



An Roinn Airgeadais
Department of Finance

GUIDELINES FOR THE ENGAGEMENT OF CONSULTANTS AND OTHER EXTERNAL SUPPORT BY THE CIVIL SERVICE

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1 INTRODUCTION

The purpose of these guidelines is to help government departments, offices and agencies (hereinafter ‘the contracting authority’) to engage external support, whether consultants, contractors or external service providers, through a competitive procedure; to comply with national and EU public procurement policy and legislation; to put in place appropriate management processes for the successful completion of the project; to achieve the benefits that should subsequently accrue to the contracting authority and to do so in such a way that Value for Money is obtained.

Value for Money (VfM) includes three basic elements: economy, efficiency and effectiveness, and is achieved when organizations use their resources, including bought-in external resources, with economy and efficiency to achieve effectiveness in their operations. Public bodies carry out operations to achieve stated policy objectives. Therefore, at the project level, VfM is obtained when the optimum combination of fitness for purpose and whole life cost of a project meet the public body’s policy objective for the project. To do this requires an organizational culture that takes into account the overall benefits and costs of each project and ensures that budget estimates are met.

These guidelines will assist public bodies that need to hire external support to ensure that their VfM objective for the project is met. While the target audience for the guidelines is the core civil service there is no reason why they cannot be used appropriately in the wider public service.

This document is not a legal interpretation of Irish law or the EU Directives on public procurement. Departments and Offices must also comply with the relevant circulars and follow other guidelines issued by the Department of Finance.

The attention of contracting authorities is drawn to the list of source and reference material, used in the compilation of this document, and provided in [Annex 2: Reference](#).

1.1 CONSULTANTS, CONTRACTORS AND EXTERNAL SERVICE PROVIDERS

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 the contracting authority.

A contractor is a person, organization or group thereof engaged, for a limited time period, to provide specified goods, works or services (including ICT (information and communications technology) services) that implement established policy objectives; to assist a contracting authority 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 contracting authority but which are not currently available. Contractors come under the direction of a contracting authority 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 the contracting authority.

External Service Providers are organizations that provide the services or the human/physical resources to meet the ICT and other service requirements of a contracting authority. These requirements could include software development; network installation and management; infrastructure management; data centre hosting; managed services; 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 contracting authority, 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 redeployed in the timeframe required.

In this document:

- 'contracting authority' refers to the department, office or agency that engages the external support;
- 'tenderer' refers to all economic operators, whether consultants, contractors or external service providers, participating in a competitive process up to the point the contract is awarded;
- 'candidate' is used where required by Directive 2004/18/EC;
- as all consultants / contractors / external service providers must be subject to a contract, the term 'contractor holder' is used in this document after a contract is established to refer to all external support, whether consultant, contractor or external service provider, engaged following a competitive process and subject to a contract.

1.2 ENGAGING EXTERNAL SUPPORT

Before a contracting authority considers hiring external support, it must first determine that the project cannot be delivered in-house. If adequate internal resources are not available or if an external review is mandated, it is only at this stage that hiring of external support should be considered. Ideally, the need for external support should already be identified in the contracting authority's corporate procurement plan, which, in compliance with the National Public Procurement Policy Framework, *inter alia*, identifies significant purchases of goods and services.

Departments/Offices to which Department of Finance Circular 16/97 *New delegated arrangements for IT related expenditure [including office machinery]* applies must consult the Centre for Management & Organization Development (CMOD) of the Department of Finance if appropriate delegated sanction is not in place.

In line with stated Government policy, all public bodies must use a competitive process for the purchase of goods and services, whatever the value. Consultants, contractors and outside service providers, therefore, must be engaged following such a process. Awarding a contract without a competitive process can be considered **only** in the situations specified in section 2.0 ‘Award of a contract without a competitive process’ in Department of Finance ‘*Guidance arising from the Quigley Report Recommendations*’. If the value of the contract is equal to or above the EU threshold, the provisions of Article 31 of Directive 2004/18/EC must be complied with where a contract notice has not been published or Article 30, where such notice has been published.

1.3 SERVICES COMPRISING A SIGNIFICANT ELEMENT OF DIRECT SERVICE TO AN OFFICE HOLDER

When hiring external support, the attention of contracting authorities is drawn to the ‘*Additional procedures to apply to certain consultancies and procurements relating to proposed consultancy (or other services) comprising a significant element of direct service to a Minister or Minister of State*’, which were approved by Government (February 2005) and issued by the Department of the Taoiseach.

1.3.1 Ethics in Public Office Act 1995

When external support is appointed personally by an office holder without a competitive process, departments of state should note, under paragraph 19.1(b) of the *Ethics in Public Office Act 1995*, that a ‘special adviser’ is any person who was or is:

- employed under a contract for services by an office holder, having been selected for the award of the contract by an office holder personally otherwise than by means of a competitive process; and
- whose function or principal function as such a person was or is to provide advice or other assistance to or for the office holder.

Therefore, if a person is: (a) selected by the office holder personally; (b) employed under a contract for services that was awarded without a competitive process; and (c) whose function or principal function is to provide advice or other assistance to or for the office holder, the person is a special adviser, as provided for by section 19(1)(b) the 1995 Ethics Act and, where this is the case, there must be compliance by both the office holder concerned and the special adviser with their respective obligations (e.g. laying the contract before the Houses of the Oireachtas, preparing and furnishing statements of interests, etc.) as required by the Ethics legislation.

Note that special advisors can also be appointed under the provisions of section 19(1)(a) of the *Ethics in Public Office Act 1995* (i.e. where an excluding order is obtained) and under the provisions of section 11(1) of the *Public Services Management Act 1997* (i.e. by Government order).

1.4 ENGAGEMENT OF EXTERNAL SUPPORT BY ONE PUBLIC BODY TO UNDERTAKE WORK IN ANOTHER

Occasionally, a contracting authority may engage external support to perform work in other public bodies. For example, the Office of Public Works may have responsibility or be best placed to engage external support on certain professional or technical issues on behalf of other public bodies. If this is the case, the beneficiary body (i.e. public body on behalf of which the external support is being engaged) must agree that the procedures of the contracting authority for the engagement of external support are the procedures to be complied with for the duration of the project. At a minimum, the beneficiary body must be represented on the project board as the user co-ordinator, formulate and express its policy objectives for the project, sign off the business case at the appropriate level, be present at the opening of the tenders, be represented on the evaluation team, be part of the approval process for the deliverables and sign off the final report.

1.5 DOCUMENTING THE DECISION TO ACQUIRE EXTERNAL SUPPORT

The importance of good documentation in the success of a project should never be underestimated. A project file (multi-volume, if necessary) must be opened, allocated an official reference no. (An Uimhir) and maintained for each project requiring external support. At a minimum, the file must contain the documents listed for the project file in Annex 1: Project File of this guideline.

The contracting authority's reasons, and also the opinion of the Department of Finance / CMOD, if obtained, for the hiring of external support must be minuted and recorded in the project file.

1.6 ACCOUNTING FOR CONSULTANCY, CONTRACTING AND EXTERNAL SERVICE PROVISION

Where to charge consultancy expenditure

In the civil service, expenditure on consultancy (as defined above) should be accounted for in conformance with the current Administrative Budget Agreements. That is to say, all expenditure on consultancies should be charged to the Consultancy Services Subhead (A7) of the Administrative Budget, except where the consultancy is required for:

- major investment programmes or major asset disposals;
- reviews or evaluations of EU-supported programmes;
- related to programme expenditure;
- related to Value for Money policy reviews;

in which case, the consultancy should be treated as a programme expenditure and charged against the relevant programme subhead, or, in the case of Value for Money Policy Reviews from 2007 onwards, be charged to the new dedicated subhead (usually styled **A8**). Therefore, subhead **A7**, which is broken down to A7.1 (IT Consultancy Services), A7.2 (Other Consultancy Services), should be used exclusively for non- programme, non- Value for Money consultancies.

The costs to Departments and Offices of all Value for Money Reviews and Policy Reviews that impact on VfM should be shown in a separate dedicated subhead of each Vote. This will be

Subhead A.8 in the AEV and REV titled "*Value for Money Policy Reviews*". If a subhead A.8 already exists within the Vote, this should become A.9 and so on. In Part III of the REV, the A.8 subhead should have three item lines; "*Consultancy Expenditure; Pay of Departmental/Office Dedicated Resources and Other Related Expenditure*". Expenditure under each of these respective item lines should include

- consultancy spend on VfM reviews (formerly Expenditure Reviews) and other policy reviews (e.g. Sectoral Policy, NDP evaluations, etc.) that impact on VfM. This item line will be classified as non-pay;
- the pay of dedicated resources within Departments and Offices undertaking VfM reviews (i.e. Value for Money or Evaluation Units within Departments and the pay of the staff assigned to undertake VfM reviews commensurate with the duration of their involvement in such reviews). This item line will be classified as pay;
- the associated costs of such dedicated resources. This item line will be classified as non-pay.

There should be no capital expenditure in subhead A.8. Consultancies relating primarily to the management, development and delivery of projects and services should continue to be accounted for under existing programme subheads. Consultancy expenditure under a grant in aid subhead should be identified separately in the relevant subhead in Part III of the REV.

With the introduction of the new A8 subhead, the existing A7 subhead should only be used for non-programme, non-VfM consultancies, broken down between IT Consultancy Services and Non-IT Consultancy Services as previously. Appendix 9 to the REV will continue to contain details of all consultancies under A7, A8 and programme subheads.

Consultancy related to programme expenditure should be attributed to the relevant programme subhead, on the understanding that an appropriate budget line is contained in the subhead to facilitate collection of information and the details of such expenditure. Where consultancies are estimated or charged to any subhead other than the Consultancy Services Subhead, 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.

All consultancy expenditure, whether charged to A7, A8 or programme subheads (including funds from Grant-in-Aid subheads), should also continue to be listed in **Appendix 9** to the REV.

Where to charge Contractors and External Service Providers expenditure

Expenditure on contractors and external service provision should be charged to the relevant element of the **A5** subhead or to a programme subhead, as appropriate and not classified as consultancy. From 2007, the A5 subhead is titled 'Office Machinery and Other Office Supplies and Related Services.'

If any doubt arises as to whether a consultancy should be treated as programme or administrative budget expenditure, the Department of Finance must be consulted.

2 THE BUSINESS CASE

2.1 ESTABLISHING THE BUSINESS CASE

As engaging external support is a cost on the public purse, a business case for the project, linked to the contracting authority's business strategy, must be produced and must provide financial justification for the project based on its whole life cost. In essence, the business case must justify the project in business terms; say what business benefits can be expected by implementing it; and must show why the project cannot be developed in-house and why external support is required. The business case must demonstrate in clear concise terms understandable to senior management that the envisaged solution is the optimum combination of fitness for purpose and whole life cost that meets the contracting authority's policy objectives for the project. That is to say, when implemented, it will achieve Value for Money.

The contracting authority must determine the set of outputs that, if delivered to its quality standards and if implemented on schedule and on budget, will be the most effective in achieving the contracting authority's policy objectives for the project. The business case, therefore, must present the deliverables, whether goods or services that the contract holder will be required to produce or provide. It must show how these deliverables will meet the contracting authority's policy objectives for the project and that its goals are expressed and quantified in terms of impact on the contracting authority's business objectives. This is a key requirement, and if the proposed deliverables cannot meet the contracting authority's policy objectives for the project, serious consideration should be given to cancellation of the project or to carry out a review of its justification. The use of whole life costing will help determine the total cost of achieving the policy objectives in the way envisaged by the contracting authority.

The business requirements must be stated in sufficient detail to enable tenderers to make workable proposals and to ensure that 'project creep' does not occur. This is particularly important for business transformation and equivalent projects that demand a clear and consistent articulation of vision and goals.

Where the implementation of deliverables in itself is unlikely to achieve full business benefit for the contracting authority, a benefits management strategy, including post-implementation review, may be required to ensure that envisaged benefits are realized and that the contracting authority extracts the maximum value from the project. (See 7.10 [Benefits Realization & Business Outcomes](#)).

Specifically, the business case must address:

- the purpose of the project and how it aligns with the contracting authority's strategic objectives and priorities. The policy objectives and business outcomes must be clearly defined, measurable, and justify investment in the project;
- the scope of the project. It is particularly important to establish project boundaries at this stage to prevent 'project creep' occurring;
- the deliverables expected from the project and how their implementation will achieve the contracting authority's policy objectives for the project;

- future phases (if any), i.e. is this a stand alone project or will its implementation commit the contracting authority to additional expenditure on goods or services in the future? If so, estimates of these future phases must be included in the whole life cost of the project;
- the benefits management strategy and post-implementation review (if appropriate). The contracting authority must state what it will do to achieve the benefits of the project when completed. This involves the management and organizational changes required to implement the deliverables. The intention to carry out a post-implementation review, which will focus on the achievement of the benefits, should be signalled at this stage;
- the identification of risks, i.e. an initial assessment of the risks to the project from the perspective of the contracting authority. Risk management is an integral part of all stages of projects and a process to mitigate and manage all risks identified must be put in place;
- the assessment of the readiness of the business units that are to use or implement the deliverables of the project and that post-implementation support will be available. This will help ensure that focus is maintained on achieving the benefits of the project and addressing issues that may adversely impact thereon;
- the whole life cost of the project, with a clear distinction between initial, operational and maintenance costs over the life of the project;
- the estimated maximum price that will be paid to the contract holder. In its financial justification, the contracting authority must estimate the maximum price it will pay the contract holder to produce the envisaged deliverables to agreed quality standards and the target date(s) by which the deliverables should be produced. Even if prices cannot be precisely estimated at business case stage (e.g. for pilot projects) contracting authorities must set an affordability threshold for the project before going to market and to guide future decision making;
- the cost management procedures envisaged, i.e. how the contracting authority intends to manage the estimating, control, approval and reporting of all cost-related aspects of the project;
- the future cost savings (if any), with associated time frames;
- an evaluation of all possibilities other than engaging external support (including doing the project in-house);
- an inventory of the type and level of specific skills that will be required by the contracting authority from the contract holders to carry out the project;
- the transfer of skills. Usually skills transfer is a part-justification for hiring external support and must be identified in the business case and specified as an award criterion in the Request for Tenders. Tenderers must be asked to provide firm proposals on how transfer of skills will be carried out and these proposals must be evaluated in the award process. Ideally, the skills deficit should already be identified in a contracting authority's training needs analysis and its rectification by transfer of skills from external support should be congruent with the contracting authority's training and development strategy;

- the contracting authority's envisaged scenario for the project management arrangements (including the proposed allocation of tasks between the contract holder and the public servants to minimise cost). Projects must not proceed without clearly defined lines of authority, responsibility and accountability and a means of ensuring that they are observed in practice;
- the identification of the public servant who will act as project manager with individual responsibility and the estimated amount of his / her time and the numbers, grades and time of other personnel allocated to the project must be estimated. This is to set out the minimum commitment in human resource terms needed from the contracting authority if the project is to proceed and to ensure that there are no illusions about the level of commitment required;
- any existing framework agreements (if any). If the contracting authority has a suitable existing framework agreement and it is not proposed to draw-down the required deliverables or services from that agreement the reason for not doing so must be clearly stated;
- the type of tendering procedure proposed and the reasons for proposing it. This must show that the proposed selection procedure is compatible with both national public procurement policy and with EU procurement legislation. For government departments and offices, proposing not to follow a competitive process can be considered **only** in the situations specified in section 2.0 '*Award of a contract without a competitive process*' in Department of Finance '*Guidance arising from the Quigley Report Recommendations*' and the justification for it must be stated in the business case.

For contracts below the EU threshold, contracting authorities should develop a business case, at a level of detail proportional to the value of the contract, prior to obtaining external support. For simple and low price contracts for services (e.g. hiring computer programmers to carry out specific tasks) whole life costing may well be excessive and contracting authorities, in such situations, should develop Requests for Tender with clearly defined technical specifications and requirements for contractors or external service providers to perform specific tasks at the lowest cost or that are the most economically advantageous.

For framework agreements, it should not be necessary to set out a detailed business case for every individual contract to be drawn down under the agreement, as the initial business case would have justified the decision to set up the framework agreement and addressed the type of contracts it was envisaged to establish under the framework.

In all cases, the business case must be approved at the appropriate management level before engaging external support.

In establishing the business case, it is good practice for the contracting authority to consult with other public sector contracting authorities that have carried out similar projects involving external support. The objective is to build on the success of these projects and not to repeat problems. Information on consultancies can be obtained from the central database on consultancies, maintained by the Department of Finance. The VfM reports of the Office of the Comptroller & Auditor General are a good source of information on the use of external support in public projects.

2.2 WHOLE LIFE COSTING

The total cost of ownership of an asset or a service to a contracting authority is the totality of the costs incurred throughout the life of the asset or service and is not simply the purchase price. Whole life costing assesses the total cost of an asset or service over its whole life: it takes into account the initial purchase cost and additional related costs, (e.g. ongoing maintenance and operational costs, disposal costs (if relevant), and other costs (be they staffing, supervisory, health and safety, etc.) specific to the solution that the contracting authority otherwise would have not incurred if it had not acquired the asset or service. If whole life costing is not carried out it is unlikely that VfM can be achieved.

Contracting authorities must decide the pricing model that will allow the award of a contract on a basis that complies with public procurement policy and that will also obtain VfM over the life of the project. This can be achieved by developing a pricing model or cost breakdown structure that will evaluate the fixed (and variable, if any) prices proposed by tenderers over the whole life of the project. In particular, a tenderer's cost proposal must be evaluated to see if it changes the contracting authority's costs, and what impact such changes would have on the whole life cost of the project.

In 'design and build' or 'advise and execute' projects, it is often only when the design or advice is presented that the future (i.e. staffing/operating) costs of a project become clear (i.e. it may not be possible to estimate whole life costs accurately until the initial phases of the project are completed). Similarly, in management consultancy reviews the initial conclusions may have a negative impact on, for example, consequential pay claims, grading claims, etc. that do not conform to government policy and other expenditure or human resource policy. (See 4.9 [Civil service numbers policy](#)). In these cases, both the contract and the project planning must allow for a review phase to reject a design and / or policy proposal or to terminate any subsequent phase of the contract, because of future costs and / or negative policy implications.

2.3 COST BENEFIT ANALYSIS

For all projects with an estimated cost in excess of €30 million a cost benefit analysis must be carried out. The cost benefit analysis must identify costs on as wide a basis as possible, be maintained and reassessed throughout the project and be used to set out targets and plans to achieve the identified benefits. It must be annexed to the business case and lodged in the project file.

2.4 RISK ASSESSMENT AND 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.

Risk management should be built into a contracting authority's procurement procedures. Contracting authorities 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, contracting authorities 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.

2.5 APPROVAL OF THE BUSINESS CASE

The senior management (i.e. Principal Officer level for projects with a cost estimate less than €500,000; Assistant Secretary level for projects at or above this level; and Accounting Officer level for all projects with a cost estimate equal to or in excess of €30 million) review of the business case must, at a minimum, assess and approve the business justification for the project on presentation of the full business case; the decision to hire external support; and the procurement strategy proposed. Senior management should also confirm that the project is well planned and will achieve policy objectives of sufficient importance to the contracting authority relative to the whole life costs, in terms of the resources, both financial and personnel, which they are prepared to commit to the implementation of the project and thereafter; that the business case is comprehensive, has been properly prepared and is justified; and, that, on implementation, the project will achieve the contracting authority's policy objectives and VfM.

The approved business case must be lodged in the project file.

Where a contracting authority is operating under an Administrative Budget Agreement, the provisions of that agreement in relation to delegated sanction for engaging consultants and other external support must be followed. Even if the estimated cost is within the overall level delegated to the contracting authority, the Department of Finance / CMOD may wish to view the business case and / or the Request for Tenders (RfT), e.g. if a purchase within the delegated limit could significantly affect future spending decisions or could impact on civil service numbers policy.

2.6 ABSENCE OF A BUSINESS CASE

There may be occasions when contracting authorities need to engage external support at short notice to deal with matters of public urgency. In these cases there may be no time to prepare a business case. If this happens the project manager must ensure that there is compliance with all key elements of these guidelines (and both national and EU public procurement law, as appropriate); the reasons for the departure from normal practice are recorded in the project file and that the decision to proceed without a business case is approved and signed off at the appropriate level.

The decision to proceed without a full business case must be documented, approved at the appropriate level and the decision recorded in the project file.

2.7 PROJECT ORGANISATION

Projects must not take place without clearly defined lines of authority, responsibility and accountability and a means of ensuring they are observed in practice. The project organisation (i.e. the contracting authority's intended management structure for the project and the envisaged allocation of staff to the project) must be defined in the business case. Typically, for all but the smallest projects, this will involve a steering committee chaired at senior level to oversee the project, the appointment of a staff member as project manager and the assignment of appropriate business, technical and user co-ordinators. For all major ICT and capital projects within the public sector an individual civil/public servant must be assigned as project manager with responsibility for the project.

The project manager is responsible for managing the external support to achieve project targets and for reporting progress to the project board and to the Management Advisory Committees of departments and / or to the Management Boards of agencies. A checklist on the responsibilities of a project manager in relation to the management of a contract is in the '*Quigley Report - Guidelines (appendix B - Managing Consultancy Contract (Checklist for Departments)*', available on the *eTenders* web site under 'General Procurement Guidance'.

In addition, as part of the delegated sanction arrangements for ICT Projects (i.e. the regime established by circular 16/97) Departments and Offices are required to maintain a progress report for all such projects. Copies of the circular 16/97 progress reports must be retained in the project file. The template for such reports is available from IT Control Section, CMOD, Department of Finance.

3 COMPETITIVE PROCESS

3.1 NATIONAL AND EU CONTRACT PROCEDURES

All public bodies must use a competitive process for the purchase of goods and services whatever the value. Furthermore, all public procurements should be carried out in a manner that achieves VfM.

All contracts whatever the value must comply with the principles expressed in recital 2 of *Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of the procedures for the award of public works contracts, public supply contracts and public service contracts*. Projects the cost of which is equal to or greater than the relevant EU threshold in force at the time of the competition must comply with the co-ordinating provisions of the Directive.

The method for calculating the value of a public contract is specified in Article 9 of Directive 2004/18/EC, and is also covered by section 5 'Estimation of Contract Value' in the Department of Finance '*Guidance arising from the Quigley Report Recommendations*'. The threshold amounts at which the co-ordinating provisions of Directive 2004/18/EC apply are specified in Article 7 of the Directive and are revised every two years, as provided for by Article 78. Complete and up-to-date thresholds can be checked on the EU public procurement SIMAP website <http://simap.europa.eu>. If there is uncertainty as to whether or not the contract value may exceed the EU threshold it is strongly recommended that a margin of 10% be allowed, so that if a project estimate is 10% under the EU threshold it should, nevertheless, be advertised in the OJEU.

Tendering procedures for service listed in Annex IIA to the Directive, which includes computer and related services and management consulting services and related services, must satisfy all criteria laid down in the Directive, including publication in the *Official Journal of the European Union* (OJEU). The services specified in Annex IIB to the Directive are subject to a limited number of the Directive's provisions.

The attention of contracting authorities is also drawn to European Commission *Interpretative Communication on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives (2006/C 179/02)* of 24 July 2006, concerning 'below threshold' procurements and the procurement of Annex IIB services. The Commission's guidance contains suggestions on how public authorities should comply with these principles, together with examples of ways to award contracts in a modern, transparent and cost-efficient manner. The guidance also applies to certain services not fully covered by the EU Directives on public procurement.

There is an onus on all contracting authorities to be familiar with the EU Public Procurement legislation and to apply it strictly - failure to do so can expose the contracting authority to severe penalties. The types of procedures allowed for the award of contracts are the open and restricted procedures, the negotiated procedure, which can take place in two forms, i.e. with or without the prior publication of a contract notice, and the competitive dialogue (see below for a description of these procedures). Framework agreements can also be established. Regardless of the procedure adopted and the value of the contract, all tender competitions must be run as a competitive process that respects the principles of transparency, equality of treatment (i.e. non-discrimination) and objectivity and comply with national public procurement policy.

3.2 ADVERTISING AND TIME LIMITS

Access to public sector contracts by smaller economic operators has been improved greatly in recent years by the development of the *eTenders* website <http://www.e-tenders.gov.ie>. In line with Government policy on promoting more vigorous competition for public sector contracts, particularly by small and medium enterprises and for low and medium value public contracts, especially contracts under €100,000, contracting authorities should afford smaller companies much greater opportunity to compete for public sector contracts by advertising public contracts on the *eTenders* web site, which will help ensure that small and medium enterprises are fully aware of the procurement opportunities available to them.

In all cases, the number of tenderers invited to tender must be sufficient to ensure genuine competition. When a public contract is awarded without giving all potentially qualified economic operators an opportunity to offer their services, economic operators are unfairly deprived of the opportunity to tender for business. Furthermore, the contracting authorities are at risk of receiving lower quality and/or more expensive services than could have been obtained through competitive tendering. That is to say, there may be a reduction in overall VfM.

3.2.1 Prior Information Notice

To draw procurement programmes to the attention of potential suppliers and to allow them to compete for contracts on an equal footing, contracting authorities that have aggregate procurement requirements equal to or greater than €750,000 for any product area or category of services are encouraged to publish an annual Prior Information Notice (PIN) in a standard format in the OJEU, or set up a buyer profile, as soon as possible after the beginning of their budgetary year. If a contracting authority publishes a PIN it may exercise the option of shortening the time limit for the receipt of tenders, as provided for by Article 38(4) of Directive 2004/18/EC.

3.2.2 Contract Notice

The contract notice provides the specific details of a contract to be awarded and calls for the submissions of tenders (open procedure), applications to be included in an invitation to tender (restricted procedure), applications to enter into negotiations (negotiated procedure with prior publication) or application to participate in dialogue (competitive dialogue). Where notices are drawn up and transmitted by electronic means the time limits may be reduced as provided for by Article 38 of Directive 2004/18/EC, and also when unrestricted electronic access to all contract documentation is provided. Common Procurement Vocabulary (CPV) codes must be quoted in PINs and contract notices. Standard forms for the submission of notices and details on transmission procedures are available on the SIMAP web site.

3.2.3 Open procedure

In an open procedure all interested service providers and suppliers may submit tenders in response to a published contract notice.

All contracts with an estimated value greater than €50,000 and up to the EU threshold, must be advertised on the *eTenders* web site, and may be supplemented with advertising on other media, if appropriate.

All contracts with an estimated value equal to or greater than the EU threshold must be advertised on the *eTenders* web site and details of the contract, in the required format, advertised in the OJEU and in TED – *Tenders Electronic Daily* - the EU database of procurement contracts

(<http://ted.publications.eu.int/>), and may be supplemented with advertising on other media, if appropriate.

The minimum time limit for the receipt of tenders in an open competition is 52 days from the date on which the contract notice was published. If a prior information notice has been published, this time limit can be cut to 36 days. In no case may the time limit for the receipt of tenders be less than 22 days.

For contracts below €50,000 contracting authorities are strongly recommended to advertise such contracts on the *eTenders* web site and are referred to the advice on advertising such contracts in Department of Finance '*Public Procurement Guidelines Competitive Process*'.

3.2.4 Restricted procedure

A restricted procedure is two stage process. In the first stage, all interested service providers and suppliers may request to participate in the tender competition in response to a published contract notice. The candidates' financial and economic standing and / or professional and technical capability are then assessed against selection criteria that are transparent, objective and laid down in advance. In the second stage, only those candidates that pass the selection criteria are subsequently invited to submit tenders that are assessed against the award criteria.

This allows contracting authorities to restrict the number of candidates that will participate in the award stage. The contract notice must state the number or range of candidates that will be selected to tender. If this is not done, all candidates who pass the selection criteria must be invited to submit tenders.

At the first stage of the process, the advertising rules are the same as in the open procedure, with the notice published on *eTenders*, and in the OJEU and TED if at or above the EU threshold. Where a restricted list of selected candidates has been drawn up following the application of the selection criteria (i.e. at the second stage of the process), the RfT must be sent simultaneously and in writing to all selected candidates.

The time limit for the receipt of applications to participate is 37 days from the date of the contract notice. Following selection, the contracting authority, simultaneously and in writing, invites the selected candidates to submit their tenders. There should be a minimum of 5 candidates. The minimum time limit for the receipt of tenders is 40 days from the date on which the invitation is sent. If a prior information notice has been published, this may be shortened to 36 days. The minimum time limit for the receipt of tenders may not be less than 22 days.

An accelerated form of the restricted procedure may be used in cases of genuine urgency, and the grounds for using the accelerated procedure must be included in the contract notice. Exceptionally and when urgency requires, the contracting authority may set a minimum time limit of 15 days (10 days if the notice is sent electronically) for requests to participate and of 10 days for the receipt of tenders.

The restricted procedure can be used to pre-select candidates who may be invited subsequently to submit tenders in response to future restricted calls whose estimated value is below the EU threshold. For example, if a contracting authority has a well defined and foreseen need for continuing and repetitive external support with a particular professional and technical capacity or for the supply of particular goods or services it could consider holding a call for expressions of

interest to establish a restricted list (or lists for different areas of services / supplies) of candidates that meet its selection criteria. (Tenderers must also pass the exclusion criteria, possess a tax clearance certificate and provide a declaration on conflict of interest). For subsequent contracts, the contracting authority need send the RfTs only to all the candidates on the relevant restricted list (i.e. only those candidates that already meet the contracting authority's selection criteria and, thereby, have the required economic and financial standing and professional and technical capacity need be invited to tender).

3.2.5 Negotiated procedure

A negotiated procedure is where the contracting authority consults the service providers and suppliers of its choice and negotiates with them the terms of the contract. This procedure can be used only in exceptional situations and in compliance with the limited set of circumstances specified in Article 30 (with prior publication of a contract notice) and Article 31 (without prior publication of a contract notice) of Directive 2004/18/EC.

If it is intended to use a negotiated procedure, the justification for doing so must be documented beforehand in the project file and must show that the procurement conforms strictly with both national procurement policy and EU public procurement law. Departments, offices and agencies must also comply with the provisions of Department of Finance '*Guidance Arising from Quigley Report Recommendations*'.

For a negotiated procedure with prior publication the advertising rules are the same as in the open procedure, with the notice published on *eTenders*, and in the OJEU and TED if at or above the EU threshold, for the contracting authority to source suitable candidates with which to negotiate.

In a negotiated procedure with prior publication, the minimum time limit for receipt of requests to participate is 37 days from the date of the contract notice. In cases of extreme urgency, the contracting authority may set a minimum time limit of 15 days (10 days if the notice is sent electronically). The contracting authority, simultaneously and in writing, then invites the selected candidates (a minimum of 3) to negotiate. The invitation must comprise all the contract documents, the deadline for the receipt of the tenders, the address to which the tenders must be sent, the language in which the tenders must be drawn up and the award criteria and their relative weighting.

3.2.6 Competitive dialogue

In particularly complex contracts, if a contracting authority is not able to define the technical solutions to satisfy its requirements, or is not able to specify the legal and/or financial make-up of a project, or where it is considered that the use of the open or restricted procedure will not allow the award of the contract, the contracting authority can consider the use of the competitive dialogue, strictly in accordance with the criteria specified in Article 29 of the Directive 2004/18/EC.

For the competitive dialogue procedure the advertising rules are the same as in the open procedure, with the notice published on *eTenders*, and in the OJEU and TED if at or above the EU threshold.

On publishing a contract notice that includes the award criteria, the minimum time limit for receipt of requests to participate is 37 days. The contracting authority then, simultaneously and in writing, invites the selected candidates (a minimum of 3) to conduct a dialogue with the aim of developing one or more suitable alternatives capable of meeting its requirements, The dialogue may take place in stages and can continue until the solutions, whether technical and/or economic and legal, have been defined. The contracting authority must ensure equal treatment of all candidates, must

not provide information in a discriminatory manner and must protect the confidentiality of information supplied by candidates. At the end of the dialogue, the candidates are requested to submit their final tenders. The contracting authority can then award the contract in accordance with the award criteria and solely on the basis of the most economically advantageous tender.

3.2.7 Framework agreements

Where a contracting authority envisages that it will have an ongoing requirement for a particular type or types of services from economic operators, but where it does not know at the outset the exact delivery times or the detailed requirements for the assignments to be performed, it could consider holding an open or restricted call (advertised in the OJEU if the envisaged maximum value of the contract equals or exceeds the EU threshold) to establish a framework agreement, the duration of which cannot exceed four years, with one or multiple (i.e. at least three) contract holders, up to a maximum value based on specified unit costs, and, subsequently, to 'draw down' individual contracts, based on the terms of the framework agreement. Framework agreements must comply with the conditions of Article 32 of Directive 2004/18/EC.

The contract notice, PIN and any related advertising must be lodged in the project file.

4 REQUEST FOR TENDER (RFT)

When the business case, including the need for hiring external support, has been approved by senior management and the type of tendering procedure agreed, the preparation of a Request for Tenders (RfT) can begin. The preparation of a comprehensive RfT that addresses the contracting authority's requirements, both business and technical, for the project is crucial in selecting the most appropriate economic operator for the project, for its success and in achieving VfM. The RfT must contain the following items:

4.1 ADMINISTRATIVE INFORMATION

The RfT must provide such administrative information as is necessary to allow economic operators to respond to the call, i.e. details on the background to the tender; the scope of the project and the duration of the contract; the type of call (i.e. open, restricted, etc.); a reference to the contract notice (and PIN, if published); the type of contract (i.e. a public service or a public supply contract); the date by which tenders must be submitted and the address to which they should be submitted; the place and date of opening; arrangements for dealing with sub-contractors; details of how to submit a tender; and any additional administrative information requested by the contracting authority. It should also detail the involvement of any third party personnel external to the contracting authority in the project (e.g. the responsibilities of a Peer Review Team).

Tenders may be submitted by groups of service providers, and service providers may employ sub-contractors. If this is the case, contracting authorities must require that a single main contract holder (the 'prime contractor') be specified as the point of contact with the contracting authority; that the prime contractor has responsibility for managing all relations with the other economic operators / sub-contractors; that the contract will be established with the prime contractor and that payments will be made only to the prime contractor who will have responsibility for managing payments to the other economic operators/sub-contractors.

RfTs must ask tenderers to ensure and confirm for the purposes of their tender proposal that they are compliant with all applicable law, including employment and taxation law; that they have regard to statutory terms relating to minimum pay and to legally binding industrial or sectoral agreements; and that the laws of Ireland apply in other matters such as official secrets, data protection and health and safety.

RfTs must state that the selection of a tender does not give rise to any enforceable rights by the successful tenderer and that the contracting authority may cancel the procurement process at any time prior to a contract being entered into and reserves the right to go to tender again.

RfTs must state that responses to invitations to tender are legally binding. If an offer is made and accepted it is not possible for the offer to be withdrawn or for the price of the offer to be modified.

4.2 TAX CLEARANCE CERTIFICATE AND TAX COMPLIANCE

The contract notice or RfT must specify that a current tax clearance certificate, as required by Department of Finance circular 22/95 *Tax Clearance Procedures Public Sector Contracts*, which states that, in the case of all public sector contracts of a value of €6,500 or more (inclusive of VAT) within any 12-month period, the contract holder (and agent as appropriate) must produce either a

valid tax clearance or C2 certificate, that this be produced before a contract can be awarded, and that a contract cannot be awarded to any firm or individual that does not comply with the terms of circular 22/95. Contract notices or RfTs must make clear this absolute requirement.

The RfT must state that non-resident tenderers should apply to the Office of the Revenue Commissioners, Non Resident Tax Clearance Unit, Office of the Collector General, Sarsfield House, Francis Street, Limerick, Ireland; e-mail: nonrestaxclearance@revenue.ie.

A particular VAT regime is applied to payments for consultancy and other services provided from outside the State. For VAT purposes these services are known as Fourth Schedule Services. Departments of State, local authorities and bodies established by statute that receive Fourth Schedule Services may be required to register and account for the VAT on these services. Details regarding relevant services are contained in the Fourth Schedule to the *Value-Added Tax Act 1972* as amended and in *Value Added Tax Information Leaflet No. 1/05*.

4.3 DECLARATION ON CONFLICT OF INTEREST

Contracting authorities, in the contract notice or RfT, must request a declaration from the tenderer that neither the organization submitting the tender nor the personnel proposed to work on the contract nor any relatives thereof have any conflict of interest in connection with the contract and that they will inform the contracting authority without delay if any event or interest could constitute or give rise to a conflict of interest. A conflict of interest is where an interest held by the contract holder, by any member of the contract holder's team working on the contract or any relative of the contract holder or of a member of the contract holder's team could materially influence the contract holder or member of the contract holder's team in their performance of the contract, by reason of the fact that such performance could so affect the interest as to confer on or withhold from the contract holder, member of the contract holder's team or relative a substantial benefit. RfTs must always clearly state that that failure to disclose a conflict of interest may disqualify a tenderer or cause the termination of a contract and entitle the contracting authority to seek remedies, such as costs or compensation for loss. In tenders relating to policy examination or evaluation, tenderers must be asked, in the contract notice or RfT, to provide a declaration of non-alignment with any entities or interests that could compromise objectivity. ("*Interest*" means an interest as specified in the Second Schedule to the *Ethics in Public Office Act 1995*; "*relative*" means a brother, sister, parent or spouse of the person or a child of the person or of the spouse).

4.4 EXCLUSION CRITERIA

Article 45 of Directive 2004/18/EC provides an exhaustive list of the grounds relating to a tenderer's personal situation on which contracting authorities may exclude tenderers from a tender competition without further verification. The RfT must request a statement from tenderers on their personal situation that they are not excluded from participation in the contract for the reasons provided for by paragraphs 1 or 2 of Article 45 of Directive 2004/18/EC and that they will provide to the contracting authority any additional supporting documentation relating to the exclusion criteria that the contracting authority may see fit to request. If required, contracting authorities can demand from tenderers a statement under oath that they are not excluded from participation in the public contract by reason of the conditions provided for by paragraphs 1 and 2 of Article 45 of Directive 2004/18/EC.

4.5 SELECTION CRITERIA

Selection criteria can be specified in the open and restricted procedures and in the negotiated procedure with prior publication. For open procedures, all tenderers that meet the selection criteria have a right to have their tenders evaluated at the award stage. For restricted (and negotiated with prior publication) procedures, contracting authorities may limit the number of tenderers to be invited to tender (or negotiate) based on the selection criteria and must state this in the contract notice.

A contracting authority that wishes to determine which tenderers have the economic and financial standing and / or professional and technical capacity to meet its requirements must specify appropriate selection criteria as provided for by Articles 47 and 48 respectively of Directive 2004/18/EC. Selection criteria must be specified with reference to the minimum levels of ability required for the specific contract and proportionate to its subject.

Where a tenderer's economic and financial standing is being evaluated, the contracting authority should request such financial information (e.g. banker's reference; balance sheets; profit and loss account or extracts thereof for the preceding three years; statements on turnover or on turnover for relevant activities for the preceding three years, etc.), based on the non-exhaustive list provided in Article 47 of Directive 2004/18/EC, as it requires to show that the tenderer can guarantee continuous performance throughout the envisaged lifetime of the contract.

Where a tenderer's professional and technical capacity is being evaluated, the contracting authority must request such information (e.g. a list of the works carried out over the past five years, a list of the main services provided over the past three years, etc.), from the exhaustive list provided in Article 48 of Directive 2004/18/EC, to show that the tenderer possesses the required professional and technical capacity to carry out the contract.

Where particular profiles of technical ability (i.e. educational and professional qualifications) are required, contracting authorities should request copies of the curriculum vitae of the tenderer's proposed project team for evaluation against the required technical profiles. For example, if a contracting authority requires the tenderer's team to be headed by a project manager educated to degree level with a specified number of years' experience of project management or a computer programmer to have a specified number of years' experience of a particular programming language the requirements for such technical ability should be specified as selection criteria, and the received curriculum vitae evaluated against the specified technical profiles. (Ideally, curriculum vitae should be supplied in the standardised European Curriculum Vitae format).

Tenderers must be asked in the RfT to confirm that the project team proposed in the tender is the project team that will work on the project, and, that in the event of being awarded a contract, any changes to the project team will be made only after agreement with the contracting authority.

If a tender is submitted by a group of economic operators or involves subcontractors, each must show that they have the required economic and financial capacity and the professional and technical ability to perform the tasks assigned to them in the tender.

4.6 AWARD CRITERIA

In all procedures, the criteria on which the contracting authority shall base the award of a contract is:

- the lowest price; or
- the most economically advantageous tender, from the viewpoint of the contracting authority.

The most economically advantageous tender can be decided only on objective grounds capable of verification, equally applicable to all tenders and strictly related to the subject-matter of the contract. This includes, for example, quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion, i.e. the criteria used should generate an economic advantage for the contracting authority.

RfTs must inform tenderers of the basis on which their tenders will be assessed, and must, therefore, list the qualitative criteria by which tenders will be evaluated at the award stage, stating the weight each criterion attracts, or, exceptionally, where weightings are not possible, to list the award criteria in descending order of importance. Only the criteria that have been announced in this way can be used to award the winning tender.

Award criteria must be strictly related to the subject-matter of the contract. As a general principle, award criteria should also be devised with regard to VfM objectives and reduction of the whole life cost of the project. Note that ‘value for money’ cannot be specified as the basis for awarding a contract, as contracts can be awarded only on the basis of the lowest price or the most economically advantageous tender.

4.7 PRICE AND DURATION

4.7.1 Price

Fixed price lump-sum contracts are the norm throughout the public sector, and must be applied to all ICT procurements in the civil service and when procuring consultancies. **Tenderers must be asked to provide a firm fixed price in euro ex-VAT for the supply of deliverables / services requested in the tender.** Unit costs must also be provided, in euro ex-VAT, and fixed for the duration of the contract. It must be stated that ALL payments will be made in euro.

Where a project consists of ‘advice and execution’ or ‘design and build’ elements, separate prices must be sought for each element. If project management is likely to be a significant overhead, contracting authorities should ensure it is appropriately attributed to each element.

Contracting authorities should consider specifying that a realistic amount depending on the subject and value of the contract will be retained by the contracting authority until the project is completed, all deliverables formally accepted, and the final report on the project (or an equivalent agreed project closure mechanism) approved and signed off at the appropriate level.

4.7.2 Maximum price contracts

As fixed price lump-sum contracts are the norm throughout the public sector, variable pricing is disapproved of except in exceptional limited circumstances (e.g. where it is the only way of pricing a contract or is a better way to achieve VfM). It must not be used as a remedy for imprecision in the specification of an RfT. Where exceptionally used, a **firm fixed maximum price**, based on events specified in the RfT and the fixed unit costs, up to which the contracting authority will pay,

must be specified in the contract (i.e. *“The contracting authority will pay up to a maximum amount of X euro for the supply of deliverables / provision of services specified in this contract”*).

Where a maximum priced contract is necessary, well-defined procedures, involving a third party if required, for the validation and approval of the variable amounts, based on the fixed unit prices, must be agreed with the tenderer before the contract is signed. Note that even if a third party verifies payment requests, the contracting authority always retains overall responsibility for ensuring payments are correct. If ‘time and materials’ pricing is exceptionally necessary, it must, in all cases, be to a specified fixed maximum amount (i.e. *‘The contracting authority will pay up to a maximum amount of ...’*). RfTs must clearly state that the specification in a contract of a maximum price for the contract is not a commitment to pay the maximum amount and does not place any obligation on the contracting authority to pay this maximum amount.

If unit costs are potentially subject to change during the life of the contract, such foreseen changes in price should be taken into account in estimating the whole life cost of the project at the business case stage, and the price of the tender at the award stage. In all cases, if unit costs are allowed to increase over the estimated life of the project, the basis on which such increases would be permitted must be recorded in the contract and in the project file. Contracts must state that unit costs and other charges cannot be revised except on prior written agreement from the contracting authority, and the basis under which such charges can be revised must be agreed with the contract holder before signature of contract. Where such revisions are permitted, contract holders must be asked to provide 60 working days notice of any requests for revision.

If acceptance of a tender requires a contracting authority to pay ongoing charges (e.g. maintenance or licencing fees) their price must also be furnished together with the basis on which they are calculated.

For ‘design and build’ / ‘advice and execution’ projects, contracting authorities must reserve the right in the contract to cancel the contract if the execution, based on the design or advice received, would exceed the maximum amount allocated for execution in the contract.

If it is intended to proceed by the initial implementation of pilot projects, subsequent stages of the project must advance only on fixed price arrangements based on the cost of the pilot implementations and the fixed unit costs supplied by the tenderer, and where the total cost will not exceed the maximum price of the contract.

As fixed price lump-sum contracts are the norm throughout the public sector, the exceptional use of any maximum price contract must be approved at Assistant Secretary level and noted separately in the department’s annual report to the Department of Finance.

4.7.3 Expenses

In determining the lowest price or most economically advantageous tender, tenderers’ expenses must be included as part of the total cost of the tender. Contracting authorities should be able to ascertain if expenses are necessary for the performance of the contract. The reason for expenses must be specified by the tenderer (e.g. a specified number of visits to decentralised offices, etc.) and should be based on reasonably foreseen circumstances or events specified in the RfT. A maximum amount for expenses must be specified in the contract (i.e. *“The contracting authority will pay up to a maximum amount of X euro in vouched expenses”*), and contracting authorities must ensure that no additional charges for expenses are made in the course of the project.

Tenderers' expenses must not exceed those for civil servants, as specified in the travel and subsistence (T&S) circular current at the time of tender. If required, the RfT could refer to the relevant T&S circular to allow tenderers to prepare a maximum price for expenses. In the wider public service expenses should not exceed equivalent public service rates. The basis for expenses must be specified in the contract, and, if revisions are permitted the contract must state the basis for such revisions and that revisions cannot occur without the prior written agreement of the contracting authority. Contract holders must not incur expenses unless the item is approved in advance by the contracting authority's project manager. Expenses can be approved for payment only where supporting evidence (e.g. receipts, tickets, etc.) is provided and endorsed by the contract holder's project/liaison officer.

For certain professional services, particularly those priced on a *per diem* basis, it is the practice for service providers to furnish quotations inclusive of expenses. While travel and subsistence expenses may be payable for events foreseen in the RfT, no additional expenses for related secretarial and offices services should be payable.

In exceptional circumstances, if it is necessary to exceed variable amounts or expenses specified in the contract, approval must first be obtained at the appropriate level and the reasons recorded in the project file. In no circumstances should exceptional additional expenses or variable items reduce the relative rating of the tender as assessed at the award stage so as to question its status as the lowest price or most economically advantageous tender.

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.

4.8 BUSINESS AND TECHNICAL SPECIFICATION

The RfT must contain a 'Business and Technical Specification', i.e. what the contracting authority wants the contract holder to achieve, based on its business case. This should include a description of the problems that are to be solved, whether of a business or technical nature; the nature of the work to be carried out; the specific tasks to be carried out by the contract holder; the deliverables the contract holder must produce (or a request to the contract holder to propose deliverables that, if implemented, will meet the contracting authority's policy objectives for the project); the reports and the number thereof that the contract holder must produce, etc.

Contracting authorities must be as detailed and specific as possible in drawing up their requirements in the business and technical specification. The level of detail should be such as to enable potential tenderers to understand what is required. If the requirements are not specified precisely enough, the economic operators best positioned to provide a solution may not be attracted to the competition. The more detailed the specification, the less opportunity there is for misunderstandings, the easier it is for tenderers to draw up precise responses and the easier it is for

contracting authorities to evaluate the tenders received. As a general rule, foreseen circumstances that could give rise to expenses should be included in the RfT and form part of the fixed price contract.

A contracting authority should specify the deliverables that it believes, if implemented, will meet its policy objectives for the project. Alternatively, a contracting authority can require tenderers to specify the deliverables that the tenderer believes will meet the contracting authority's business requirements for the project. In the latter case, the requirements should focus on the 'what' to be achieved rather than the detailed 'how' of the requirement. This challenges tenderers to use their specialist knowledge and creativity to show how they can best meet the contracting authority's business and technical requirements. If the contracting authority intends to use a quality review mechanism to approve the deliverables and their price, particularly if this involves external experts, this must be made clear in the RfT.

Where technical standards already exist to which the project must conform (e.g. an organization's IT architecture) compliance with these must be specified. Technical standards should be expressed in compliance with Article 23 of Directive 2004/18/EC. Unless justified by the subject-matter of the contract, proprietary products should not be referenced, and where such reference is justified on an exceptional basis (i.e. to provide a sufficiently precise and intelligible description of the subject matter of the contract) any such reference shall be accompanied by the words '*or equivalent*'.

4.9 CIVIL SERVICE NUMBERS POLICY

Policy on staff numbers in the civil service is a matter for the Government, in the first instance, with the grading levels of staff agreed between the Departments concerned and the Minister for Finance. Certain flexibility in grading is allowed under the Administrative Budget Agreements. Therefore, RfTs for management consultancy or organizational review projects must state explicitly as an absolute requirement that, while such reviews may encompass staffing or organizational issues and may propose organizational change or restructuring, this can occur only within the existing numbers and grades in the Departments or sections reviewed. In all cases Departments must ensure that consultants do not make recommendations on matters that may only be agreed at central level, given the need to avoid creating knock-on pay or grading claims, or staffing demands that contravene government policy or may give rise to industrial relations problems. Departments must have in place procedures to prevent the above happening by prior clearance of the terms of reference with the Department of Finance.

4.10 TERMS AND CONDITIONS

Contracting authorities must state in the RfT the terms and conditions under which they will establish a contract with a successful tenderer, and must inform tenderers in the RfT of the conditions that they will impose in the contract. RfTs must contain a statement that the contracting authority does not bind itself to accept any tender and that any award of a contract will be subject to agreement on the terms and conditions of the contract (see 6. [The Contract](#)). Where an independent peer review will be carried out (see 7.8. [Independent Peer Review](#)) tenders must be informed of this, and the envisaged involvement of any other third parties, in the RfT.

4.10.1 Freedom of Information

The RfT must state that the contracting authority undertakes to use its best endeavours to hold confidential any information provided by a tenderer in response to the RfT, subject to the

contracting authority's obligations under law, including the *Freedom of Information Act 1997*. If a tenderer believes that any of the information supplied by the tenderer in response to the RfT should not be disclosed because of its sensitivity, the tenderer should identify such information and state the reasons for its sensitivity, and that the contracting authority will consult with the tenderer on this sensitive information before making a decision on any Freedom of Information request received; and that the final decision on disclosures rests with the Office of the Information Commissioner.

4.11 TENDERER'S RESPONSE

In their response to the RfT, tenderers must be asked to supply the following items, which must be requested for all projects at or above the EU threshold and the tenderers' responses evaluated under the relevant criteria:

- administrative information including the tenderer's details; details of any subcontractors, the identification of the person on the tenderer's side who will carry overall responsibility for the contract; confirmation of acceptance by the tenderer and any third parties of the conditions of tender described in the RfT, etc.;
- a financial proposal, with prices expressed in euro and ex-VAT, giving a firm fixed price (or a firm fixed maximum price) for the work to be carried out / services provided; the unit prices on which these price is based; the maximum price for expenses; and confirmation from the tenderer that these prices are fixed for the duration of the contract;
- the declaration that the tenderer is not excluded by reason of paragraphs 1 or 2 of Article 45 of Directive 2004/18/EC (i.e. the documentation to attest to the personal situation of the tenderer);
- the tax clearance certificate and the declaration on conflict of interest, and any other mandatory information or documentation requested by the contracting authority;
- the documentation (e.g. financial statements / curriculum vitae, etc.) requested in the RfT to meet the selection criteria and thereby show that the tenderer possesses the required economic and financial standing and / or the professional and technical capacity to carry out the tasks in the tender;
- a technical proposal, i.e. how the tenderer will address the business and technical specification of the RfT. This should address each requirement in the RfT's specification and should propose business and technical solutions, as appropriate to the requirements, issues and problems detailed in the RfT. Tenderers should be asked to provide their responses at the level of detail the tenderer believes is necessary to respond to the RfT's business and technical specification, should elaborate on how the tenderer will address all points in the business and technical specification and provide all the information needed for the contracting authority to assess the tender and to award the contract. If the contracting authority has specified conformance with specific technical standards as part of the required solution the tender must show how the proposed solution will provide such conformance;
- where project management by the contract holder is likely to be a significant component of the project, a draft project management plan that, at a minimum, must show the tasks that will be carried out and by whom (i.e. by the contract holder or by the contracting authority); the

time scale for such tasks; the project management meetings that will be held; an outline work breakdown structure showing the deliverables that will be produced, the timescale for their delivery, and the allocation of work and the respective responsibilities of the contract holder and the contracting authority.

- The project management plan must define precisely, clearly and completely the responsibilities for managing the relationships between the contracting authority and the contract holder. It must describe the project objectives; the deliverables, work packages, etc. that will be produced or services that will be supplied; the activities that will take place to produce the deliverables / services; the identification of key activities; the allocation of responsibility for the activities between the contract holder, sub-contractors (if any) and the involvement and responsibilities of the contracting authority's staff; the quality standards to which the deliverables will conform; the technical standards, if any, to which the deliverables must comply; the schedule of project management meetings and any mid-term review or peer review (if planned); any technical or other informal meetings to review deliverables; a global project time plan showing the planned delivery dates for deliverables (in elapsed time) and any dependencies, assumptions, risks, impediments, constraints or limitations on the project plan. The project organisation, e.g. project board and membership, involvement and responsibilities of outsiders (whether from other business units or bodies external to the contracting authority), review groups, etc. should be detailed and the relationships between the various players defined. The project plan should also include an escalation process by which project problems and other exceptions are taken to progressively higher levels of management attention within both the contract holder's organization and the contracting authority. The criteria for launching the escalation process must also be specified.

The draft project plan must be evaluated to assess the procedures proposed by the tenderer to fulfil its contractual obligations to the contracting authority. Therefore, its assessment must be included as an award criterion in the RfT;

- the quality standards to which the deliverables will be produced and their fitness for purpose measured (if these have not been already specified by the contracting authority);
- details of any methodology the tenderer will employ in implementing the project;
- an analysis by the tenderer of the key risks to the project and what the tenderer proposes should be done to reduce significantly or eliminate them. Tenderers must be asked to address the possible issues that could threaten the successful outcome of the project. This must identify the major risks; assess the probability of their occurrence and possible impact on the project; indicate strategies to manage risks in terms of their prevention and mitigation; and must provide for continuous tracking of project threats;
- a list of deliverables to be supplied. Deliverables should be sub-divided into business deliverables that will meet the contracting authority's policy objectives for the project and project management deliverables that manage, control and monitor the progress of the project together with any deliverables produced by the contract holder's methodology.

The documentation attesting to the tenderer's personal situation and to their professional and economic standing and / or professional and technical capacity will be evaluated against the exclusion and selection criteria. Contracts cannot be awarded without the provision of a tax

clearance certificate and the declaration on conflict of interest. All other requested items must be evaluated against an appropriate award criterion at the award stage of the evaluation.

For projects below the EU threshold, contracting authorities must request the administrative, technical and financial proposals, the declaration on personal situation, the tax clearance certificate and the declaration on conflict of interest, but have discretion on requesting additional items, as proportionate to the project.

4.12 NON-RESPONSIVE TENDERS

Contracting authorities can specify that ‘non-responsive’ tenders will be excluded from consideration under the terms of the award criteria. A non-responsive tender is one that fails to conform in a substantial way with, or deviates in a material way from, the business and technical specifications as set out in the RFT. A material deviation is one that affects in any substantial way the price, scope, quality completion or timing of the proposed contract or which limits in any substantial way the rights of the contracting authority or the tenderer’s obligations under the contract. The RFT should specify that, in these situations, the contracting authority reserves the right to reject without further evaluation any tender determined to be non-responsive. If a contracting authority wishes to evaluate the standard of the tender documentation submitted it could include “*quality, completeness and logical structure of the tender documentation*” as an award criterion.

4.13 REQUESTS FOR CLARIFICATION

Tenderers can request clarification from contracting authorities on the content of the RFT. All such requests and the responses must be sent at least six days before the final date for receipt of tenders to all who have requested the tender documentation.

5 EVALUATION OF TENDERS

5.1 OPENING OF TENDERS

A formal opening of tenders received must take place. At least two officials of the contracting authority (ideally from different business units and with one being the project manager) must open the tenders. If a contracting authority so desires it may invite representatives of the tenderers to the opening. When tenders are opened they must be date stamped and initialled by the opening officials. In particular, the pages containing pricing details must be stamped and initialled by the contracting authority's project manager. Tenders received after the closing date must be returned unopened, with their arrival time recorded. Tenderers cannot submit modifications to their tenders once submitted. The stamped and initialled prices are the prices that must be used in determining the price of the tender.

As the RfT must require tenderers to provide a firm fixed price in euro ex-VAT for the deliverables and services that are the subject of the tender (and / or a firm fixed maximum price in euro ex-VAT up to which the contracting authority will pay for the tender), and if the tender does not provide such a firm fixed price or firm fixed maximum price, the unit costs on which the price is based or the maximum price for expenses, or if prices are not provided in euro and ex-VAT, the tender must be rejected at this stage.

A report on the tenders received, including tenders returned, those present at the opening of the tenders, and details of any tenders rejected and the reasons for the rejection must be produced, signed off at the appropriate level and lodged in the project file.

5.2 EVALUATION TEAM

Contracts can be awarded only after all tenders received have been evaluated by an evaluation team. For all tender competitions with an estimated cost greater than or equal to the EU threshold, the evaluation team must include an evaluator from outside the business unit that is managing the tender competition. For all tender competitions with an estimated cost equal to or greater than €1 million, the evaluation team must include an evaluator from another department/office. ICT-related competitions to procure deliverables or services to be used by a business unit must include evaluators from both the business unit that will use the deliverables and / or services being procured and the contracting authority's IT unit in the evaluation team. (Where not used by any specific business unit (e.g. ICT-related competitions for central or common services) evaluations should normally be carried out by the contracting authority's IT unit). For particularly expensive, complex or strategic ICT projects, CMOD may, if requested and subject to it having relevant expertise available, assist or advise on the development of the business case, the finalisation of the RfT or the evaluation process.

External experts (i.e. non-civil / non-public servants), if used in complex evaluations, can provide advice or recommendations on the technical aspects of the tenders to the civil / public servants who make up the evaluation team or to the contracting authority who will make the decision on the award of the contract. External experts must sign declarations of confidentiality and non-disclosure; comply with any other security or confidentiality requirements of the contracting authority; and must return to the contracting authority all documentation, materials and notes received or made during the evaluation.

For all procurements, the obligations and requirements of the *Civil Service Code of Standards and Behaviour*, in particular sections 13 to 21 ‘Standards of Integrity’ thereof, must be brought to the attention of all civil servants of the Government and of the State who are members of evaluation teams. In the wider public service it would be best practice to follow the code in the absence of equivalent local codes of business conduct. The *Code of Practice for the Governance of State Bodies*, endorsed by the Government in October 2001 and subsequently published by the Department of Finance, states that all state bodies should have written codes of business conduct for directors and employees and that competitive tendering should be the normal procedure in the procurement process of state bodies.

5.3 CLARIFICATIONS

In open and restricted procedures, the European Council and the European Commission have stated that *“in open and restricted procedures all negotiations with candidates or tenderers on fundamental aspects of contracts, variations in which are likely to distort competition, and in particular on prices, shall be ruled out; however, discussions with candidates or tenderers may be held but only for the purpose of clarifying or supplementing the content of their tenders or the requirements of the contracting entities and provided this does not involve discrimination.”*

Contracting authorities, therefore, can request further information from tenderers but only for the purpose of clarifying the content of tenders and provided this does not involve discrimination. If it is intended to clarify the content of a tender the contracting authority should identify beforehand the items in the tender that require clarification, and should record the tenderer’s responses to confirm the clarifications received. Tenderers cannot be allowed to introduce additional information or proposals not already contained in their tenders. In particular, discussion on prices is prohibited.

5.4 EVALUATION AGAINST THE EXCLUSION CRITERIA AND OTHER REQUESTED DOCUMENTATION

If a tender does not contain the statement on the personal situation of the tenderer that the tenderer is not excluded by reason of article 45 of Directive 2004/18/EC, or does not contain other requested information, such as the tax clearance certificate, the declaration on conflict of interest, or any other mandatory information, documentation or declarations, without which a contract cannot be awarded and as requested by the contracting authority in the contract notice or in the RfT, the tender may be rejected at this stage.

If a tenderer has clearly forgotten to supply requested non-price material, contracting authorities have discretion to request the tenderer to supply the missing documentation within a specified time period, which generally should not exceed 10 working days. This decision must be documented in the evaluation report. Any such missing material must be supplied and evaluated before the tenders are further assessed. In no circumstances should the exercise of such discretion by a contracting authority be such as to bestow favouritism or beneficial treatment on a tenderer and must be performed in an objective, transparent and non-discriminatory way.

Contracting authorities should refer to Department of Finance circular 22/95 for procedures on tax clearance and on the production of tax clearance certificates.

5.5 EVALUATION AGAINST THE SELECTION CRITERIA

Tenders that do not pass the selection criteria, if specified in the RfT, must be rejected at this stage and cannot be admitted to the award stage of the evaluation (in an open procedure), placed on the restricted list (in a restricted procedure), invited to negotiate (negotiated procedure with prior publication) or invited to dialogue (competitive dialogue). That is to say, if, after an examination of any requested financial statements (for economic and financial standing) and / or documentation attesting to the tenderer's recent professional experience (for professional capacity) and / or curriculum vitae of the tenderer's proposed team (for technical capacity) the tenderer is deemed not to have the required economic and financial standing and / or the required professional and technical capacity to carry out the work / deliver the services specified in the RfT, then the tender must be rejected.

5.6 EVALUATION AGAINST THE AWARD CRITERIA

Contracting authorities ultimately have a wide margin of discretion in awarding contracts provided the principles of objectivity, non-discrimination and transparency have been observed and there is compliance with both national procurement policy and EU procurement law.

If 'lowest price' is specified as the award criterion the lowest priced tender, compliant with the RfT, must be selected.

If 'most economically advantageous tender' is specified, tenders must be evaluated objectively against each award criterion. Ideally, this should take place by each member of the evaluation team independently awarding a mark to each tender for each award criterion. No other award criteria apart from those specified in the RfT can be used in the award of a tender. The weighting for each award criterion is then applied to the marks. Based on the weighted score of each tender and the tender's price, it is the project manager's responsibility, while respecting the principles of objectivity, transparency and non-discrimination, to decide which tender is the most economically advantageous from the viewpoint of the contracting authority, and, therefore, will be awarded the contract. This decision should be confirmed by the evaluation team.

When evaluating the price of tenders with both initial and future costs, contracting authorities must use an appropriate methodology (e.g. the net present value (NPV) of the initial and future costs) or a standardised price comparison model to arrive at a meaningful comparison price, which is the price that must be used at the award stage. The objective is to use a consistent method to compare the financial proposals of tenders with both initial and future prices. It is not to justify the investment: justification for which should have been carried out at the business case stage, where other evaluation methods (e.g. internal rate of return, cost-benefit ratio, payback period, etc.) may be more appropriate or used in conjunction with NPV. Ideally, the discount rate to be applied and its basis (e.g. the Exchequer's cost of long term borrowing, etc.) should be decided by the contracting authority at business case stage and before the RfT is issued.

5.7 EVALUATION REPORT

When the evaluation is completed, an evaluation report must be drawn up showing the assessment of the tenders against the exclusion, selection and award criteria. Depending on the value of the contract the evaluation report should be addressed to the appropriate responsibility level (i.e. to Principal Officer, Assistant Secretary General, or Accounting Officer) for acceptance and approval.

For contracts awarded on the basis of lowest price the evaluation report must state that the contract was awarded to the lowest price tender, compliant with the requirements of the RfT.

For those contracts that are awarded to the most economically advantageous tender the evaluation report must show the attribution of marks to each tender for each award criterion, the justification for the mark (by the evaluation team collectively or by the individual evaluators), the total marks awarded to each tender, the price of the tender and the award of the tender as the most economically advantageous. The report can also contain any additional commentary deemed essential by the evaluation team, or by individual team members, on the tender competition or on the evaluation process.

For contracts at or above the EU threshold contracting authorities are obliged by EU law to draw up a written report that shall include at least the following:

- the name and address of the contracting authority, the subject and value of the contract;
- the names of the candidates or tenderers admitted and the reasons for their selection;
- the names of the candidates or tenderers rejected and the reasons for their rejection;
- the reasons for the rejection of tenders found to have abnormally low prices;
- the name of the successful tenderer and the reasons for this tender having been selected and, if known, any share of the contract the successful tenderer may intend to subcontract to third parties;
- for negotiated procedures, the circumstances referred to in Articles 30 and 31 of Directive 2004/18/EC that justify the use of these procedures;
- for competitive dialogue, the circumstances referred to in Article 29 of Directive 2004/18/EC that justify the use of these procedures; and
- if a contract could not be awarded, the reasons why the contracting authority decided not to award a contract.

This report, or the main features of it, shall be communicated to the European Commission at its request. The evaluation report, therefore, at a minimum, must also contain this information.

An evaluation report must be prepared for every tender competition and must be lodged in the project file. Contracts must not be awarded until the evaluation report is accepted and signed off at the appropriate level.

In this regard, contracting authorities should note that, consistent with the provisions of the *Freedom of Information Act 1997*, members of the public may now access papers relating to the basis for deciding on the need for external support; the process and reasons for the engagement of a particular firm; and the work undertaken and related papers. Therefore, contracting authorities should note that evaluation reports are potentially available for public disclosure, as allowed for under Freedom of Information legislation.

For all contracts the Accounting Officer must certify annually to the Department of Finance that evaluation reports are available for inspection by the Department of Finance, and, if required, by the Office of the Comptroller and Auditor General.

Tenderers must not be informed of the outcome of the tender competition until the evaluation report has been accepted.

5.8 CONTRACT AWARD NOTICE

A 14 calendar day interval should be allowed between notifying unsuccessful tenderers of the outcome of the tendering procedure and the formal award of contract. For all contracts at or above the EU threshold contracting authorities must submit a contract award notice for publication in the OJEU within 48 days of award of a contract. This notice is the same for open, restricted and negotiated procedures, including negotiated procedures without prior publication of a contract notice. For tenders below the EU threshold a contract award notice should be published on the *eTenders* website.

6 THE CONTRACT

Before the contract holder can start to work on the project a contract (i.e. a public service or public supply contract, as appropriate) must be put in place. Contracting authorities have responsibility for drawing up contracts appropriate to the project and have discretion to include items specific to the contract in addition to those provided below.

Contracting authorities should not underestimate the complexity of preparing detailed terms and conditions of contracts, with legal advice obtained, if necessary. In large / complex projects it would be prudent for contracting authorities to obtain independent advice on the contract from the Office of the Chief State Solicitor or a legal adviser. If a contracting authority has a standard contract that the successful tenderer will be required to sign, a statement to this effect and a draft contract must be provided in the RfT. If it is intended to sign the contract holder's terms and conditions these should be evaluated to ensure they cover the issues listed hereafter and that the contracting authority does not assume any additional risk. If necessary, the contracting authority should include an addendum to protect its interests or can have the contract holder's terms and the conditions vetted by the Office of the Chief State Solicitor or by a legal adviser.

The contract must make clear the subject, scope and duration of the contract with no room for ambiguities and comprises the general and specific terms of the contract; the request for tenders; the contract holder's tender (including the curriculum vitae of the contract holder's team); the acceptance letter; and all declarations provided and signed by the contract holder. It must also provide for the annexation of the project management plan to the contract.

Under no circumstances may any external support personnel (including consultants) be assigned to work outside of the strict terms of reference of the relevant contract. In this context, particular care must be taken to ensure that consultants and other external support personnel are not deployed on normal civil service work or to compensate for staff vacancies, unless specific approval in each instance has been obtained from the Department of Finance and subject to any restrictions that may be imposed on their performance of certain tasks.

6.1 SPECIFIC CONDITIONS

The contract must state the subject, scope, duration and price of the contract, and any other conditions specific to the contract that the contracting authority may wish to impose on the contract holder.

6.2 FINANCIAL CONDITIONS

The contract must provide a clear and unequivocal statement that it is a fixed price contract (or a contract for which the contracting authority will pay up to a fixed maximum price based on the fixed unit prices in the contract holder's tender). It must state the fixed price (or the fixed maximum price up to which the contracting authority will pay) of the contract, the fixed unit prices, and the maximum price payable for vouched expenses; with all prices expressed in euro ex-VAT. These prices must be the prices provided by the contract holder in the tender.

6.3 DELIVERABLES

In all cases, the contract must specify precisely:

- the tasks to be carried out by the contract holder;
-
- the specific deliverables to be produced and / or services to be delivered by the contract holder; and
- the schedule for their delivery;

all of which are subject to acceptance by the contracting authority.

In relation to deliverables, the contract must also provide:

- the contracting authority's procedures for the acceptance of deliverables / services;
- a statement confirming that the contracting authority is the exclusive owner of the deliverables and of all titles, rights and interests in and to the deliverables, including any associated intellectual property rights and copyrights on acceptance and payment for the deliverables;
- a statement that the contract holder shall not acquire any rights in products, materials or methodologies proprietary to the contracting authority;
- the circumstances under which the contracting authority can terminate the contract;
- the terms (e.g. transferability, exclusivity, etc.) for the use in the project of any proprietary software, licences, etc. (if any) owned or held by the contract holder or by any third parties involved in the contract;
- a list of the documentation to be provided by the contract holder and the period within which it will be provided;
- and the technical and quality standards to which the deliverables must conform.

6.4 PAYMENTS

The contract should specify:

- the payment schedule setting out the deliverables required for each stage of payment;
- details of the contracting authority's procedures for making payments, which should include a statement that, where a tax clearance certificate expires within the course of the contract, the contracting authority reserves the right to seek a renewed certificate and that all payments under the contract will be conditional on the contract holder being in possession of a valid tax clearance certificate at all times;
- that a prime contractor must retain and provide to the contracting authority the tax reference numbers for any sub-contractors;

- that for ‘advice and execution’ / ‘design and build’ contracts, the contractor should present requests for payment so as to charge appropriately and separately for the advice and execution elements and that the contracting authority reserves the right to cancel the contract if the execution based on the advice received would exceed the maximum price of the contract;
- for a project being implemented by way of pilot projects, that subsequent stages (if any) of the project will be priced on the cost of the pilot implementations and the fixed unit costs supplied by the contract holder and that the contracting authority reserves the right not to proceed where the total cost will exceed the maximum price of the contract;
- that professional services withholding tax will be deducted at the standard rate for professional services;
- where it is intended to use a third party to verify the contract holder’s payment requests, the contracting authority’s procedures for the verification of the payment requests including the involvement of the third party;
- that the contracting authority retains the right to withhold payments where a contract holder has failed to meet his/her contractual obligations in relation to the provisions of goods / delivery of services to the agreed quality levels;
- that payments for deliverables / services are on written acceptance;
- the contracting authority’s procedures for the acceptance and reimbursement of expenses;
- that the provisions of the Prompt Payment of Accounts Act 1997 shall apply in regard to all invoicing matters.

6.5 OBLIGATIONS OF THE CONTRACT HOLDER

Contracts must include the contract holder’s declaration that it is not disqualified in any way from participation in the contract for the reasons provided for by paragraphs 1 or 2 of Article 45 of Directive 2004/18/EC (if required, contracting authorities can demand from contract holders a statement under oath that they are not excluded from participation in the public contract by reason of the conditions provided for by paragraphs 1 and 2 of Article 45 of Directive 2004/18/EC); a declaration of confidentiality and non-disclosure by the contract holder that the contract holder will not make use of or divulge to third parties any information or documents obtained in work resulting from the performance of the contract; a declaration on conflict of interest and / or a declaration of non-alignment with any entities or interests that could compromise the contract holder’s objectivity (if relevant to the subject of the contract); and a requirement that the contract holder’s staff working on the project will accept and comply with all local security arrangements deemed necessary by the contracting authority.

The contract must provide that the contract holder will have responsibility for the supervision of the professional conduct and behaviour of its personnel and of any subcontractors assigned to work on the project; details of the liability insurance of the contract holder and sub-contractors; the liability of the contract holder for the performance of sub-contractors; and a requirement that the contract

holder will work with any other economic operators or third parties where the contracting authority deems such working arrangements reasonably necessary to the contract.

If necessary, the contract can require all of the contract holder's staff assigned to or providing any part of the deliverables or services that are the subject of the contract to sign any documentation necessitated by the *Official Secrets Act 1963* or any other declarations in relation to confidentiality deemed necessary by the contracting authority before commencing work on the contract; and / or that such staff will agree to security clearances by the Garda Síochaná where deemed necessary by the contracting authority and where related to the subject of the contract. All declarations must be signed and dated.

Where the contracting authority has specified professional and technical capacity as a selection criteria, the contract must state that the personnel allocated by the contract holder to work on the project will be the personnel whose curriculum vitae were provided in the contract holder's tender; in the event the contract holder wishes to change the personnel that this cannot occur unless the curriculum vitae of the substitute personnel (who must have equivalent professional and technical capacity) are accepted by the contracting authority; and that no change of personnel working on the project can occur without the contracting authority's agreement.

6.6 GENERAL CONDITIONS

In all cases, the contract must require contract holders to produce a final report showing that the contract was carried out as specified, and providing a summary of the work carried out by the contract holder, showing that the required deliverables were produced and when, and that they were accepted by the contracting authority.

As the project management plan will not be finalised and agreed until the initial project inception meeting has been held, provision should be made in the contract for the inclusion as annex to the contract of the finalised project management plan.

The contract should provide:

- where a contract provides for extension, that extension cannot occur without re-tendering where the cost of the extension is more than 50% of the original contract price or exceeds €250,000, whichever is the lower;
- for phased projects, 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;
- for 'design and build' / 'advice and execution' contracts, that the contracting authority reserves the right to cancel the build / execution phase, if the execution, based on the design or advice received, would exceed the maximum amount allocated for execution;
- that the contract does not confer either directly or by default any rights on any of the contract holder's team that would normally be associated with an employee of the contracting authority;
- where it is planned that an independent peer review (see 7.8 [Independent Peer Review](#)) or a mid-term review using external support (see [7.5 Mid-term Review](#)) will take place, a

- statement requiring the contract holder to cooperate with the review process;
- for framework agreements, that the signing of the framework agreement does not commit the contracting authority to make any contracts or purchase any deliverables or services under the framework agreement;
 - for project change, that any request for project change made by the contracting authority does not commit the contracting authority to purchase any proposal made in response by the contract holder and that all such proposals must be based on the unit costs stated in the contract;
 - the obligations of the contract holder in cases of contract termination;
 - the contracting authority's procedures for dispute resolution;
 - that the contracting authority is not responsible in any way for any indirect or consequential loss of any kind of the contract holder even if the contracting authority has been advised of such a possibility;
 - the respective liability or non-liability of the contracting authority and contract holder in cases of *force majeure*;
 - the contracting authority's procedures for amending the contract;
 - any other general conditions that the contracting authority may wish to impose on contract holders;
 - that the contract shall be governed by the national law of Ireland and subject to the exclusive jurisdiction of the Courts of Ireland.

6.7 ANNEXES

Provision should be made for the following to be annexed to the contract: the request for tenders; the contract holder's tender; the acceptance letter; all declarations signed by the contract holder; the contract holder's tax clearance certificate; the project management plan; all amendments to the contract; all orders for specific services / deliverables.

The letter of acceptance / the contract / order(s) for deliverables and services must be lodged in the project file.

6.8 RECORDING OF CONTRACTS AND REPORTING ARRANGEMENTS

For Government departments and offices the sanctioning arrangements require the provision of project impact statements for all proposed projects and must include a project descriptions, costs and expected timescales.

The sanctioning arrangements for ICT expenditures funded from voted moneys require departments and agencies to supply yearly to the Department of Finance:

- an annual statement on ICT-related expenditure under a number of categories (including ICT-related consultancy) and, for each new business project, a succinct statement of expected impacts and the lifetime costs;
- a statement of strategies for the management of information, computer applications and technical infrastructures. Departments, offices and agencies must keep these strategies up to date with the updates supplied to the Department of Finance.

The Department of Finance hosts a website <http://www.consultexp.gov.ie> for the purposes of disseminating information to Departments / Offices on the use of external consultants. The central database is available for reference by any Department / Office involved in hiring consultants. Access passwords may be obtained from Vote Control Section, Department of Finance.

Departments / Offices are required to:

- (i) maintain computer registers of their consultancy contracts;**
- (ii) transfer the information contained therein to the central database.**

Failure to comply with this absolute requirement may be regarded as a breach of a department's Administrative Budget agreement.

These reporting requirements relate to all expenditure on consultancy, not just that charged to the Administrative Budget. Each Department / Office must ensure that personnel dealing with expenditure on consultancy arising from the Programme side of their Vote are aware of and comply with these reporting requirements, comply with these guidelines and both national and EU public procurement law, maintain the documentation specified herein and hold all such files for inspection, if required.

7 MANAGING THE CONTRACT

7.1 MANAGEMENT OF CONTRACT HOLDERS

Passive supervision of contract holders does not constitute project management. Contracting authorities must be pro-active to ensure that the expected business benefits are realised and that VfM is achieved. Contracting authorities must set up a contract management structure appropriate to the value and complexity of the contract being managed. As contracts are not self-managing, contracting authorities need to allocate sufficient resources to manage contracts, with a nominated staff member as project manager, responsible for the management of the contract holders, and the involvement of the appropriate stakeholders (e.g. the business, technical, and user assurance coordinators). In the majority of cases, the nominated project manager, for any major project, will be freed up from certain routine responsibilities and this should be formally noted at the appropriate management level in the contracting authority.

In the course of a contract, the work of core civil servants must not be allocated to contract holders, unless this is the subject of a specific contract.

7.2 PROJECT INCEPTION MEETING

All contracts must start with a formal project inception meeting that will, *inter alia*, review and confirm the outline project management plan that the contract holder was asked to supply as part of their proposal; confirm working procedures including procedures for the approval of payments; and confirm the contract holder's project team.

In addition, each project must have a formal project closure mechanism agreed at project inception between the contracting authority and the contract holder.

The contracting authority must provide the contract holder with the name and contact details of the contracting authority's staff member who will act as project manager and any others who will have the duty of acting as official contact(s) with contract holder for the purposes of the contract. The contracting authority must also tell the contract holder its procedures for the formal acceptance of project deliverables and for the approval of payments, which can only be made on acceptance of deliverables or services.

The project management plan is the first deliverable for any project, and must be finalized at the project inception meeting. It must be of sufficient detail to enable the contracting authority to ensure that all activities, described in the plan, are performed and that the deliverables / services requested are referenced therein. The plan must be approved by the contracting authority at the project inception meeting and, on acceptance, must be annexed to the contract. The plan must be updated whenever required during the duration of the contract, with all updates approved by the contracting authority. The agreed project plan must be annexed to the contract.

The contracting authority must confirm at the project inception meeting that the contract holder's team is the team proposed by the contract holder in its tender and the assignment of the personnel to the provision of deliverables / services. It must also agree with the contract holder change management procedures to control, in a defined procedure, all changes to project plans, specifications, etc.

7.3 PROJECT REVIEW MEETINGS

Project review meetings, to review progress to date against the project plan, must take place on a schedule (e.g. monthly or quarterly review, *ad hoc* after an exceptional event, etc.) previously agreed and written in the contract. Each project must have a project inception meeting to launch the project, agree the project plan, etc. and a finalization meeting to close the project. Each meeting must be minuted by the contracting authority and the minutes agreed with the contract holder. If contract holders are to provide progress-to-date or other interim reports at project review meetings this should be specified in the RfT and included in the contract. If the deliverables / services are broken down into workpackages / terminal elements, etc. contracting authorities should formally order the start of work on each individual workpackage and formally close off each work package when its deliverables / services have been accepted and payment approved. No deliverable / service should be accepted or payment authorised unless its acceptance is formally agreed and minuted at a project review meeting.

Each project review meeting must address the current status of risks / threats to the project and should put in place whatever is necessary to mitigate and manage all risks. Even if the contract holder has not been required to produce a separate risk management plan the risks will have already been identified by the contracting authority in the business case and by the contract holder in their tender and / or project management plan. All new risks identified in the course of the project and the likelihood of their impact must be assessed and appropriate countermeasures agreed.

Particular care should be taken to ensure that objectivity is not compromised where contractors are examining and / or making recommendations in a policy environment.

The agreed and signed minutes of project review meetings and the formal acceptance of deliverables must be recorded in the project file. A standard project template must be used to monitor progress and to report at meetings. A draft is available from the IT Control section of CMOD.

7.4 CHANGE MANAGEMENT PROCEDURES

Change management is an integral part of good project management. Change management procedures must be put in place to control project change. Project change must not occur on an informal basis. Each change must be the subject of a request for the change from the contracting authority to the contract holder and a formal written response from the contract holder. Responses must be priced on the unit costs specified in the contract. Each time a project change occurs the contract must be appropriately modified to reflect the change. Change control procedures must ensure that a fixed price or maximum price contract cannot become, in effect, a variable priced contract on a 'time and materials' basis, due to the contracting authority requesting, or the contract holder proposing, multiple incremental changes to the specification. If this were to occur, the business case has probably not been stated correctly or the technical specifications were not drawn up correctly or an inadequate response received from the contract holder. Contracting authorities must ensure that project implementation does not become a cycle of upgrades, new functionality, etc. that was not in the original specification or the contract holder's tender. If this occurs a mid-term review (see 7.5 [Mid-term review](#)) on the future of the project must take place.

In change management procedures, contracting authorities must ensure that no extension of a service contract without tendering occurs if the extension is more than 50% of the original contract or exceeds €250,000, whichever is the lower.

All requests for change and the contract holder's response must be lodged in the project file.

7.5 MID-TERM REVIEW

All projects with a budget above €1 million or with an estimated duration of 1 year or more must include a mid-term review in their project management. It is strongly recommended that mid-term reviews also take place in contracts of lower value or shorter duration. A mid-term review is not a review of the objectives or the need for the project. It is to allow the project team to take stock and to review progress to date against the project plan, and expenditure to date against the budget, and to confirm that the project will be delivered on schedule and / or on budget. The mid-term review can be carried out either when approximately half the project schedule has elapsed or when approximately half the budget is consumed. A mid-term review must produce a report showing the actual achievement of deliverables against the project plan and expenditure to date against foreseen costs, and conclusions must be drawn. For most projects (i.e. those proceeding on schedule and on budget) the mid-term review can be part of normal project management procedures. However, if milestones are not being achieved on schedule, if deliverables are not meeting quality objectives or if funds are being spent at a faster than originally envisaged, a mid-term review, using external support if necessary, should be carried out earlier in the project. In this case the review must also address the specific issues that are causing serious deviations from the project plan and / or budget and must produce firm costed proposals for project recovery, with these to be included in the review report.

If the mid-term review considers that revisions may be necessary to the contract, these should be specified in detail in the report, together with explanations and estimated costs. If contract revisions, refocusing of the project or contract cancellation is proposed, under no circumstances should these be acted upon until the report is signed off by the Accounting Officer, and after such consultation with the Department of Finance and the Office of the Chief State Solicitor (for contract issues) as is necessary.

7.6 FINAL REPORT

All contracts for external support must produce a final report as a deliverable. This must show the progress of the project against the project plan; the dates the deliverables were accepted; the payments made to the contract holders; details of any problems that occurred and how they were solved, etc.; details of the implementation of the project's deliverables and how they met or did not meet the contracting authority's policy objectives for the project. The payment schedule to the contract holder should be structured so that the final payment to the contract holder is not made until the final report is accepted.

All project management reports, including the mid-term review, the independent peer review, the large contract quarterly report and the final report must be addressed to the appropriate level, signed off and be lodged in the project file.

8 PROJECT CLOSURE

As stated above, each project must have a formal project closure mechanism agreed at project inception. Typically, project closure will be achieved by the contracting authority accepting from the contract holder the final report that provides a summary of the project; the deliverables produced; a statement that all deliverables / workpackages that were the subject of the contract were delivered; the schedule at which they were produced; confirmation of the acceptance of the deliverables by the contracting authority; a schedule of the payments made; any deviations from the project plan or problems encountered and how they were addressed, etc. The contract holder must confirm that it has returned to the contracting authority all material relating to the subject of the contract in its possession and must return or destroy any copies, reproductions or renditions thereof and must, if the contracting authority so requires, provide a declaration in writing that such action has been completed. After project closure, any retained payments can be released.

8.1 INDEPENDENT PEER REVIEW

For Government departments, offices and agencies, all ICT projects including related work items and related projects with a contract value exceeding €5 million, or where the project is likely to impact significantly on the resources of the contracting authority, must be subject to an independent peer review.

The peer review process will focus in particular on the preparation of good business cases; affordability within the approved budget for the contracting authority; detailed planning; strong governance arrangements; the selection of the appropriate business solution; ongoing project progress; the capacity in ICT and in operational areas relating to the project; and in general on Government Initiatives on achieving VfM. The review will apply over the whole lifecycle of the project and the persons conducting the review, which may involve the use of external support, will be independent of the project teams.

The peer review is carried out at key decision points (preliminary business case assessment, detailed assessment, pre-tender, post-tender, and project close-out) by a team of experienced people external to the Project Board and the organization. The process will particularly focus on examining the preparation of good business cases; cost benefit analysis; affordability within the approved budget for the organization; detailed planning; and the governance arrangements etc.

For each project subjected to the process, peer review teams will be selected by the sponsoring department, office or agency. These selections are subject to agreement with CMOD. It is envisaged that such review teams will include people with relevant experience from both the public and private sectors.

The peer review process is an additional safeguard in the development and implementation of ICT projects and does not in any way override the accountability arrangement in place within contracting authorities. It is envisaged that reviews will be carried out for all projects where the development and roll out costs exceed €5 million or where the project would be likely to stretch the resources of the sponsoring department, office or agency.

As well as developing and agreeing the process with departments, offices and agencies, CMOD coordinates and administers the Peer Review Process, which includes:

- providing a panel of peer reviewers to sponsoring organizations;
- selecting the number and type of projects to be peer reviewed;
- agreeing the composition of peer review teams;
- considering the peer review team's findings and the sponsoring organization's consideration of these findings for each stage of the Peer Review Process before making and issuing any final decision regarding the project;
- maintaining a web site where Peer Review Findings will be placed in the public domain.

8.2 REPORTING ON CONTRACTS

For all capital projects with a cost in excess of €30 million and for all ICT, consultancy and other projects with a cost in excess of €5 million, departments and agencies must furnish a separate progress report, on a quarterly basis, to the Department's MAC for departmental projects, to the Management Board for agencies and then to the relevant Minister. These reports may be subject to inspection by the Department of Finance. There is also an additional level of internal reporting from departments to the Department of Finance for projects with costs between €5 million and €30 million, between €2.5 million and €5 million, between €1 million and €2.5 million and those less than €1 million.

As part of their annual capital envelope, departments with capital projects with a cost in excess of €30 million must furnish a report in a format that shows, for these projects, the outputs against contract timescales and budgets to the Department of Finance and in their Annual Report on their Statement of Strategy.

All departments must furnish annually to the Department of Finance a report on the ICT projects in their ICT strategy statement and must publish progress on Peer Reviews of major ICT projects on a Department of Finance website.

8.3 BENEFITS REALIZATION & BUSINESS OUTCOMES

The final report is simply a statement of the progress and completion of the project. It does not say that the deliverables have actually been used as envisaged in the business case or that the envisaged benefits actually accrued to the contracting authority. The full business benefits of the project to the contracting authority are unlikely to be achieved unless a benefits management strategy is put in place to ensure the deliverables achieve the contracting authority's policy objectives for the project and that the benefits of the policy objectives to the contracting authority are achieved. Simply put, the production of deliverables, even if on budget and on schedule, will be unlikely to achieve the expected benefits unless the contracting authority works at their achievement, and, unless the foreseen benefits are realised and value extracted thereby, VfM will not be achieved. This is particularly true where the benefits are not subject to an easily quantifiable metric or direct financial measurement. Also, this should not be seen as a once-off process, as benefits must continue to be realised in the future and VfM maximised thereby.

As a matter of good practice, departments/offices will be expected to put in place formal arrangements to ensure that all projects with a cost equal to or in excess of €1 million are subject to a post-implementation review, carried out within one year of project completion (with external support in necessary) to determine if the benefits of the project have been achieved as envisaged, that the contracting authority is extracting the maximum value from the deliverables of the project. Such a review should also consider if there are lessons to be learned for the commissioning of future projects.

ANNEX 1: PROJECT FILE

At a minimum the project file must be registered, allocated an official reference number (i.e. An Uimhir) and contain:

- a record of the meeting at which it was decided to engage external support and the reasons justifying this decision;
- the business case;
- the cost benefit analysis (if performed);
- all correspondence with the Department of Finance;
- the contract notice;
- all advertising related to the tender;
- the Request for Tenders;
- all clarifications sent to those who requested the tenders;
- the report of the opening of the tenders;
- the winning tender. (Unsuccessful tenders should be archived together with a copy of the RfT, the contract notice and the evaluation report);
- the evaluation report;
- the acceptance by senior management of the evaluation team's report;
- the acceptance letter to the successful tenderer informing of the result of the tender competition;
- the letters to the unsuccessful tenderers;
- the contract award notices;
- the contract;
- the project management plan (including the risk assessment);
- the minutes of all project management meetings (including the project inception meeting);
- all orders to the contract holder for workpackages / services;
- all requests / responses for project change;

- for framework agreements all correspondence, including orders, relating to individual contracts / draw downs. (One file should be opened for the agreement and individual project files set up for each contract / draw down established under the framework);
- all requests for payment by the contract holder;
- all requests for expenses, supporting documentation and vouched expense claims from the contract holder;
- all acceptance notes for deliverables and services;
- all acceptance notes for expenses;
- all correspondence with the contract holder. E-mails should be recorded in a specific folder, subject to archive, on a network drive. Important e-mails should be printed down, initialled, and the hard copies stored in the project file;
- all circular 16/97 progress reports;
- the reports of any mid-term or peer reviews;
- the large contracts quarterly review reports and, if relevant, such other reports as are mentioned in 7.9 [Reporting On Contracts](#);
- the final report;
- the post-implementation review or reviews/reports by third parties.

ANNEX 2: REFERENCE

Government Decision S360/01/01/002 of 11 Deireadh Fómhair, 2005

Achieving Value for Money in Public Expenditure, Mr Brian Cowen T.D., Minister for Finance, 20 October 2005

Department of Finance letter of 25 January 2006 to Secretaries General concerning the Government Decision of 11 October 2005, in regard to management of ICT projects and consultants, and the announcement of the Minister for Finance of additional general measures to secure better value for money from public expenditure

Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of the procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134/114)

European Commission Interpretative Communication on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives (2006/C 179/02) of 24 July 2006

Statement of the Council and the Commission re Article 20 of Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ No L 111, 30.4.94)

Additional procedures to apply to certain consultancies and procurements relating to proposed consultancy (or other services) comprising a significant element of direct service to a Minister or Minister of State, Department of the Taoiseach, February 2005

An inquiry into certain matters in relation to procurement as requested by the Taoiseach, Mr. Bertie Ahern, T.D., (*The Quigley Report*), January 2005

Guidance arising from the Quigley Report Recommendations, Department of Finance, September 2005

Civil Service Code of Standards and Behaviour, Standards in Public Office Commission, 2004

Public Procurement Guidelines Competitive Process, Department of Finance, 2004

Circular 16/97 Delegation Arrangements for IT Related Expenditure (Including Office Machinery), Department of Finance

Circular 16/97 Progress Report Template, IT Control, CMOD, Department of Finance

Circular 22/95 Tax Clearance Procedures Public Sector Contracts, Department of Finance

Value Added Tax Information Leaflet No. 1/05 Fourth Schedule Services, Office of the Revenue Commissioners, 2005

Guide to Professional Services Withholding Tax, Office of the Revenue Commissioners

European standardised curriculum vitae format: <http://europass.cedefop.eu.int/>

Guidelines for the Appraisal and Management of Capital Expenditure Proposals in the Public Sector, Department of Finance, February 2005

Value for Money Special Reports, Office of the Comptroller and Auditor General

Code of Practice for the Governance of State Bodies, Department of Finance, 2001

Report of the Working Group on the Accountability of Secretaries General and Accounting Officers, Department of Finance, July 2002

FOI & Public Procurement, FOI CPU Notice No. 9, Department of Finance

Buying Green - a handbook on environmental public procurement, European Commission, 2004

Guidance Note on Engaging Advertising, Public Relations and Creative Design Services, Government Contracts Committee, 2003