

Ethics in Public Procurement

1. Introduction

The purpose of this note is to provide information to assist public sector buyers to conduct purchasing in a way that satisfies probity and accountability requirements and to offer a framework within which contracting authorities may wish to draw up more detailed internal procurement procedures relevant to their own activities.

These guidelines do not purport to be a legal interpretation of the relevant legislation or Circulars. Accordingly, contracting authorities should familiarise themselves thoroughly with the provisions applying.

2. Guiding Principles

It is very important that the public procurement function is discharged with probity, transparency and accountability in a manner that secures best value for public money.

Probity requires the purchasing process to be conducted

- ethically;
- honestly; and
- with fairness to all participants

Transparency and *accountability* require that the basis for decisions is demonstrably clear and objective and that the purchaser is held to account for the conduct of the procurement process.

Contracting authorities must be cost effective and efficient in the use of resources while upholding the highest standards of integrity. 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.

Management in contracting authorities should ensure that there is an appropriate focus on good practice in purchasing and, where there is a significant procurement function, that procedures are in place to ensure compliance with all relevant guidelines.

3. Probity

In the context of procurement, the aim should be that individuals and organisations are trusted and respected by those with whom they deal and that business is conducted by all parties not only efficiently but in a fair and reasonable manner. Some of the practical implications of ensuring probity in procurement are set out in the following sub-sections.

3.1 Legality

There is an obligation on officials to exercise their powers lawfully. Officers must be aware of the provisions of the various Acts, Directives, regulations, policies and procedures that are relevant to their function. Compliance with national and EU legal requirements is a duty owed to contractors, suppliers, and service-providers by awarding authorities. Contractors, suppliers, and service-providers who have been treated unfairly or whose rights have been infringed in the public procurement process have a right to legal redress under EU remedies Directives.

If officials are unsure of the legal, policy or procedural requirements, they must seek advice from their line managers.

3.2 Disclosure of Interest

Any form of personal interest which may impinge, or might reasonably be deemed by others to impinge, on a public official's impartiality in any matter relevant to his or her duties should be disclosed in writing to line management. Personal interest includes an interest of a relative or connected person. Line management must then decide if the exercise should be dealt with by another member of staff or seek further advice.

3.3 Gifts

Public officials should not accept benefits of any kind from a third party which might reasonably be seen to compromise their personal judgement or integrity. The actions of public officials must be above suspicion and not give rise to any actual or potential conflict of interest and their dealings with commercial and other interests should bear the closest possible scrutiny.

It is not possible to give guidelines for every conceivable situation that may arise but if a doubt arises about a particular situation line management should be consulted. The following general guidelines provide a framework within which decisions in this area can be made or local rules formulated:

- Gifts must never be solicited, directly or indirectly.

- Subject to local rules, an official may accept and retain gifts of low intrinsic value. Any gift of more significant value should be refused. The policy of the contracting authority and the ethical rules that apply to public officials should be explained to the donor so that reasons for refusal are not misunderstood or offence caused. Particular care should be taken in relation to offers of gifts from donors who stand to derive a personal or commercial benefit from their relationship with the contracting authority concerned.
- Cash, gift cheques or any vouchers that may be exchanged for cash may not be accepted regardless of the amount.
- Public purchasers must never solicit sponsorship for social, sporting, charitable or similar organisations or events from contractors, suppliers or service providers. Where such sponsorship is offered, it may only be accepted when expressly approved in writing by management. (This is not intended to relate to instances of appropriate and acceptable sponsorship of projects or activities which are related to a contracting authority's official activities and are otherwise in accord with public procurement rules).
- Public purchasers must not seek or accept special facilities or discounts on private purchases from contractors, suppliers or service providers with whom they have official dealings.

It should be noted that the Prevention of Corruption Acts 1889 to 2001, as amended by the Ethics in Public Office Act 1995, provide that money, gifts or other consideration received by a public official from a person holding or seeking to obtain a contract from a public body is deemed to have been received corruptly unless the contrary is proved.

3.4 Hospitality

Normal business practice may occasionally justify accepting routine / modest hospitality from suppliers provided that:

- The frequency and scale of hospitality is not allowed by the recipient to reach a position whereby he or she might be, or might be reasonably deemed by others to have been, influenced in making a business decision as a consequence of such hospitality.
- The number of officers availing of the hospitality is kept to a minimum.

- Invitations do not include provisions deemed to be excessive, such as significant travel, overnight accommodation or trips abroad.
- Availing of the hospitality does not identify the contracting authority in a public way with any particular contractor, supplier or service provider.

Under the Civil Service Code of Standards and Behaviour, which applies to central government departments and offices, offers of hospitality should be reported to line management. Particular care should be taken where suppliers are in the process of tendering for business. In this regard there should be no acceptance of gifts or hospitality from contractors, suppliers or service providers involved in a current tendering process.

4.0 Transparency and Accountability

Procurement transactions and decisions must in all respects be fair, equitable and ensure value for money. Contracting authorities must be able to justify decisions made and actions taken.

In organising the procurement function, management in contracting authorities must ensure appropriate separation of duties within the procurement cycle. For example, insofar as possible, ordering and receiving goods and services should be distinct from payment for goods and services.

Accurate written records (including computer records) are essential in demonstrating that proper ethical standards have been observed. Therefore, appropriate records should be maintained throughout the purchasing process. These records should provide an audit trail of the reasons for making a particular procurement decision. The type and detail of information that is recorded should be specified in local procedural guidelines and will depend on the complexity or sensitivity of the particular purchasing issue.

5.0 Confidentiality of Information

The basic rule is that commercially sensitive information must be kept secure and never used for personal gain or to prejudice fair competition. Information on individual contracts must not be given to the media or any other enquirer (except the individual contractor concerned), without the authority of line management.

Disclosure of supplier and tender information relating to the tender process prior to contract award, and in particular to another interested party, is strictly prohibited. After the award of contract, information may be provided in accordance with the

detailed guidance on “*Notifying Tenderers and Disclosure of Information*” outlined in the booklet “*Public Procurement Guidelines – Competitive Process*” and published in the general procurement guidance section of www.etenders.gov.ie. Some information on the tendering process may be disclosable under FOI legislation where invoked.

National Public Procurement Policy Unit / Government Contracts Committee

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