

Department of Education & Skills

Procurement Policy

Goods & Services

Corporate Services
2019

Contents

Section	Page number
1. Introduction	3
2. Guiding Principles	3
3. Centralised Arrangements	5
4. Governance and Structure	6
5. Undertaking procurement	7
6. Procurement roles and responsibilities	8
7. Statutory and obligatory reporting	9
8. Record Keeping	10
9. Engagement of External Service Providers	12
10. Contract Management	12
11. Contract Register	13
12. Useful Information & Advice	14
Appendix A Examples of Non-Competitive Procurement	14

1. Introduction

Procurement is one of the key means to secure resources required by the Department, in pursuit of its mission and goals.

The procurement policy of the Department is to source necessary goods and services, from central frameworks and contracts where suitable, while achieving value for money and conducting procurement in a fair, open and transparent manner, compliant with EU Directives and national guidelines. The Department's procurement policy document is a guide for business units to achieve a consistent and compliant approach to procurement across the Department.

This document addresses **the sourcing of goods and services only**, exempting works (capital procurement under Planning & Building Unit mainly) which are addressed by different regulation and guidance. See link to the relevant construction procurement guidance notes. <https://constructionprocurement.gov.ie/guidance-notes/>. For more detailed information on procurement please see the Department's [Procurement Intranet Page](#).

All ICT goods and services for Department use must be sourced solely through the IT Unit. An overview of ICT procurement information is available [here](#) and any questions on ICT contracts may be addressed to ITUnitAdmin@education.gov.ie.

It is a requirement of DPER "Circular [02/16](#): Arrangements for Digital and ICT-related Expenditure in the Civil and Public Service" that ICT-related expenditure must be approved by the DES ICT Liaison Officer prior to Requests for Specific Approval of ICT Proposals being submitted to the Office of the Government Chief Information Officer (OGCIO).

2. Guiding Principles

The Department's Procurement Policy is guided by the principles of Fairness, Compliance, Accountability, Sustainability and Value for Money (VFM).

Fairness

- In all its dealings with suppliers the Department will observe the EU Treaty Principles of Non-discrimination, Equal Treatment, Transparency, Mutual Recognition, Proportionality, Freedom to Provide Service and Freedom of Establishment.
- Competitive tendering will be used unless exceptional circumstances apply. In such circumstances, prior approval of the Department's Procurement Review Committee must be obtained by the relevant Business Unit. Please read Office Notice [CS 01/2017](#)
- The basis for all decisions will be demonstrably clear and objective.

Compliance

The EU Directives are as follows (see <https://ogp.gov.ie/> for up to date amendments):

- [EU Directive 2014/24/EC](#) (General) replaced EU Directive 2004/18/EC
- [EU Directive 2014/25/EC](#) (Utilities) replaced EU Directive 2004/17/EU
- [EU Directive 2014/23/EC](#) (Concessions Contracts) – New Directive
- [EU Directive 2007/66/EC](#) – Remedies Directive

National Regulations are as follows:

- [S.I. 284 of 2016](#) European Union (Award of Public Contracts)
- [S.I. 286 of 2016](#) European Union (Award of Public Utility Contracts)
- [S.I. 130 2010](#) Remedies Directive
- [Circular 10/14](#) Initiatives to assist SMEs in Public Procurement
- [Circular 16-13](#) Revision of arrangements concerning the use of Central Contracts put in place by the National Procurement Service (NPS).
- It is a requirement of DPER Circular [02/16: Arrangements for Digital and ICT-related Expenditure in the Civil and Public Service](#) that ICT-related expenditure must be approved by the DES ICT Liaison Officer prior to Requests for Specific Approval of ICT Proposals being submitted to OGCIO.

Accountability

- An officer of the Department will inform his/her line management and excuse him/herself from any procurement competition where he/she or a relative has a personal interest.
- In keeping with the provisions of the Ethics in Public Office Act 1995, section 15(1) states that an officer of the Department will not solicit or accept benefits of any kind from a current or potential supplier e.g. gifts, cash, gift cheques, vouchers, hospitality, discounts on private purchases etc.
- A full record of a procurement must be retained and a complete record of the contract maintained, including the registration of contract details on the [Contract Register](#).

Sustainability

- It is Department policy to source goods and services that are energy efficient and minimise negative impacts on the environment. Please see the link to the latest guidance document for the Public Sector on green procurement. <http://GreenProcurementGuidance>
- All procurement will consider the inclusion of accessibility requirements, in line with Section 27 of the Disability Act, 2005 and other relevant regulation including applicable planning codes, EU law and the EU Web Directive, 2016.

Value for Money (VFM)

- Government policy is that public bodies, where possible, should make use of central procurement frameworks/contracts. Where public bodies do not utilise central procurement frameworks they should be in a position to provide a Value for Money justification.

3. Central Arrangements

Procurement is a key element of the Government's Public Service Reform agenda and the Department actively engages with the Procurement Reform Programme in this regard. A centralised public procurement service consisting of the Office of

Government Procurement (OGP) and four sectoral procurement hubs provide public service-wide frameworks and contracts. The procurement website is at www.ogp.gov.ie

Since the establishment of the Procurement Reform Programme, public bodies are obliged to use central procurement frameworks/contracts that are targeted at securing best value for money and facilitating contracting authorities to deliver services (Circular [16/13](#)). Information on all centralised arrangements is available on www.ogp.gov.ie To access all OGP contract information, register as a buyer using your education email address.

The Department will only undertake procurement directly, where central arrangements do not meet business requirements and / or where no central arrangements are in place.

Procurement exercises must be disciplined and managed on a project management basis, according to the value and type of sourcing requirement. Procurement regulation, procedures and guidelines must be strictly adhered to. A complete record must be kept of the procurement work and made available for subsequent examination and audit. (See Record Keeping)

4. Governance and Structure of Procurement

The Department operates a delegated/distributed procurement structure where senior managers in business units undertake procurement relevant to their remit. IT Unit undertake ICT related sourcing for the Department's requirements. The manager is responsible for compliance with regulation, policy and advice on behalf of the Department.

Public procurement should be a competitive process but exceptional circumstances may warrant awarding a contract without a competitive process (see Appendix A). The Procurement Review Committee (PRC) is a subcommittee of the Management Board. The role of the Committee is to review proposals to undertake non-competitive procurement (€25,000+excluding VAT) and to agree their inclusion on the [Circular 40/02](#) Report. The PRC may attach conditions to such proposals with which the relevant sections will be required to comply. The extension of contracts beyond their agreed term is considered non-competitive procurement; Circular [CS 01/2017 refers](#).

The Committee reviews specific procurement issues that may need to be reported as part of the Statement of Internal Financial Control and the annual procurement reports in the financial year being reported and audited.

5. Undertaking procurement

Authority to Procure

In advance of commencing a procurement process, business units must ensure that they have the authority to procure. The commitment of expenditure requires the authority of the budget holder and specific sanction in some cases. Sanction and authority can derive from;

- (i) An explicit subhead sanction from the Department of Public Expenditure & Reform (DPER).
- (ii) A delegated sanction from DPER (e.g. under an annual IT or Capital sanction),
- (iii) Under the Administrative Budget Agreement for certain subheads in the X range, or
- (iv) As comprehended within the scope of programme-related expenditure permitted under a specific programme subhead's sanction. In instances where it is uncertain whether such authority to procure is in place the matter should be considered with the relevant member of the Management Board and, where necessary, specific advice obtained from the Department DPER.
- (v) Approval of the budget holder must be obtained prior to the sourcing or appointment of a consultant/contractor/external service provider.

The Procurement Process

The procurement policy of the Department is to source necessary goods and services, from central frameworks and contracts where suitable, while achieving value for money and conducting procurement in a fair, open and transparent manner, compliant with EU Directives and national guidelines.

All procurement should be undertaken by officials fully conversant with the pertaining procurement regulation, policy and advices. Both the specification of requirements and the basis for the award should be scrutinised and approved by the relevant business unit.

Advice and guidance is available through the Procurement Policy Unit and Office of Government Procurement. The onus is on the business unit to ensure that it is in compliance with all relevant procurement regulation, procedures and guidance irrespective of the subhead from which the expenditure is incurred. More detailed information is available on the Department's [Procurement Information Page](#).

Extending Contracts/Modification of Contracts ([Office Notice 01/2018](#)).

For contract durations to be appropriate, the nature, investment cost, replacement cost and effort, commonality of service and duration average for that type of service should be considered. Contract duration terms of up to four years would be typical.

Specific procurement rules and contract clauses govern the extension of contracts. Contracts should not be extended beyond their term unless exceptional circumstances apply. Such extensions, unless provided for under the contract terms, should be notified to the Procurement Officer and may be considered as a purchase without a competitive process. Section 72 of [S.I. 284 of 2016](#) outlines the specifications for the modification of contracts.

6. Procurement Roles and Responsibilities

ROLE	RESPONSIBILITY
Accounting Officer	The Secretary General, as head of Department, is obliged to report on procurement compliance and governance as part of the Appropriation Accounts.
Procurement Review Committee (PRC)	The PRC is a Sub Committee of the Management Board that reviews exceptional procurement cases as recommended by Circular 40/02 on the approval of certain contracts in the Central Government sector, (Appendix A). The PRC also reviews the list of Contracts / Purchases less than €25,000(excluding VAT) undertaken without an appropriate procurement process (Appendix B).
Managers (Business Units)	Undertakes procurement applying correct and appropriate procurement rules and guidelines
Budget Holder	PO or higher. Responsible for approving and accounting for expenditure under the relevant subhead/nominal code under their control

Approving Officer	APO or higher grade who approves the business case to source goods and services. Ensures full and appropriate record keeping
Purchasing Officer	Undertakes the tender process and/or liaison with the OGP
Contract Manager	Manages the contract, the relationship with the supplier and ensures performance of the contract. Ensures contract registration and regular review.
Procurement Officer	A designated position, responsible for corporate procurement reporting and information
Procurement Co-ordinator	Provide general advice and support for procurement. Shares information on regulation, guidelines and opportunities. Compiles reports and co-ordinates activity.

7. Statutory and Obligatory Reporting

The Department is obliged, as part of its statutory accounts, to submit a set of procurement reports and include a statement on procurement in the Statement of Internal Financial Control.

Two reports; Appendix A (contracts / purchases of more than €25,000 excl.of VAT undertaken without a competitive process) *and* Appendix B (contracts / purchases of less than €25,000 excl.of VAT undertaken without an appropriate procurement process) must be submitted as part of the Appropriation Account for each year. The reports are inclusive of all contracts undertaken in that year, with the statement signed by the Accounting Officer attesting that *'I confirm that for all procurements appropriate national and EU procedures were followed, the contract prices were fair and reasonable and represented best value for money'*.

Each senior manager is obliged to submit procurement reports in respect of their remit, to enable the correct and accurate compilation of the corporate report.

The Department, as an FOI body under the Freedom of Information Act, is committed to publishing its procurement policy, a link to current e-tender competitions and details of all contracts with a value over €25,000 on a quarterly basis.

Tender awards must be published. S.I.284 of 2016 EUROPEAN UNION (AWARD OF PUBLIC AUTHORITY CONTRACTS) REGULATIONS 2016 states in section 50(1), in respect of OJEC level tenders, that a '*contracting authority shall, not later than 30 days after the award of a contract or the conclusion of a framework agreement, following the decision to award or conclude it, send for publication a contract award notice on the results of the procurement procedure*'. [Circular 10/14](#) places an additional reporting requirement that buyers are required to publish all contract award notices over €25,000 on the eTenders website on completion of the award

8. Record Keeping

You must retain all documentation:

A record for the procurement must be kept for any subsequent examination or audit. It should be noted that the purchases of goods and services may be the subject of Freedom of Information requests or Parliamentary Questions. All contract tender documentation must be retained for a minimum of ten years. For the destruction of any file, Records Management must be contacted.

Project File for Low/Intermediate value purchases –less than €25,000

The Project File for low/intermediate value purchases should include the following documents:

- The reason for the expenditure
- the approval of the AP, or higher, in the business unit concerned, and;
- confirmation that the relevant budget holder has been notified of the expenditure
- The email/correspondence sent to the supplier/s and the quote/s received. A supplementary request for tender (SRFT) may be issued if using an OGP Framework and mini-competition
- A record of all relevant decisions and key actions taken
- Copies of any clarifications sought by the tenderers
- The emails informing the successful and unsuccessful suppliers of the outcome.

Project File for High value purchases – greater than €25,000

The Project File for high value purchases should include the following documents:

- The business case for the expenditure & approval at PO/Management Board level
- Confirmation that the relevant budget holder has been notified of the expenditure
- The Request for Tender document (RFT), SRFT or application to the Procurement Review Committee for purchase made without a competitive process
- A record of all relevant decisions and key actions taken
- E-Tenders reference number/ID number
- Copies of any clarifications sought by the tenderers.
- Copy of the letter to the preferred supplier and regret letters and information on any debriefing provided
- The signed contract for the good/service
- The tender documentation submitted by the successful tenderer (the tender documentation submitted by the unsuccessful tenderers should be held on a separate “Tenders” file). All tenders must be submitted through e-tender in soft copy only from October, 2018 for all public sector contracts.
- A tender report containing the following information:
 - The name and address of the contracting authority, the subject matter and value of the contract
 - The names of any rejected tenderers (following selection evaluation in the open procedure) and the reason/s for their rejection
 - The reason for the rejection of an abnormally low tender, if applicable
 - The name of the successful tenderer and the reason for their selection
 - The share of the contract which will be subcontracted, if applicable
 - The reason a contract was not awarded, if applicable

9. Engagement of External Service Providers

The engagement of all consultants, contractors and external service providers is strictly governed by a range of regulation, policy and prescribed procedures. Guidelines¹ issued by the Department of Finance state that engagement of external support should be through a competitive procedure and comply with national and EU public procurement policy and legislation.

Any departure from competitive tendering for external providers can only be considered in specific situations and may be subject to further legislative and guidance provisions.

Special arrangements apply in relation to the procurement of **consultancy services**.

Section D.2.39 of the Public Financial Procedures states that,

" Consultancy services or external support should only be availed of where the expert skills or capabilities are not available within the Government Department or Public Body contracting the service or where an external review is required by an outside body such as, for example, the EU Commission."

Corporate Services collates details of consultancy expenditure at the end of each financial year and a report containing this information is published on the Department's website. Proposals for engaging consultants/contractors/external service providers must be included in the business planning process at the beginning of the year. Where funding for consultants/contractors/external service providers is coming from the administrative budget, proposals must be submitted in advance to Corporate Services for governance and budget management purposes.

In all other circumstance where a procurement process has not taken place, DPER must be contacted to set the daily rate for the engagement of an external service provider/consultant/contractor (including retired civil and public servants).

10. Contract Management

You must manage the contract actively:

The supplier's performance must be managed throughout the lifetime of the contract to ensure that the goods or services are delivered in line with the performance or

¹ Guidelines for the engagement of consultants and other external support by the Civil Service

service level expectations, i.e., quality/service/cost/delivery, identified in the original quotation. You should manage the contract to ensure that any changes to the original quotation are notified in advance, are explained and are minimised. Most importantly, any additional cost incurred by the Department must be supported by verifiable value added by the contractor to the contract.

Contract modifications:

Modifications to the brief may result in a situation where a new procurement process becomes necessary. Modifications are an exception and must be kept to a minimum. It is important that the modifications are not such as to materially alter the original contract. (See [Section 72 of S.I. 284 of 2016](#))

Contract extensions:

Extensions to the period of the original quotation are not allowed unless they result from a delay by the contractor in the delivery of the specified goods and services and unless there is no additional cost to the Department. In any other circumstances, they are a material alteration of the original contract and a new procurement process will be necessary ([Office Notice 01/2018](#)).

11. Contracts Register

All contracts active on 1st January 2016 and thereafter should be registered and updated on the Contracts Register ([See Office Notice 01/16](#)). The Contracts Register for the Department is to support contract management by business units and the corporate management of procurement and reporting obligations. Contracts must be entered to facilitate the Department with our reporting obligations for the C&AG & DPER, and other sources such as FOI/PQs.

Each business unit will have access to their own contracts and this will enable them to update, view and report on and monitor each of these contracts. Managers should review their portfolio of contracts regularly.

Accessing your Contracts Register

The Contracts Register can be accessed through the [Department Applications](#) option and the specific contracts register icon can then be



selected. Just click and go. A User Guide and link to the Department's intranet page on procurement is available.

12 Summary of Useful Information and Contacts

www.ogp.gov.ie (OGP website)

support@ogp.gov.ie (OGP information and advice)

<http://www.etenders.gov.ie> (EU Tenders Procurement Website)

[Procurement Page](#) (Departments Procurement Information page)

Procurement@education.gov.ie (Department Procurement Policy)

Procurement@education.gov.ie (Procurement Officer)

[Procurement Guidelines for Goods and Services](#) (OGP Version 2 -January, 2019)

www.per.gov.ie Tel: 01 6767571 General Pay & Industrial Relations, DPER

Appendix A – Non-competitive Procurements

Exceptions to awarding a contract without a competitive process

Derogation from the procurement regulations may be considered in the following exceptional circumstances. However, these purchases/contracts must still be reported to the Procurement Officer for review by the PRC.

Contracts below EU threshold levels

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

- (a) Where only a proprietary product will meet requirements, such as parts or components for equipment.
- (b) Where an agent, licensee or franchise holder has sole rights to supply a service or product.
- (c) Where there is only one suitably qualified specialist supplier/provider in the relevant field.
- (d) Where a particular service provider possesses a special advantage due, for example, to earlier research exclusively carried out in a particular area, or has exclusive data or information required to perform a particular task. In such

circumstances, it must be demonstrably clear that another service provider could not perform a contract more economically.

(e) Where due to urgency a competitive process cannot be undertaken in the time available. What constitutes urgency cannot be specified definitively. 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. Occasions when it is necessary to award a contract without a competitive process due to urgency should be very rare because, under Section 5.3 of Public Procurement Guidelines – Competitive Process 2004, an appropriate competitive process can be completed relatively quickly below thresholds, by direct invitation to tender to a number of suitably qualified suppliers or service providers.

(f) When awarding a contract, care should be taken to avoid entering into open-ended arrangements, for administrative convenience, that reduce or hinder competition.

(g) Market testing should be undertaken at appropriate intervals to ensure that market openness and competition is maintained.

Contracts above EU threshold levels

For contracts above the EU value thresholds, the procurement Directives list the limited exceptional circumstances where the terms of a contract may be negotiated with one contractor without advertising, i.e. without a competitive process.

The main instances where a contract may be awarded through negotiating with one contractor, without advertising, are summarised below.

(a) The contract may be awarded to a particular contractor for technical reasons or for reasons connected with the protection of exclusive rights. This may occur where there is a sole licensee or franchise holder for the supply of a particular product or service or where a proprietary component or part is required for equipment

(b) Where the timeframe required for an advertised competitive process cannot be met due to extreme urgency arising from events unforeseeable by the Department / Office. The circumstances invoked to justify extreme urgency must not be attributable to actions or inaction by the contracting authority. Such instances should be very rare as reduced timeframes can be availed of under an accelerated restricted tendering procedure in genuinely urgent cases of contracts governed by the EU procurement

Directives. It should be noted that definitions of ‘exceptions’ and ‘urgency’ are strictly interpreted by the Commission and the Courts. Factors giving rise to urgency must be unforeseeable and outside the control of the contracting authority.

(c) Due to unforeseen circumstances additional works or services not included in the Original contract are necessary for the performance of the works or services concerned. This is conditional on the award being made to the contractor performing the original works or services where

- The additional works or services cannot be technically or economically separated from the original contract without major inconvenience to the contracting authorities

or

- where the works or services can be separated from the original contract but are strictly necessary for completion of that original contract.

Note: the aggregate value of contracts awarded for additional works or services may not exceed 50% of the value of the original contract.

(d) Where there is a requirement for repetitive works or services a contractor can be awarded a works or services contract for subsequent similar contracts. This provision can be used provided that the works or services are in conformity with a basic project for which the original contract was awarded under a competitive process.

Note: When tendering for the initial project, the possible use of this provision must be indicated in the tender documents and the estimated cost of such subsequent works or services taken into account for OJEU advertising purposes. This procedure may only be used during the three year period following the conclusion of the original contract. The full provisions on negotiating contracts without competition are set out in the Procurement Directives. If a question of awarding a contract above the relevant thresholds without advertising in the OJEU arises, the circumstances should be carefully examined against these provisions.

Statement of the justification for use of urgency /extreme urgency

In cases where a contracting authority opts to award a contract without a competitive process on grounds of urgency care should be taken to ensure that the

circumstances for invoking urgency and extreme urgency are justifiable. In the case of contracts both above and below the EU threshold the factors giving rise to urgency must be serious, unforeseeable and not due to action or inaction on the part of the contracting authority concerned. What constitutes urgency cannot be specified exhaustively but occasions when it is necessary to award a contract without a competitive process due to urgency should be very rare. This is particularly the case for contracts below the EU threshold where an approach to the market can be made relatively quickly. In all instances of an award of contract without a competitive process on grounds of urgency, the reasons for choosing the particular company involved should be noted on file. The Head of the relevant organisation should make appropriate arrangements to ensure that all such instances (whether under or over EU thresholds) are subject either to their specific approval or approval of a specified senior Manager.

In all instances where a competitive tender is not undertaken, a record must be kept of the justification and reasoning for the purchase of the goods or services. All these exceptions over €5,000 must be notified to the Procurement Officer for the attention of the PRC. All non-competitive procurement over €25,000 is formally notified to auditors/authorities and reported as part of our annual accounts.