



Improving SME's access to public procurement

Guide to country specific elements on public procurement: Ireland



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List of Acronyms

Acronym	Title
EU	European Union
ESPD	European Single Procurement Document
GDP	Gross domestic product
HM	Her Majesty's
ITN	Invitation to negotiate
ITPD	Invitation to participate in dialogue
ITT	Invitation to tender
MEAT	Most Economically Advantageous Tender
MPER	Ministry for Public Expenditure and Reform
NHS	National Health Service
NPPPUs	National Public Procurement Policy Unit
OGP	Office of Government Procurement
OJEU	Official Journal of the European Union
PCR	Public Contract Regulations
SME	Small and Medium sized Enterprise

The current guide was prepared under the Task 2.5 of the TENDERIO project which is funded by the COSME programme of the European Union (Grant Agreement No 739966) and aims to increase SME's access to public procurement in EU.

Within this concept, a series of national guides on public procurement was developed for Czech Republic, Estonia, Greece, Ireland, Latvia, Lithuania, Portugal, Slovakia, Spain and United Kingdom targeting to support in particular SMEs who are interested in participating in public procurement processes in EU Member States and need to know more regarding the national procedures.

National guides are available in the project's official website: www.tenderio.com

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Executive summary

This report provides practical information on Ireland's public procurement rules and processes. The aim is to provide a short and concise preliminary guide primarily for SMEs considering, and interested in applying for a contract.

Ireland's public procurement system is relatively modern and high performing. In particular, the range of services offered online is extensive, national, and well-developed. The Irish system is currently undergoing a move towards greater centralisation. There has also been a move to introduce greater standardisation and simplification of processes, which is expected to accelerate under the coordination of the central procurement authority.

One of the key recommendations for improvement includes incentivising the SMEs involved as it is currently low and they are being undermined by larger framework contracts. The latest changes to have been made to the Irish public procurement policy include: shorter deadlines for submitting tenders; introduction of the new 'light touch' regime; the use of life-cycle costing to promote sustainable procurement.; provisions aimed at ensuring that SMEs are given an equal opportunity to compete with larger companies.

New procurement rules were set out in April 2016 to make it easier and cheaper for small and medium sized enterprises (SMEs) to bid for public contracts. To encourage progress towards particular public policy objectives, the new rules also allow for environmental and social considerations, as well as innovation aspects to be taken into account when awarding public contracts.

The data in this report is exclusively based on Ireland's public procurement rules under the EU Procurement Directive 2014/24/EU - goods, services and works - and was published in the Official Journal of the European Union (OJEU). The EU Directive was transposed into Irish Law in 2016 by way of the S.I No. 284/206 regulation. Much of the content of the EU Procurement Directive broadly reflects the pre-existing framework of procurement law, and the rules set out are seen as an important policy instrument to promote and support the Europe 2020 strategy for smart, sustainable and inclusive growth.

The Office of Government Procurement (OGP) of the Ministry for Public Expenditure and Reform (MPER) plays the primary role in the Irish procurement system. It is in charge of the formulation of public procurement policy, dissemination of best practices, general guidance, and management of the Government's e-procurement strategy.

This report is to highlight that contract opportunities are highly accessible to small businesses and encourage SMEs to participate in public contracts to increase competition, encourage innovation and provide value for money for public bodies.

This report lays out the national particularities so they can be easily communicated to other countries, project partners and SMEs.

1 Introduction

The current guide was elaborated under the activities of the TENDERIO project. The TENDERIO project is funded by the COSME programme of the European Union (Grant Agreement No 739966) and aims to increase access to public procurement opportunities for SMEs in the EU.

This guide is addressed to SMEs and to any other economic operator interested in participating in UK public contracts and who wishes to know more about the public procurement procedures in the UK.

Chapter one, introduces the scope and the content of this guide and lays out the concept within which it was developed.

The second chapter focuses on the potential of the EU's public procurement market, emphasising the performance of European SMEs in the cross-border procurement contracts and briefly presenting the key points of the new EU legislative framework (2014) on public procurement.

The third chapter highlights the current status of public procurement in the UK. In particular, it provides an overview of the public procurement framework in the UK along with a summary of key data regarding the UK market size as well as data regarding cross-border procurement i.e. the implementation of UK public contracts by companies located in other EU Member States.

Chapter four briefly comments on the national procedures of public procurement in the UK. More specifically, it includes information regarding:

- the contracting authorities;
- the award procedures;
- the eligibility of the potential bidders;
- the publication of the contracts notices;
- the time limits for the submission of an offer;
- the bid submission and bid evaluation procedures;
- the award criteria;
- the complaints and the prejudicial objections.

Finally, the fifth chapter lists key points for SMEs that are interested in submitting offers for UK public contracts. The guide concludes with a reference on how the TENDERIO platform could support European SMEs in applying for a public contract abroad.

2 Public Procurement in EU

According to the European Commission, the term "Public Procurement" refers to the process by which public authorities, such as government departments or local authorities, purchase work, goods or services from companies, i.e. the building of a state school, purchasing furniture for a public prosecutor's office, contracting cleaning services for a public university etc¹.

The Public procurement market in the EU

- Every year nearly 2 trillion euros are paid in Europe for public contracts, i.e. 14% of EU GDP.
- At least 250.000 public authorities conduct public procurements annually.
- Public authorities are the major buyers in sectors such as energy, transport, waste management, social protection and the provision of health or education services.
- The estimated value of general government expenditures on works, goods, and services -excluding utilities - has increased by 4,2% in 2015. Almost all EU Member States increased their expenditure on public contracts between 2014 to 2015².
- The estimated value of tenders published in the Tenders Electronic Daily³ (TED) in 2015 was 450.21 billion euros which is 6.9% more than it was in 2014.

Overall, public procurement represents a substantial portion of the EU economy offering many opportunities and innovation prospects for European SMEs.

¹ <http://ec.europa.eu/growth/single-market/public-procurement/>, 2017

² DG GROW G4, 2016. *Public Procurement Indicators 2015*.

³ The online version of the 'Supplement to the Official Journal' of the EU, dedicated to European public procurement.

European SME's participation in cross-border procurement

The term “cross-border procurement” refers to a procedure by which a public contract in a Member State is partly or fully performed by firms located in another EU Member State.

SMEs account 99,8% of the registered enterprises in Europe (20,8 million SMEs) and they are considered to be the backbone of the EU28 economy. European SMEs could participate in procurements across borders either directly or indirectly through its local subsidiaries (**Error! Reference source not found.**). However, the past years the overall participation of European SMEs in public procurement across borders is considered to be low.

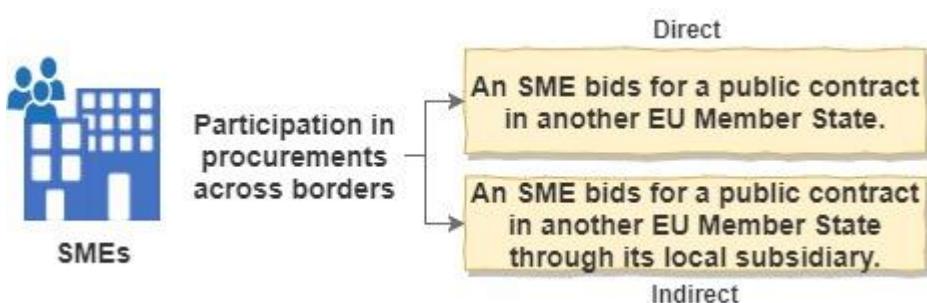


Figure 1: How European SMEs can participate in cross border public procurement

SMEs account 99,8% of the registered enterprises in Europe (20,8 million SMEs) and they are considered to be the backbone of the EU28 economy. However, over the past years the overall participation of SMEs in cross-border public procurement is considered to be low.

The share of European SMEs in direct cross-border procurement accounts for 27% in terms of number of awards and 24,5% in terms of the value of awards, which is significantly lower compared to their contribution to the European GDP (58%)⁴.

The share of European SMEs in indirect cross-border procurement is estimated at 3% both in terms of number and value of awards⁵.

⁴ European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, 2017. *Measurement of impact of cross-border penetration in public procurement*.

⁵ European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, 2017. *Measurement of impact of cross-border penetration in public procurement*.

Obstacles to the participation of SMEs in cross-border procurement

The low level of participation by SMEs in cross-border procurement in the past years was due to (Figure 2):

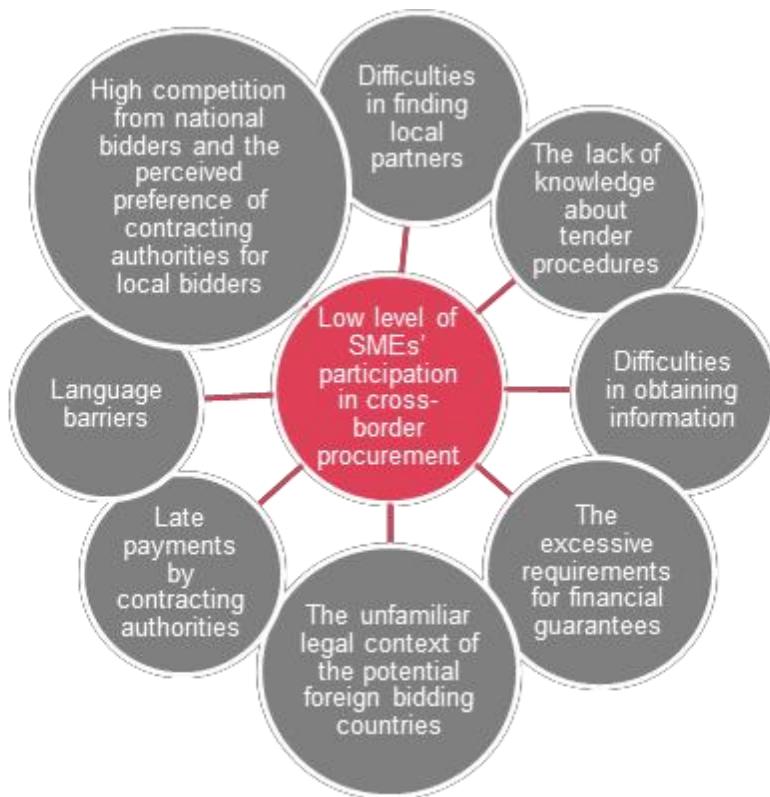


Figure 2: Main obstacles that SMEs face when they participate in cross-border public procurement

Despite the fact that SMEs are facing difficulties in their participation in cross-border public procurement, contracting authorities do, however, see high potential in using cross-border contractors. Using cross-border contractors brings potential benefit for contracting authorities by providing more and better choice in terms of quality and price and by enabling them to carry out contracts when there is an absence or limited availability of suppliers at their national level.



The European Commission has introduced legislative measures to improve access for SMEs to public contracts, aiming to open up national public procurement markets and increase the levels of cross-border public procurement.

Legislative Framework

In 2014, the EU Parliament and the European Council introduced a new common legislative framework in public procurement and concessions aiming to simplify the procedures and encourage SMEs to access public contracts and concessions contracts. The reform included the following directives:

- 2014/23/EU on the award of concession contracts;
- 2014/24/EU on public procurement;
- 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors.

More specifically the new EU directives aim to (Figure 3):



Figure 3: Objectives of the new EU directives on public procurement

The reform of public procurement legislation reduces bureaucracy and makes public procurement in Europe more efficient within a single market facilitating that way SMEs are able to participate in public contracts.

3 Public Procurement in Ireland

Ireland spends approximately €8.5 billion on goods and services annually. In 2014, total public procurement expenditure was €15.5 billion, or 9% of GDP, reflecting a small public sector in the country. According to the Book of Estimates and the Public Capital Programme 2017-2021, the total value of expenditure to be procured will rise to at least €17 billion per annum, or €85 billion over five years.

In 2016, Bid Management Services carried out a survey of its clients, 133 responded with 83% classified as small businesses, and summarises some important trends relevant to the tendering process in Ireland. The results highlight how ambiguous public procurement guidelines are, and therefore how the process needs to be made clearer and simpler.

- ⊕ Professional training for tendering receives very high interest
- ⊕ 62% feel the Open Government Partnership's (OGP) guidance is not clear
- ⊕ 73% consider tendering specifications to be badly defined

In Ireland, data from 2016 showed that 24% of all tenders were procured using framework agreements with an average of 17.6 bids received for framework tenders – the EU average is just 11.4%. Also, Irish SMEs win 25% of all contracts above the EU threshold and 53% of those below the threshold (Table 1)⁶.

	Micro	Small	Medium	Large
Commodities	3	5	9	84
Machinery	3	9	13	75
Medical Products	4	8	39	50
Other Manufacturing	8	23	26	43
Construction	4	8	15	74
Business Services	5	9	12	74
Other Services	6	12	14	68

Table 1: Share of SMEs in Total Value of Contracts Award

The data on public procurement activity in Ireland is incomplete as there are no up-to-date statistics on matters such as: the volume and value of all contracts won by companies outside the size category of the bidders; the number of suppliers registered on eTenders by jurisdiction; the total value of supplies, services and works procured by all contracting authorities in Ireland; the number of bids submitted for all tender competitions based on the procurement procedures used.

⁶ EPS Consulting, *Public Procurement in Ireland, A Critical Review*, Dr Peter Brennan, 7 November 2016, <<http://www.ppan.ie/wp-content/uploads/2016/11/Procurement-A-critical-review-by-Doctor-Peter-Brennan-1.pdf>>

4 National Procedures on Public Procurement

The National Public Procurement Policy Unit (NPPPU) has overall responsibility for public procurement, policy making and the implementation of EU Rules and Regulations in Ireland.

4.1 Contracting Authorities and Contracting Entities

The principle legislation that regulates public procurement is the EU Procurement Directive 2014/24/EU.

The regulatory authorities responsible for public procurement enforcement under EU rule are generally enforced at the member state level, by contracting authorities and national courts. These must apply the national legislation that was adopted by the respective member states to transpose the EU Procurement Directives. While the EU procurement rules contain the rules for procurement at member state level, they are not binding on EU institutions, bodies and agencies that award works, services and supply contracts. These regulations broadly follow the general principles contained in the Procurement Directives, in particular the principles of:

- ⊕ Equal treatment
- ⊕ Non-discrimination
- ⊕ Mutual recognition
- ⊕ Proportionality
- ⊕ Transparency

Other public entities include:

- ⊕ **Contracting authorities:** the State, regional or local authorities, bodies of government by public law or associations formed by several of such authorities, public sectors including NHS, commercial and non-commercial state bodies
- ⊕ **Public works contracts:** the execution and design of works relating to the outcome of building or civil engineering works
- ⊕ **Public supply contracts:** the purchase, lease, rental or hire-purchase
- ⊕ **Public service contracts:** the provision of services other than those under public works contracts
- ⊕ **Light-touch Regime:** for certain social and services with limited cross-border dimensions such as: health, social and related; administrative social, educational, healthcare and social services; compulsory social security services; other community, social and personal services; youth associations and other membership organization services; postal services etc.

4.2 Threshold Amounts

Below are the thresholds, exclusive of VAT:

Authority Category (i.e.: Awarded by central government authorities, contracting authorities, sub-central contracting authorities etc.)	Threshold Amount	Covered by law
Supply and Services Contracts – awarded by Central Government authorities: Applies to government departments and offices	€135,000	Appendix E
Supply and Services Contracts – awarded by sub-Central Government authorities: applies to local and regional authorities and public bodies	€209,000	Appendix E
Work Contracts: Applies to Government departments and offices, local and regional authorities and public bodies	€5,225,000	Appendix E
Social Services: Applies to all services concerning social and other specific services listed in the new Annex XIV “Light Touch Services”	€750,000	2016 Regulations Annex XIV of the EU Directive 2014/24/EU

Table 2: Thresholds triggering EU-wide rules on public procurement contracts

Below the threshold amount and a tender is involved in competitive tendering set out by Irish Government Contract Regulations', above the threshold and a tender will be advertised in the official journal and rules of the European Procurement Directives apply.

4.3 Award Procedures

Under this, there are six award procedures that contracting authorities may utilise when awarding contracts, that are as follows: Open procedure, restricted procedure, competitive dialogue, competitive procedure with negotiation, innovative partnership, negotiated procedure without prior publication.

Type of Procedure	Short Description
Open Procedure	It is considered as the most common award procedure. A notice that the contract is being tendered is announced and any economic operator may submit an offer.
Restricted Procedure	Stage 1: Any economic operator may submit a request to participate in response to a call for competition containing the information requested by the contracting authority.
	Stage 2: Only those economic operators invited to do so by the contracting authority following its assessment of the information provided, may submit an offer.
Competitive Procedure with negotiation	Stage 1: Any economic operator may submit a request to participate in response to a call for competition containing the information requested by the contracting authority.
	Stage 2: Only those economic operators, invited to do so by the contracting authority following its assessment of the information provided, may submit an offer. Contracting authorities open a dialogue with the participants selected, aiming to identify and define the means best suited to satisfying their needs.
Competitive Dialogue	Stage 1: Any economic operator may submit a request to participate in response to a call for competition containing the information requested by the contracting authority.
	Stage 2: Contracting authorities open a dialog with the participants selected, aiming to identify and define the means best suited to satisfying their needs.
Innovation Partnership	The contracting authority identifies the need for an innovative product, service or works that cannot be met by purchasing products, services or works already available on the market. Stage 1: Any economic operator may submit a request to participate in response to a call for competition containing the information requested by the contracting authority.
	Stage 2: The contracting authority invites the selected candidates to participate.

Table 3: Types of award procedure

There is also a new simplified award regime was also introduced called a '**light touch regime**', under Appendix IV, for certain services including health, social, educational and cultural services.

For all award procedures, a standstill period of at least 10 days is required to allow rejected bidders to decide whether to challenge the award and to initiate a review procedure.

4.4 Who are Eligible to Participate?

Both public authorities and contracting authorities are eligible to participate in public procurement, covered by law under the EU Directives.

Potential bidders include:

-  Individuals
-  Legal partnerships
-  Cooperatives
-  Suppliers

Contracting authorities can exclude any economic operator from participating in a public procurement procedure where they have established or are aware that the economic operator has been subjected of a conviction for participation in:

- i. a criminal organisation;
- ii. corruption;
- iii. economic fraud;
- iv. terrorist offences or offences linked to terrorist activities;
- v. money laundering or terrorist financing;
- vi. child labour;
- vii. other forms of trafficking of human beings.

Above that, any economic operator may be excluded in case:

- i. is bankrupt or being wound-up;
- ii. has not paid taxes or social security contributions;
- iii. has been found guilty of grave misconduct;
- iv. has entered into agreements with other economic operators aimed at distorting competition;
- v. has violated environmental, social or labour law.

Bidders can be excluded at any stage during the procedure when it turns out that any abovementioned criteria are valid. On the other hand, any bidder that is in one of the above situations may provide evidence in order to demonstrate its reliability to participate in a public contract.

Whilst many contracts are publicly advertised without the need for prequalification, most larger contracts request a prequalification from potential bidders. This questionnaire does not guarantee a company is awarded the contract, but only that once the prequalification has been approved, then it is free to bid for the contract. Prequalification therefore helps to reduce the need to evaluate unqualified contractors and that only those with the financial capability and requisite can undertake the work. This stage also allows for unqualified bidders to be picked out and leaves those pre-qualified eligible to bid on the contract.

4.5 Publication of Public Contract Notices

All public contracts for supplies and services with an estimated value of €25,000 (exclusive of VAT) and above are required to be advertised in the following repository:

-  Official Journal of the European Union (OJEU) on the Irish government's eTenders website
www.etenders.gov.ie and <https://irl.eu-supply.com/ctm/supplier/publictenders>

For works and works-related services, the threshold for advertising on the eTenders website is €50,000 (exclusive of VAT) and public contracts are to be published in the following repository:

-  **Tenders Electronic Daily (TED)**
www.ted.europa.eu

Public sector buyers are also encouraged to advertise lower value opportunities on eTenders as part of the drive to facilitate SME access to government contracts.

Other tender announcements can also be found at:

Tenders Direct – www.TendersDirect.com, commercial service with access to all OJEU notices and lower value contracts from a variety of sources.

Euro Info Centres (EIC)

Access to public contracts all around the EU is provided also by the **TENDERIO** platform (<http://www.tenderio.com/>). SMEs can access public procurement in their country or abroad by using a tender search engine that aligns live tender opportunities most suited to their business needs and expertise.

With the publication of the contract notice, the contracting authority may invite the potential bidders to participate in a consultation regarding the contract at a specific place/date/time at least thirty (30) days before the deadline for submission of bids or requests to participate. Within ten (10) days of the consultation any interested party may submit comments on the contract indicating any technical, financial or contractual errors/inaccuracies.

In the case that the comments are valid, the contracting authority publishes an issue of amendments to the initial contract notice within five (5) days from the last day of comments' submission.

4.6 Time Limit of Submitting an Offer for a Public Contract

Under Regulation 46 of the Public Sector Regulations within the EU Directives, the rules governing the minimum timescales are as follows.

Type of Procedure		
Open Procedure	Minimum time for receipt of tenders – 35 days	
Restricted Procedure	Minimum time for requests to participate – 30 days	Minimum time limit for tenders – 30 days
Competitive Procedure with Negotiation and Innovation Partnerships	Minimum time for requests to participate – 30 days	Minimum time limit for initial tenders – 30 days
Negotiated Procedure	Minimum time for requests to participate – 30 days	

Table 4: Minimum time limit for submitting an offer for public procurements in the EU

4.7 Public Contract Notice Contents

A typical public contract notice includes the following information.

The contract notices are split into five sections:

1. Contracting authority, name and type of contract
2. Participation general and specific terms
3. Public procurement procedure and bid evaluation
4. General terms of carrying out the contract
5. Specific terms in carrying out the contract

Plus annexes, the general structure of a public contract notice includes the following:

- ⊕ Official name, address and national ID
- ⊕ Contact details: email, telephone
- ⊕ Does the contract involve joint procurement?
- ⊕ Where to obtain further information and additional documents, such as competitive dialogue
- ⊕ Where tenders or requests must be sent to
- ⊕ Type of contracting authority
- ⊕ Main activity i.e. environment, defense, health, education
- ⊕ Detailed description on the object of the contract i.e. title of contract; type of contract – works, supplies, services, and location of works; estimated value; information about lots; duration of agreement; estimated value; duration of contract, framework agreement or dynamic purchasing system; short description of the contract or purchase(s); information on Government Procurement Agreement; information about variants; information about electronic catalogues
- ⊕ Award criteria –made up of sub-criteria which is usually found within the tender document rather than contract notice
- ⊕ Legal, economic, financial and technical information i.e. conditions relating to the contract, conditions for participation, conditions related to contracts
- ⊕ Type of procedure and detailed description i.e. information about negotiations and Government Procurement Agreement
- ⊕ Administration information i.e. conditions for opening tenders, minimum time frames
- ⊕ Procedures for review with contact details

4.8 How to Submit a Bid

When a contracting authority publishes a contract notice, any interested candidate may prepare and submit an offer.



Figure 4: Bid's preparation & submission workflow

4.8.1 What are the specific elements that a bid must include

When submitting a bid, you will be requested to complete a questionnaire online or provide the information listed in the tender advertisement, and the criteria includes:

- ⊕ **Exclusion Criteria:** any history of bankruptcy, convictions, non-payment of taxes.
- ⊕ **Personal standing, self-cleaning:** A candidate must be permitted to provide evidence to show it has taken measures sufficient to demonstrate its reliability.
- ⊕ **Financial and Economic Information:** evidence is ascertained through the provision of audited accounts, turnover for previous three financial years, evidence of risk indemnity insurance.
- ⊕ **Information Supporting Technical Capacity:** will relate to the nature, quantity and purpose of the product or service including the supplier's technical, quality assurance and research facilities; Information on Health and Safety aspects; For products, samples, descriptions or photographs, authenticated if required. Recognised third party certification of conformity of the products to given specifications and standards.

-  **Required to comply with central government spending controls in relation to:** advertising, marketing and communications; commercial; technology; digital service delivery; consultancy; civil service learning; property.

Before a procurement process is commenced bidders will be handed a Tender folder where there will be a Procurement Management Document Checklist. This checklist will help to ensure that all required documentation has issued. See Appendix D for a template Procurement Management Document Checklist.

The contents and structure of tenders depend on the advertisement option and what type of contract it is. However, you will be expected to complete a checklist along the lines of the one below:

Tender preparation checklist (with explanation – not exhaustive):

- Closing date
- Award criteria: is it the most advantageous tender?
- Company information: structure, management, shareholding
- Financial information: turnover for past three years, bank references
- Technical information: health and safety policies, environmental issues
- Grounds for exclusion of bidders
- Specification: do you meet them? How will you manage the project?
- Bids: criteria against which bids will be evaluated, method used to assess bids
- Bonds and guarantees: agree these with the banks if required
- Pricing: do they include tender pricing sheets? If so complete accurately
- Main terms and conditions of the contract
- Sign-off

Tender documents must include particular technical solutions:

- **Non-discriminatory performance and functional requirements:** the tender document must use common specifications and not specific technical specifications of products or services such as: the make, sources, particular processes and characteristics of the product or service
- **'Or equivalent':** any reference to a particular technical standard should include these words
- **Labels:** environmental requirements may lay down environmental characteristics such as production method, specific environmental effects, appropriate eco-labels and national eco-labels but only if adopted on the basis of scientific information using a procedure in which stakeholders can participate and accessible to all interested parties.

4.8.2 Where you submit the tender and what are the steps

The new 2015 Regulations established a requirement surrounding the issuing of procurement documents electronically. Under the EU rules, this is to be made mandatory by the UK Government by 2018, while currently is just remains incentivised. Under the previous 2006 Regulations, bidders were free to choose whether they required submissions to be made electronically or by paper, or both.

With regards to the minimum timescales for the various procedures, for open procedure electronic submission can reduce the time-scale but for the majority, electronic submission does not guarantee further time reductions.

When submitting a tender, it is advised to follow the requested format and Instructions to Tenderers. Attach all requested documentation and/or samples. Remember criteria weightings indicate the relative importance of each area. Ensure sufficient information to allow each criterion to be evaluated. Complete the pricing schedule very carefully.

BID's Submission		
Action	Who	Short Description
Public Contract Notice	Contracting Authority	Public Contract Notice is announced in the Publications Office of the EU (for contract value above the EU thresholds) and in the Central Electronic Public Procurement Registry (CERPP) (for all contracts irrespective the value and the award procedure).
Questions	Bidders	Up until 6 days before the submission deadline, bidders could ask for clarifications on the contract notice.
Bid's Submission	Bidders	The bidders should submit: i) the supporting documents, ii) the technical offer and iii) the financial offer.
Bids' receipt	Tender's Committee	Upon the submission deadline, the Tender's Committee records all the submitted offers along with the supporting documents and issues minutes of the action.

Table 5: Actions towards bid's submission

4.9 What are the Key Phases after Submitting the Bid

At this point we can add a diagram showing the steps of the overall procedure.



Figure 5: Key phases after submitting the bid

1. **Pre-tendering phased:** consists of project preparation and may include preliminary market consultation by the contracting authority. When opening a tender, the "European Single Procurement Document" (ESPD) allows a tenderer to declare that it is not excluded from a competition on the basis of Exclusion Grounds and that it meets the Selection Criteria that have been set.
2. **Opening of tenders:** validation of bids
3. **Tendering procedure:** depending on whether the procurement is subject to national or EU rules, this phase will differ, however, the procedure will comprise generally of; the preparation of tender documents, the publication of an advertisement or call for competition requesting expressions of interest or tenders.
4. **Evaluation:** Contracts with an estimated value of €25,000 and above should have their evaluations carried out by a team with a requisite competency and transparency and objectivity is achieved by the use of weighted criteria, including price.
5. **Exclusion grounds:** offences relating in the last five years: participation in a criminal organization; corruption; fraud; terrorism; sexual offences; drug and/or people trafficking.
6. **Approval:** depending on the complexity of the case, the judicial proceedings can vary in length however the Irish Courts are mindful of the need to progress procurement cases expeditiously. They can still take between 12 to 18 months to reach a final judgement.
7. **Tender stage:** this will usually commence with the authority issuing an Invitation to Tender (ITT), an Invitation to Participate in Dialogue (ITPD) or an Invitation to Negotiate (ITN) to the shortlisted tenderers.
8. **Contract Management:** the execution, management and monitoring of the awarded contract. As soon as possible after the award decision has been taken, the contracting authority must inform all tenderers of the outcome using a "standstill letter" for above threshold procurements. The day after the contract decision notice has been issued the "standstill period" will begin. Within 28 days of receipt of the Contract Agreement, the successful tenderer shall sign, date, and return it to the employer.

See below diagram of the process for of the overall procedure:

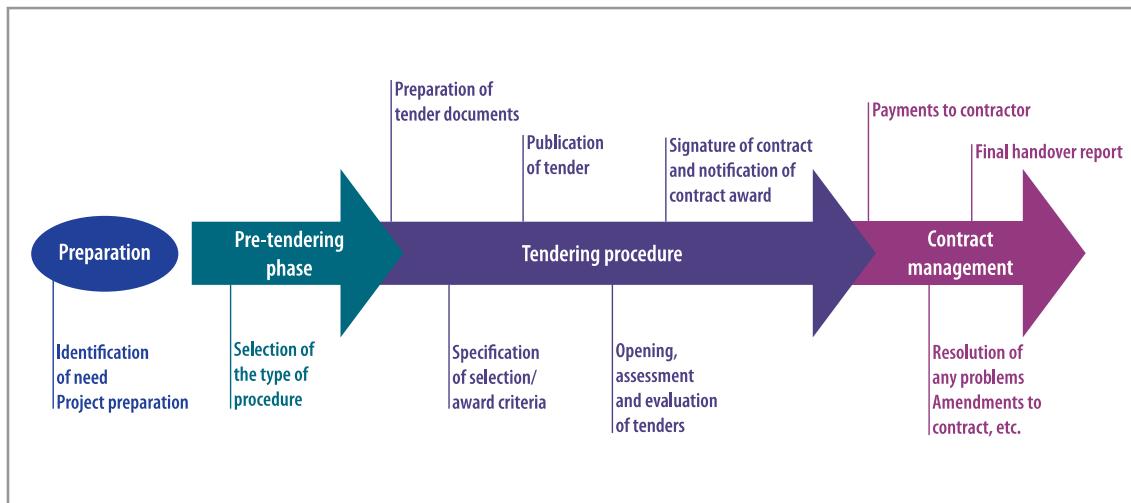


Figure 6: Detailed diagram of the processes of submitting a bid

Upon the completion of every action listed above, the candidates have the right to challenge the results and the decisions of the Tender's Committee and of the Financial Committee by submitting a complaint or a prejudicial objection.

4.10 Award Criteria

The Public Sector Regulations suggest that the award criteria may include criteria relating to, but not inclusive of:

- ✚ Technical merit
- ✚ Aesthetic and functional characteristics
- ✚ Accessibility
- ✚ Design
- ✚ Social and environmental characteristics

Ireland did not agree to use the award criteria to be on the basis of price or cost alone.

- ✚ The 2016 Regulations provide that the contract should be awarded to the **MEAT** (most economically advantageous tender). To identify the most economically advantageous tender, the contract award decision should be based on: price, or cost, using a cost-effectiveness approach such as life-cycle costing or the best price-quality ratio.
- ✚ On the one hand, life-cycle costing allows a contracting authority to calculate all of the costs that will be incurred during the lifetime of a good, service or works. Costs include delivery, installation, energy, fuel, maintenance, decommissioning and disposal. On the other, assessments can be on the basis of qualitative, environmental or social aspects such as delivery date, period of completion, delivery process, running costs, accessibility, technical merit, organisation and any other relevant factors chosen by the awarding body.

Bid's will be awarded by contracting authorities who must either state in the procurement documents the relative weighting which it gives to each of the criteria, or indicate the Award Criteria in descending order of importance.

Bidder's need to remember that for the evaluation process, procurers gather information on, and make assessments of prospective bidders' credentials before considering tenders and this includes information about the companies' track records, financial credentials, corruption, and whether they meet various selection criteria.

To gather this information, bidder's must complete Selection Questionnaire so procurers can understand: 1) basic information about supplier, 2) self-declaration on exclusion grounds, 3) self-declaration on meeting the selection criteria for example.

4.11 Complaints/Prejudicial Objections

In Ireland, review applications are dealt with by the Courts. There is no specific Court or tribunal that is specialised to handle procurement cases exclusively. Judicial review proceedings are generally commenced in the High Court and decisions of the High Court are ordinarily appealed to the Court of Appeal. Appeals to the Supreme Court are now only permitted in exceptional circumstances.

A challenge can be submitted within 30 days of publication of the contract notice: the strict timing rules mean that if, for example, a bidder believes that the wrong procedure was used, it should issue proceedings.

At the selection stage, contracting authorities are required to exclude from further consideration any tenderers who have been convicted of specified offences. The mandatory Exclusion Grounds are where a tenderer has been convicted of one or more of the following offences: participation in a criminal organisation, corruption, fraud, terrorist offences or offences linked to terrorist activities, money laundering or terrorist financing, child labour and human-tracking related offences, breach of tax or social security obligations.

You can also challenge a decision excluding a party from the award process at pre-qualification stage, but this must normally be done within 30 days of receiving notification of the exclusion. Each application will be looked at critically, although time limits may be extended at the discretion of the High Court.

If the relevant contracting authority or utility refuses to accept a disgruntled bidder's objection, then High Court litigation is the only serious option for disgruntled bidders seeking to protect their rights. There is no Irish procurement authority with powers to investigate complaints and resolve disputes outside litigation. While a complaint to the European Commission might assist in persuading the contracting authority to terminate the infringement, this falls outside the control of the challenger.

The procedure you should follow when submitting an objection:

1. **Grounds for challenge:** the breach of duty has to cause loss or risk of a loss to be actionable and enforceable.
2. **Courts function:** to review the contracting authority's actions
3. Time limits for challenges
4. **Declarations of ineffectiveness:** three grounds of serious failure to observe the rules, on which the court has power to declare a contract ineffective; this ineffectiveness remedy nullifies any future obligations in the contract and comes with a financial penalty – other remedies for breaches of the rules depending on whether the contract has been entered into.
5. **Tender evaluation:** the aggrieved bidder can challenge an evaluation by arguing that: the contracting authority did not provide information about how it was going to undertake the evaluation; argue that the authority made an obvious error in its marking; whether the disclosed award criteria were sufficiently clear to permit a uniform interpretation by tenderers.
6. **Awards of damages:** Claimants who successfully challenge procurement decisions are entitled to damages based on the profits they would have made, which can be very substantial. A contracting authority that enters into a challenged contract is faced with the prospect of paying under the contract and also paying damages.

The following steps should help you act swiftly and correctly in the case that your tender is challenged:

- Act swiftly: Time limits for taking action are short, so do not delay
- Seek advice early if you suspect there has been a breach of the rules. You will need some time to obtain legal advice and to make an informed decision on the options open to you
- Ask questions: You are entitled to be given reasons for the rejection of your tender. If you are not satisfied, ask for a debriefing meeting to obtain further information. Although it may be difficult to accept, there may be a valid reason for rejecting your tender: it is better to find this out at an early stage than mid-way through costly litigation.
- Create a paper trail: Keep notes of any conversations that could be relevant. Where possible, record your objections or concerns in relation to the process in writing (e.g., in an e-mail to the authority's relevant contact person)
- Consider your preferred result and be realistic: Do you believe you should have been awarded the contract? Are you seeking damages?

5 Key Points when Submitting a Tender in Ireland

What to pay attention to when submitting a bid – top tips:

- ⊕ Specifications must not mention goods of a specific make, source, process or trademark or patent. However, if it is absolutely essential to describe something by these terms, the words "or equivalent" must be used
- ⊕ A poor specification can result in: non-compliance and potential challenge, no response from the market, poor value for money, buying the wrong thing or paying too much for the right one, having to redo the procurement, inability to realise benefits, poor performance and difficulties in contract management
- ⊕ Tell the buyer you will meet their requirements and offer them value for money
- ⊕ To get them to pick your organization to do the work
- ⊕ Your proposal is critical; main and only opportunity to introduce your business, explain your approach and solutions to the buyer's needs and stand out
- ⊕ Tender is also known as 'silent salesperson' – need to know your competition, know your businesses unique selling points
- ⊕ Know your buyer's requirements, the evaluation criteria, attend potential 'Industry Days' or 'Clarification meetings'
- ⊕ Buyers expect certain minimum criteria standards are met i.e: offer value for money, positive approach, follow deadlines
- ⊕ Tenders fail: simple admin failures such as not signing the tender, supporting information is not provided, don't answer the questions, inconsistent, no competitive
- ⊕ Preparation and planning: make sure you want to bid for this contract and that you have the resources you need

6 What Tenderio Offers

The TENDERIO project is funded by the COSME programme of the European Union (Grant Agreement No 739966) and aims to increase the participation in public procurement by SMEs in the EU through the development and the implementation of innovative activities that will inform, educate and support European SMEs to access international tenders.

TENDERIO helps SMEs to overcome the barriers that inhibit their participation in cross-border procurement, i.e. the language, the bureaucracy, the difficulties in finding local partners and the lack of knowledge about local tender procedures, by providing the following tools and services:

- a tender search engine which allows access to 1,500 new tenders in Europe every day;
- a benchmarking model on public procurement;
- national training sessions;
- business-to-procurers' days and matchmaking opportunities;
- tailored coaching and mentoring services;
- e-conference and webinars on "how to win a tender abroad".

Other services include a helpdesk, through which companies can access valuable information about specific tenders, country guides on public procurement, regular workshops, and an innovative "bidding laboratory" where guidance on developing successful bids is delivered.

TENDERIO also identifies possible partners and recommends expert consultancies to help companies write bids and translate materials into the appropriate language for each offer.

Registration to Tenderio is free and is performed through the project's official website: www.tenderio.com.

7 References

Documents

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