

IDA Ireland Procurement Procedures

IDA's purchasing procedures which must be complied with prior to contracting for works, goods or services. The procedures are drawn up so as to ensure;

1. Compliance with EU procurement directives
2. Compliance with guidelines issued by the Department of Public Expenditure and Reform (DPER) and the Office of Government Procurement (OGP).
3. Compliance with IDA procedures that the estimated costs represent value for money
4. Purchases are not split into smaller units to avoid tendering
5. The decision criteria used to appoint a supplier stands up to inspection, audit and freedom of information requests
6. That tax clearance certificates must be supplied by potential suppliers.
7. That no goods or services are procured unless a budget allocation is available (contact Financial Management)

Criteria for awarding contracts

Contracts may be awarded on the basis of either the lowest price or the most economically advantageous tender (MEAT) following evaluation against predefined weighted award criteria.

Where MEAT is used the notice or tender must state all the criteria being applied in the award process, giving the relative weightings if used for each criterion. If it is not technically possible to indicate criteria weightings in advance, the criteria must be listed in what you consider to be the descending order of importance. New or amended criteria must not be introduced in the course of the contract award procedure. If significant additional information or material is supplied to a candidate, on their request or otherwise, the same material must be supplied to all candidates. This can be done on the eTenders website.

When a new or small company submits a tender, consideration should be given to the skills and experience of the staff available to conduct the work. In certain instances using clear and robust output specifications may allow companies to propose innovative and cost effective solutions.

IT purchases

All IT purchases must be made by the IT Department and all IT tenders where the value is greater than €10,000 must be advertised on eTenders (Department of Finance Circular 02/09).

Office of Government Procurement Frameworks

It is IDA policy to avail of the Government Frameworks managed by the OGP where appropriate.

EU Procurement Directives

EU Directives set legal obligations which, if violated, can give rise to serious legal/financial sanctions. All State Bodies are subject to the EU Directives. The Directives recognise four tendering procedures:

- i. Open - all interested parties may submit tenders. Open tendering must be used for all services and supply contracts up to €134,000 and all works and works related contracts up to €250,000. This is a one step process
- ii. Restricted - only those invited may submit tenders. This is a two step process.
- iii. Competitive Dialogue - for use in the award of complex contracts, where there is a need to discuss all aspects of the proposed contract with candidates, mainly for use in public private partnerships, full details are set out in Article 29 of the revised public sector Directive 2004/18/EC
- iv. Negotiated - parties of choice are consulted for negotiations, however, this may only be used in very special circumstances as set out in Articles 30 and 31 of the Directives.

As a result of the EU Directives, the placing of any contract, if it is over the relevant financial threshold, must be open to competition across the EU, by means of advertisement in the Supplement of the Official Journal of the EU (OJEU). The relevant thresholds are:

- i. Works contracts (buildings and civil engineering) €5,225,000.
- ii. Supplies contracts (purchasing goods) €209,000.
- iii. Service contracts (consultancy, property management services etc.) €209,000.

Public Procurement Guidelines

IDA Ireland must operate in accordance with the code of practice for Governance of State bodies. In this regard the following points should be noted:

- i. Competitive tendering should be normal procedure in the procurement process of State bodies. It is the specific responsibility of the Board to ensure that this procedure is implemented.
- ii. IDA should comply with the broad principles of Government contracts procedures as set out in the Public Procurement 1994 Edition (Green Book). The National Public Procurement Unit of the Department of Finance in 2004 issued the document Public Procurement Guidelines – Competitive Process which re-iterates the principles set out in the 1994 booklet and gives further information on all aspects of public procurement and is available on the following link; [Public Procurement Procedures - Competitive Process](#)

Summary of Thresholds

The following table summarises the value thresholds governing the issue of purchase orders, tendering procedures and compliance with EU Directives. **All staff must competitively tender and must hold the evidence that they have done so for seven years.**

Table 1

Section	Type of Procurement	Value excluding VAT	Type of Tendering	Purchase Order
4.1	All	< €5,000	1 or more verbal quotes	Yes*
4.2	All	€5,000 - €25,000	3 written quotes	Yes
4.3	All	€25,000 – EU Thresholds	eTenders website	Yes
4.4	Supplies & Services	> €209,000	OJEU	Yes
	Works	> €5,225,000	OJEU	Yes

* Note: Purchases under €650 do not require a purchase order but the procurers must still retain details of verbal quote(s) obtained.

Competitive Process

Procurement of goods and services must be the subject of competitive tenders.

Please note that details of the request for tender, replies and any other relevant information must be held for seven years for reporting purposes.

All purchases from a supplier where the cumulative annual payment will be in excess of €10,000 are subject to Tax Clearance Certificate rules see Appendix 1.

The Open Procedure for competitive tendering must be used for all:

- advertised contracts for supplies and services with an estimated value up to €134,000
- advertised contracts for works and related services with an estimated value up to €250,000.

Below EU Thresholds

Low Value Requirements - Less than €5,000

Government guidelines state that where the value of the supplies or services is less than €5,000 these may be purchased on the basis of verbal quotes from one or more competitive suppliers. Information regarding suppliers and prices quoted should be recorded on the Purchase Order

Requisition form. Details of all verbal quotes received must be retained by the procurer even in cases where a purchase order is not required.

Between €5,000 and €25,000

(i) Where the value is between €5,000 and €25,000 staff must normally obtain at least three written quotations and note the details of suppliers and prices quoted on the Purchase Order Requisition form. If three quotations have not been obtained staff should write a full explanatory note on the Purchase Order Requisition form.

(ii) While advertising on the public procurement website etenders.gov.ie for requirements below €25,000 is not required staff are encouraged to do so if the anticipated response would not be disproportionate, having regard to the value of the requirement.

(iii) Voluntary Debriefing of Unsuccessful Tenderers

At a minimum, unsuccessful candidates and tenderers should be informed of the outcome of their application or tender. It is good practice to give tenderers the reason for the unsuccessful bid by reference to their relative performance under the relevant evaluation criteria used in the competition, for example, uncompetitive on price.

eTenders Process - Above €25,000

(i) Procurement of goods and services should form part of an open competitive tender process. Recommended IDA practice for purchases of goods and services above €25,000 and up to the value of EU thresholds is advertisement on the eTenders website. [eTenders Procurement Home Page](#)

(ii) There is a panel of IDA staff who are authorised to advertise on eTenders. If you wish to be included on this panel please contact Compliance & Information Management.

(iii) When advertising on eTenders please allow ten working days as a minimum timeframe for responses to request for tenders. A longer timeframe can be used if required/appropriate.

(iv) Voluntary Debriefing of Unsuccessful Tenderers

For services or supplies contracts above €25,000 the unsuccessful tenderers should be offered the opportunity of a debriefing meeting. The time and resources to be devoted to debriefing is likely to be reduced if as much information as possible is provided in the notification of the award decision. Where a more formal debriefing is required, a structured approach should be adopted. It would be prudent to have at least two staff members in attendance and a note of the proceedings kept for the records. The unsuccessful tenderers should be given an objective assessment of the comparative strengths and weaknesses of their tenders having due regard to commercial sensitivity and the need to avoid compromising the rights or competitive situation of other tenderers.

(v) If for some reason staff members cannot use the eTenders website or require assistance with the process please contact Compliance and Information Management.

(vi) Contract Award Notice - Buyers are required to publish all Contract Award Notices over €25,000 on the eTenders website on completion of the award. Failure to enter award details within 45 days will trigger a notification process.

EU Public Procurement Procedures

(i) Where expenditure is expected to be in excess of the EU thresholds set out above, the procurement **MUST** be advertised in the Official Journal of the European Union (OJEU).

These contracts can be advertised on [eTenders Procurement Home Page](#). It is possible to indicate when advertising on eTenders that the tender should also be advertised on OJEU. The time limit will run from the date on which the contract notice is posted on eTenders. If the notice is posted after 4 pm allow 1 extra day to allow for administrative delays.

Please note that in addition to completing the required eTenders fields it is now necessary to enter certain information directly in the submission to OJEU due to the introduction of the new eTenders portal.

The EU Directives also impose obligations on contracting authorities to:

- use procurement procedures that provide open and transparent competition;
- apply clear and objective criteria, notified to all interested parties, in selecting tenderers and awarding contracts;
- use broadly based non - discriminatory technical specifications;
- allow sufficient time for submission of expressions of interest and tenders.

(ii) Time-limits for Replies

Under EU Regulations minimum time-limits are set down for the different stages of the particular contract award procedure chosen. The minimum time-limits are calculated in calendar days from the date the contract notice is advertised on the OJEU.

(iii) Electronic /online transmission: The minimum times for responses may be reduced where contract notices are transmitted electronically to the OJEU. It is IDA policy to advertise in this way. If it is not possible to advertise electronically it will be necessary to add up to twelve days to the timeframes shown in Table 2 below.

Table 2 - The time limits, in calendar days, when advertising electronically on OJEU.

Type of Tendering	PIN* published	Receipt of Requests to Participate	Receipt of Tenders
Open Procedure	No	n/a	40
	Yes	n/a	24
Restricted, Negotiated & Competitive Dialogue	No	30	35
	Yes	30	31

**** Prior Information Notice (PIN) must be published between 52 days and 12 months before the date on which the contract notice was advertised.***

Where genuine urgency renders these time limits impracticable, shorter time-limits may be applied as follows

- for receipt of expressions of interest, not less than 15 days from the date of dispatching the notice and
- for receipt of tenders, not less than 10 days from the date of issue of invitation to tender.

Where staff wish to apply deadlines on the basis of genuine urgency approval must first be sought from the CEO, the Executive Director or the Secretary.

(iv) Notifying Tenderers and Disclosure of Information

Unsuccessful tenderers for contracts covered by the EU Directives should be notified promptly of the outcome of a tendering procedure and the contract cannot be formally awarded before a specified standstill period has elapsed. During this time an unsuccessful tenderer can seek a review of the decision if they feel that the process has been unfair or unlawful. (This interval is currently set at 14 calendar days where electronically transmitted and 16 calendar days otherwise.

During the standstill period a contract must not be concluded with the successful tenderer, nor should IDA Ireland negotiate contract terms in that period or allow any work to commence. The standstill period will not commence until the day after the award decision issues to tenderers and candidates concerned. The standstill period must be specified in date form in the standstill notice to comply with the requirements of the Remedies Directive.

This implies that any notification to the tenderer deemed successful during this interval must be provisional and not constitute a contractual arrangement. Tender documentation should include a statement indicating the need for an appropriate interval after the award decision is notified and before a formal contract is put in place.

Further information on the Remedies Directive can be found in Appendix 3.

(v) Contract Award Notice

It is a requirement that information on contracts awarded is published on OJEU within 48 days.

(vi) Report on Contracts Awarded

For contracts above EU thresholds a written report must be prepared containing fundamental information, as outlined in Article 43 of the public sector procurement Directive 2004/18/EC, on the award procedure adopted. This report, or the main features of it, may be requested by the EU Commission at any time.

Framework Agreements

This process allows an organisation to enter into framework agreements with one or more suppliers in situations where some elements of the requirements (for example price or quantity) will generally not be fully established at the start of the agreement

If you require any further information on Framework Agreements please contact Compliance and Information Management.

Tax Clearance Certificates

Where a supplier, whether based in Ireland or overseas, is to be awarded contract(s) with an aggregate value of €10,000 or more (including VAT) in any rolling 12 month period, they are required to furnish IDA with an appropriate Tax Clearance Certificate (TCC). This requirement may not apply to overseas office expenditure. Detailed tax clearance guidelines are set out in Appendix 1.

Necessity for Written Purchase Orders

Written purchase orders are required for all purchases in excess of €650 (excluding VAT). Orders must be requisitioned and issued through Financial Management.

European Communities (Late Payment in Commercial Transactions) Regulations 2012

The European Communities (Late Payment in Commercial Transactions) (S.I. No. 580 of 2012) came into operation on 16 March 2013 and superseded the European Communities (Late Payment in Commercial Transactions) Regulations 2002.

The main provisions of the revised legislation are:

- Public authorities must pay for the goods and services that they procure within 30 days or, in very exceptional circumstances, within 60 days.
- Enterprises should pay their invoices within 60 days, unless they expressly agree otherwise and if it is not grossly unfair to the creditor.
- Enterprises are automatically entitled, without the necessity of a reminder, to interest for late payments plus compensation costs.
- The statutory interest rate for late payment is increased
- Enterprises can challenge grossly unfair terms and practices

Disability Act, 2005

This Act obliges Public Bodies to make services, information and premises accessible to people with disabilities. Section 27 of the Act requires Public Bodies to ensure that goods or services that they purchase are accessible, unless to do so would not be practicable or justifiable on cost grounds or would result in an unreasonable delay.

Freedom of Information

The Freedom of Information Act 2014 has implications for current procurement procedures in that staff dealing with suppliers of goods or services, e.g. consultants, contractors, solicitors, persons/companies submitting tenders for business:

- i. Will not be able to give guarantees of confidentiality in respect of information which they provide to IDA Ireland.
- ii. Will be required to consult with parties who supply information to IDA Ireland about the release of any such information before making a decision on any FOI request.
- iii. Should advise that any files held by a contractor, consultant etc in so far as it relates to the service which they have contracted to provide to IDA Ireland shall be made available to IDA Ireland upon request.

Appendix 1 **Tax Clearance Certificates**

1.1 Tax Clearance Certificate Regulations

Where a supplier, whether based in Ireland or overseas, is to be awarded contract(s) with an aggregate value of €10,000 or more (including VAT) in any rolling 12 month period, they are required to furnish IDA with an appropriate Tax Clearance Certificate (TCC). Any one of the following are considered to be appropriate certificates:

- a Tax Clearance Certificate (TCC) for a supplier based in Ireland (valid for one year from date of issue) or
- a C2 certificate for a supplier based in Ireland and engaged in the construction industry (valid for one year from the 1 January)
- a Statement of Suitability for a supplier based overseas (valid for one year from date of issue)

Any of the above certificates may be obtained by submitting an application to the Revenue Commissioners. If the supplier wishes to apply online they should access the attached link: <https://www.revenue.ie/itp/identification.jsp>

1.2 Definition of a contract

The procedures direct that a “contract” be interpreted to cover any situation where public sector authorities expend public monies, including such areas as:

1. grant payments
2. the purchase, hire, or lease of goods, commodities, services or property,
3. construction of buildings
4. contracts for cleaning or security
5. land purchase
6. site development works
7. consultancy, legal or design services
8. leasing of property

It is not necessary that a contract be the subject of formal documentation or a tendering process in order for the tax clearance regulations to apply. It applies to all purchases of goods or services.

1.3 Where no certificate is submitted

Where an appropriate certificate cannot be furnished, IDA must not transact any business with a supplier except where clearance has been obtained in advance from the Department of Finance to award the contract notwithstanding the non- availability of a valid TCC. Such sanction is rare, is only forthcoming in very exceptional circumstances and takes some considerable time to obtain.

1.4 On-line Verification

The on-line verification service for Tax Clearance Certificates at www.revenue.ie can be used instead of requesting the original from the company. In these instances the supplier must provide a tax reference number.

Appendix 2

Initiatives to assist SMEs in Public Procurement – Department of Public Expenditure and Reform **Circular 10/14**

As a general principle, this guidance sets out positive measures that buyers should take to promote SME involvement in public sector procurement.

Market Analysis

Buyers should undertake market analysis prior to tendering in order to better understand the range of goods and services on offer, market developments and innovation, what commercial models are available, the competitive landscape, and the specific capabilities of SMEs. Initial consultation with the market should not have the effect of precluding or distorting competition. To ensure transparency, any information provided by the buyer during this process should be circulated to any potential tenderer.

Sub-dividing Contracts into Lots

Buyers should, where reasonable and without compromising efficiency and value for money, consider breaking contracts into lots, enabling smaller businesses to compete for these elements. Buyers must consider the aggregate value of the lots when deciding whether a contract needs to be advertised on eTenders and in the Official Journal of the European Union (OJEU).

Consortium Bids

SMEs are encouraged to consider using consortia where they are not of sufficient scale to tender in their own right.

Less use of “restricted” tendering and greater use of “open” tendering

Buyers should use open tendering for contracts below €134,000 (exclusive of VAT) in the case of advertised contracts for general goods and services. In the case of advertised contracts for works and works related services, separate guidance in relation to thresholds will issue shortly.

Capacity Requirements

Buyers should ensure that any capacity levels set for candidates/tenderers are relevant and proportionate to the circumstances of a particular contract. Buyers may consider the previous experience of individuals who have formed a start-up SME that has yet to establish a track record as a company.

Documentary evidence of financial capacity to undertake a project should not be sought by buyers early on in the procurement process. Instead candidates/tenderers should declare that they meet the minimum standards required by the buyer and will produce the necessary documentation (e.g. bank statements, audited accounts, proof of professional indemnity, etc.) when provisionally short-listed in a restricted procedure or when chosen as the successful tenderer in an open procurement competition.

Turnover requirements

In assessing the financial capacity of a supplier to do a job, buyers, as a matter of general policy, should not for routine (e.g. low-value, high volume) goods and services competitions set company turnover requirements at more than twice the estimated contract value.

Innovation

Buyers should, where possible and appropriate, encourage new and innovative solutions by indicating in tender documents where they are prepared to accept reasonable variants to the specifications.

Framework Agreements

Breaking framework agreements into lots can be an effective way of opening up opportunities to SMEs.

Publication of Contract Award Notices

Buyers are required to publish all Contract Award Notices over €25,000 on the eTenders website on completion of the award. This is a separate step to publishing on the OJEU.

PINs

Buyers should communicate long term purchasing plans to the market as early as possible by publishing Prior Information Notices (PINs) on the eTenders website.

Requests for Tenders/Expressions of Interest (RFTs/ EOIs)

Buyers should publish RFTs or EOIs on eTenders for direct downloading by suppliers.

Insurance

In carrying out competitions for the acquisition of routine low-to-medium-risk goods and services buyers should use the matrix below as a general guide to assessing insurance level requirements. For bespoke and or complex competitions or if the buyer has concerns with regard to any aspect relating to subject matter of the procurement then buyers should contact Compliance to determine the appropriate levels of cover.

Type of Insurance	Indemnity Limit
Employer's Liability	€12.7m
Public Liability	€6.5m
Environmental Indemnity	€2m
Professional Indemnity	Contract Value (min. €50,000)
Product Liability	Contract Value (min. €50,000)

Life Cycle Costs

Where appropriate buyers should seek full life-cycle costing solutions in their tender documents.

No Charging for Tendering Opportunities

Buyers must not use arrangements which involve candidates/ tenderers having to pay so as to access competitions for public contracts.

Feedback

For contracts above EU thresholds for which advertising of contracts in the Official Journal of the EU is obligatory, buyers are required to give appropriate feedback to companies who have participated in a public procurement competition. For all other contracts buyers are strongly encouraged to provide written feedback as a matter of good practice.

Appendix 3
EU Public Procurement Remedies Directive

The Remedies Directive applies to all contracts advertised in the OJEU. This directive imposes a number of new rules on contracting authorities and these are set out below.

1. Standstill Period

A standstill period is now formally imposed. The objective of the new provisions is to allow for effective pre-contractual remedies. The new Directive requires a standstill period of a minimum of 14 days for electronic communication (and 16 days for non-electronic transmission) from the day following publication of a standstill notice

During the standstill period a contract must not be concluded with the successful tenderer, nor should the contracting authority negotiate contract terms in that period or allow any work to commence.

The standstill period will not commence until the day after the award decision (referred to hereinafter as the “standstill notice”) issues to tenderers and candidates concerned. Thus service of a valid standstill notice compliant with the obligations imposed by the legislation is critical.

2. Standstill Notice

The standstill notice **must give sufficient information to enable an unsuccessful bidder to decide whether there are grounds for seeking a review.** The wording used in the new Directive is that the standstill notice must give tenderers and candidates concerned *“the relevant information which is essential for them to seek effective review”*.

The new Directive requires that, subject to the exceptions listed below, contracting authorities must as soon as possible:

Inform candidates and tenderers of decisions reached concerning

- i) Conclusion of a framework agreement
- ii) Award of contract or admittance to dynamic purchasing system
- iii) Grounds for any decision not to conclude framework agreement or award of contract for which there had been a call for competition or implementation of a dynamic purchasing agreement

The standstill notice must also give a summary to each tenderer and candidate concerned of the relevant reasons for rejection of the application.

For tenderers concerned the reasons for rejection should include

- characteristics and relative advantages of tender selected
- name of successful tenderer or parties to framework agreement
- statement why works, supplies or services do not meet performance or functional requirements

The standstill period must be specified in date form in the standstill notice (e.g. the contract will not be concluded until after the X day of X 20XX) to comply with the requirements of the Remedies Directive.

The information required to be furnished has to be given TO ALLOW THE STANDSTILL PERIOD TO COMMENCE and it must be given to all concerned tenderers and candidates. In the past this information was only furnished on request.

Information may only be withheld where it's release:

- would impede law enforcement
- would be contrary to public interest
- would prejudice legitimate commercial interests of economic operators, whether public or private
- might prejudice fair competition between economic operators

Caution should be used when relying on this exception which will be applied strictly against contracting authorities. Legal advice from the IDA Solicitor should always be sought if you intend to use this exception.

In addition, the new Directive does provide for a derogation from the requirement to impose a standstill period and no standstill period is required in respect of:-

- (i) contracts which do not require prior publication of contract notice in OJEU such as Annex IIB – (non-priority) contracts or below threshold contracts;
- (ii) a contract where the only tenderer concerned is the one who is awarded the contract and there are no candidates concerned;
- (iii) a contract based on a Framework Agreement in respect of call-off or draw-down contracts;
- (iv) a contract based on dynamic purchasing systems.

Caution should again be exercised in the use of these derogations. The new remedies in respect of misuse of the derogations are severe.

3. Definition of 'concerned tenderer' and 'concerned candidate'

The new Directive provides for service on "Concerned Tenderers" and "Concerned Candidates".

An economic operator who has submitted a tender shall be designated a "**tenderer**". Tenderers are deemed to be concerned if they have not yet been definitively excluded.

An economic operator who has sought an invitation to take part in a restricted or negotiated procedure or a competitive dialogue shall be designated a "**candidate**". Candidates are deemed to be concerned if the contracting authority "*has not made available information about the rejection of their application before the notification of the contract award decision to the tenderers concerned.*"

4. Impact of Court Proceedings

A person who is an eligible person in relation to a reviewable public contract that has not been concluded may apply to the Court

- a. for interlocutory orders with the aim of correcting an alleged infringement or preventing further damage to their interests, including measures to suspend or to ensure the suspension of the procedure for the award of the public contract concerned or the implementation of any decision taken by the contracting authority, or
- b. for review of the contracting authority's decision to award the contract to a particular tenderer or candidate.

If an eligible person applies to the Court the contracting authority shall not conclude the contract until the Court has determined the matter, or the proceedings are discontinued or otherwise disposed of.

A person who is an eligible person in relation to a reviewable public contract that has been concluded may apply to the Court for a declaration that the contract is ineffective.

A person seeking a review of a reviewable public contract in accordance with this Regulation shall first notify the contracting authority of—

- a. the alleged infringement,
- b. his or her intention to seek a review of the decision, and
- c. the matters that in his or her opinion constitute the infringement.

5. Remedies

Sanctions for violation of the standstill obligations are:

1. Remedy of Ineffectiveness of the contract
2. Alternative Remedies including monetary fines
3. Any power of the Court to grant any other remedy in relation to a contract.

4.1 Remedy of Ineffectiveness

“Ineffectiveness” is the mandatory setting aside of contracts.

If the Court declares a contract ineffective, any contractual obligations not already performed are cancelled. Contractual obligations already performed are not affected.

The remedy is available in respect of the following types of improperly awarded contracts:

- illegal direct awards
- failure to comply with the standstill obligations
- concluding contract following application to the Court but before Court has made its decision
- breaches of the rules pertaining to permissible call off or draw down contracts

Where a Contracting Authority relies on the derogation from the requirement to impose a standstill period Member States shall ensure that the contract is ineffective if there is an infringement of the rules governing:

- i) Mini competitions for frameworks
- ii) Mini competitions for Dynamic Purchasing Systems and
- iii) Threshold amounts.

It is recommended that a *stand alone confidentiality agreement* is executed when contracting, so that in the event of an order of ineffectiveness being secured against any contract awarded, all obligations in respect of confidentiality, data protection or other security related matters will be protected.

4.2 Alternative Remedies

Where the Court considers that there are overriding reasons for allowing a contract to continue the Court may impose “Alternative Remedies” by way of monetary fine (up to 10% of the contract value) or terminate the contract illegally awarded or shorten the duration of an illegally awarded contract.

Appendix 4 – Steps in conducting a Competitive Process below EU Thresholds

