

Frequently Asked Questions

Question 1: To whom do the public procurement guidelines and rules apply?

They apply to procurement by all public sector bodies, such as Government Departments/Offices, local and regional authorities, health authorities, commercial and non-commercial State bodies. Also, most works and related services contracts awarded by a private entity, which are subsidised 50% or more by a public body, are covered by the EU Directives if they exceed the EU thresholds. Contracts below the EU thresholds which are funded or part-funded from public funds, awarded by private sector entities, should, as far as possible, be awarded in accordance with the national guidelines.

Question 2: When do I have to tender for the purchase of supplies and services?

The basic principle of public procurement is that there should be a competitive process. The type of process will depend on the value and nature of the requirement. There is a legal obligation to engage in a competitive process for contracts above EU thresholds and award them in accordance with procedures set out in EU public procurement Directives.

Question 3: Can I invite parties to tender directly?

Yes. Particularly suitable suppliers or service providers may be invited to compete for contracts below €25,000. A number sufficient to ensure adequate competition, selected on an objective and non-discriminatory basis, should be invited to tender. It is also acceptable to supplement advertising for competitions above EU threshold by issuing details of a competition directly to particular suppliers or service providers after publication of notices.

Question 4: Must requests for tenders be advertised in national newspapers?

It is not obligatory to advertise in national newspapers. There is a legal obligation to advertise contracts above the EU thresholds in the OJEU. All public contracts above €25,000, and some below this value, should be published on www.etenders.gov.ie Etenders web site is the main point of reference for entities interested in Irish public sector contracts. If newspaper or other media advertising is considered necessary it is recommended that an abbreviated notice be published referring to full details on the etenders site.

Question 5: Why the €25,000 threshold for advertising on etenders?

Advertising contracts above €25,000 on etenders is a requirement of Department of Finance Circular 10/2010. It was introduced to provide accessibility to public contracts for the SME sector.

Question 6: Is there a list of contractors/ suppliers/ service providers used by public bodies?

Many public bodies have lists from which they invite suppliers to submit tenders for requirements below €25,000. Contracting authorities who maintain lists generally advertise and invite applications annually, but application may be made directly at any time to the relevant Department/Office, National Procurement Service, local authority, health authority etc.

Question 7: Is there a minimum time to be allowed for the submission of tenders?

For contracts below the EU thresholds there are no prescribed time limits. Sufficient time must be allowed for suppliers to prepare tenders. The complexity of a project/contract should be taken into account when deciding the response duration to a competition. For contracts above EU threshold the procurement directive advertising rules apply.

Question 8: How do I prepare a Request for Tender (RFT)?

A sample RFT can be viewed on www.etenders.gov.ie Contract notices on the website will also have tender documentation attached which can be viewed for guidance. New template RFT's for supplies and services frameworks and contracts, along with supporting contract documents, will be posted shortly.

Question 9: What is the GCC?

The GCC (Government Contracts Committee) is a committee of procurement officers from central Government Departments and agencies which have a significant procurement function or have responsibility for key procurement sectors. It examines and considers procurement issues and assists the Department of Finance and the National Procurement Service in formulating procurement policy, drafting guidelines and promoting best procurement practice.

Question 10: Do I need GCC approval to award a contract?

No. The procedure whereby certain contracts of Central Government Departments and Offices had to be submitted for GCC approval is replaced by the procedure outlined in Department of Finance Circular 40/02. Contracting authorities outside the Central Government Sector may have their own internal approval procedures.

Question 11: What are Public Procurement Directives?

Public Procurement Directives are EU rules which impose legal obligations on public bodies (contracting authorities) in member states to advertise contracts for works, supplies and services, above certain thresholds, in the Official Journal of the EU. The directives set out procedures for awarding contracts designed to ensure open, transparent and fair competition.

Question 12: What are the EU Procurement Directive thresholds?

The relevant values (exclusive of VAT) applicable from 1 January 2012 to 31 December 2014, above which advertising of contracts in the Official Journal of the EU is obligatory are:

Works

Contract Notice - €5,000,000 threshold applies to Government Departments and Offices, Local and Regional Authorities and other Public Bodies.

Supplies and Services

Contract Notice - €130,000 threshold applies to Government Departments and Offices. Contract Notice - €200,000 threshold applies to Local and Regional Authorities and Public Bodies outside the Utilities Sector.

Utilities

Works Contracts / Prior Indicative Notice - €5,000,000 applies to entities in Utilities Sectors covered by GPA (Government Procurement Agreement).

Supplies and Services contracts - € 400,000 applies to entities in Utilities Sectors covered by GPA.

Question 13: Are there any exemptions from the Directives?

The vast majority of public contracts above the relevant thresholds are subject to the provisions of the EU public procurement directives. There are very limited exceptions, for example in the areas of Defence and State security. Some services, annexed to the directives and listed in Appendix IIB of the Competitive Process Guidelines, are not subject to the full provisions of the directive and advertising in the OJEU is not obligatory. However, it is national policy to advertise such contracts of significant value as part of a competitive process. They must also be awarded in accordance with EU Treaty principles of transparency (this implies appropriate advertising), non-discrimination on the grounds of nationality, freedom to provide services, freedom of establishment.

Question 14: How do I get my contract notices / advertisements published in the OJEU?

Contracting authorities are strongly advised to complete and publish their notices online via www.etenders.gov.ie or the EU public procurement website <http://SIMAP.eu.int>. There is guidance for users in completing online publication on both websites.

Question 15: The OJEU form requires that the language or languages in which tenders can be drawn up is indicated. What should I indicate here?

Responses must be accepted in one of the official languages of the EU, for example English. However, under national policy, responses in the Irish language must also be accepted; therefore the indication must normally be Irish or English.

Question 16: Is publication of a Prior Information Notice (PIN) in the OJEU mandatory?

Under the revised directives, publication of a PIN is not mandatory. However, where estimated annual requirements are in excess of €750,000 for similar categories of supplies or services, publication is encouraged as an aid to transparency and as a means of enabling suppliers and service providers to prepare in advance to tender for upcoming contracts. Contracting authorities who publish a PIN with the required amount of information can avail of shortened minimum times for submitting expressions of interest or tenders. A “purchaser profile” with the necessary amount of information published on a website and notified via a brief notice in the OJEU fulfils the same function as a PIN published in the OJEU.

Question 17: If I haven't advertised in the OJ EU and tenders received are above the EU thresholds, what can I do?

Estimates of costs must be realistic and it is advisable to take a conservative approach. If tenders received are priced above EU thresholds, a contracting authority must be able to justify its original estimate if it awards a contract without OJEU advertising.

Question 18: My contract is urgent – do I have to advertise in the OJEU and adhere to the minimum times for responses set out in the directives?

The directives make provisions for awarding a contract (without advertising) and for accelerating an advertised procedure in urgent and exceptional circumstances. However, ‘urgency’ and ‘exceptional circumstances’ are very narrowly interpreted by the European Court and the EU Commission. The instances where resort to these provisions is justified will be very rare and maximum care must be taken before availing of them. The exceptional circumstances / urgency must have been unforeseeable and must not have arisen due to any action or inaction on the part of the contracting authority.

Question 19: Can I try to negotiate a better deal on a tender price to get better value for money?

Post - tender negotiation is prohibited under EU rules as it diminishes transparency and can give rise to abuses in the tendering process. The system is designed to operate on the basis that tenderers submit their most competitive bid in response to the specifications set out in an RFT. Where contracting authorities cannot specify requirements precisely enough to allow the submission of priced tenders, the rules permit the use of a negotiated procedure. Negotiation must be carried out on a fair basis with the highest possible degree of transparency.

Question 20: Is it possible to extend contracts?

It is possible to extend contracts in certain circumstances. The circumstances in which extensions to contracts may be negotiated are set out in the EU Directives. As a general rule the provisions confine extensions to 50% of the original value of contracts. Therefore contracting authorities should be prudent and anticipate, as far as possible, all potential requirements before advertising.

Question 21: What is the CPV?

The ‘Common Procurement Vocabulary’ (CPV) is a code for describing works, supplies and services to be advertised in the OJEU. It is available on <http://SIMAP.eu.int>. It can be best viewed or downloaded in ‘Excel’. (There is a link to the EU site on www.etenders.gov.ie).

Question 22: What is the GPA?

The GPA (Government Procurement Agreement) is a formal agreement concluded by a number of member States of the World Trade Organisation, including the EU, to observe an open and non - discriminatory public procurement policy and practice among its signatories. The provisions of the EU Directives and the GPA are closely harmonized. Almost all public contracts are covered by the GPA. The principal exceptions are service contracts of public bodies for research and development and contracts placed by entities in certain utility sectors (i.e. gas, heat, oil and railways), which are covered by the EU Directives only. The slight variation in coverage gives rise to the application of different thresholds, as indicated in Appendix I of the Competitive Process Guidelines.

Question 23: How long is the standstill period required under the new Remedies Directive?

The Irish Regulations (implementing the Remedies Directive) provide for a minimum standstill period of fourteen (14) days where notification in compliance with the Irish Regulations is sent by fax or electronically and a minimum standstill period of sixteen (16) days where notification is by any other means. The standstill period starts of the day **after** the day on which the notification is sent. The purpose of a 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.