training Centre Managers must comply with the ETB Procurement Policy. Interim transitional arrangements, are now replaced by this ETB Procurement Policy to ensure consistency across the ETB Sector. 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.

⁶ i.e. Director of Organisation Support and Development, Director of Further Education & Training, Director of Schools

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:

	Threshold ⁹	Procedure	Publish on ETenders?	Publish on OJEU ¹⁰ ?	Procurement Authority Level
SUPPLIES & SERVICES ^{7/8}	€0 - €500	Proceed with PO (PO not required on SAP System).	While publication not required, consider using E-Tenders 'Quick Quote' function		Budget Holder
	€501-5,000	One or more written competitive quotation(s). ¹¹			
	€5,001-€15,000	Seek 3 written quotations by specified closing date			Budget Holder plus email to procurement with copy of quotes sought
	€15,001-€25,000	Seek 5 written quotations by specified closing date. Follow clear process e.g. specification, evaluate, notify.			
	€25,001-€125,000	Open Procedure (single stage no prequalification)	☑		Director with CE Approval
	€125,001-€214,000	Choice of Procedure (e.g. open, restricted, competitive dialogue)	☑		
	€214,000+ ¹²	Choice of Procedure		☑	
	> €750,000	Title III Services ¹³		☑	
WORKS/CONCESSIONS ¹⁴	< €50,000	Minimum of 5 written quotations	While publication not required, consider using E-Tenders is considered best practice		Capital Procurement Manager with Director approval
	€50,000-€2,500,000	Open procedure	☑		Director with CE Approval
	€2,500,000-€5,350,000	Large/ complex projects: Restricted Procedure. Smaller/ straight forward projects: Open Procedure	☑		
	€5,350,000+	Restricted Procedure		☑	

⁷ Including ICT. However ICT projects also require liaison with DES [PMO / OGCI](#)

⁸ While Contracted Training Services are subject to public procurement regulations, dedicated Contracted Training Procedures have been developed to support the implementation of the upcoming Multi Supplier Framework Agreement for Provision of Contracted Training Services, including specific requirements for contractors.

⁹ All thresholds exclude VAT

¹⁰ Via [eTenders](#)

¹¹ Best practice is to seek a minimum of 3 quotes confirmed by e-mail

¹² EU Threshold as of January 2020. EU thresholds are updated every 2 years – current thresholds available [here](#)

¹³ Particularly relevant for services such as e.g. 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)

¹⁴ See [here](#) for latest DES TGD Guidelines

N.B. Utility invoices do not require a PO.

N.B. Supplies/Services being processed through the SAP system which have undergone a tender process do not require a PO number.

N.B. Purchasing card transactions are limited to €500 per transaction with a maximum value of €5,000 per month – no PO required.

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 TIMESCALES¹⁵

Procedure ¹⁶	Receipt of Expression of Interest	Receipt of Tenders	+Standstill	+allow time for
NATIONAL (Non-OJEU tenders)				• Preparing specification
National – Open (recommended)	N/A	21 days	7	
National – Restricted (recommended)	21 days	21 days	7	
EUROPEAN (OJEU tenders)¹⁷				• Evaluation of tenders
Open – e sending notices/docs available	N/A	35 days	14	
Open – e sending & receiving tenders	N/A	30 days	14	• Contract finalisation
Open – PIN	N/A	15 days	14	
Restricted – e sending notices/docs available	30 days	30 days	14	• Supply & delivery
Restricted – e sending & receiving tenders	30 days	25 days	14	
Restricted - PIN	15 days	10 days	14	

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

¹⁵ All expressed in Calendar days and relate to goods and services. For works related timescales go to [Section 9](#)

¹⁶ For details of timeframes that apply to below EU Threshold works-specific procurements go to www.education.ie

¹⁷ 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](#) (July 2017) refers to below EU Thresholds in terms of **"exclusive of VAT"**. Department of Finance and DoES Circulars refer to contract values being **"inclusive of VAT"** for works-related contracts below EU thresholds. Latest guidance from DoES PBU is available from [this link](#).

8 PROCEDURE GOODS/SUPPLIES AND SERVICES

8.1 VALUE OF CONTRACT BETWEEN €0- €500 (EXCL. VAT)

- Proceed with Purchase Order (Purchase Order is not required on the SAP system).

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

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

8.3 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.
- Date and time for return of quotes should be specified.
- Evaluation on lowest price meeting the specification.
- The Purchase Order and quotes should be submitted to relevant Finance Section with the Invoice for payment.

8.4 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.
- Date and time for return of quotes should be specified.
- Evaluation on award criteria meeting the specification.
- Approval from Budget Holder with email to procurement with evidence of quotes sought and received.
- The Purchase Order and quotes should be submitted to relevant Finance Section with the Invoice for payment.

8.5 VALUE OF CONTRACT BETWEEN €25,001 - €214,000 (EXCL. 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 by the Manager responsible for Procurement.

8.6 VALUE OF CONTRACT OVER €214,000 (EXC. VAT)

- The EU directives applies to Contracts for Supplies and Services over €214,000. 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 works wherein a material or structural element of the property would be altered.¹⁸ Building Works should not be undertaken by schools/Centres without first consulting with the Capital/ Buildings Department as building works must comply with all statutory requirements including Building Regulations, Planning Permission, Fire Certificate and Disability Access Certificate requirements. In addition, the Safety Health and Welfare at Work (Construction Regulations 2006) must be complied with and a Project Supervisor Design Process (PSDP) and Project Supervisor Construction Stage (PSCS) appointed where necessary.

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. However, as the Department of Education and Skills are the main funding body for building works to ETB schools, the DoES have taken the CWMF documents and tailored them to suit school building (Works) projects. The following three guidance documents should be adhered to in terms of Procurement of Contractors to undertake minor works in schools where financed by the DoES:

1. TGD007 Design Team Procedures for Small Works [Click here for link](#)
2. DTP – 2012 Procurement of Contractors [Click here for link](#)
3. Procedures for the appointment of consultants (Minor and Major Projects) [Click here for link](#)

The DoES are continually updating their Technical Guidance documents therefore you must refer to information at [this link](#) prior to issuing documentation. For further details refer to [Appendix 9](#).

All other capital funded works outside of the DoES primary and post primary projects *i.e* Department of Youth & Affairs, SOLAS should be brought to the attention of the Capital Management Department/Buildings 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 €221k	15 working days (min)
Consultants >€221k	As per EU Directive
Works Contractors <€50k	No prescribed minimum
Works Contractors €50k to €500k (small works)	15 working days (min)
€500k to €5,350,000	20 working days (min)
> €5,350,000	As per EU directive

10 TIED OR SOLE SOURCE

It is ETB Policy not to engage in Tied or Sole Source supplier relationships unless 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.

¹⁸ 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

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.¹⁹ 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 ETBs](#)²⁰ 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 by the Director of OSD, should be kept on file for audit purposes.

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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.

¹⁹ For additional guidelines on market engagement see page 30 of DPER [Public Procurement Guidelines for Goods and Services](#)

²⁰ See Page 20-21

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
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	

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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.

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 New Procurement regulations effective from April 2016 require that electronic means of information and communication should become the standard means of exchange from 2018²¹ 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 completed. Each member of the Tender Opening Team should complete a Conflict of Interest Form.
- When ETBs move to all RFQs/RFTs being returned electronically via the e-tenders tender box facility further appropriate procedures will be put in place.
- Ensure that a clear and formal independently vouched report of the tenders received is produced.

²¹ By October 2018

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 €214,000 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-€214K). The [ETB Suite of templates](#) recommends 7 calendar days.

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17 LEASING

All leasing requires Board and DoES 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.

Property leasing and Procurement related issues for Property Acquisition and Disposal of Surplus Property

is set out in [DPER Circular 17/2016](#)

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 supplier²²; 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.²³
- ii. Confidentiality - Staff involved in the procurement process must also commit to maintaining the confidentiality of information²⁴
- iii. Hospitality- see Appendix 8
- 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.

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

20 RECORD KEEPING

- Refer to the records management policy and retention schedule for information on our records disposal²⁵

²² 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.

²³ A template is included in the suite of ETB documents referenced at [Appendix 5.](#)

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

²⁵ Refer to ETB's Record retention Policy

- 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.

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](#) ²⁶

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 Department of Education and Skills and the Department of Public Expenditure & Reform. The date of implementation will reflect training and system changes.

²⁶ For tender documentation relating to Building works go to <https://www.education.ie/en/School-Design/>

APPENDIX 1 THE PROCUREMENT CYCLE



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

Name of Section/ School/Centre		
Name and Contact Details for Principal/Line or Centre Manager		
<u>ICT Projects Only</u> Has Dept. approval been secured under Circular 02/16 – Please provide copy		
Description of Goods/Services required		
What is the estimated contract value exclusive of VAT? To include Whole Life Cost *see overleaf		
Has Budget Holder approval been secured?	Yes:	No:
	Name of Approver: _____	
	Position: _____	
	Date Approved: _____	
Description of the product/service to be procured		
**When are the goods/services required Why required by this date e.g. end of current contract, expiry of equipment warranty etc.		
Is there an existing contract in place?	Yes:	No:
Name of current supplier		
Contract arrangement (written or verbal)		
Date of expiry or termination of contract/agreement		
Has the Incumbent been notified regarding this upcoming Tender process?	Yes:	No:
<u>Service Contracts only</u> Is TUPE likely to be a factor with the new contract?	Yes:	No:
Contact name, number & email address of who will be providing the spec for these goods/services	Name: _____	
	Phone Number: _____	
	Email: _____	
Is the specification being submitted with this request? ***See overleaf	Yes:	No:
If No advise when full spec will be available		

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Budget Holder Signature

Director Signature of Approval

Date: _____

*** Whole Life Cost:**

In procurement the 'Whole Life Cost' is the initial purchase price plus the running, maintenance and all other costs applicable over the lifetime of the contract.

****Procurement requests will be prioritised in line with the Corporate Procurement Plan (CPP), ongoing Procurement Projects and any urgent Procurement needs.**

***** 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:

- | | |
|--|---|
| <ol style="list-style-type: none"> 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: <ul style="list-style-type: none"> • 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 (*Whole Life Cost, labour, delivery, disposal, retainer fee etc.) • Do you have a list of suppliers/ Are there many suppliers of this product/service? • Green Procurement – Circular 20/19 | <ul style="list-style-type: none"> • Alternatives • Technical information where appropriate • Scope of the Tender • Are requirements unique for your School or Centre • Standards, e.g ISO • Legislation • Environmental Considerations • Garda Vetting if applicable • Innovation • Are Site Visits required • Child Protection Issues • Site Access Issues • Data Protection |
|--|---|

For Office Use Only	
Date Received	
Comment	

APPENDIX 3 PROCUREMENT CHECKLIST AND CONTRACT FILE

- | | |
|--|--|
| <ul style="list-style-type: none"> • Regulation 84 report (if applicable) • A business case or cost benefit analysis • All documentation that issues to the market including PIN, Contract Notice and RFT • All clarifications sent to tenderers/candidates • The report of the opening of the tenders • 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 | <ul style="list-style-type: none"> 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 <p>Contract Management</p> <ul style="list-style-type: none"> • 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

- 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 BELOW EU THRESHOLD TENDER DOCUMENTS

Suite of ETB Templates for use in the procurement of goods and services below EU Threshold is available from ETB Head Office and ETBI. This suite contains the following documents:

- **Invitation to Tender Documents for both Contracts and Frameworks**
- **Notification Letters**
- **Terms & Conditions & SLA**
- **Tender Response Document**
- **Declaration of Confidentiality and Conflict of Interest**
- **Open Tender Evaluation template**

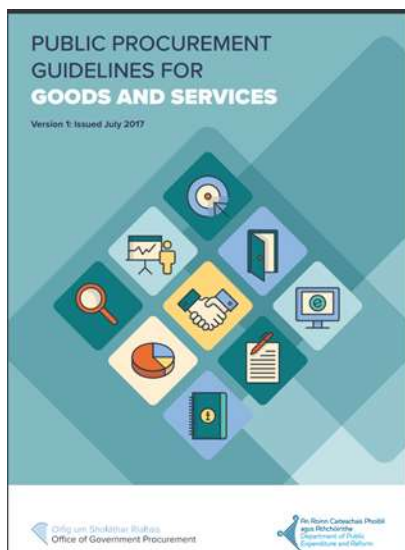
APPENDIX 6 ABOVE EU THRESHOLDS TENDER DOCUMENTS

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](#)

APPENDIX 7 PUBLIC PROCUREMENT GUIDELINES FOR GOODS AND SERVICES

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



APPENDIX 8 ETHICS IN PUBLIC PROCUREMENT²⁷

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.

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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

²⁷ Updated for ETBs from **Ethics in Public Procurement** (National Public Procurement Policy Unit, June 2005)

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.

Gifts

Employees of the ETB should not accept benefits of any kind from a third party which might reasonably be seen to compromise their personal judgement or integrity. The actions of employees of the ETB must be above suspicion and not give rise to any actual or potential conflict of interest and their dealings with commercial and other interests should bear the closest possible scrutiny.

It is not possible to give guidelines for every conceivable situation that may arise but if a doubt arises about a particular situation the line manager should be consulted. The following general guidelines provide a framework within which decisions in this area can be made:

- Gifts must never be solicited, directly or indirectly.
- Cash, gift cheques or any vouchers that may be exchanged for cash may not be accepted regardless of the amount.
- Gifts of a value exceeding €50 each or a cumulative total of €150 in a year should be refused. This policy and the ethical rules that apply to public employees of the ETB should be explained to the donor so that reasons for refusal are not misunderstood or offence caused. Particular care should be taken in relation to offers of gifts from donors who stand to derive a personal or commercial benefit from their relationship with the contracting authority concerned.
- Should a gift be received an employee may accept and retain gifts of low intrinsic value, on behalf of the ETB. For instance, diaries, bottle of wine, box of chocolates or any gift less than value of €50 subject to a limit of €150 in any one year. It is not appropriate that individual employees would personally benefit from such gifts therefore it is recommended that an impartial method of distribution of such gifts be undertaken *e.g.* raffle or donation to charity. Any such procedure must be open and transparent and the line manager will have responsibility for same.
- Employees of the ETB must never solicit sponsorship for social, sporting, charitable or similar organisations or events from contractors, suppliers or service providers. Where such sponsorship is offered, it may only be accepted when expressly approved in writing by management. (This is not intended to relate to instances of appropriate and acceptable sponsorship of projects or activities which are related to a contracting authority's official activities and are otherwise in accord with public procurement rules).
- Employees of the ETB must not seek or accept special facilities or discounts on private purchases from contractors, suppliers or service providers with whom they have official dealings. This does not preclude special arrangements for employees negotiated by the ETB on behalf of employees.

It should be noted that the Prevention of Corruption Acts 1889 to 2001, as amended by the Ethics in Public Office Act 1995, provide that money, gifts or other consideration received by a public official from a person holding or seeking to obtain a contract from a public body is deemed to have been received corruptly unless the contrary is proved.

Hospitality

Normal business practice may occasionally justify accepting routine/modest hospitality from suppliers provided that:

- The frequency and scale of hospitality is not allowed by the recipient to reach a position whereby he or she might be, or might be reasonably deemed by others to have been influenced in making a business decision as a consequence of such hospitality.
- The number of employees availing of the hospitality is kept to a minimum.
- Invitations do not include provisions deemed to be excessive, such as significant travel, overnight accommodation or trips abroad.
- Availing of the hospitality does not identify the ETB in a public way with any particular contractor, supplier or service provider.

All offers of hospitality should be reported to the line manager. Particular care should be taken where suppliers are in the process of tendering for business. In this regard, there should be no acceptance of gifts or hospitality from contractors, suppliers or service providers involved in a current tendering process.

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 "*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.

APPENDIX 9 WORKS (BUILDING AND RELATED SERVICES)²⁸

9.1 Open or Restricted Tendering?

- (a) **Below €500,000 (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 (excluding VAT) the Open Procedure must be used.
 - (iii) The advertising and tendering procedures set out below apply.
- (b) **Above €500,000 (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 and Skills [DoES] to use the Restricted Procedure has been obtained.
 - (ii) 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 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.
 - (iii) 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 using the Open Procedure.
 - (iv) 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.

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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 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 €5,350,000 (excluding VAT) a Contract Notice must 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 quotes (in writing or by email) must be sought from suitable contractors and a minimum of 5 obtained.
 - (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,

²⁸ From DoES PBU Technical Guidance Document TGD-007 (5th Edition, April 2016) available [here](#)

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/Centre 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. In addition, the School 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.

- (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 < €500,000 (excluding VAT)

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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 DoES Suitability Declaration for Small Works available at www.education.ie under School Design > Procedures and Cost Plans > Design Team Procedures.
- (d) For Projects < €500,000 (excluding VAT) all tenderers should be required to sign the DoES 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 DoES 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 DoES 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 in the company of the Consultant(s). All details must be recorded, checked and signed by all present.
- (l) A signed *DoES Suitability Declaration for Small Works*²⁹ 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 *DoES 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.
- (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 *DoES 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 > €500,000 (excluding VAT)

- (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 for approval to the Manager with Responsibility for Procurement and 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;³⁰
3. Where there is only one suitably qualified specialist in the relevant field.
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 or the Chief Executive.

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.

³⁰ 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 obtain a single quotation or tender.

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

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

Approval:

	BLOCK CAPITALS NAME	SIGNATURE	DATE
Manager			
Director			