



28 March 2023

To Heads of Departments

## Circular 05/2023: Initiatives to assist SMEs in Public Procurement

A Dhuine Uasail,

As part of the Public Service Reform Plan, the Government established the Office of Government Procurement (OGP) to drive a new consolidated and integrated approach to public procurement. In the context of its ongoing commitment to ensure that Small and Medium Enterprises (SMEs) are fully engaged with public procurement and the opportunities presenting, the OGP has undertaken a review of Department of Public Expenditure and Reform Circular 10/2014.

The Programme for Government – Our Shared Future identified the role public procurement can play as an instrument to support innovation and allow greater access for SMEs to public procurement. SMEs, as defined in EU [Recommendation 2003/361](#), are enterprises which employ less than 250 persons with an annual turnover not exceeding €50 million, and/or an annual balance sheet total not exceeding €43 million.

This Circular is designed to further enable SMEs in competing for public contracts and replaces Department of Public Expenditure and Reform Circular 10/2014. This Circular should be read in conjunction with the Public Procurement Guidelines for Goods and Services and the Capital Works Management Framework as appropriate.

This Circular applies to all public sector bodies from date of publication.

You are requested to bring this circular to the attention of all staff in your Department who are involved in any aspect of procurement and all Bodies, Offices and Agencies under the aegis of your Department.

Mise le meas,

Paul Quinn  
Government Chief Procurement Officer

# 1. General Measures

## 1.1. Good Corporate Governance

Management in Government Departments and Offices should ensure that there is an appropriate focus on good practice in purchasing and that procedures are in place to ensure compliance with all relevant legislation, guidelines and procedures including the Public Financial Procedures and the Public Spending Code.

As a general principle, this Circular sets out positive measures for contracting authorities to take to promote SME participation in public sector procurement.

## 1.2. Capital Works Management Framework

Contracting authorities should note that the Capital Works Management Framework (CWMF) suite of guidance, standard contracts and template documents will continue to apply to works and works related services as set out in Circular 06/2010.

## 1.3. EU Principles

Public sector procurements within the EU, irrespective of value, are covered by the principles set out in the Treaty on the Functioning of the European Union (TFEU) of non-discrimination, equal treatment, proportionality and transparency.

## 1.4. Review

These measures will be kept under review in light of their impact on SME participation and operational efficiency.

# 2. Transparency

## 2.1. Advertising of contract opportunities to promote SME participation

The threshold at which contracting authorities are required to advertise all contracts for goods and services on eTenders is now €50,000 (exclusive of VAT).

Contracts with a value between €5,000 (exclusive of VAT) and the new national advertising threshold of €50,000 (exclusive of VAT) may be awarded on the basis of responses to written specifications (for example, by email) issued to at least three suppliers or service providers.<sup>1</sup>

The use of the eTenders website to advertise tenders for low value purchases should continue, where possible. Contracting authorities should note that the eTenders system supports the use of electronic request for quotations (eRFQ) for contracts under €50,000 (exclusive of VAT). This facility is available in an efficient, quick and simple manner utilising data from registered SMEs under a broad range of categories.

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<sup>1</sup> Contracts less than €5,000 can be awarded on the basis of verbal or written quotes from one or more competitive supplier. Contracts between €5,000 and €50,000 can be awarded on the basis of responses to written specifications (for example, sent by email) to at least three suppliers or service providers, responses to at least three quotations sought via the electronic request for quotes facility on eTenders or can be advertised on eTenders as part of a more formal tendering process.

Government Departments and Offices should continue to report to the Comptroller and Auditor General on contracts above €25,000 (exclusive of VAT) awarded without a competitive process in accordance with Department of Finance Circular 40/2002: *Public Procurement Guidelines – revision of existing procedures for approval of certain contracts in the Central Government sector.*

## 2.2. Works and Works-related services thresholds

The Capital Works Management Framework (CWMF) suite of guidance, standard contracts and generic template documents applies to the procurement of all works and works related services as set out in Circular 06/10. The CWMF for works and works-related services includes a suite of standard pre-qualification questionnaires and standard declarations (CWMF Pillar 3) as well as standard Instructions to Tenderers and Forms of Tender (CWMF Pillar 1 for works and Pillar 2 for consultants). These are available to download at [www.constructionprocurement.gov.ie](http://www.constructionprocurement.gov.ie).

### *Works Threshold*

The threshold at which contracting authorities are required to advertise all contracts for works on eTenders is now €200,000 (exclusive of VAT). Contracts for works with an estimated value less than €200,000 (exclusive of VAT) may still be advertised on eTenders. However, where it is decided not to advertise on eTenders, contracting authorities should seek a minimum of five written tenders from interested and competent contractors.

Contracts for works with an estimated value equal or greater than €200,000 (exclusive of VAT) should be advertised as part of a formal tendering process on eTenders.

### *Works-related Services threshold*

The threshold at which contracting authorities are required to advertise all contracts for works-related services remains at €50,000 (exclusive of VAT). Contracts for works-related services with an estimated value less than €50,000 (exclusive of VAT) may still be advertised on eTenders. Where it is decided not to advertise the contract, contracting authorities should seek a minimum of five written tenders from interested and competent consultants.

Contracts for works-related services with an estimated value equal or greater than €50,000 (exclusive of VAT) should be advertised as part of a formal tendering process on eTenders.

## 2.3. Contract award information

Contracting authorities are required to publish contract award information for all procurements over €25,000 (exclusive of VAT), including any contract awarded under a Framework Agreement, on the eTenders website on completion of the award whether the procurement was advertised on eTenders or not (for example, via email). For tenders above the relevant EU thresholds, a Contract Award Notice must be published. For tenders between €25,000 (exclusive of VAT) and the EU thresholds, a separate notice on eTenders should be created. This will facilitate measurement of the impact of the change in the national advertising threshold on SME participation in public procurement.

Contracting authorities should note that this is a separate requirement to other obligations that public bodies have to publish information on contracts derived from other government guidelines.

### *Procurements not advertised on eTenders*

In situations where the procurement competition was managed outside of eTenders, contracting authorities are required to manually create a record of the award on eTenders and complete all relevant fields for contracts over €25,000 (exclusive of VAT).

#### **2.4. Contracting authority websites**

To promote transparency and assist SMEs in identifying potential opportunities, contracting authorities should consider publishing details on their websites of what they procure as well as information on existing contracts and future procurement plans.

## **3. Measures to Promote SME Participation**

### **3.1. Preliminary Market Consultations**

Contracting authorities may wish to consider, on a case-by-case basis, undertaking preliminary market consultations prior to tendering in order to better understand matters including the range of goods and services available, market developments, what commercial models are available, the competitive landscape, and the specific capabilities of SMEs, etc.

Preliminary market consultations can also help determine where the potential for innovation lies and facilitate development of the procurement strategy (for example, decision to break down larger contracts into lots and the manner in which they may be broken down).

Preliminary market consultations can include one-to-one consultations or wider market engagement. Contracting authorities can contact suppliers directly or use eTenders to invite input from suppliers by publishing a Request for Information (RFI). When undertaking preliminary market consultations, contracting authorities may involve end users (such as employees and existing or potential clients), subject matter/industry experts and relevant policy leads. Preliminary consultation with the market should not have the effect of distorting competition. Contracting authorities should maintain appropriate records of any engagement with the market. To ensure transparency, any information provided by the contracting authority during this process should be made available to all potential tenderers.

### **3.2. Use of Lotting**

The sub-division of contracts, including framework agreements, into lots supports SME participation in public procurement. Contracting authorities should, where reasonable and without compromising efficiency and value for money, consider separating contracts into lots, thereby enabling smaller businesses to compete for these elements. Depending upon requirements, to be considered on a case-by-case basis, contracts can be divided into lots in range of ways including on the basis of geography, specialism and/or value, thereby encouraging SMEs to bid for contracts appropriate to their capacity, specialism and location.

When deciding to advertise on eTenders and publish in the Official Journal of the European Union (OJEU), contracting authorities must consider the aggregate value of the lots. Where a contracting authority decides not to sub-divide a procurement into lots (for tenders valued above of the relevant

EU thresholds), the contracting authority must provide an indication of the main reasons for that decision in the procurement documents or Regulation 84 Report.<sup>2</sup>

### **3.3. Consortium Bids**

SMEs are encouraged to consider forming a consortium where they are not of sufficient scale to tender in their own right. Suppliers considering forming a consortium to bid for public sector opportunities should seek legal advice in relation to the structure and operation of the consortium to ensure that it is fit for purpose and complies with their legal obligations particularly in relation to competition law. Contracting authorities are encouraged to consider the use of Prior Information Notices (PINs) to provide SMEs with time to consider and form a consortium.

### **3.4. Greater Use of ‘Open’ Tendering**

Contracting authorities should use the open procedure, where reasonable and without compromising efficiency and value for money, for contracts valued below the EU advertising threshold for Government Departments and Offices in the case of advertised contracts for general goods and services. Above this threshold, contracting authorities should decide which tendering procedure is most appropriate in each case. It is recognised that in certain circumstances, such as the procurement of innovation (see Section 3.7), alternative procedures to open procedure may be more appropriate to promote the participation of SMEs.

### **3.5. Technical ability and Economic and Financial Requirements**

Selection criteria may be comprised of the following: suitability to pursue a professional activity; economic and financial standing; and technical & professional ability. Contracting authorities should ensure that any selection criteria set for candidates/tenderers are relevant and proportionate to the circumstances of a particular contract. For example, where experience is specified as a qualifying or award criterion, it should not be framed in such a way as to unduly narrow a field of eligible tenderers, including SMEs. In the case of newly established start-ups that have yet to establish a track record as a company, contracting authorities may wish to consider the previous experience of the personnel of the start-up.

For contracts valued above the EU threshold, proof of an economic operator’s economic and financial standing and technical ability may be provided by one or more of the references specified in Schedule 8 of the 2016 Procurement Regulations. Documentary evidence of financial capacity should not be sought by contracting authorities early in the procurement process. Instead candidates/tenderers should be asked to declare that they meet the minimum standards required by the contracting authority and will produce the necessary documentation when provisionally short-listed in a restricted procedure or when chosen as the successful tenderer in an open procurement competition.

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<sup>2</sup> The EU Procurement Directives were transposed into Irish Law in 2016 and 2017 by way of the following Regulations: S.I. No. 284/2016 (the “2016 Regulations”); S.I. No. 286/2016 (the “2016 Utilities Regulations”) and S.I. No. 203/2017 (the “2017 Concessions Regulations”).

### *Works and works-related services*

The CWMF for works and works-related services includes guidance on minimum standards for pre-qualification for contractors and consultants. GN 1.6.3 – Suitability Assessment of Construction Service Providers – Minimum Standards for Suitability Criteria and GN 2.3.1 – Suitability Assessment of Works Contractors, Restricted Procedure.

## **3.6. Turnover Requirements**

The use of high turnover levels as a measure of financial capacity may provide a barrier to the participation of SMEs.

Contracting authorities are encouraged to consider, on a case-by-case basis, the risk associated with the delivery of the goods or services to ensure that any turnover or financial capacity requirement is proportionate to the level of risk involved. In line with EU and national legislation, and to support SME participation in public procurement, the minimum yearly turnover required of an economic operator shall not exceed (and can be lower than) twice the estimated contract value, except in duly justified cases. For contracts above EU thresholds, where a higher turnover requirement is adopted, this must be justified in the procurement documents or Regulation 84 Report of the 2016 Regulations.

The 2016 Regulations provide alternative means of assessing financial capacity in the form of asset-to-liability ratios. In some instances, these may be more appropriate selection criteria for assessing a supplier's financial capacity.

The CWMF for works and works-related services includes detailed guidance on Minimum Standards for Pre-qualification of Works and Consultants, which are available to download at [www.constructionprocurement.gov.ie](http://www.constructionprocurement.gov.ie) under Pillar 4 - Guidance.

## **3.7. Innovation**

The Government recognises that creative ideas for new and innovative solutions and products often come from SMEs and the award of a public contract can act as a springboard for emerging SMEs to expand and export. For above EU threshold procurements, the 2016 Regulations provide for the use of procurement procedures that can facilitate innovation including Competitive Procedure with Negotiation, Competitive Dialogue and Innovation Partnership.

Preliminary market consultation can provide insights about the capacity of the market to deliver on the requirements of the contracting authority, the risks involved and identify creative solutions. To promote innovative solutions, contracting authorities may, depending upon the subject matter and the form procurement procedure, indicate in tender documents where they are prepared to accept reasonable variants to the specifications. Alternatively or in addition, requirements may, for example, be set out in terms of a deliverable which allows tenderers to provide creative and innovative solutions which may in turn yield wider society benefits and/or inaugurate green considerations. This output-oriented approach may enable contracting authorities to concentrate on the functional requirements of a product they would like to have but leaves tenderers the freedom to develop new, innovative goods or services which better correspond to the actual need of the contracting authority.

Contracting authorities are also encouraged to consider the use of pre-commercial procurement to promote the development of innovation solutions.

### 3.8. Prior Information Notices (PINs)

For contracts above EU threshold, contracting authorities may wish to consider the publication of a Prior Information Notice (PIN) on the eTenders website setting out their intentions with respect to planned procurements. This will alert the market to upcoming procurement opportunities.

Communicating long-term procurement plans to the market gives the market time to react and develop solutions. This is particularly important in the case of large and complex contracts and where SMEs might need time to find partners for joint or consortia bidding. PINs may reduce the time required for responses when publishing procurement documents.

Sub-central contracting authorities may use a PIN as a call for competition for contracts above the EU threshold in certain procedures.

### 3.9. Feedback

In order to prepare for future bids, it is helpful for unsuccessful tenderers to see what aspects of their bids were considered strong and which need improvement. The OGP has published a set of model letters for use in relation to above EU threshold competitions. For other contracts, contracting authorities are strongly encouraged to provide proportionate written feedback as a matter of good practice to assist suppliers in preparing future tenders.

For works and works-related procurements the CWMF, which is available at: <https://constructionprocurement.gov.ie/> includes a suite of model form letters to notify Candidates/Tenderers at different stages of the procurement process:

- Works: Pillar 1 - MF 1.2 Letters notifying Candidates/Tenderers.
- Works-related services: Pillar 2 - Letters notifying Candidates/Tenderers.

### 3.10. Life Cycle Costing

The 2016 Procurement Regulations provide that a contract shall be awarded on the basis of the most economically advantageous tender (MEAT). Contracting authorities, to the extent relevant, should take into account not just the acquisition costs but the whole life-cycle costs. This allows contracting authorities to take account of various elements relating to the subject-matter of the contract. Life cycle costing can include costs borne by the contracting authority or other users and costs imputed to environmental externalities linked to the product, service or works during its life cycle, provided their monetary value can be determined and verified. Where appropriate, contracting authorities should seek full life-cycle costing solutions in their tender documents. The extent of information sought should always be related to what in fact is being procured, that is the work, services or supplies.

### 3.11. Insurance

#### *Requirements for Supply of Goods and Services*

Contracting authorities should only require such types and levels of insurance which are proportionate and reasonable in the context of a particular contract. Factors that may be considered for the supply of goods and general services should include the risks involved, the value of the contract and the subject matter of the contract. The required insurance coverage will vary from contract to contract as will the type of insurance cover available to suppliers, particularly in relation to professional indemnity and cyber risks. Any requirement for insurance cover must be signalled in the tender documentation. Tenderers should be asked to declare that they can obtain such cover

but should not be required to have it in place at the time of tendering. Documentary evidence of the required insurance will only be required when a candidate has been identified as a successful tenderer in a procurement competition. In carrying out competitions for the acquisition of routine low-to-medium-risk goods and services, contracting authorities should use Appendix 1 as a guide to assessing insurance level requirements. For bespoke and or complex competitions or if the contracting authority has concerns with regard to any aspect relating to subject matter of the procurement then contracting authorities, who are covered by the State Claims Agency, should contact this agency for assistance in setting appropriate insurance levels. Public bodies not covered by the State Claims Agency are asked to contact their risk management department or relevant insurance advisor to determine the appropriate levels of cover.

### *Requirements for Works and works-related services*

Guidance for works and works related services are available on [www.constructionprocurement.gov.ie](http://www.constructionprocurement.gov.ie) under Pillar 4/Guidance Notes:

- GN 1.1.2 – Professional Indemnity Insurance Application in the Capital Works Management Framework
- GN 1.6.3 – Suitability Assessment of Construction Service Providers – Minimum Standards for Suitability Criteria
- GN 2.3.1.3 – Minimum Standards for Suitability Works Contractor Criteria (Open, Restricted Procedure).

### **3.12. Dynamic Purchasing Systems**

Contracting authorities may wish to consider the use of Dynamic Purchasing Systems (DPS) for the procurement of commonly used goods, works or services which are generally available on the market. DPS remain open for economic operators (such as SMEs and new market participants) to apply for admission following its establishment. Any DPS being considered for the procurement of works and works-related services must meet the requirements set out in the CWMF.

### **3.13. No Charging for Tendering Opportunities**

Contracting authorities must not use arrangements where candidates/tenderers are required to pay to access competitions for public contracts. Such charging would represent a barrier to the participation of SMEs.

## **4. Central Arrangements**

The OGP and its sector sourcing partners (known as central purchasing bodies) in Education, Health, Defence and Local Government establish a range of Framework Agreements and Dynamic Purchasing Systems for use by contracting authorities. These central arrangements facilitate more efficient and better procurement practice, optimise value-for-money possibilities and help contracting authorities meet their obligations to consider more strategic considerations including green, social and SME-friendly conditions. As set out in Circular 16/2013 *Revision of Arrangements Concerning the Use of Central Contracts* contracting authorities should continue to make use of all such central arrangements, where they are available.



## 5. eTenders

### 5.1. eTenders

The OGP will continue to promote the optimum use of the eTenders portal as a tool for supporting the participation of SMEs in public procurement. Contracting authorities are encouraged to use the full range of eProcurement solutions available to make public procurement more accessible to SMEs and limit the administrative burden on all suppliers.

### 5.2. Tender Finalisation

Contracting authorities should ensure that all tender notices and relevant data fields in eTenders are completed in a timely manner. For contracts above the EU threshold, Contracting authorities are obliged to send contract award notices to the OJEU via eTenders within 30 days of the award of the contract. These measures will provide for better data capture and facilitate future assessment of the impact of the change in the national advertising threshold.

### 5.3. Registration and Email Alerts

Contracting authorities should encourage suppliers to register accurate and detailed business information on [www.etenders.gov.ie](http://www.etenders.gov.ie) to ensure maximum exposure to tendering opportunities within their sector. Email alerts are provided to registered suppliers based on the Common Procurement Vocabulary (CPV) codes suppliers have indicated on their eTenders' business profiles. Registered suppliers are encouraged to critically analyse the range of CPV codes attached to their registration to maximise the receipt of relevant alerts and ensure their selection in the relevant eRFQ. The more information provided the more exposure a supplier will have to opportunities. Contracting authorities also use eTenders to search for relevant suppliers to provide an eRFQ.

### 5.4. Supplier Documents

Suppliers can upload documents and information to their profile (such as insurance, health and safety and financial documents) on eTenders. Suppliers can then attach these documents when submitting a response to a tender. This facility is aimed at easing the administrative burden on suppliers competing for multiple tenders.

## 6. Enquiries

Any queries in relation to the operation of this Circular regarding goods and general services can be addressed to [support@ogp.gov.ie](mailto:support@ogp.gov.ie).

Queries in relation to works and works related services should be emailed to [construction@per.gov.ie](mailto:construction@per.gov.ie).

# Appendix 1

## Guide to Setting Insurance level requirements routine low-to-medium-risk goods and services

The table below sets out the types of insurance and associated minimum indemnity limits and which should be considered/maintained for setting insurance level requirements for routine low-to-medium-risk goods and services.

Selection of insurance and limits should be based on a risk assessment of the services/goods provided. Further guidance for setting and checking insurance is available on SCA website:

<https://stateclaims.ie/learning-events/guidance-on-indemnity-and-insurance>.

| Type of Insurance    | Minimum Indemnity Limit                                                                                                 |
|----------------------|-------------------------------------------------------------------------------------------------------------------------|
| Employer's Liability | €12.7m any one claim or series of claims arising out of a single occurrence<br>(if self-employed this is not necessary) |
| Public Liability     | €6.5m any one claim or series of claims arising out of a single occurrence.                                             |

Other typical insurances contract dependent (non-exhaustive list)

|                        |                                                                           |
|------------------------|---------------------------------------------------------------------------|
| Product Liability      | €6.5m any one occurrence and in the aggregate per insurance year          |
| Professional Indemnity | Risk assess based on potential damage and/or loss (refer to SCA guidance) |
| Cyber insurance        | Risk assess based on potential damage and/or loss (refer to SCA guidance) |

Once the relevant insurance documents are received, they should be reviewed to ensure they are appropriate. The third party may only provide an overview of cover in the form of a policy schedule and not provide the full insurance policy; however, the following should be confirmed:

- Scope/business description
- Name of insured
- Renewal date
- Limit of indemnity
- Territorial limits and jurisdiction
- Insurer authorisation
- Excess and inner limits
- Restrictions/conditions/warranties
- Sub-contractors and indemnity to principals clause (employers, public and product liability policies).

Please refer to SCA guidance for full details.