



IRISH FILM BOARD

BORD SCANNÁN NA hÉIREANN

## BORD SCANNÁN NA hÉIREANN/ THE IRISH FILM BOARD

### PROCUREMENT POLICIES & PROCEDURES MANUAL

The document is **not** intended to be a legal interpretation of existing procurement legislation/guidance and staff should, as necessary, refer to the more detailed advisory documents available and/or seek advice as may be appropriate.

#### INTRODUCTION

This Policy and Procedures document is designed to ensure a common approach across the Irish Film Board (BSÉ/IFB) to the procurement of goods and services. At both EU and national levels, public procurement is governed by a comprehensive regulatory and policy framework. The aims of procurement rules and guidelines are to achieve value for money and ensure that fair and transparent procedures are applied to all procurement decisions.

BSÉ/IFB also includes Screen Training Ireland which was transferred to BSÉ/IFB under a Transfer of Undertakings in February 2013. Screen Training Ireland is a Registered Business Name (No. 486043) of the Bord Scannán na hÉireann/ the Irish Film Board under the Registration of Business Names Act 1965.

In this context, the policy and procedures manual aims to ensure that the procurement function within the BSÉ/IFB is discharged as effectively and efficiently as possible. Primarily, it is intended to provide a quick reference for all staff regarding the key issues that need to be considered in the context of procurement. It also provides a reference source for the purposes of obtaining more detailed advisory information as may be necessary. Please note that the document is **not** intended to be a legal interpretation of existing procurement legislation/guidance and staff should, as necessary, refer to the more detailed advisory documents available and/or seek advice as may be appropriate.

Questions arising from this document or advice in relation to procurement should be addressed to: Susanne Cassells, Procurement Officer, [susanne.cassells@screentrainingireland.ie](mailto:susanne.cassells@screentrainingireland.ie)

At a central Government level, advice on public procurement is available from:

**The Office of Government Procurement: [email-support@ogp.gov.ie](mailto:email-support@ogp.gov.ie)**

Comprehensive guidance on procurement, including model tender documents and guidance issued nationally for buyers and suppliers, is available at [www.procurement.ie](http://www.procurement.ie). Further websites and contact details are provided in Appendix 1.

This document will be reviewed and circulated annually and relevant updates will be emailed to all staff on an ongoing basis. If anyone has any suggestions as regards additional material/advice that could be included in the document, please let us know.

Celine Forde  
Financial Controller  
September 2014

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## CHAPTER 1: Procurement Principles and Project Appraisal

Public Procurement can be defined as the acquisition, whether under formal contract or not, of works, supplies and services by public bodies. It ranges from the purchase of routine supplies or services to formal tendering and placing contracts for large infrastructural projects. At both EU and national levels, public procurement is governed by a comprehensive regulatory and policy framework. The aims of procurement rules and guidelines are to achieve value for money and ensure that fair and transparent procedures are applied to all procurement decisions.

Overall responsibility for ensuring compliance with national and EU rules rests with the contracting or purchasing sections. The onus is on evaluation teams assessing tenders to be satisfied that the evaluation and award process is conducted appropriately and that best value for money is achieved. All staff are reminded that procurement practices are subject to audit and scrutiny under the Comptroller and Auditor General (Amendment) Act 1993 and Accounting Officers are publicly accountable for expenditure incurred. All managers should ensure that there is an appropriate focus on good practice in procurement and purchasing and that procedures are in place to ensure compliance with the relevant guidelines.

### 1.1 GENERAL PRINCIPLES

Important general principles to be observed by all sections involved in purchasing/procurement are set out below:

- **Expertise and Probity**  
Staff involved in purchasing or placing contracts must be familiar with both the national and EU rules that may apply (see Chapter 3). It is also incumbent on sections to take measures to separate functions within the procurement cycle, by ensuring that, for example, ordering and receiving are distinct from payment for goods and services.
- **Casual Purchases**  
Staff should examine purchasing profiles to minimize casual or “once off” purchases. An appropriate contracting arrangement should be put in place for efficient and cost effective delivery of recurring supplies and services.
- **Sole Suppliers**  
Where it is necessary to deal with a sole supplier, service provider or contractor, arrangements, which provide best value for money, should be negotiated. This should only arise in very limited, exceptional circumstances. Staff should exercise care in such cases and open-ended arrangements should be avoided. Please note that the reporting requirements relating to such procurement are set out in the section dealing with Circular 40/02 (see Chapter 7).
- **Conflict of Interest**  
Staff should be aware of potential conflicts of interest in the tendering process and should take appropriate steps to avoid them. Please refer to the Code of Business Conduct which can be found on \\dublin\Company\Business Affairs\Corp Gov HR - Staff\IFB Code of Conduct
- **Statutory Provisions**  
Before awarding a contract, staff should ensure that tenderers have regard to statutory provisions such as minimum pay, legally binding industrial or sectoral agreements, relevant health and safety and accessibility issues, and other relevant issues such as green procurement.
- **Collusive Tendering**  
Staff should watch for anti-competitive practices such as collusive tendering.

- **Criminal Convictions**

Candidates or tenderers who have been convicted of involvement in organized crime, fraud, corruption or money laundering must be excluded from performing a public contract.

- **Procurement and Accessibility**

Under Section 27(1) of the Disability Act 2005, a Public Body is required to ensure that goods and services that are supplied to it are accessible to people with disabilities. Section 27 (2) of the Disability Act provides that this requirement to ensure goods and services are accessible will not apply where:

- it would not be practicable;
- it would not be justified on the grounds of cost;
- it would cause unreasonable delay in making goods and services available to other persons.

In line with the provisions of the Disability Act, relevant accessibility requirements for people with disabilities should, where appropriate, be included in all stages of the tender process - specification, tendering, evaluation, award and review.

- **Green Procurement**

Staff are reminded of the need to consider environmental specifications when issuing tenders.

BSÉ/IFB strives to provide the highest quality of service to our clients and stakeholders. In this regard, and in response to energy efficiency targets for the public sector, the BSÉ/IFB is committed to the continual assessment and improvement of our environmental performance.

BSÉ/IFB is committed to the core principles of environmental sustainability and protection. Throughout our operations we strive to minimise our impact on the environment, via sustainable procurement and the efficient management of resources such as energy and waste.

Environmental responsibility is the cornerstone of the Agency's environmental policy. In order to honour this commitment, we shall continue to:

- Meet or exceed all our obligations with regard to environmental legislation;
- Adhere to our environmental procurement policy to promote the selection of environmentally superior products and services;
- Commission an independent third party assessment of all our activities on an annual basis;
- Continuously strive to improve reporting methodologies and documentation to ensure transparency and credibility;
- Develop a set of clearly identifiable annual targets to improve energy efficiency, minimize waste generated and reduce our carbon footprint;
- Communicate our progress, in respect of these targets, to all stakeholders;
- Promote environmental awareness and commitment amongst staff;
- Encourage best practice across the wider film industry by making available our recommended best practice guidelines;
- Advance towards an overall improvement in energy efficiency by 33% by 2020, in accordance with government targets.

- **Verifiable Audit Trail**

Written records supporting all procurement decisions, including business case submissions, should always be retained for audit purposes. This includes all information on tender process undertaken, evaluation and award of contract. This information should be retained in hard copy but should also be scanned into the following folder \\GALWAY\Company\Finance\Tenders. The responsibility for this lies with the Procurement Officer.

## 1.2 PROJECT APPRAISAL AND INITIATION – SOME KEY ISSUES

All prospective procurement projects should be planned well in advance. The staff member proposing the procurement should discuss all aspects of the project with their respective line managers to determine if the identified need is a priority. It goes without saying that all procurement exercises should be fully justified and the intended outcome or deliverable from the project should be clearly outlined as part of the appraisal. Equally, in order to determine what procurement procedure needs to be followed (see Chapter 3), a full and realistic assessment of the costs associated with the project must be undertaken as part of the project appraisal.

### **Budget**

Once the proposed procurement is approved in principle by the relevant line manager, sanction must be sought from the Deputy CEO prior to the commencement of the procurement process. The Deputy CEO will consult with the Financial Controller to ensure sufficient monies are available within the budget before approval is given. A determination also needs to be made as to whether the expenditure falls under the category of current or capital.

### **ICT Procurement**

Please note also, that all ICT related procurements for the BSÉ/IFB's functions are dealt with by the IT Committee which consists of Teresa McGrane, Niamh O'Reilly, Celine Forde and Peter Kubecka. The use of central and Departmental ICT Framework agreements is favoured wherever possible.

### **Process Audit**

A Process Audit procedure is in place to ensure proper procurement and tendering occurs across the Agency (see Appendix 7 for copy of Process Audit Form). All procurement exercises where the potential value of the contract is in excess of €25,000 (excluding VAT) is subject to the process audit procedure. In addition, the procurement of every consultancy, regardless of the value of the contract, must go through the process audit procedure. It is essential that the process audit is performed after tender evaluation but before the award of a contract so that compliance with procedures can be verified in advance of contract signature. A copy of the completed form must be forwarded to the Deputy CEO and the Procurement Officer for approval in advance of the contract being signed. The Procurement Officer maintains a central register of contracts entered into by the Agency and also a separate register of consultancies, based on information contained in Process Audit Forms.

Please allow a reasonable period for us to fully consider the information on the Process Audit Form and to clarify any issue, if necessary.

It is essential that copies of signed and dated Process Audit Forms and all relevant documentation, including approvals from the DCEO and the Procurement Officer, are filed safely for retrieval in case of future queries, particularly by the C&AG. Responsibility in this regard rests with the Procurement Officer.

## CHAPTER 2: Office of Government Procurement (OGP)

The Office of Government Procurement was officially launched in July 2013 and operates as an office of the Department of Public Expenditure and Reform, with its own Vote. On 1st January 2014 the National Procurement Service (NPS) officially transferred from the Office of Public Works and was integrated into the OGP. The Office of Government Procurement is responsible for procurement policy and procedures and, together with four key Sectors (Health, Defense, Education and Local Government) for sourcing all goods and services on behalf of the public service. The OGP put in place contracts and frameworks that all public bodies will buy from for all their goods and services.

The OGP has introduced a newsletter which is published quarterly. OGP News is intended to keep staff across the civil and public sector up-to-date about how public procurement is changing. The newsletter also includes information about OGP's procurement programmes and activities. The newsletter is available to download from [www.procurement.ie](http://www.procurement.ie) and is also available on the Extranet.

The Office of Government Procurement website [www.procurement.ie](http://www.procurement.ie) provides further details.

### 2.1 FRAMEWORK AGREEMENTS

Staff should note the existence of framework agreements for common goods and services under the Office of Government Procurement.

D/PER Circular 16/13-Revision of Arrangements concerning the use of Central Contracts put in place by the National Procurement Service (This Circular replaces Circular 6/12.)

The Circular states that central procurement frameworks and contracts established by the Office of Government Procurement and the NPS are designed to optimise benefits to the public service through the strategic aggregation of its buying power. It is Government policy that public bodies where possible should make use of all such central arrangements.

As before in Circular 6/12, this Circular states that systems of internal control should support compliance with this Circular and procedures should be in place to ensure compliance with all relevant guidelines. Where public bodies do not utilise central procurement frameworks they should be in a position to provide a value for money justification. Where goods and services are purchased outside the framework agreements, the BSÉ/IFB must provide a rationale for doing so together with a value for money justification that takes account of the full costs incurred in managing its own procurement process. In this regard, any proposal to use suppliers other than those covered by the framework agreements should be approved by the DCEO and submitted to the Procurement Officer in advance.

The list of goods and services to be included in framework agreements is likely to expand over the period ahead. In this context, staff should check the existence of a possible framework agreement prior to making any decision on the procurement route to be taken.

In 2014 the OGP have delivered a number of frameworks for the public sector including laptops, notebooks, tablets, ICT consumables, desktop personal computers, fuel charge cards, travel management and paper. The list of contracts and frameworks will continue to grow and full details are available on [www.procurement.ie](http://www.procurement.ie) - all purchasing staff should ensure that they are registered as "Buyers" on the site: please contact the Procurement Officer for further information in this regard.

## 2.2 ASSISTING SMALL AND MEDIUM ENTERPRISES IN PUBLIC PROCUREMENT

D/PER Circular 10/14 - Initiatives to Assist SME's in Public Procurement - sets out a range of measures which have been put in place to ensure that SMEs in particular are not hindered from tendering for public sector contracts. This Circular replaces Circular 10/2010 and applies to all public sector bodies.

The Circular updates and strengthens measures aimed at facilitating SME participation in public procurement. At all times this guidance is to be implemented by buyers in accordance with the principles of EU law, and in a manner that is fully compliant with EU public procurement law and national guidelines.

An email issued to all staff on 2nd May 2014 setting out the position regarding Circular 10/14 and is included in Appendix 8.

### **Key Provisions**

- New requirement for public bodies to publish contract award notices for contracts valued over €25,000 on eTenders with effect from 1 August 2014. This is a separate step to publishing on the OJEU and will facilitate measurement of SME participation in public procurement.
- Open procedure to be utilised for goods and services contracts below the value of €134,000 (excl. VAT)- previously €125,000
- Minimum financial turnover requirement not to exceed twice the estimated contract value for routine goods and services contracts.
- Contracting authorities are strongly encouraged to provide written feedback to unsuccessful bidders for contracts below EU value thresholds.



## CHAPTER 3: Which Procurement Process?

It is a basic principle of public procurement that a competitive process should be used unless there are justifiably exceptional circumstances. The type of competitive process used will vary depending on the size and characteristics of the contract to be awarded and the nature of the contracting authority.

When a procurement requirement is identified and no contract is currently in place, the first step, before going to tender, is to estimate the projected value of the contract. The contract value is the total expenditure expected under the contract (exclusive of VAT). It must include all possible extensions of the contract which will be highlighted in the tender. The contract value will then inform the procurement process that should be used.

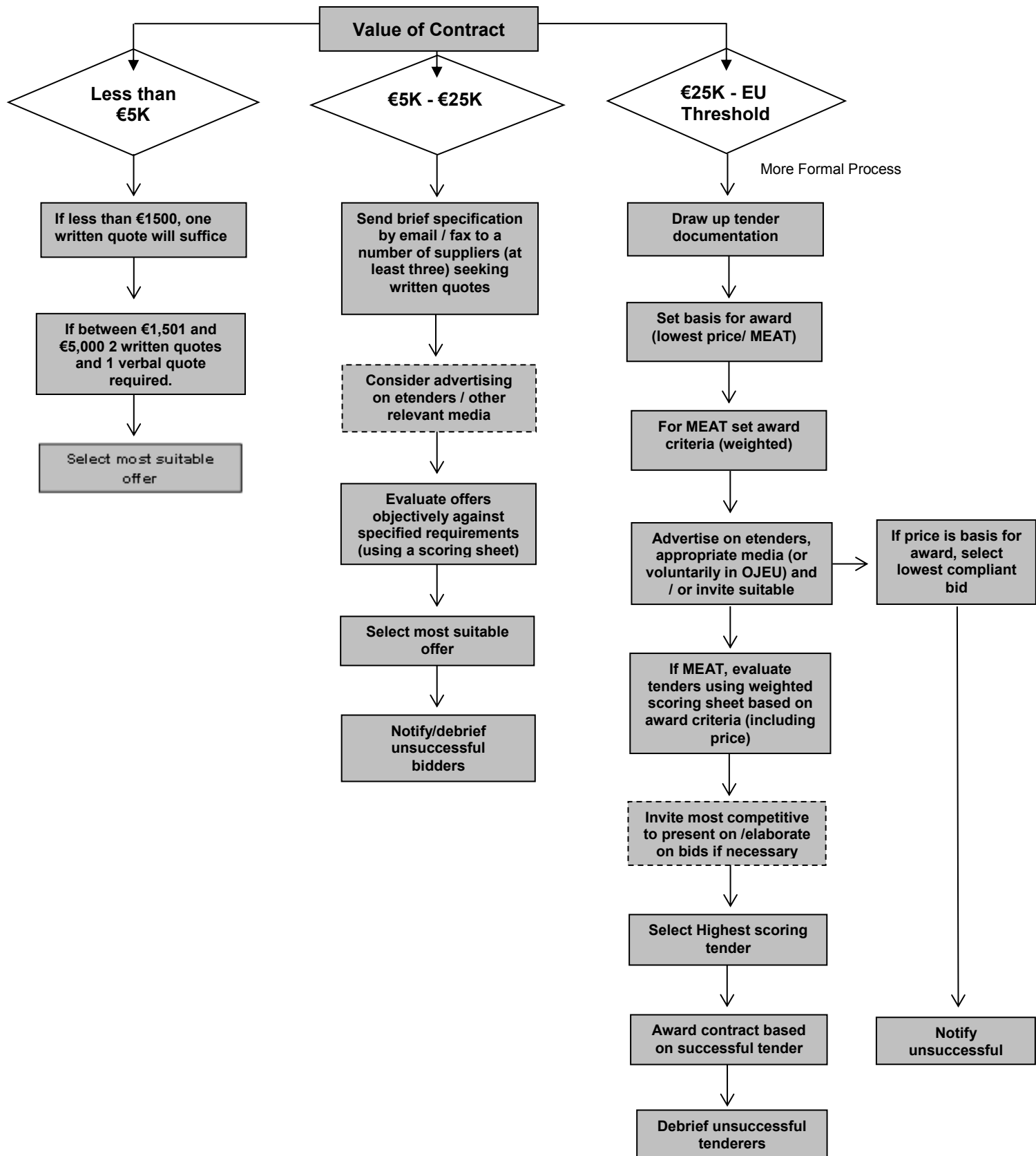
There are essentially two procurement routes to be followed, one for contracts below the EU threshold values and the other for contracts above the EU threshold. See Appendix 2 for current EU thresholds.

### 3.1 PROCUREMENT FOR BELOW EU THRESHOLDS

For the procurement of goods and services, the procedures to be followed below the EU thresholds are as follows:

- Supplies or services less than €1,500 in value can be purchased on the basis of verbal quotes from one or more competitive suppliers. Although it is acceptable to obtain one verbal quote from a competitive supplier, this approach must be shown to be justified and reasons should be clearly recorded. Issues that should be considered include the competitiveness of the price obtained from the supplier and the frequency with which the requirement arises; e.g. if the same supplies or services are purchased on a regular basis, the aggregate value could potentially be much higher.
- Supplies or services between €1,501 and €5,000 in value can be purchased on the basis of two written quotes and one verbal quote. Issues that should be considered include the competitiveness of the price obtained from the supplier and the frequency with which the requirement arises; e.g. if the same supplies or services are purchased on a regular basis, the aggregate value could potentially be much higher.
- Supplies or services contracts between €5,000 and €25,000 in value can be awarded on the basis of responses to specifications sent by fax or e-mail to at least three suppliers. While the BSE/IFB is not required to advertise on etenders for requirements below €25,000 they are encouraged to do so if the anticipated response would not be disproportionate, having regard to the value of the requirement;
- Contracts for supplies and services above €25,000 and up to the value of the EU threshold (€134,000) should normally be part of a formal tendering process. All public contracts for goods and general services above €25,000 should be published on [www.etenders.gov.ie](http://www.etenders.gov.ie). Contracting authorities are encouraged to advertise contracts of lower value also where this would be useful.

In accordance with the information above, the diagram overleaf sets out the process to be followed in terms of procurement procedures below the EU thresholds:



### Direct Invitation (without Advertising)

Alternatively a process of direct invitation to tender may be used. This may involve:

- invitation to firms deemed appropriately qualified for a particular project (this may be appropriate for specialised requirements in markets where there is a limited number of suppliers or service providers);
- invitation to tender to firms on a list established on an open and objective basis (normally used when there is a frequent or recurring requirement or to maintain a well organised ongoing procurement system).

Where direct invitations are issued, firms from which tenders are sought should be a good representative sample of all potential bidders in the market concerned. The number must be sufficient to ensure adequate competition, and should not be restricted for reasons of administrative convenience. At least five firms should normally be invited to submit tenders.

If a Unit maintains a list of firms from which they invite tenders, this should be advertised at appropriate intervals (normally on an annual basis) for the admission of interested parties. Care should be taken to ensure that such lists are used in an open and non - discriminatory manner and those recently established firms, or firms with no previous experience of public contracts, are not excluded from invitations to tender.

The methods and criteria for selecting firms and for awarding contracts should be documented and should be objective, transparent and proportionate. It should be clearly understood that whether responses are to an advertisement or to a direct invitation, all parties in the process must be treated on the same fair and objective basis. Decisions on selections for smaller projects or purchases should be recorded with a minimum of formality.

### 3.2 AWARDING A CONTRACT WITHOUT A COMPETITIVE PROCESS – CIRCULAR 40/02

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

- Where only a proprietary product will meet requirements, such as parts or components for equipment.
- Where an agent, licensee or franchise holder has sole rights to supply a service or product.
- Where there is only one suitable qualified specialist in the relevant field.
- Where a particular service provider possesses a special advantage due, for example, to earlier research exclusively carried out in a particular area, or has exclusive data or information required performing a particular task. In such circumstances, it must be demonstrably clear that another service provider could not perform a contract more economically.
- Where due to the urgency a competitive process cannot be undertaken in the time available. What constitutes urgency cannot be specified definitively. Factors giving rise to urgency must be serious, unforeseeable and, except in the most exceptional circumstances (for instance a matter of urgent public safety or the like) not due to the action or inaction on the part of the Agency. Occasions when it is necessary to award a contract without a competitive process due to urgency should be very rare because an appropriate competitive process can be completed relative quickly below thresholds, by direct invitation to tender to a number of suitably qualified suppliers or service providers (see Direct Invitation).

When awarding a contract, care should be taken to avoid entering into open-ended arrangements, for administrative convenience, that reduces or hinders competition and contracts should not roll over indefinitely. Having regard to the principles of fairness and proportionality, the duration of contracts should be reasonable in terms of the value of the contract, the nature of the work, the market situation etc. and should not be so long that new operators in the market are not afforded an opportunity to compete. In this regard, market testing should be undertaken at appropriate intervals to ensure that market openness and competition is maintained. It may be even appropriate to advertise in the OJEU (see paragraph 3.3) to establish if there are international suppliers capable of meeting your needs. However, should the situation arise, at a minimum, a section should negotiate the terms of the contract with the company to ensure value for money.

Contract periods should be reviewed on a regular basis to ensure that they are still within “date”. It is critical that a process is undertaken to retender for the relevant goods/services in good time prior to the expiration of the original contract, in accordance with proper procurement procedures and subject to prior approval by the Procurement Officer. Particular attention is needed in relation to maintenance/service agreements, annual license fees etc. where no competitive process took place in the year but which have stemmed from an initial competitive process. Contract periods that have lapsed must therefore be included on the 40/02 return to the C&AG once they exceed the threshold. The C&AG has advised that contract extensions not explicitly provided for in a contract must be treated as a “single” tender for this purpose.

NB: If for any reason it is proposed to procure any good/service above €25,000 without a competitive process, these procurements are subject to prior review by a staff member who is not part of the procurement process. Any such contract must also be reported to the Procurement Office who will maintain a Register of same. This is in line with Circular 40/02 that requires that an annual report for submission to the C&AG be prepared based on the information contained in this Register.

### 3.3 PROCUREMENT ABOVE EU THRESHOLDS

The EU Procurement Directives impose obligations on contracting authorities to:

- advertise their requirements in the Official Journal of the European Union (OJEU);
- 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.

It is a legal requirement that contracts with estimated values above the thresholds (see Appendix 2) set out in the Directives (apart from some defined exceptions) are advertised in the OJEU and that these contracts are awarded in accordance with the provisions of the Directives. Contracting authorities covered by the public sector Directive must also ensure that most works contracts and related services contracts, which they subsidize by 50% or more, are awarded in accordance with the provisions of that Directive. Any infringement of the terms of the Directives can give rise to serious legal or financial sanctions.

Estimation of contract values for OJEU publication purposes must be realistic. If a contract that has not been advertised in the OJEU attracts tenders in excess of the EU thresholds, there is a risk that the award could be subject to infringement proceedings. In such an event, a contracting authority would be required to justify the original estimation. Equally, no project or purchase may be sub-divided to prevent it coming within the scope of the Directives. Where a project or purchase involves separate lots, the value of all lots must be included in estimating the value of the contract.

OJEU Notices must be drawn up in accordance with the standard forms set out in EU Directive 2001/78/EC of 13 September 2001 or any revised version which will be published on <http://simap.europa.eu>, the EU public procurement website. The simap website has a FAQs section which provides comprehensive information on the procedures involved in publishing notices. Advertisements in the OJEU should also be published on the etenders website. This will be done automatically if etenders is used for online OJEU publication. They may be supplemented by advertisements in the national media to ensure the widest possible competition for the contract. However, national advertisements must not appear before the date of dispatch to the OJEU and must not contain any information additional to that in the OJEU advertisement.

Contracting sections with an aggregated procurement requirement in excess of €750,000 for any product area of supplies or category of services are encouraged to publish an annual notice called a Prior Information Notice / Prior Indicative Notice (PIN) in the OJEU. The PIN is normally submitted by the contracting authority at the start of the budgetary year and sets out the categories of products and services likely to be procured during the year. Please note that insertion of a PIN does not commit contracting authorities to purchasing or proceeding with a project if circumstances change. It is intended as an aid to transparency and is for the benefit of suppliers. Publication of a PIN permits a contracting authority to reduce the minimum time for tendering if the PIN, with the necessary amount of information specified, has been dispatched to the OJEU at least 52 days before, and within twelve months of, dispatching the contract notice.

### 3.4 EU TENDERING PROCEDURES

The current EU public sector Directives permit four tendering procedures (see paragraph 3.5 regarding proposed new Directives). The two more commonly used of these are detailed below, whilst reference is made to the other two processes. Further information in relation to the latter can be found in the document Public Procurement Guidelines – Competitive Process 2010 (available on the extranet).

(i) **Open**

Under this procedure all interested parties may submit tenders. Information on tenderers' capacity and expertise may be sought and only the tenders of those deemed to meet minimum levels of technical and financial capacity and expertise are evaluated. If there are minimum requirements it is important that they be made clear in the notice or the request for tenders (RFT) to avoid unqualified bidders incurring the expense of preparing and submitting tenders. The open procedure should be utilized for goods and services contracts below the value of €134,000.

(ii) **Restricted**

This is a two-stage process where only those parties who meet minimum requirements in regard to professional or technical capability, experience and expertise and financial capacity to carry out a project are invited to tender.

- As a first step, the requirements of the contracting authority are set out through a contract notice in the OJEU and expressions of interest are invited from potential tenderers. The contract notice may indicate the relevant information to be submitted or the information may be sought via a detailed questionnaire to interested parties.
- The second step involves issuing the complete specifications and tender documents (RFT) with an invitation to submit tenders only to those who possess the requisite level of professional, technical and financial expertise and capacity. It is important to note that, as a basis for pre - qualifying candidates, only the criteria relating to personal situation, financial capacity, technical capacity, relevant experience, expertise and competency of candidates set out in the revised Directive (Articles 45 to 48 of 2004/18/EC) are permissible.

Contracting authorities may opt to shortlist qualified candidates if this intention is indicated in the contract notice and the number or range of candidates indicated. Short listing of candidates who meet the minimum qualification criteria must be carried out by non-discriminatory and transparent rules and criteria made known to candidates. The Directives require that a number sufficient to ensure adequate competition is invited to submit bids and indicate a minimum of five (provided there is at least this number who meet the qualification criteria) and up to a total of 20.

(iii)&(iv) **Competitive Dialogue and Negotiated procedures.**

The competitive dialogue designed to provide more flexibility in the tendering process for more complex contracts, for example public private partnerships (PPPs). In terms of the Negotiated procedure, this is an exceptional procedure, which may be used only in the limited circumstances set out (see Articles 30 and 31 of Directive 2004/18/EC).

Further details in relation to processes (iii) and (vi) can be found in Public Procurement Guidelines-Competitive Process ([www.procurement.ie](http://www.procurement.ie)).

### **Time-limits for Replies**

At EU level, minimum time-limits are set down for the different stages of the particular contract award procedure chosen. In all cases, the times specified in days relate to calendar days. When fixing the timescale for submitting expressions of interest / requests to participate or tenders, contracting authorities should take account of the complexity of the contract and allow sufficient time for submitting the necessary information and preparing tenders.

The main minimum time-limits, which are reckoned from the date of dispatching the notice to the OJEU, are as follows.

#### ***Open Procedure***

- for receipt of tenders: 52 days
- if a PIN has been published as a general rule the minimum time may be reduced to 36 days but in no circumstances less than 22 days.

#### ***Restricted, Negotiated and Competitive Dialogue Procedures***

- for receipt of expressions of interest / requests to participate: 37 days;
- for receipt of tenders under restricted procedures: 40 days from date of issue of invitation to tender;
- if a PIN has been published: as a general rule the minimum time for receipt of tenders under the restricted procedure may be reduced to 36 days but in no circumstances less than 22 days (no reduction in times for receipt of expressions of interest);
- Under a negotiated procedure or in competitive dialogue the time allowed for receipt of tenders may be agreed between the parties involved.

Where genuine urgency<sup>1</sup> 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.

#### **Electronic / Online Transmission**

Minimum times for responses may be reduced where contract notices are transmitted electronically to the OJEU and all tender documentation is made available electronically in accordance with the provisions of the revised Directives. The reduction can be up to a cumulative 12 days. Conditions for availing of these potential time reductions are set out in Article 38 (5) and (6) of Directive 2004/18/EC - Co-Ordination of Procedures for award of public works, supply and services contracts.

Responses to requests for information, requests for tender documents and other supporting documentation (if not made available electronically) must be issued without delay and in any event within a maximum of six days of the request. Additional information, requested in good time, must be issued at least six days before the latest date for receipt of tenders. In order to avoid giving unfair advantage, additional information supplied to one party in response to a request should be supplied to all interested parties if it could be significant in the context of preparing a tender.

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<sup>1</sup> The use of the urgent procedures, or accelerated procedures, as referred to in the Directives, must be justified and have been caused by unforeseeable events outside the control of the contracting authority. The EU Commission and ECJ interpret 'urgency' very strictly. Delay or inaction on the part of the contracting authority is not sufficient reason for applying exceptional procedures.

## CHAPTER 4: Preparing Tender Documentation

In terms of the preparation of tender documentation, sections should note the development of a suite of documents by the Office of Government Procurement (OGP) designed for use in the procurement of routine, non-bespoke and low to medium risk supplies and services, including model Request for Tenders (RFTs) and model contract documents. Those model documents are available on the [www.procurement.ie](http://www.procurement.ie) site.

A sample RFT is also included on the [etenders.gov.ie](http://etenders.gov.ie) site, as are examples of tenders issued by a wide range of public sector organizations. These should be reviewed prior to embarking on the development of any tender documents.

In general, care should be taken to ensure that tender documentation is complete, relevant and proportionate to the need. Small and medium sized enterprises frequently report that they find public sector tendering documentation complex and difficult to follow. In many cases, this arises from lengthy and detailed standard type provisions for larger contracts being “cut and pasted” into documentation for smaller requirements.

### 4.1 GENERAL RFT REQUIREMENTS AND TIPS FOR RFT DEVELOPMENT

RFTs generally contain the following sections (not prescriptive/ exhaustive):

- Background and summary of requirements;
- Financial and invoicing arrangements;
- Contact details for further information and query handling – as well as rules relating to same;
- General instructions to tenderers in relation to submission of tenders and required format of tender responses;
- Specifications (comprehensive and unambiguous descriptions) of the services, goods or works required;
- Conditions applicable to the contract including, for example, time for delivery, payments schedule, liability for defects, insurance provisions, settlement of disputes etc.;
- Examination and evaluation of tenders - the RFT must state all of the criteria being applied in the award process, giving the relative weighting for each criterion. If it is not technically possible to indicate criteria weightings in advance, they must be listed in descending order of importance;
- Obligations and restrictions imposed by the contracting authority, including details of the statutory provisions that the contracting authority is expected to adhere to regarding employment rights, minimum wage agreements, FOI provisions etc.;
- Details of the Agency’s adherence to policies in relation to accessibility, green procurement etc.

In terms of tips for drawing up RFTs, the following should be considered:

1. Start with the Request for Tender (RFT) sample on the [etenders](http://etenders.gov.ie) website.
2. Be very clear in what you are looking for to ensure that you get tenders that fit your needs. Make sure you set out under what criteria the tenders will be evaluated.
3. Avoid using ambiguous phrases that may be misinterpreted by the suppliers, such as “quality of tender” in the award criteria, and address in the RFT any possible questions that may arise. If appropriate, ask someone not involved in the project to read the documentation and ensure it is clear. You will have a better chance of getting what you want if you are very specific in stating exactly what you will measure (e.g. the extent to which the tender meets the technical requirements specified in a certain paragraph, etc.).
4. It can be helpful to include a return check list (with tick-boxes) for suppliers so that they can be sure that they have satisfied all requirements mentioned in the documents. This can also be helpful to the buyer in summarizing what they need from suppliers.

5. Include any timescales associated with the project early in the notice. This includes the latest date for submission of queries relating to the project, the closing date and time for submission of tenders, etc. Many buyers only state the closing date; however, suppliers often like to know when the evaluation might be completed or when the contract is likely to take effect.
6. In some projects, it may be useful to indicate a budget for the project in the RFT. This can give potential suppliers an idea of the range of the project, and they can tailor their submissions to meet this budget.
7. If possible, upload any tender documentation that may help clarify the tender on to the etenders website. This will reduce the need for contracting authorities to send any relevant documentation manually at a later date.
8. When uploading any tender documentation, ensure that the size of the documents is kept small. This will allow the documents to be accessed by those on slower internet connections, such as dial-up. It is also useful to consider using PDF documents, which are harder to alter than standard text documents.
9. Contracting authorities may also include a statement in the RFT prohibiting the RFT being passed to a third party without the authorities' permission. This is particularly relevant in the case of tenders advertised and documentation made available on the etenders website. Candidates who register with the site and download tender documents will automatically receive any clarifications or additions to the original documentation. If the documentation is passed on by a third party to a supplier not registered with the site, that supplier may miss out on important additional information.

## 4.2 CRITERIA FOR AWARDING CONTRACTS

### Establishing Criteria

When establishing criteria for awarding contracts, contracting authorities may choose to award contracts on the basis of:

- the lowest priced tender
- or
- the most economically advantageous tender (MEAT)

In general, for contracts being awarded on the basis of the most economically advantageous tender (MEAT), transparency and objectivity are best demonstrated by the use of a scoring system or marking sheet based on the relevant weighted criteria, including price. The RFT must state all of the criteria being applied in the award process. Contracts above the EU thresholds must, in addition to stating all of the criteria being applied in the award process, give the relative weightings of each criterion. The scoring system or marking scheme should be agreed and documented by the relevant Division, and approved by the relevant Principal Officer, in advance of the invitation of tenders. 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 request or otherwise, it must be supplied to all candidates.

### Timescales

For contracts below the EU thresholds there are no prescribed time limits for the submission of tenders, but sufficient time must be allowed for preparation and submission. The complexity of a project and other relevant factors (e.g. holiday periods) relating to the preparation of tenders should be taken into account. In this context, a minimum 20 day response period is suggested. In the case of contracts in excess of EU Directive thresholds, sections must ensure that the timescale complies with the minimum periods specified in the Directives (see section on Procurement above EU Threshold EU Directives – Chapter 3).



### Engagement with prospective tenderers during tender cycle

Responses to requests for information from prospective tenderers must be issued without delay and in any event within a maximum of six days of the request. Additional information, requested in good time, must be issued at least six days before the latest date for receipt of tenders. In order to avoid giving unfair advantage, additional information supplied to one party in response to a request should be supplied to all interested parties if it could be significant in the context of preparing a tender. This functionality is available on etenders as all of the email addresses of the prospective tenderers have already been filed.

### Freedom of Information

The Freedom of Information Acts 1997 and 2003 assert the public's right to obtain access to official information to the greatest extent possible consistent with the public interest and the right to privacy of individuals. All records, including procurement records, created from the commencement of the FOI Act, 1997 come within the scope of the Acts. In this context, the following standard statement is suggested for inclusion in:

- tender documents
- invitations for submissions
- standard forms requiring information to be supplied

*“The BSÉ/IFB undertakes to use its best endeavors to hold confidential, any information provided by you in this (tender / form / submission, etc.) subject to the BSÉ/IFB’s obligations under law, including the Freedom of Information Act which came into force on 21 April 1998. Should you wish that any of the information supplied by you in this tender / form / submission should not be disclosed because of its sensitivity, you should, when providing the information, identify same and specify the reasons for its sensitivity. The BSÉ/IFB will consult with you about this sensitive information before making a decision on any Freedom of Information request received”.*

It is also advisable to be specific that if no information is identified as sensitive, with supporting reasons, then it is likely to be released in response to an FOI request.

## CHAPTER 5: Evaluating Tenders Received

A rigorous and clearly documented process must be followed when evaluating all tenders.

A schedule of all tenders received, specifying date and time received, should be recorded in the period of receipt and tenders received after the closing time for receipt of tenders should not be opened. All tenders validly received should be opened at the same time in the presence of at least two staff members, as soon as possible after the time set for receipt of tenders. One of the officers should be of at least HEO level and one should be unconnected to the competition in question. A report of the opening of tenders should be prepared signed and dated by the two officers as evidence of receiving the tender by the due date and should include details of anyone else who was in attendance, date of opening of tenders and other relevant details.

### Composition of Evaluation Team:

- For contracts up to €25,000 (inclusive of VAT), the team will consist of no less than three members. A senior staff member who is not involved in the procurement process, must be included on the evaluation team. In most instances this senior staff member will be either the DCEO or the CEO.
- For contracts over €25,000 (inclusive of VAT), the team will consist of no less than three members. The CEO must approve the composition of the evaluation team before tenders are invited. Any subsequent changes must be similarly approved. The CEO should decide whether a member of the Board or an external specialist should be included on the evaluation team in addition to a senior staff member not involved in the procurement process. In most instances this senior staff member will be either the DCEO or the CEO

The onus is on evaluation teams assessing tenders to be satisfied that the evaluation and award process is conducted appropriately, that the agreed marking scheme is used, that best value for money is achieved and, crucially, that all processes are adequately documented and records maintained.

### 5.1 EVALUATION OF TENDERS AND AWARD OF CONTRACT

The evaluation and award process must be demonstrably objective and transparent and based solely on the published criteria. Price should be evaluated exclusive of VAT.

- (i) Where price is the sole criterion, the contract will be awarded to the lowest priced bid complying with the specified requirements.
- (ii) Where 'most economically advantageous tender' (MEAT) is the basis, the contract must be awarded to the tender which best meets the relevant criteria. In addition to price this will include other criteria relevant to the subject of the contract. For example, this may include running costs, servicing costs, level of after sales service, technical assistance, technical merit, environmental characteristics. The criteria, with the relevant weighting, will have been pre-established and made known to the tenderers, either in the contract notice or the tender documentation (RFT).

Tenders must be evaluated objectively and transparently against the published weighted criteria. It is useful to first draw up a list of basic requirements, which each tenderer must meet prior to being fully evaluated. Such a list might include – financial viability statement; confirmation of relevant insurance requirements; statements indicating compliance with relevant statutory requirements e.g. – industrial wage agreements etc.; ability to provide service nationwide.

Objectivity and transparency is best achieved by the use of a scoring system or marking sheet based on the weighted criteria, indicating a comparative assessment of tenders under each criterion. The scoring system must include price and not 'value for money' or 'cost effectiveness' as a specific criterion. Value for money / cost effectiveness / economic advantage is largely the outcome of the completed evaluation. (See Appendix 3 for sample of an evaluation score sheet).

A suitable marking scheme for evaluating tenders may be something along the lines of the following:

- Quality of Service Proposal (40 marks)
- Cost (30 marks)
- Proven ability of supplier to deliver service, including information obtained from referees and sites, if applicable (20 marks)
- Effective contract management & monitoring procedures (10 marks)

In the case of an example such as the above, where it is intended that the 'most economically advantageous tender' (MEAT) will be the basis for awarding the contract, an initial evaluation and marks should be awarded to each tender for cost. The marks for cost should be calculated on the basis that the lowest tender is awarded the full 30 marks and the points are reduced in proportion for the following tenders (i.e. Formula =  $\text{Lowest Cost} \times \text{Total Marks for Cost} / \text{Your Cost}$ ). Each member of the evaluation team should use the same formula for cost, thus ensuring that each tender is awarded the same marks for this part of the evaluation exercise.

Independently, each member of the evaluation team should then examine each tender and award marks for the other criteria. An evaluation team average mark per tender submitted might then be awarded to determine the outcome. Prior to any notifications on results issuing, the references of each company should be checked.

#### **Presentations**

In open or restricted procedures, the most competitive or advantageous tenderers are frequently asked to make a presentation on their proposals. These presentations are used as an aid to understanding and for purposes of elaboration and clarification. Any dialogue with tenderers that could be construed as "post tender negotiation" on price, or result in significant changes to criteria or tender specifications, is to be avoided. Such negotiations, outside the exceptional and clearly defined circumstances where EU rules permit, could contravene the EU procurement Directives.

#### **Abnormally Low Tenders**

A tender which might be regarded as abnormally low may not be rejected without investigation and consideration of the relevant elements that gave rise to a particularly low bid. Such elements might include an innovative technical solution or exceptionally favorable conditions available to the tenderer. The tenderer should be given the opportunity to explain the basis of the tender.

## **5.2 NOTIFYING TENDERERS (SEE APPENDIX 4)**

All tenderers must be informed of the result of a tendering process without delay.

Apart from observing the legal obligations where the provisions of the procurement Directives apply, it is good practice to adopt a voluntary constructive policy on de-briefing unsuccessful candidates. Unsuccessful tenderers should be given an objective assessment of the comparative strengths and weaknesses of their tenders having due regard to the need to avoid compromising the competitive situation of tenderers and for commercial sensitivity.

In the case of contracts under €25,000 unsuccessful candidates should at a minimum be informed of the outcome of their tender by reference to their performance under the relevant evaluation criteria used in the competition. It is also useful to assess this performance vis-à-vis the performance of the highest and lowest marks awarded. In addition to a letter setting out these details, an offer of feedback by telephone should normally be sufficient subject to being satisfied as to the identity of the tenderer.

In the case of larger contracts above €25,000 unsuccessful tenderers should be afforded an opportunity of a debriefing meeting. While many requests may be satisfied by telephone feedback, where a more formal or personal debriefing is required it would be normal practice to have two officials in attendance and a note of the proceedings be kept for the records. Tenderers should be made aware that the decision was not just the opinion of one individual but was made by an evaluation team. The discussions should address the tenderers offer against the evaluation criteria focusing on the relevant strengths and weaknesses of the tender. It is imperative that information such as the identity or the prices of other tenderers or information that could compromise the competitive situation not be disclosed.

The debriefing should not be a forum to debate the process of how tenders were evaluated or discuss the merits of the award decision.

The EU Remedies Directives require that unsuccessful tenderers for contracts covered by the EU Directives be notified promptly of the outcome of a tendering competition and that a contract be not formally awarded before an interval - 14 days electronically and 16 days by letter - has elapsed during which an unsuccessful tenderer can seek a review of the decision. The standstill period starts the day after the day on which the notification is sent. The purpose of the standstill period is to allow for effective pre-contract remedy to disappointed tenderers and the contracting authority may not conclude a contract with an identified preferred bidder during this time.

### 5.3 TAX CLEARANCE

Before a contract is awarded, the successful tenderer must hold a valid Tax Clearance Certificate from the Revenue Commissioners. Revenue provides an online verification facility to allow third party access to the applicant's tax cleared status. This secure facility can only be accessed with the permission of the applicant, who will quote the customer number and tax clearance number, which appear on the certificate. Access to the online verification can be located at [www.revenue.ie](http://www.revenue.ie) "What can I do online", "Tax Clearance". There is no need for the applicant to produce the original certificate to confirm his/her tax-cleared status.

### 5.4 CONTRACT AWARD NOTICE

It is a requirement that contracting authorities publish certain information on contracts awarded (or framework agreements concluded) within 48 days of the award in the OJEU. Particulars, including the type of contract, the procedure and award criteria used, the number of tenders received, the name of the successful tenderer, the value of the contract or the range of tender prices, justification for the negotiated procedure, if used, are published. The necessary information can be submitted online to the OJEU or electronically on the standard 'Contract Award Notice'.

There is a new requirement for public bodies to publish contract award notices for contracts valued at over €25,000 on tenders with effect from 1st August 2014. This is a separate step to advertising in the OJEU and will facilitate measurement of SME participation in public procurement.

## CHAPTER 6: Post Tender Process

A Process Audit procedure is in place to ensure that proper procurement and tendering occurs across the Department (see Appendix 7 for copy of Process Audit Form). All procurement exercises where the potential value of the contract will exceed €25,000 (excluding VAT) are subject to the process audit procedure. Where the estimated value of the contract is close to the €25,000 threshold, it may be prudent to submit a Process Audit Form to cover the possibility that the threshold may be exceeded. In addition, the procurement of every consultancy, regardless of the value of the contract, must go through the process audit procedure. It is essential that the process audit is performed after tender evaluation but before the award of a contract so that compliance with procedures can be verified in advance of contract signature. A copy of the completed form must be forwarded to the Procurement Officer for approval in advance of the contract being signed. The Procurement Officer maintains a central register of contracts entered into by the Agency and also a separate register of consultancies, based on information contained in Process Audit Forms.

Please allow a reasonable period for the Procurement Officer to fully consider the information on the Process Audit Form and to clarify any issue, if necessary. If the contract date is imminent, please alert the Procurement Officer in advance and consider sending a provisional Process Audit Form pending the submission of the final signed and dated Form. This will help to ensure a timely response, especially during periods of annual leave etc.

It is essential that copies of signed and dated Process Audit Forms and all relevant documentation, including approvals from the Procurement Officer, are filed safely in the section for retrieval in case of future queries, particularly by the C&AG. Responsibility in this regard rests with the Procurement Officer

### 6.1 CONTRACT

The Office of Government Procurement (OGP) has produced a suite of documents to be used for the procurement of low to medium risk goods and services. Staff should examine model /template contract documents that are available to be downloaded from etenders.ie for the provision of goods and services. Care should be exercised that in the case where the service/goods are bespoke in nature or where staff may have concerns with regard to any aspect relating to the subject matter of the procurement, then legal or other advices should be sought.

### 6.2 MAINTENANCE OF RECORDS

It is crucial that every stage and aspect of the procurement process is documented. The importance of maintaining an accurate and complete record of the procurement process and decisions made cannot be overstated. The records should always consist of a procurement file and in some cases a project management file. The procurement file should include the business case/specifications/research conducted/procurement process from advertisement through to award of contract (see detail below). The contract management file should contain the day-to-day management of the contract including performance reviews and payments made against the contract.

The rationale underpinning key decisions and submissions/approvals should be noted on file as sections may be asked to justify a decision sometime after the event. One set of agreed scoring sheets should be signed by all members of the evaluation team and retained.

The checklist set out at Appendix 5 is a useful means of ensuring that all stages in the procurement process are observed and that all relevant aspects are considered. This can be used as a template for a procurement report detailing the procedures followed and will assist in following the audit trail. All records must be kept for a period of at least seven (7) years.

In a standard open procurement process the following records should be retained on the procurement file:

- The approved Business Case and reference to/copy of approval e.g. written approval from the CEO or DCEO, Board minutes of (date);
- The published Request for Tenders, including copies of the notices which appeared in the OJEU where relevant;
- Correspondence with potential bidders and/or other relevant correspondence;
- Clarifications provided and evidence of circulation of additional information to all interested bidders via the etenders facility;
- Copies of Tenders received;
- Evidence of the receipt of tenders including time and date (a schedule of all tenders received should be prepared);
- Report of the opening of the tenders (including the schedule of tenders) should be prepared detailing who was in attendance, date of opening of tenders etc.;
- Scoring of tenders and evaluation of tenders including clear scoring methodology signed by evaluation team;
- Letters to unqualified bidders, shortlisted bidders, unsuccessful bidders, successful bidder (or as appropriate to competition);
- Minutes of meetings with potential suppliers;
- Contract and contract award notice;
- Any variations to the contract.

### **6.3 CONTRACT MANAGEMENT**

The management of the contract should be seen as an integral part of the procurement process and suppliers should be proactively managed once the contract is in place. It is incumbent on the budget holder/project manager to ensure that the terms of the contract are delivered. Consideration should be given to including performance review milestones into the contract (e.g. the contract is for an initial period of 12 months and will be renewed for another 6/12 months subject to satisfactory performance in the review period). Ongoing monitoring of performance should be undertaken and noted on the contract file. Signing off on invoices and approving purchase orders for payments is an indication that you are satisfied with the service/goods provided and should not be done until you are satisfied that the terms of the contract have been met. If companies fail to meet these requirements they should be contacted immediately and a management process of improvement put in place. A full written record of all correspondence with/from the supplier should be maintained. Once a contract is completed it is good practice to review the entire procurement process noting the supplier's performance and effectiveness of the procurement process itself.

In particular, careful recording should be maintained where performance issues exist with a contract and these will be relied upon should there be a need to terminate the contract.

A good overview of contract management is contained in the Guidelines for the Engagement of Consultants and Other External Support in the Civil Service (Department of Finance 2006), available on [www.etenders.gov.ie](http://www.etenders.gov.ie).

### **6.4 PAYMENTS: CERTIFYING AND AUTHORISING INVOICES**

For an invoice to be paid it must be -

- certified by an officer at any grade who confirms that the goods/services have been received and
- accompanied by a Purchase Order. All purchase orders in excess of €500 must be signed by the CEO/DCEO

## 6.5 CONTRACT EXTENSIONS

It is possible to extend contracts in certain circumstances. Broadly speaking contract extensions fall into two categories: those that come within the scope of the EU Directives and those that do not.

The circumstances in which extensions to contracts may be negotiated are set out in Articles 30 and 31 of Directive 2004/18/EC. These articles provide specifically for circumstances where contracts may be awarded by means of negotiated procedure. The provisions of Article 31, of which paragraph 4 confines extensions to 50% of the amount of the original contract, can be used in very limited circumstances only. The negotiated procedure is generally used for more complex requirements.

For contract extensions that do not come within the scope Article 31 of Directive 2004/18/EC, a best practice approach is to ensure that due consideration is given to the principles of procurement. The principles apply to all procurement, both above and below EU threshold values, and focus on equal treatment, non-discrimination, mutual recognition, proportionality and transparency. Justification for any decision taken around extending a contract should be relative to the details of the contract and should stand up to the principles of procurement. Therefore contracting sections should be prudent and anticipate, as far as possible, all potential requirements before advertising. The RfT should state clearly that open ended contracts cannot be awarded. Where future phases of a project are envisaged, RfT's should make it clear that being awarded a contract for any particular phase does not give the contract holder any entitlement to be engaged for any other or subsequent phase.

The 'Guidelines For The Engagement Of Consultants And Other External Support By The Civil Service', published by the Department of Finance in 2006, states that:

### '4.7.4 Duration

*The RfT must state clearly that open ended contracts cannot be awarded, and that, in all cases, there cannot be an extension of a contract for services without re-tendering if the cost of the extension is more than 50% percent of the original contract price or exceeds €250,000, whichever is the lower. Where future phases of a project are envisaged, RfTs must make it clear that being awarded a contract for any particular phase does not give to the contract holder any entitlement to be engaged on any other or subsequent phase.*

*The duration or nature of a contract cannot be such as to confer on the external support personnel any rights that one would normally associate with an employee of the contracting authority.'*

Overall, sections are reminded of their responsibility in ensuring that contracts do not roll over indefinitely. It is critical that a process is put in place to retender for the relevant goods/services in good time prior to the expiration of the original contract. All contracts should be reviewed on a regular basis to ensure that they are still within "date". As noted in Paragraph 3.2, contract periods that have lapsed must be included on the 40/02 return to the C&AG once they exceed the €25,000 threshold.

## 6.6 RISK MANAGEMENT

The 'Report of the Working Group on the Accountability of Secretaries General and Accounting Officers' (the Mullarkey Report) recommended, inter alia, that all Government Departments and offices should introduce a formal risk management system and should make risk management part of the business planning process. The process of risk management involves a cycle of identifying risks, evaluating their potential consequences and determining the most effective methods of responding to them. This means reducing the chances of their occurrence and reducing their impact if they do occur.

Each business unit within the BSÉ/IFB should ensure that appropriate procedures are in place to identify and assess all relevant risks throughout the procurement cycle. As a general principle, risks should be borne by the party best placed to manage them and a body should not accept risks which another party is better placed to manage.

While a detailed exposition of risk assessment and management is beyond the scope of these guidelines, sections should note that, typically, risk will impact the project at different stages and it should be addressed appropriately as follows:

- Project risk: This encompasses risk to the project from the inadequate definition or assessment of the need, scope, scale and financing of the project. These should be addressed in the business case;
- Process risk: This is risk resulting from an inadequate knowledge of national and EU procurement policy and law and from incorrectly or inadequately carrying out a public procurement procedure. Process risk is addressed by adhering to these guidelines and to the other documents referenced herein;
- Relationship risk: This is risk resulting from inadequate relationships with the contract holder and the implementation of the project. It is addressed by the contract, the project management plan, project management procedures and by review procedures (e.g. mid-term review, independent peer review, etc.);
- Termination risk: This is risk resulting from inadequate definition of project boundaries, of 'project creep', incrementalism, etc. It is addressed by having a business case that specifies the scope of the project; a contract that states how and when project change can occur; by change management procedures; and by the final report.



## CHAPTER 7: Specific Procurement Issues

### 7.1 CIRCULAR 40/02 – CONTRACTS AWARDED WITHOUT A COMPETITIVE PROCESS

If it is proposed for any reason to award a contract in excess of €25,000 without a competition, the proposal must be reviewed, prior to placing, by the CEO/DCEO who is not part of the procurement process. Any such contract must also be reported to the Procurement Officer who will maintain a Register of same. In accordance with Circular 40/02, an annual report must be prepared for submission to the C&AG under signature of the Accounting Officer, based on the information contained in this Register.

The type of circumstances that may justify setting aside the competitive process would include:

- where only a proprietary product will meet requirements
- where an agent, licensee or franchise holder has sole rights to supply a service or product
- where a similar work, supply or service was obtained competitively earlier (normally within one year) and a new contract is performed on the same terms
- where due to extreme urgency arising from events unforeseeable by the Agency, a competitive process cannot be undertaken in the time available.

Staff may wish to consult the Quigley Guidelines on [www.procurement.ie](http://www.procurement.ie) for further information in relation to non-competitive tendering.

### 7.2 ENGAGEMENT OF CONSULTANTS AND OTHER EXTERNAL SUPPORT

Consultancy is where a person, organization or group thereof is engaged to provide intellectual or knowledge-based services (e.g. expert analysis and advice) through delivering reports, studies, assessments, recommendations, proposals, etc. that contribute to decision - or policy-making in a contracting authority. The engagement should be for a limited time period to carry out a specific finite task or set of tasks that involve expert skills or capabilities that would not normally be expected to reside within this Agency.

In line with Department of Finance directives, all consultancies<sup>2</sup> must be approved at CEO level before they are commenced. No new consultancies should be entered into or new commitments made without first consulting the Procurement Officer. This applies not just to consultancies funded from the Administration Budget but also to those funded directly from the Capital Budget also. Only on approval by the CEO can consultancies commence. See Appendix 6 for further clarification. In addition, the procurement of every consultancy, regardless of the value of the contract, must go through the process audit procedure. It is essential that the process audit is performed after tender evaluation but before the award of a contract so that compliance with procedures can be verified in advance of contract signature.

A contractor is a person, organisation or group thereof engaged, for a limited time period, to provide specified goods, works or services (including ICT services) that implement established policy objectives; to assist the Agency in carrying out its operations and functions; or to perform operations or functions that involve skills or capabilities that would normally be expected to reside within the Agency but which are not currently available. Contractors come under the direction of the Agency for operational purposes and take day-to-day instructions from local management even though they are not employees of the contracting authority. Particular care should be taken at all times to ensure that such contractors are not at any stage explicitly or implicitly treated as employees of this Agency.

External Service Providers are organisations that provide the services or the human/physical resources to meet the ICT and other service requirements of the Agency. These requirements could include software development; network installation and management; infrastructure management; data centre hosting; managed services;

<sup>2</sup> From the Department's perspective, the definition of a consultancy is set out in an email circulated by Trevor Donnelly on 17/1/13; copy attached Appendix 6

shared services, etc. External service provision involves the transfer of actions for delivering business functions or services to an external service provider but does not include the use of contractors (i.e. external support under the day-to-day direction of the contracting authority) or the cost of purchasing packaged software.

Additionally, external support may be required where:

- a need for an external assessment is deemed essential;
- a study or review is required by an external body (e.g. the European Commission);
- a study/project must be completed within a short time scale and, although the knowledge or expertise may be available within the Agency, performing the task in-house would involve a prohibitive opportunity cost (i.e. total cost of diverted staff, including relevant overheads etc.) or would be impractical (e.g. staff engaged on other essential duties would have to be diverted), or it might not be possible to redeploy staff cost-effectively in the timeframe required.

#### Formal Tendering Process (Consultancies)

Staff should note that Units must, in advance:

- notify the CEO (who in turn may notify the Board) where non-routine consultancies arise or, in the case of routine consultancies, those in excess of €50,000;
- obtain the explicit approval of the Board for consultancies in excess of €100,000. In such cases, approval also needs to be secured for the proposed tendering process and composition of the tender evaluation team;

In addition, the procurement of every consultancy, regardless of the value of the contract, must go through the process audit procedure (please consult Chapter 5).

Finally, the Agency must maintain registers of their consultancies. Information contained within it is collated as part of the Process Audit returns (see Chapter 5 and Appendix 7).

The specification for consultancy services should include:

- Brief background on the Agency including scale and number of staff etc;
- Details and background of the proposed assignment;
- Required deliverables from consultant;
- Timeline including proposed starting date;
- Outline resources to be provided by the Agency/Section if relevant;
- Reporting & contact details;
- Selection details including contract award criteria;
- If required, notification that presentation to selection panel must be made;
- Request for reference details and CV's of proposed project team.

#### 7.4 PROFESSIONAL SERVICES WITHHOLDING TAX (PSWT)

Professional Services Withholding Tax (PSWT) must be deducted at the standard rate of tax from payments for professional services. These services include:

- Services of an architectural, engineering, quantity surveying or surveying nature and related services
- Services of a solicitor or barrister or other legal services
- Geological services
- Marketing, advertising or other consultancies

The rate at which PSWT is deducted is the standard rate of tax in force at the date on which the relevant payment is made. The standard rate of income tax at the date of issue of this guide (tax year 2014) is 20%. PSWT is deducted from the total amount of the payment for the professional service involved, including, in general, any amount in respect of expenses, outlay or third party costs, but excluding any VAT charged by the person providing the service. PSWT must be deducted even where a valid Tax Clearance Certificate has been produced.

More information on PSWT is available in a booklet “A Revenue Guide to Professional Services Withholding Tax (PSWT) for Accountable Persons and Specified Persons” which is published on [www.revenue.ie](http://www.revenue.ie).

## 7.5 ELECTRONIC RELEVANT CONTRACTS TAX (ERCT)

An Electronic Relevant Contracts Tax (eRCT) regime came into effect from 1st January 2012. eRCT is applicable for building and construction work (including alteration and repair), and Forestry. In the context the BSE/IFB is the Principal in terms of RCT.

**The major issues in relation to eRCT are:**

1. Contracts that may incur RCT must be registered on ROS.
2. Payment notification must be sent prior to actual payment. Revenue will then provide the appropriate RCT rate by automated reply. Failure to provide this notification prior to issuing a payment to a subcontractor may incur a penalty of €5,000 or 35% of the contract, whichever is the lesser.
3. The eRCT process involves a four step online process.
4. Subcontractors may no longer claim an interim refund – instead RCT is offset against other tax liability and a refund is only applicable at year end with there is an excess in their overall liability.
5. There are 3 RCT rates under the eRCT regime – 0%, 20% and 35% (the latter for suppliers not known to Revenue)
6. C2 cards are no longer valid.

In circumstances, where staff are likely to be processing payments that may incur RCT, contact should be made in the first instance with the Finance Unit to enable the payment process to occur.

More information on eRCT is available on [www.revenue.ie](http://www.revenue.ie).

## APPENDIX 1: PROCUREMENT GUIDANCE

### PROCUREMENT OFFICER

The provision of guidance and oversight of procurement related issues across the Agency rests with the Procurement Officer.

Susanne Cassells (Procurement Officer): Tel (01) 6775304

E-Mail: [susanne.cassells@screentrainingireland.ie](mailto:susanne.cassells@screentrainingireland.ie)

### USEFUL SOURCES OF INFORMATION AND WEBSITES:

[www.etenders.gov.ie](http://www.etenders.gov.ie):

The site is designed to be a central facility for all public sector contracting authorities to advertise procurement opportunities and award notices. It displays, on a daily basis, all Irish public sector procurement opportunities currently being advertised in the Official Journal of the European Union (OJEU), as well as other lower-value contracts uploaded to the site from awarding authorities. Sample tender documents also available on the site.

<http://www.simap.europa.eu/>:

This European Commission site contains Guidelines, Explanatory Notes, Green papers and policies on procurement.

[www.procurement.ie](http://www.procurement.ie):

This is the website of the Office of Government Procurement and contains information on public procurement and centralised contracts. The OGP provide advice at a central Government level and can be contacted at [email-support@ogp.gov.ie](mailto:email-support@ogp.gov.ie)

### KEY GUIDANCE

All staff involved in procurement in the Agency should be familiar, in particular, with the key documentation listed below and should use it to validate the process undertaken:

- *Public Procurement Guidelines – Competitive Process (2010)*
- *Public Procurement Checklist (2009) – see Appendix 5 to this document*
- *Guidelines for Engagement of Consultants and Other External Support by the Civil Service (2006)*
- *Circular 16/2013-Revision of Arrangements concerning the use of Central Contracts put in place by the Office of Government Procurement*
- *Circular 10/2014- Initiatives to assist SME's in Public Procurement*
- *ICT Circular 02/2011: Additional Arrangements for ICT Expenditure in the Civil and Public service (see also website [www.ictprocurement.gov.ie](http://www.ictprocurement.gov.ie))*

The above documents are available on the extranet.

## APPENDIX 2

### Overview Of Procurement Process To Be Undertaken Based On Contract Value

#### GOODS & SERVICES

Threshold Band	Up to €5K	€5K-€25K	€25K-€134K	€134K to EU Thresholds*	EU+*
Government Departments and Offices	1 or more competitive quotes	3 written quotes	Open procedure up to 134K; advertise on etenders	n/a	Must advertise in OJEU and etenders; choice of procedure
Agencies	1 or more competitive quotes	3 written quotes	Open procedure up to 134K; advertise on etenders	Up to €193K Must advertise on etenders; choice of procedure	Must advertise in OJEU and etenders; choice of procedure
Utilities	1 or more competitive quotes	3 written quotes	Open procedure up to 134K; advertise on etenders	Up to €387K Must advertise on etenders; choice of procedure	Must advertise in OJEU and etenders; choice of procedure

### WORKS AND RELATED SERVICES

Threshold Band	Up to €5K	€5K-€50K	€50K-€250K	€250K up to EU*	EU + *
Government Departments and Offices	1 or more competitive quotes	5 written quotes	Open procedure up to €250K; advertise on etenders	Up to €5m Must advertise on eTenders; restricted procedure preferred;	Must advertise in OJEU and etenders; choice of procedure
Agencies	1 or more competitive quotes	5 written quotes	Open procedure up to €250K; advertise on etenders	Up to €5m Must advertise on eTenders; restricted procedure preferred	Must advertise in OJEU and etenders; choice of procedure
Utilities	1 or more competitive quotes	5 written quotes	Open procedure up to €250K; advertise on etenders	Up to €5M Must advertise on eTenders; restricted procedure preferred	Must advertise in OJEU and etenders; choice of procedure

\*EU Thresholds are revised every two years. Full and up to date thresholds can be checked on the EU Public procurement website <http://www.simap.europa.eu/>. See overleaf.

**Thresholds (exclusive of VAT) above which advertising of contracts in the Official Journal of the EU is obligatory, applicable from 1 January 2014<sup>1</sup>:**

The main advertising thresholds with effect from 1 January 2014 are as follows:

<b>Works</b>		
Contract Notice	€5,186,000	Threshold applies to Government Departments and Offices, Local and Regional Authorities and public bodies
<b>Supplies and Services</b>		
Contract Notice	€134,000	Threshold applies to Government Departments and Offices
Contract Notice	€207,000	Threshold applies to Local and Regional Authorities and public bodies outside the Utilities sector
<b>Utilities</b>		
Works Contracts / Prior Indicative Notice	€5,186,000	For entities in Utilities sector covered by GPA
Supplies and Services	€414,000	For entities in Utilities sector covered by GPA

<sup>1</sup> Thresholds are revised every two years. Full and up to date thresholds can be checked on the EU public procurement website <http://www.simap.europa.eu/>

### APPENDIX 3

#### SAMPLE EVALUTION SCORESHEET

<b>EVALUATION OVERVIEW</b>	<b>Company X</b>	<b>Company Y</b>
<b>Essential requirements</b>	<b>Yes/No</b>	<b>Yes/No</b>
A current reference detailing financial viability		
Written confirmation that the tenderer will be in a position to commence the contract within 10 days of an award		
Current insurance certificates detailing types and levels of cover		
Statement confirming compliance with legislation on employment protection and working conditions		
The information required at Appendices xx-xx, completed in full and vouched, as appropriate.		
Description of reporting system and problem resolution process proposed		
<b>Award criteria</b>		
Quality of Service Proposal (40 marks)		
Cost (30 marks)		
Proven ability of supplier to deliver service , including information obtained from referees and sites, if applicable see 2.5 (20 marks)		
Effective contract management & monitoring procedures (10 marks)		
<b>Total (100 marks)</b>		
<b>Appendix A - Response Structure</b>		
<b>Part 1 - Company details and proposal summary</b>		
<b>Part 2 - Description of Proposed Services</b>		
Approach to delivering the services and plans for supporting the requirements of the Department		
Details of specific requirements requested by Department (e.g. environmentally friendly nature of products/ accessibility requirements)		
<b>Part 3 – Costs</b>		
<b>Part 4 - Experience of Company</b>		
Track record of organisation in delivering service		
Client references (x 3)		
Details of staff training, including health and safety training, provided to all staff		
<b>Part 5 - Further Information</b>		
<b>Summary</b>		



## APPENDIX 4

### SAMPLE EVALUATION NOTIFICATION LETTERS

#### Unsuccessful:

Dear xxx,

Thank you for your tender for .... .

All the tenders received have now been assessed and I regret to inform you that your company has not been successful on this occasion.

The formal award of the contract to the successful tenderer will not take place before.... (14 calendar days from date of notification – or seven days in the case of an urgent or accelerated procedure) at the earliest.

For your information, the following are details of how your tender was weighted under the assessment criteria and also details of the successful tender.

Category	Maximum Score	Maximum Score Achieved	Your Score
Demonstration that tenderer understands and has met Department's particular requirements at this time	40	35	26
Total cost per day	30	30	30
Proven track record and experience of the company	20	19	19
Provision for the assessment of learning transfer	10	9	5

Thank you for your time and effort during this process. If you have any queries and/or wish to receive any further feedback, please contact xxx

Yours sincerely,

---

**SUCCESSFUL:**

Dear xxxx

Thank you for your recent tender for the provision of XXXXX for the BSÉ/IFB (ET Ref: 69377).

We have now examined all the tenders and I am pleased to inform you that your company has been successful. Please note that this is subject to your acceptance in writing of the attached terms and conditions. Please sign the undertaking overleaf and return it to me as soon as possible with a copy of your current tax clearance certificate.

If you have any queries please do not hesitate to contact xxxxx

Yours sincerely

---

**Nature of Contract:** Provision of xxxxxx

**Period Covered:** Up to xx months/years with an option to retain the contractor for up to a further 2 years from the date of award of contract.

**Service Provider:** xxxxx.

**Special Conditions:**

I confirm that (Name of Service Provider) will provide the delivery XXXXXX in accordance with the tender documents supplied by the Irish Film Board (ET Ref: X) and the tender submitted by the (Name of Service Provider).

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Signed on behalf of

---

Witnessed By

## APPENDIX 5

### PROCUREMENT OVERVIEW CHECKLIST

No.	Description	Resp.	Yes	No
1	Identify the need			
2	Estimate the cost			
3	Secure funding approval			
4	Determine the best procurement strategy			
5	Prepare Request for Tender (RFT) – see sample tenders on <a href="http://www.etenders.gov.ie">www.etenders.gov.ie</a>			
6	Agree on make-up of evaluation team and award criteria to be included in RFT.			
7	Issue tender documents, supporting documents and clarification without delay. Ensure sufficient response times given.			
8	Receipt and open tenders			
9	Examine all tenders to see if they meet basic requirements			
10	Reject all non-responsive tenders and note reason for rejection			
11	Ascertain marks to be awarded for cost			
12	Each member of evaluation team to conduct assessment based on published award criteria			
13	Check standing of company with referees nominated by tenderer			
14	Complete tender evaluation scoring sheet			
15	Prepare evaluation report and submit recommendation for approval			
16	Advise all individuals/Units concerned when contract is approved and issue regret and award letters (note standstill period to be applied to award process for EU contracts – Remedies Directives)			
17	Seek tax clearance certificate from successful tenderer			
18	Prepare Process Audit Form and submit to Procurement officer			
19	Following receipt of confirmation from Procurement Officer finalise contract details with successful tenderer			
20	Publish award notice in OJEU (for EU contracts only) if necessary			
21	Bring contract file up to date			

## APPENDIX 6 CONSULTANCIES

### Copy of E-Mail of 17th January 2013 from Trevor Donnelly, Finance Unit

From: Trevor Donnelly [mailto:Trevor.Donnelly@ahg.gov.ie]  
Sent: 17 January 2013 09:24  
To: Everyone - AHG  
Subject: Expenditure Controls - Consultancies  
Importance: High

A Chairde,

In line with Department of Finance directives, all consultancies must be approved at MAC level before they are commenced (a definition of what constitutes a "consultancy" is provided below).

The procedure in relation to securing MAC approval for consultancies is as follows:

- 1) No new consultancies should be entered into, advertised for tender or new commitments made without first consulting Finance Unit (this applies not just to consultancies funded from the Administration Budget but also to those funded directly from programme subheads). A business case should be prepared outlining the purpose of the proposed consultancy, its expected cost and duration.
- 2) Finance Unit will then submit the business case to MAC for consideration and will convey the resultant decision to the line division.
- 3) No expenditure/commitments should be entered into until formal approval from MAC has been provided.
- 4) Finance Unit keeps a record of all approved consultancies and should be kept informed of any significant developments in respect of the consultancy (for example if the costs or expected duration change).

Please note that for the purpose of the above:

- a) The definition of a consultancy is based on the Administrative Budget Agreement (see text below) and the Department of Finance Consultancy Guidelines (attached). As such expenditure on the following is technically not classified as "consultancy", irrespective of whether this expenditure is with individuals or with consultancy houses:
  - Information and Communications Technologies (ICT) expenditure on software development from analysis through to implementation and post-implementation
  - Other non-ICT (Information and Communications Technologies) related expenditure on professional services for the development of projects or implementation of programmes (examples would include Architects/Engineers on islands piers projects etc).
- b) Before engaging a consultant, the VFM aspects of the consultancy should be determined.
- c) Consideration should be given to whether it is possible that the project could be delivered in-house. In line with the Department of Finance Guidelines, consultancies should only be entered into if they are absolutely necessary, if adequate internal resources are not available or if an external review is mandated.

- d) The requirement for prior MAC approval applies in particular to consultancies funded directly from the Admin Budget, from Programme Subheads, or from the Environment Fund. Consultancies entered into by bodies under the Department's aegis are not covered by the above. However, line divisions should ensure that these agencies have appropriate controls on consultancy expenditure in place and are cognisant of VFM considerations and the need to only enter into essential consultancies. If the agencies are entering into any large consultancies these may be brought to MAC for their information.

#### Extract from Administrative Budget Agreement

In general, all expenditure on consultancies should be charged to Admin except:-

- a) where the consultancy is required for the purposes of major investment programmes or major asset disposals;
- b) where the consultancy is required for the purposes of a review or evaluation of an EU supported Programme;

in which cases, the consultancy should be treated as a programme expenditure and charged against the relevant programme subhead.

Where consultancies are estimated or charged against any other subhead other than the Consultancy Services Subhead of the Administrative Budget, the cost should be identified separately in the subhead(s) concerned in the "Details of Certain Subheads" section of the Revised Book of Estimates and in a note to the Appropriation Account. If any doubt arises as to whether a consultancy should be treated as a programme or as an Administrative Budget expenditure, the Department of Finance should be consulted.

In relation to Information and Communications Technologies (ICT), expenditure on software development, from analysis through to implementation and post-implementation, should not be classified as consultancy, irrespective of whether this expenditure is with individuals or with consultancy houses. Expenditure on services such as strategy planning and advice should be classified as consultancy.

Other non-ICT (Information and Communications Technologies) related expenditure on professional services for the development of projects or implementation of programmes should not, in general, be classified as consultancy, irrespective of whether this expenditure is with individuals or with consultancy houses. Expenditure on services where advice is provided, such as strategy planning or programme evaluation, should, generally speaking, be classified as consultancy. In all instances the latest Department of Finance guidelines on engaging consultants should be taken into account.

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Trevor Donnelly  
Assistant Principal  
Finance Unit  
Tel: (01) 6313822

## APPENDIX 7

### BSÉ/IFB Procurement Process Audit Form

The purpose of the Procurement Process Audit is to ensure that all procurement exercises are carried out in accordance with National and EU guidelines. The completion of a procurement process audit form is required

- in respect of any procurement exercise where the value of the contract is in excess of €25,000. Where the estimated value of the contract is close to the €25,000 threshold, it may be prudent to submit a Process Audit form to cover the possibility that the threshold may be exceeded  
or
- where any consultancy work is being undertaken in the Agency, regardless of the programme, subhead or cost of that consultancy.

Staff should familiarise themselves with the guidance issued by Procurement Officer prior to completing this form. Forms must be returned Susanne Cassells [susanne.cassells@screentrainingireland.ie](mailto:susanne.cassells@screentrainingireland.ie) and approved before a contract is awarded.

#### GENERAL DETAILS

Section	
Contact /Project Leader	
Address/location and phone number	
What is the purpose of the procurement	
Is this contract a standalone project or part of a bigger body of work?	
Contract type: Tick as appropriate	<input type="checkbox"/> Contractor
	<input type="checkbox"/> External Service Provider
	<input type="checkbox"/> Research agreement
	<input type="checkbox"/> Legal Services
	<input type="checkbox"/> Other
(if Other, please give details)	
Project approved by	
PO/Budget holder (if different from above)	
Please state the full amount of the contract. State VAT and expenses separately	

### PROCUREMENT DETAILS

How was the contract advertised? (i.e. eTenders, national newspapers etc)	
If the contract value is in excess of the EU limits, was the contract advertised in the EU Journal (indicate date)	
What type of tendering procedure was used (i.e. Open, restricted etc).	
If only one supplier was invited to bid for the contract (Single Tender) please state the reasons for this (This information must be advised to the Procurement Officer for collation as part of an annual return to the C&AG on contracts awarded without a competitive tendering process <sup>3</sup> .)	
State the number of valid tenders received	
On what basis was the contract awarded (i.e. Price only, other award criteria etc)	
Does the contract comprise a significant element of direct service to the Minister or Minister of State, particularly in the PR or communications area?	
Is the successful tenderer a person/enterprise who was suggested by the Minister/Minister of State as being suitable for the role/post?	
Has a formal contract been drawn up? If not, state what formal contract procedures are to be put in place.	

### BUDGETARY DETAILS

Proposed contractor or supplier	
Programme Name	
Are there any other sanctioning requirements attached to this procurement (i.e. Dept Finance sanction)	
Unit	
Project code (if applicable)	
Does withholding tax apply?	
Contract award date	
Start date	
End date	
Has a Tax clearance cert been obtained	
Any further comments	

I certify that the above information is correct at this time.

Signed: \_\_\_\_\_ (Budget Holder or PO)

Date: \_\_\_\_\_

<sup>3</sup> Staff should note that in the case of proposals to award a contract in excess of €25K without a competitive tendering process, the CEO or Deputy CEO, who is not part of the procurement process, must review the proposed contract prior to its award.