



# **Table of Contents**

1.0	VERSION CONTROL	6
2.0	INTRODUCTION	7
3.0	KEY PRINCIPLES	8
4.0	THRESHOLDS	9
5.0	PROCUREMENT PROCEDURE – SUPPLIES & SERVICES	10
5.2	Writing the specification	11
5.3	Estimating cost	12
5.4	Securing approvals and funding	12
5.5	Determining the best procurement strategy	12
5.6	Deciding on the Procurement Procedure to be followed	12
5.7	Preparing your Request for Tender (RFT)	13
5.7	•	13
5.7 5.7	•	14
5. <i>1</i> 5.7		14 15
5.1	.4 Award Officia	13
5.8	Allowing sufficient time for submission of tenders	15
5.9	Issuing tender documents	15
5.10	Receipting and opening tenders	16
5.11	Clarifying tenders	16
5.12	Evaluating tenders	17
5.1	2.1 Abnormally Low Tenders	17
	2.2 Scoring Tenders	18
5.1	2.3 Tender Evaluation Report	18
5.13	Contract Approval and Notification of Result	18
5.14	Debriefing Unsuccessful Tenderers	19
5.15	Tax Clearance	19
5.16	Awarding the contract	19
5.17	Publishing a contract award notice	20
5.18	Managing the contract	20
6.0	PROCUREMENT OF CONSULTANCY SERVICES IN WEXFORD CO.	
COL	JNCIL	20
6.1	Distinguishing between Contractor, Service Provider and Consultant	20
6	S.1.1 Consultancy	21
	S.1.2 A Contractor	21
	S.1.3 An External Service Provider	21
6.2	,	21
6.3		22
6.4		22
6.5	Management of Consultancies.	22



6.6	Project Result Evaluation	23
7.0	PROCUREMENT PROCEDURE - WORKS	23
8.0	CONTRACT MANAGEMENT	24
	Contract Lifecycle	24
	Principles of Good Contract Management	24
	Contract Planning Managing the Contract	25 25
	Review and Evaluation	25 25
9.0	CATEGORY MANAGEMENT	27
10.0	FRAMEWORK AGREEMENTS AND APPROVED LISTS/PANELS	27
	ramework Agreements	27
	.1 OGP Frameworks	28
10.1	.2 Awarding a framework	28
10.2 P	anels/Approved Lists	28
11.0	QUOTATIONS/TENDERING FOR GOODS & SERVICES	29
	olicies	29
11.1		29
11.1		29
11.1 11.1	, ,	30
11.1		30 30
11.1		30
11.1		30
11.1		31
11.1	.10 Maintaining Records	31
11.1	.11 Guidelines for advertising tenders	31
11.1	.12 Acceptance of Tenders	32
12.0	ORDERING OF GOODS & SERVICES	32
12.1 P	olicies	32
12.2	Procedures – Ordering of Goods & Services	33
12.2		33
12.2 12.2		34 34
12.2		34 34
12.2		34
12.2	,	34
	2.2.6.1 Items from the supplygov ie (Supplies and Services)	34

Printed on 20/12/2018 09:57



12.2.6.2 Items from supplygov.ie (Plant and Machinery)	35
12.2.6.3 Items from the Fuel Tender List	35
12.2.6.4 Other	35
12.2.7 Macadam Works Tenders	35
12.2.8 Payment of Housing Grants under Sub Service A09	35
12.2.9 Low Value Purchasing Cards/Business Cards	35
13.0 RECEIVING OF GOODS & SERVICES	36
13.1 Policies	36
13.2 Procedures – Receiving Goods & Services	36
14.0 PAYING FOR GOODS & SERVICES	36
14.1 Policies	36
14.2 Procedures	37
15.0 TYPES OF PROCEDURES	38
15.1 Open Procedure	38
15.2 Restricted Procedure	39
15.3 Competitive Dialogue	40
15.4 Panels/Approved Lists	41
15.5 Timescales for tender process	41
16.0 SPECIFIC CONSIDERATIONS	42
16.1 Taxation Issues	42
16.1.1 Taxation Liability	42
16.1.2 Tax Clearance Certificates	42
16.1.3 Sub Contractors Tax/Relevant Contracts Tax (RCT)	42
16.1.4 Professional Services Withholding Tax (PSWT) What is PSWT?	43 43
Rate of PSWT to be deducted	43
From what payments is PSWT deducted	43
Calculating the PSWT deduction	43
16.2 Value Added Tax (VAT)	44
16.2.1 VAT Reverse Charge/Self Accounting	44
16.2.2 Reverse Charge/Self-accounting Purchases from abroad	44
16.2.3 Reverse Charge/Self Accounting – Sub Contractors	44
17.0 ONLINE PROCUREMENT TOOLS - WWW.SUPPLYGOV.IE	45
17.1 Requests for Tender (RFT)	45
17.2 Requests for Quotation (RFQ)	45

4



Categories of supplies/works/services available to us for immediate quotation via supplygov.ie include the following:	46
APPENDICES	48
Appendix A – Prompt Payment of Accounts Act	49
Appendix B – Procedure for Receipt of Tenders in Wexford Co. Council	50
Appendix C - Freedom of Information	51
Appendix D - Guidelines on Record Keeping	52
Appendix E - Fourth Schedule Services	53
Appendix F - Implications of the EU "Remedies Directive"	54
Appendix G - Other Legislative Considerations	57
Disability Act 2005	57
Safety, Health and Welfare at Work Act, 2005	57
Data Protection	57
Equal Status	58
WEEE Regulations	58
Green Procurement	58



# 1.0 Version Control

Due to the nature of these policies and procedures, all amendments will be version controlled and all previous copies of the document in PDF format will be retained for future use.

Date	Version Issued	Issued By	Amendments to previous version
May 2016	Redeveloped Document Draft 1.0 - for approval	The Procurement Unit, Wexford Co. Council	Significant redevelopment of original document Version 1.0 Aug 2010, following review by Procurement Officer
Feb 2017	Amendments from review group incorporated Version 2.0 Feb 2017	The Procurement Unit, Wexford Co. Council	Multiple amendments to document following review by working group
Quarter 2 2017	Amendments to previous Version	The Procurement Unit, Wexford Co. Council	Correction of incorrect link on section 6.0.
Feb 2018	Amendment to Version 2.1	The Procurement Unit, Wexford County Council	Updated EU Thresholds form 1 January, 2018 (p9) and insert regarding to the electronic receipt of tenders (p31)



# 2.0 Introduction

The purpose of this document is to set out the policies and procedures surrounding the procurement process, as set down by the management of Wexford County Council. A Procurement Library has been established on Wexford County Council's Intranet which contains additional reference documents and information which should inform and aid the procurement process within Wexford Local Authorities

http://10.68.0.15/intranet/finance/procurement library.htm

The controls set out in this document apply to all transactions including those of an emergency or urgent nature, save where an exception has been clearly stated and approved.

All staff should have regard to the published Code of Conduct for Employees in their dealings in the area of procurement. Abuses of the policies or procedures contained in this document will be dealt with in line with published disciplinary policies.

These policies and procedures will come into force from February 2017 and will supersede any previous publications.

A new Procurement Unit was established in Wexford County Council in March 2016. The unit's primary roles are as follows:

- To act as an advisory service to those tasked with procurement activities within the various directorates of the organisation.
- Act in a supervisory role for tenders being advertised publically to ensure compliance with correct procedures. It remains the duty of each Section Head to ensure that procurement activities within their respective sections are being carried out correctly and the responsibility for the outcome of their procurement activities ultimately rests with them).
- Improve compliance with local and national guidelines and with E.U. procurement rules by implementing policy and procedure improvements within the organisation.
- Act as intermediary between both the Office of Government Procurement and the LGSPC/LGOPC and Wexford County Council in all matters related to centralised procurement and government direction.
- Execute an approved plan of continuous improvement in the area of Procurement within the organisation.
- Report on progress in procurement reform to Management.
- Implement any changes brought about as a result of circulars.



# 3.0 Key Principles

It is very important that the public procurement function is discharged honestly, fairly and in a manner that secures best value for public money. Contracting authorities must be cost effective and efficient in the use of resources while upholding the highest standards of probity and integrity. (Source: Public Procurement Guidelines Competitive Process, National Public Procurement Policy Unit 2004 (Department of Finance))

In general, a competitive process carried out in an open, objective and transparent manner can achieve best value for money in public procurement. This is in line with EU Treaty principles and EU Directives on public procurement. Essential principles to be observed in conducting the procurement function include

- Non-discrimination,
- Equal treatment,
- Transparency,
- Mutual recognition,
- Proportionality,
- · Freedom to provide services and
- Freedom of establishment.

The Directives impose legal obligations on public bodies with regard to advertising and the use of objective tendering procedures for contracts above certain value thresholds. – See Appendix A for thresholds. (Source: Public Procurement Guidelines Competitive Process, National Public Procurement Policy Unit 2004 (Department of Finance)).

Even in the case of procurement which might not be subject to the full scope of the Directives, such as "non-priority" service or service concessions, the EU Commission and European Court of Justice (ECJ) have ruled that the Treaty principles of Non-discrimination, Transparency, Proportionality, Freedom of movement, Freedom to provide goods and services, must be observed. ECJ case law implies a requirement to publicise and advertise such contracts of significant value to a degree which allows parties in other Member States the opportunity to express an interest or to submit tenders. (Source: Public Procurement Guidelines Competitive Process, National Public Procurement Policy Unit 2004 (Department of Finance)).

The following principles must also underlie the Procurement Process in Wexford County Council. These procedures are subject to availability of allocated budgets or unspent budgetary allocations and appropriateness of expenditure to the allocated budget. It is implicit in this document that staff involved in the procurement process would strive to achieve value for money (VFM) at all times.

It is a requirement that every effort is made to ensure that all procurement decisions are made with full information in relation to the good or service. Assurances should be aided with techniques such as sampling, evaluation of references, costing full life time costs e.g. cost of consumables etc required after purchase. It is a requirement of this organisation that all staff involved in the procurement process within Wexford County Council, are familiar with the contents of this document.

N.B. The three pillars of procurement should be borne in mind when developing any procurement strategy.

Compliance – Risk Management – Value for Money



Works/Engineering

# 4.0 Thresholds

Procedure

Thresholds for procurement of Non-EU and EU Level Contracts

Supplies

Wexford County Council has adopted as internal procurement policy, the guidelines set out by the Department of Public Expenditure and Reform for handling of procurements under the EU Threshold. That policy is set out against the various thresholds and procurement categories in the table below (excluding VAT) and should be adhered to at all times unless otherwise approved by Director of Services.

Services

	Cappiloo	30171333	Services
Invite at least 1 quotation	Less than €5,000	Less than €5,000	
Invite at least 3 quotations	Between €5,000 and €25,000	Between €5,000 and €25,000	
Invite at least 5 Quotations			Between €5,000 and €50,000
Formal advertising using open procedure (non-OJEU) on eTenders	Between €25,000 and €221,000	Between €25,000 and €221,000	Between €50,000 and €250,000
Formal Advertising – Choice of procedures on eTenders	Between €221,000 and EU Thresholds	Between €221,000 and EU Thresholds	€250,000 and EU Threshold
Formal Advertising inviting tenders advertised on OJEU and eTenders	Above EU Threshold (€221,000)	Above EU Threshold (€221,000)	Above EU Threshold (€5,548,000)
ICT Contracts - Formal Advertising on eTenders	Above €10,000	Above €10,000	



# 5.0 Procurement Procedure – Supplies & Services

The following guidance template has been included to provide a basic checklist covering the steps in a normal procurement cycle, from identifying and specifying a need to award a contract. While the specifics of each individual procurement process will be different, the following checklist aims to provide a general reminder list to those required to undertake a procurement process.

Public procurement is the acquisition, whether under formal contract or not, of works, supplies and services by public bodies. It ranges from the purchase of routine supplies or services to formal tendering and placing contracts for large infrastructural projects by a wide and diverse range of contracting authorities.

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

This checklist should be read in conjunction with the national public procurement guidelines, Public Procurement Guidelines – Competitive Process, which provide more detailed guidance on the competitive process to be followed in the award of contracts for supplies and services. These and other guidelines are published on the national public procurement website <a href="www.etenders.gov.ie">www.etenders.gov.ie</a> (under Guides/General Procurement Guidance).

The checklist should also have regard to the specific procurement requirement of Wexford County Council as contained in this policies and procedures document

This checklist addresses the following steps in the procurement process:

#### **Standard Procurement Process**

- 1. Identifying the need is the purchase necessary?
- 2. Writing the specification
- 3. Estimating cost
- 4. Securing approvals and funding
- 5. Determining the best procurement strategy
- 6. Deciding on the tendering procedure that should be followed
- 7. Preparing your Request for Tender (RFT)
- 8. Allowing sufficient time for submission of tenders
- 9. Issuing tender documents, supporting documents, clarifications without delay
- 10. Receipting and opening tenders
- 11. Clarifying tenders
- 12. Evaluation of tenders
- 13. Notifying tenderers
- 14. Debriefing unsuccessful tenderers
- Checking tax clearance certificates
- 16. Awarding the contract



17. Publishing contract award notice

18. Managing the contract

# 5.1 Identifying the need

Before beginning any procurement process, it is important to establish whether it is necessary to make this purchase.

- Establish whether there is a clear business need for the product or service. The procurement should be essential for the conduct of normal business or to improve performance. Stating that the need for the procurement 'is a good idea' is not a sufficient business case.
- Establish whether accessibility needs are a requirement of the product or service. Refer to Accessibility procedures and Best practice guidelines http://10.68.0.15/intranet/documents/index.htm.....
- Establish whether the product/service meets relevant Health & Safety standards. Contact the Health & Safety officer for advice on this where necessary.
- Ensure that the business case addresses future phases of the service or purchase of goods that may be required.
- o Determine whether the products or services are already readily available within your organisation at a value for money rate.
- Determine whether a category management approach is already in place for the product/services within the organisation and if so contact the category manager or procurement unit for advice on how to proceed.

# 5.2 Writing the specification

Once the need for, and what is needed from, a supplier or service provider has been established, the specification of requirements needs to be developed.

- The specification must be as detailed as possible in stating the known requirements. However where a full solution is not known at tender stage, you may wish to allow proposal of innovative solutions by defining the required output rather than the method of achieving it. This is one of the most important aspects of the procurement itself. The specification must provide sufficient level of detail to the prospective tenderers in order that they are capable of tendering an accurate price and know exactly what the requirements are. Be extremely careful when writing your specification that you do not leave out anything significant and never assume that the tenderer will know what you want. You must tell them exactly what the tender requirements are. Tenders are required to meet the specification at a minimum. Therefore care should be taken not to specify requirements that are not mandatory and may be seen as extras or "added value".
- Brand names are not allowed in the specification. For example you cannot tender for a "Ford" pickup truck. You must give the exact requirements of the truck that you require because you do not know whether any other supplier can provide that specification other than Ford. Care should be taken here to avoid specifying the exact specification of a product that you consider the "best". You must ensure that sufficient level of competition is allowed and not restrict it to a certain provider based on your own opinion or on past results.
- To encourage innovation, you may allow variants in your specification. This is where you provide
  the specification that you are looking for but you allow tenderers to offer you alternative solutions
  which will give you a similar result.
- For accessibility specifications refer to the relevant best practice guidelines. Identify and include the design elements/requirements that are relevant to access to ensure an accessible



service/product. This will support, where applicable, the initial development of a Disability Statement which will later be an essential part in outline planning consents in order to achieve a Disability Access Certificate (Building Control Act 2007)

# 5.3 Estimating cost

- Market analysis may be required here to determine what the estimated cost of the product or service is currently standing at.
- Full Life Costing approach should be used. I.e. It is not sufficient to compare simply the up front cost of the supplies or services. You should take care to include all other indirect or maintenance costs, end of life costs, etc...
- Know the budget and establish whether funds are available to meet the purchase.
- Determine whether the estimate (exclusive of VAT) is over the relevant procurement threshold.
   (See Section 4 above for Thresholds). Thresholds are revised every two years. Full and up to date thresholds can be checked on the public procurement website <a href="https://www.procurement.ie">www.procurement.ie</a>
- Prepare a realistic estimate of all phases of the service or product.
- Ensuring accessibility requirements are included at this stage will eliminate the need for costly retrospective amendments.

# 5.4 Securing approvals and funding

Once a realistic estimate of cost is available the relevant budget holder should be requested to approve the expenditure prior to embarking on a procurement exercise and prior to award of contract.

# 5.5 Determining the best procurement strategy

With the introduction of the new procurement unit in 2016, some major changes have been implemented and are in the process of being further developed within the organisation. The procedure for determining the best procurement strategy is now as follows:

- 1. Is there a strategy in place internally within the section? E.g.
  - a. Use of OGP framework
  - b. Use of internal/regional framework
  - c. Existing contract in place locally for the section
- 2. Is there a Category Manager in place within the organisation for this type of procurement?
  - a. Check the list of category managers on the Procurement Library on the staff intranet
  - b. Contact the category manager (section) to inform them of your need and request information about the method of procuring the goods/services
- 3. Proceed to tender or contact the procurement unit for assistance. The procurement unit will work with you to determine what the best strategy should be, assist in putting the new strategy in place or take on the role of implementing the new strategy according to the needs of the organisation.

# 5.6 Deciding on the Procurement Procedure to be followed

Following an appropriate competitive tendering procedure will reduce breaches of Wexford County Council procurement policies, national procurement policies or EU Procurement Directives. The type of competitive process to be followed can vary depending on the size and characteristics of the



contract to be awarded and the nature of your organisation/department. There are two generic types of procedure which may usually be used:

- An open procedure, where all interested parties are invited to tender
- A <u>restricted</u> procedure where an invitation to express an interest is advertised and only a small number of qualified applicants deemed to have the necessary technical expertise are invited to submit a full tender.

Procedure	Process	Comment	
Open	Single Stage – Anyone who	Required for all contracts	
	wants can submit a tender	between €25K and €135k for	
		Supplies and Services and	
	below €250K for works		
Restricted	Two stage process - Anyone	Suitable where large volumes of	
	can apply to the qualification	interest in the market: where	
	stage. Following qualification	tendering is expensive, where	
	only those invited (at least 5)	buyer needs to manage risk.	
	can submit a tender where		
	available		
Accelerated Restricted	Two Stage process – shorter	For urgent procurements –	
Procedure (and negotiation)	timescales	where urgency renders	
		impractical the normal times for	
		open and restricted	
Competitive Dialogue	Three stage process – anyone	For complex projects where	
	can apply, at least 3 are invited	open or restricted procedure	
	to dialogue stage, followed by	would not be suitable to deliver	
	tender stage with participants	the contract	
	who offered suitable solution(s)		
Urgent Procedures		Anything of an emergency	
		nature that requires deviation	
		from these procedures requires	
		signoff from the Chief	
		Executive.	

# 5.7 Preparing your Request for Tender (RFT)

#### 5.7.1 Template Documents

From June 2016, it is policy within Wexford County Council to use the template documents prepared by the Office of Government Procurement (OGP) which are available on <a href="www.procurement.ie">www.procurement.ie</a> and on <a href="http://www.etenders.gov.ie/template-documents">http://www.etenders.gov.ie/template-documents</a> for procurement of all national and EU value contracts for services and goods unless situation dictates otherwise. For works it is the policy to follow Government direction to use the templates available on <a href="www.constructionprocurement.ie">www.constructionprocurement.ie</a>. The reason for this policy is that the template documents provide all the legal certainty, the content and requirements needed to develop a compliant tender document. It cuts down significantly on the time required to prepare tender documentation and on the level of expertise required to create them and ensures consistency of approach across the organisation while protecting our interests in the form of well designed and trusted documents. While the templates may seem daunting on first use, they should be viewed online as a protected Word document and this will allow you to tab across to the next available field for editing. You will find that the number of requirements for adding information is not as large as it first seems.



You should always download the most recent template document from one of the above two sources before you begin rather than relying on a previously used one. This will ensure that the document is the most up to date version. These documents prompt us to include all the necessary information that is required for the tender and gives you peace of mind that you have included all requirements. Another benefit is that many suppliers are now used to tendering on the basis of this format and therefore find them clearer than bespoke documents.

### 5.7.2 RFT – Request for Tender

For procurement of goods and services you will start with the Request for Tender (RFT) template from the eTenders website <a href="www.etenders.gov.ie">www.etenders.gov.ie</a>. This template also includes a copy of the contract at the back which will be used to enter into the deal between the contracting authority and the winning tenderer which is for information purposes at this stage.

Be very clear about what you are looking for to ensure that you get tenders that fit your needs. Your specification should be detailed and written by a person or persons who have the correct experience and know-how to determine the exact need.

Take care to distinguish between absolute requirements and "wish-list" items at this stage so that you don't eliminate potential tenderers who cannot provide requirements that you do not really need.

- It can be helpful to include a return check list (with tick-boxes) for suppliers so that they can be sure that they have satisfied all requirements mentioned in the documents. This can also be helpful to the buyer in summarising what they need from suppliers. (See sample checklist for Procurement and Accessibility Capital Build)
- Include any timescales associated with the project early in the notice. This includes the latest
  date for submission of queries relating to the project, the closing date and time for submission of
  tenders, etc. Many buyers only state the closing date; however, suppliers often like to know when
  the evaluation might be completed or when the contract is likely to take effect.
- In some projects, it may be useful to indicate a budget for the project in the RFT. This can give
  potential suppliers an idea of the range of the project, and they can tailor their submissions to
  meet this budget. For example, in an advertising tender, you might want to see how much of your
  budget will be used on actual advertising and how much will be charged in the management fee.
- If possible, upload any tender documentation that may help clarify the tender on to the eTenders website. This will reduce the need for contracting authorities to send any relevant documentation manually at a later date.

#### 5.7.3 Selection Criteria

Set out the selection criteria (pass/fail and/or weighted) and the award criteria (weighted) under which the tenders will be evaluated. It is important to note at this stage that choosing selection criteria is the first stage in the process. If an applicant fails the selection criteria the tender is not qualified and will not be assessed further. Selection criteria should be limited to:

- Suitability to pursue the professional activity/deliver the contract
- Economic and financial standing (Annual turnover limited to twice the value of the contract). This is essential to ensure that the winning bidder has the financial standing to perform the contract throughout its duration
- Technical and professional ability as proven by relevant certification/qualification/experience



All requirements to show suitability to perform the contract should be proportionate and directly related to the subject matter of the contract.

#### 5.7.4 Award Criteria

Avoid using ambiguous phrases that may be misinterpreted by the suppliers, such as "quality of tender" in the award criteria, and address in the RFT any possible questions that may arise. If appropriate, ask someone not involved in the project to read the documentation and ensure it is clear. You will have a better chance of getting the best result if you are very specific in stating exactly what you will measure.

Award criteria that are permitted for use include the following non exhaustive list:

- Quality including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions
- Organisation, qualification and experience of staff assigned to performing the contract where the quality of the staff assigned can have a significant impact on the level of performance of the contract:
- After-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion.

Contact the Procurement Unit for any queries regarding the use of these documents.

# 5.8 Allowing sufficient time for submission of tenders

Allow suppliers an adequate period for the preparation of tenders.

- Take account of the complexity of the contract when fixing the timescale for submitting responses.
- Allow sufficient time for compilation of pre-qualification criteria where relevant.
- Allow suppliers sufficient time for submitting the necessary information and preparing the tenders, gathering pre-qualification criteria etc. (And also taking into account holiday periods etc).
- o In the case of contracts in excess of EU thresholds, ensure that the timescale complies with the minimum periods specified in the Directives.
- o In general, where there is no urgency allow a reasonable amount of time for the tenderers to prepare a high quality submission.

# 5.9 Issuing tender documents

The procurement unit takes responsibility for uploading all tender documents to the eTenders system. You will be guided as to what information you are required to provide by means of a high level information gathering sheet and you will then submit all your relevant documents/specifications/pricing schedules etc as required to the Procurement Unit for uploading.

The procurement unit will check that the correct approach has been taken and you may be asked to amend your documents to take account of policy or procurement rules where necessary. <a href="However">However</a>, while the Procurement Unit will do a cursory approval of the procurement format,



responsibility for the procurement and its subsequent outcome remains with the head of section performing the procurement.

Responses to requests for information, requests for tender documents and other supporting documentation (if not made available electronically on the eTenders website) must be issued without delay.

Any requests for clarification on the tender will come into the email specified on the tender. Clarifications must be uploaded to eTenders so that all tenderers receive them at the same time (electronically)

# 5.10 Receipting and opening tenders

Tenders should be addressed to The Procurement Unit and will be held unopened in the Procurement office until passing of the submission deadline. They will then be opened in an official capacity in the presence of two members of the Procurement Unit. The instruction regarding deadlines for receipt of tenders must be issued with the tender documents.

- Return late tenders (unopened if possible) to the tenderer and record their existence and time
  of arrival.
- Open all tenders (received on time) together as soon as possible after the designated latest time and date set for receipt of tenders.
- Arrange for the opening of tenders to take place in accordance with adopted procedures in Wexford Co. Council.
- Ensure that a clear and formal independently vouched report of the tenders received is produced.

# 5.11 Clarifying tenders

It may be necessary to seek clarification on certain aspects of the tenders prior to the evaluation process. For example:

- The tender contains inconsistent or contradictory information about the same specific aspect of the tender.
- o The tender is not clear when describing what it is offering.
- When the tender contains minor mistakes or omissions that affect the understanding of the tender submission.

However you must be very careful in the interests of equal-treatment and transparency:

- Never allow a non-compliant tender to be brought into compliance with the mandatory requirements during a clarification process
- Never allow a material change to the tender.
- Never allow a change in the tender price (except for correction of very obvious arithmetic errors in the case of Supplies and Services tenders at the discretion of the contracting authority). However, for Construction related tenders using the public works contracts from the CWMF, a change in tender price is **never** allowed under any circumstances.



N.B. All clarifications should be requested in writing and responses received in writing (email will suffice).

#### **Clarification Meetings**

In some cases meetings may be required with tenderers in order to clarify their tender submission. Important points to note on clarification meetings:

- Never allow a non-compliant tender to be brought into compliance with the mandatory requirements during a clarification process
- Never allow a change in the tender price (except for correction of obvious computational errors)
- Confirm and clarify the content of the tender prior to finalising the tender scores.
- The use of meetings for clarification purposes should be <u>indicated up front in the tender</u> documents.
- The same evaluation team that evaluates the tenders must carry out the clarification meetings.
- A tenderer who has been eliminated from the competition already cannot be invited to clarification meetings.
- The meeting must address the tenderers response to the specification and the award criteria only. It is not permitted to have an award criterion related to "performance at interview".

# 5.12 Evaluating tenders

The evaluation and award process must be demonstrably objective and transparent and based solely on the criteria published in the RFT. This must be achieved by the use of the scoring system based on all the relevant weighted criteria set out in the RFT document only and no extra award criteria can be used at the evaluation stage that is not already set out in the tender documents.

- The evaluation of tenders must be carried out by a suitably competent team of at least 3 people and should never be executed by a single individual acting alone.
- Price must be evaluated <u>exclusive</u> of VAT.
- If price is the sole criterion, award the contract to the lowest priced bid complying with the specified requirements.
- If the 'most economically advantageous tender' is the basis for award, award the contract to the tender that best meets the relevant published criteria.

#### 5.12.1 Abnormally Low Tenders

An "abnormally low tender" refers to a tender price that is significantly out of line with the other tender prices and where the description in the tender document provides no reasoning for the price to be so low. Contracting authorities must require economic operators to explain the price or costs proposed in the tender where tenders appear to be abnormally low in relation to the works, supplies or services. Where the result of this explanation provides a reasonable and acceptable answer e.g. new work practice/technology/innovative approach etc allows the price to be lower, then the tender should not be rejected.

The purpose of this rule is to safeguard against tenders being one based on a low price with the intention of recouping further monies from other areas and also to protect the potential level of quality to be achieved.



#### 5.12.2 Scoring Tenders

It is best to use a scoring system or marking sheet based on the pre-stated award criteria, indicating a comparative assessment of tenders under each criterion.

#### **Example (but not limited to the following)**

0 = No Response

1 - 19 = Poor

20 - 39 = Mediocre

40 - 59 = Good

60 - 79 = Very Good

80 - 100 = Excellent

Etc... The scoring mechanism should be tailored for the task in hand but in general it is more advisable to give a range of marks to allow you to distinguish between tenders more effectively. For example, while two tenders may score in the 80-100 "excellent" range, one may still score higher than the other (e.g. 85, 90). As well as assigning marks to the award criteria, it is important to make note of why individual scores were allotted as these may be requested by the unsuccessful tenderer in the future, and in some circumstances it may be required to give more detailed results than just scores alone.

#### 5.12.3 Tender Evaluation Report

All evaluation material, paper and electronic must be retained for audit purposes. An evaluation report should be prepared which can be referenced at a later date to fully explain the reasoning behind the marks awarded to each tender.

Items to be included in or appended to an evaluation report include:

- Summary of the steps undertaken by the evaluation team in the evaluation of the tender
- o A history of the procurement process undertaken
- o A clear justification for any recommendation made.
- Explanation of reasons for rejecting a tender
- A copy of the contract notice and award notice (OJEU or National)
- A copy of the completed spreadsheet used to score the tenders.

# 5.13 Contract Approval and Notification of Result

Unsuccessful candidates and tenderers for any public contract should be informed of the results of the tendering process without delay. Professionally approved templates for "Regret Letters" are available on the intranet or from Wexford Co. Council's Procurement Unit and these are encouraged for use at all times unless a specific reason arises that renders them unsuitable.

In the case of above threshold contracts, a standstill period of 14 or 16 calendar days will have been specified in the tender documents. This standstill period begins once you have notified unsuccessful tenderers of the outcome of the tendering procedure and the formal award of contract. In the case of below threshold procurements, it is good practice to also allow a voluntary standstill period as this gives tenderers reassurance that principles of fairness and transparency have been adhered to.



# 5.14 Debriefing Unsuccessful Tenderers

Apart from observing the legal obligations where the provisions of the procurement Directives apply, where contracts are awarded on the basis of the most economically advantageous tender (M.E.A.T.) it is good practice to adopt a voluntary constructive policy on debriefing unsuccessful candidates.

Debriefing should be done in writing and using the pre-defined template documents that are available on the intranet. For any further advice on debriefing please contact the Procurement Unit.

#### 5.15 Tax Clearance

Before a contract is placed the supplier or service provider must produce proof of Tax compliance. From June 2016 tax clearance became completely online. Economic operators are now issued with a tax clearance account number which they can provide to the contracting authority and this allows confirmation of tax clearance to be achieved at any time.

# **5.16** Awarding the contract

The contract should be awarded to the supplier or service provider that is best able to fulfil your requirements (selected in accordance with the award criteria), whose bid is within budget and in all other respects complies with the RFT, approval requirements, for Wexford County Council procurement policies. Under the 2014 directive, all tenders must be awarded based on the Most Economically Advantageous Tender basis. This means that selection and award criteria must be used. However, it is still possible to award price only contracts on this basis by stating only price as the award criteria and this is permitted under the directive.

It is the agreed policy of Wexford Co. Council that OUR contract is signed by both parties and that we do not sign terms & conditions of suppliers. All terms and special conditions that apply, including health and safety requirements, insurance etc. should be recorded in the contract document.

Where template documents from eTenders are used for the procurement process, the template contract which is included at the back of the RFT is the relevant contract to sign. The agreed specification and any special terms including prices are copied into the contract which is then accepted and signed by the winning tenderer. Where for any special reason, these template documents were not used, the relevant goods/services contract template document from eTenders may still be used to award the contract.

In cases where it is considered necessary to sign a contract other than Wexford Co. Council's contract, following a normal procurement process, advice should be sought first from the Procurement Unit.

All procurement of public works must be awarded using the relevant public works contracts applicable to the works being procured.

Ensure that the contract specifies clearly the roles and responsibilities of both the client and the supplier/service provider – what needs to be done, by whom and how much it will cost.



# 5.17 Publishing a contract award notice

For contracts above the EU thresholds, you are required to publish certain information in the OJEU on contracts awarded within 48 days of the award. For contracts below EU thresholds, you are encouraged to publish a notice on the eTenders website, to aid the transparency of the procurement process (and, possibly, reduce or eliminate enquiries from nonparticipants about the award of a contract) and to facilitate the compilation of statistical information required by the EU Commission.

You should submit the necessary information to the Procurement Unit who will upload it to the eTenders site on the standard 'Contract Award Notice'.

# 5.18 Managing the contract

The management stage of a contract is where value for money (VFM) gained during the preceding stages is realised. A contract needs to be effectively managed by the contract manager, not just left to the supplier. Proactive involvement in the management of the contract is essential to maximise Value for Money (VFM) and ensure quality is achieved.

- You should appoint a contract manager who will oversee the project. This is not necessarily the person or persons who executed the procurement but a person who will engage with the contractor during the life of the contract to ensure that the terms and conditions are being met. Depending on the size and complexity of the project, the contract manage may be of any grade and should be awarded to the person best placed within the section to deal with the ongoing issues of the contract in question.
- Know the contents of the contract that has been signed by both parties.
- Ensure that there are procedures for identifying inadequacies/poor performance and for remedial action.
- Maintain a record of supplier performance, meetings held, remedial action taken etc... Any
  gross deviation from the terms of the agreed contract must be dealt with as they occur. They
  must also be documented and witnessed officially by the relevant official (director of service).
  This is important to ensure that documentation is maintained so that any future procurement
  can be protected from low performing contractors.
- At the conclusion of the contract, review the whole procurement process, not just the supplier's performance but also the effectiveness of the earlier stages. This review process can provide information for future procurements – in respect of developing and specifying needs, supplier selection and contract management.

# 6.0 Procurement of Consultancy Services in Wexford Co. Council

## 6.1 Distinguishing between Contractor, Service Provider and Consultant

(The following three definitions are direct extracts from <u>Department of Finance Guidance on Procurement of Consultants</u> It is the policy of Wexford County Council to seek approval from the Chief Executive for engagement of Consultants for a value of €25k or greater.



- **6.1.1 Consultancy** is where a person, organisation 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.
- **6.1.2 A Contractor** is a person, organisation 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.
- **6.1.3 An External Service Provider** is an organisation that provides 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.

#### 6.2 Consultants to be appointed by Chief Executive

The procurement of consultancy services must comply with Wexford County Council Procurement Policies and Procedures and the Department of Finance Guidelines for the Engagement of Consultants-(2006).

http://etenders.gov.ie/Media/Default/SiteContent/LegislationGuides/6.%20Guidelines%20for%20the%20Engagement%20of%20Consultants%20by%20the%20Civil%20Service.pdf

Subject to the above, all consultants with contracts valued in excess of €25,000 incl. of expenses and excl. V.A.T. will be appointed solely by the Chief Executive.

Consultants with contracts valued under the above threshold will be appointed by the relevant Director of Service. The procedure for the procurement of consultancy services may be divided into four parts as follows:

- 1. When to engage consultants
- 2. Procuring and selecting consultants
- 3. Management of Consultants



4. Project result evaluation

## 6.3 When to engage consultants

- In deciding whether or not to engage consultants the principles of Value for Money i.e. economy, efficiency and effectiveness must be given the utmost consideration.
- Generally, consultants are engaged when it is considered that there is a lack of capacity or technical expertise in-house to carry out the specific work.
- The need for a consultant must be evaluated and documented to establish whether, in particular
  cases, the appointment of a consultant is appropriate or necessary. This assessment must
  include a documented plan setting out the objectives, expected benefits and estimated cost of the
  consultancy and have due regard to the relevant Department's budget or other funding provision.

#### 6.4 Procurement and Selection of Consultants

- Quotations are sought for consultancy contracts with a value less than €25,000 in accordance
  with Part 1 of the policy document. Invitations to tender by way of public advertisement on
  eTenders are sought for consultancy contracts where the contract value exceeds €25,000. All
  tendering is presumed to be on an open basis.
- Criteria for the selection of a consultant must be determined prior to advertising.
- All tenders received must be dealt with in accordance with Wexford County Council established procedure for the receipt of tenders.
- All tenders must be fully evaluated in accordance with any selection criteria, which must include consideration of the proposed fee.
  - o The level of fee should be determined by reference to any nationally agreed scale of fees
  - Any additional costs must be adequately vouched and reasonable. Where additional
    costs for travelling and subsistence cannot be avoided, the rates charged must not
    exceed those currently applicable in the public service.
  - Clear terms of reference must be drawn up to ensure that all consultancies are project specific.
  - A timeframe for the completion of the work must also be agreed at the outset.

#### N.B. Under no circumstances should open-ended contracts be awarded.

#### 6.5 Management of Consultancies.

Contracts for consultancy work must not be extended beyond their original agreed terms of reference.

- Consultant's performance must be monitored by means of regular minuted progress meetings.
- A consultancy which is not achieving its objectives or which is deviating from its terms of reference can be terminated according to the conditions of engagement.
- All communications with consultants regarding changes made to the original terms of reference, which do not materially affect the terms of reference or objectives of the consultancy e.g. telephone conversations, emails etc., should be clearly documented and retained on file.
- Where particular projects do not require a formal Project Team, a designated contact person must be appointed to liaise with the consultant.
- o Invoices must be submitted for payment on a regular basis to facilitate budget management and the timely drawdown of funds where applicable.



#### 6.6 Project Result Evaluation

A documented post project review must be carried out to enable the effectiveness of consultants to be evaluated. This should include measuring the actual deliverables against expected outcome and should include the following:

- (a) The actual cost of the consultancy versus originally agreed cost.
- (b) Any savings or improvements realised as a result of the engagement of the consultant.
- (c) Whether project objectives have been achieved.
- (d) Whether the project has been completed in a timely manner and within budget
- (e) The quality of the work.
- (f) Ownership of outputs arising from the consultancy
- (g) Any appropriate transfer of expertise or skills from the consultant to the relevant staff of Wexford Co. Council.

The documented project review should be retained on file for audit and other purposes and should feed forward to any future projects.

# 7.0 Procurement Procedure - Works

All public works contracts, whether for Building, Civil Engineering Works, Traditional or Design Build, must be awarded under the Public Works Contracts as defined by the government. Contracts are to be awarded on a lump-sum, fixed-price basis following a competitive tender process

<u>www.constructionprocurement.ie</u> should be referenced for all public works contract template documents which are <u>mandatory</u> for use with works contracts and their associated consultancy/engineering services. <u>This is a government direction</u> and you must ensure that the correct templates of the CWMF (Capital Works Management Framework) are used.

It is an agreed policy of Wexford County Council to follow the government direction to use the CWMF. A substantial and comprehensive set of guidance notes are also available on www.constructionprocurement.ie which explain the Public Works contracts/templates/procedures and these should be consulted when preparing a public works tender.

An important element of this procurement process is the obligation of the contractor to ensure that all rates of pay and conditions of employment of relevant personnel comply with all applicable Law. The contractor is responsible for all personnel – including subcontractors and must provide a Certificate of Compliance with every interim statement.

The Capital Works Management Framework (CWMF) is a structure that has been developed to deliver the Government's objectives in relation to public sector construction procurement reform. It consists of a suite of best practice guidance, standard contracts and generic template documents that form the four pillars that support the Framework, as shown below

Dillor 1	Dillor 2	Dillor 2	Dillor 4
Fillal I	Fillal Z	Fillal 3	Fillal 4

#### **SIPTU**



Before the contract is signed the employer (Wexford County Council) must inform SIPTU that it intends to award the contract and submit evidence that the contractor is compliant with all registered employment agreements. Failure to provide the necessary information in adequate time for consideration by SIPTU will result in an objection under the 1997 Analogue Agreement from SIPTU to the use of the external contractor.

Failure by the contractor to meet any of the standards will also result in an objection from SIPTU. Cooperation in this respect is part of the current National Partnership Agreement "Towards 2016" (Section 20 – Supporting Employment Standards through Public Procurement)

The obligations as set out above are applicable to all public works contracts including all those referred to in the Small Works/Macadam Works Programme.

# 8.0 Contract Management

Contract Management is the process that enables both Parties to a contract, the buying organisation and the provider/contractor, to meet their obligations in order to deliver the objectives required from the contract. Contract Management continues throughout the life of the contract and involves optimising the efficiency, effectiveness and economy of the works or service described by the contract, balancing costs against risks and actively managing the customer-provider relationship. Contract management may also involve aiming for continuous improvement in performance over the life of the contract.

When using the standard OGP template documents for RFT, the model goods/services contract is included at the back of the RFT. This should always be submitted as part of the RFT and should be signed in the appropriate places before commencing the contract.

It has been unofficial but often common practice within Wexford County Council in the past, to sign the contract of the contractor only, thereby agreeing to all of their terms and conditions yet enforcing none of our own. This practice is now specifically against Wexford County Council's procurement policies and must not be allowed to happen in the future. If in doubt regarding the correct contract to use, contact the procurement unit.

# 8.1 Contract Lifecycle

The stages in the lifecycle of any contract can be categorised as:

- Planning
- Selecting a Provider
- Managing the Contract
- Review and Evaluation

# 8.2 Principles of Good Contract Management

Principles which should underpin any decision to enter into a contract on behalf of the local authority including Works/Services procured through contracts should contribute to the achievement of the objectives of the local authority, reflecting the needs of the ultimate users or recipient of the services/works. Contracts should provide appropriate accountability for public money. Contracts should represent value for money.



The following checklist has been included to provide Wexford Co. Council staff with a guidance template which should assist in better management of contracts entered into on behalf of the local authority.

# 8.3 Contract Planning

Contracting should take place within a structured contract management arrangement. A key part of this is planning. Where contracts are being considered as a means of procurement for works/services, there should be clarity on:

- The overall objective of the work/service
- o The means being used to achieve this objective
- The nature of the contracting organisation that is likely to be involved, and the relationship they expect or wish to have with that organisation.
- Contracting Management capabilities available to manage the contract.
- How accountability for public money will be demonstrated.
- o The budget available.
- Risk Management.

# 8.4 Managing the Contract

Signing the contract is only part of the responsibilities associated with contract management. The procuring section is also responsible for the ongoing management of the contract once it has been signed and the relationship with the contractor providing the service. This will involve:

- Monitoring (including verifying) delivery against the contract.
- · Assessing the effectiveness of the services delivered.
- Approval of payment, and making payment according to the contract.
- · Ongoing relationship management.
- Dealing with any differences of opinion with the contractor.
- Negotiating changes to the contract, if necessary.
- In extreme cases, taking action to enforce compliance with the contract, including exercising any rights to terminate the contract.

#### 8.5 Review and Evaluation

Review and evaluation overlaps with monitoring, but it merits separate treatment given that it extends further than an individual contract. Departments using contracting as a procurement method should consider the following questions:

- Has contracting for the work/service been an effective method of achieving the original objective?
- o Has it represented value for money?
- O What improvements can be made?
- o How effective has the contractor's management of the contract been?
- o How did the contractor perform against the assessment of risk?

The end of all contracts is an important part of the contract management cycle as experience gained in individual projects can assist in informing management of future contracts and feed forward to contracting and contractor decisions for future projects.





Responsibility for management of contracts includes ensuring that recoupment claims from government or other agencies are made in a timely and efficient manner.

The <u>Public Spending Code</u> should be adhered to at all times to ensure that public money is being spent according to the principles and guidelines set out in the code.



# 9.0 Category Management

Category Management is the term given to the centralisation of certain categories of procurement and the Office of Government Procurement (OGP) have implemented a number of category management approaches in recent years. Within Wexford County Council a small amount of Category Management already exists e.g. the purchasing of stationary which is managed by General Purposes, the small works tender list which is managed by Roads and used by various other sections, the purchasing of fuel... etc...

It is intended to further role out category management as a procurement method within Wexford County Council over the coming years and the Procurement Unit will be central to that role out. While still in the early stages of planning (in 2016) the procedure for incorporating Category Management into our normal procurement policy is as follows:

- Determine the procurement need
- Check if category management approach exists
  - Check Procurement Page on intranet
  - Check www.procurement.ie for existing OGP framework agreements available for use
  - Consult with Procurement Unit
- Category management approach already in existence
  - Consult with category manager on how to proceed to make your purchase via the procurement strategy already in place for that category of goods/services
- No Category Management approach in existence
  - Talk to Procurement unit about possibility of a category management approach
  - Proceed to Procurement strategy

#### **Examples of Category Management approaches:**

- Online catalogues e.g. OGP led framework agreements (e.g. cleaning supplies)
- Services available via <a href="www.supplygov.ie">www.supplygov.ie</a>
- Services and contractors available via WCC Small Works Tender List/Housing Works Lists etc...

# 10.0 Framework Agreements and Approved Lists/Panels

# 10.1 Framework Agreements

A framework agreement is "an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity"

Broadly speaking, framework agreements allow a purchaser and a supplier, service provider or contractor to establish terms on which purchases will be made, but don't set the precise quantities to be delivered, works to be done, etc.

Framework agreements come in a number of forms, with varying obligations on the purchaser and supplier and various degrees of precision as to the terms to govern contracts made under the agreement. The most common type in this context is where a purchaser and a supplier agree the terms on which requirements will be supplied, but the purchaser is not obliged to make purchases from the supplier.



Once the agreement is concluded, the purchaser then makes periodic purchases using individual contracts with suppliers in the framework. These individual contracts are known as "call-offs".

The Directive clarifies the situation by providing that contracting authorities must advertise the initial setting up of the framework, but need not advertise subsequent call-offs.

#### 10.1.1 OGP Frameworks

The Office of Government Procurement (OGP) are continuously developing frameworks for use by the public sector. These can be accessed on <a href="www.procurement.ie">www.procurement.ie</a> where all details regarding how to order from the frameworks etc can be found. In September 2013 the Department issued circular 16-13 which requires public bodies to consider the use of these established framework agreements and to be able to provide a cost-justification for non use. Examples of these frameworks include:

- Cleaning supplies
- Pickup Trucks
- Supply of Electricity
- Etc...

### 10.1.2 Awarding a framework

Framework agreements may be set up with one or more suppliers (or "economic operators"). Where contracting authorities set up multi-supplier agreements under the Directive, there must be at least three economic operators, insofar as there is a sufficient number of economic operators to satisfy the selection criteria and/or of admissible tenders which meet the award criteria.

It will be important to consider whether a framework agreement, as defined above, is the right approach for the particular goods, works or services to be purchased. This will be a value for money (VFM) judgement for the contracting authority or authorities concerned, taking account of the kinds of purchases involved and the ability to specify such purchases with sufficient precision upfront. In particular, in order to be consistent with VFM obligations the framework should be capable of establishing a pricing mechanism. However, this does not mean actual prices should always be fixed, but rather that there should be a mechanism that will be applied to pricing particular requirements for call offs during the period of the framework.

It is necessary to advertise a framework agreement in the OJEU, if its estimated maximum value over its lifetime exceeds the relevant EU threshold and the procurements in question are not covered by one of the exclusions set out in the Directives.

# 10.2 Panels/Approved Lists

Panels/Approved Lists are used in certain areas of Wexford Co. Council and their use may be further developed over the next few years. The purpose of a panel is to establish a list of pre-qualified suppliers of a certain supply or service that can be called on for quotations/mini tenders as required. The benefit of the panel is that the work of qualification is already done and a list of potential contractors is always at our disposal.



#### Wexford County Council adopts the following policy for operating panels:

- o Panels must be re-advertised on an annual basis
- The panel should be kept up-to-date regarding qualifying information regarding financial and technical capacity
- The number invited to tender/quotation should ensure adequate competition and include at least 5 where available
- Procedures should be documented and be objective transparent and proportionate
- Rules regarding "Call off" or awarding of contracts must be set out up front and adhered to at all times. These can include:
  - o Application of specific criteria based on information available
  - By random selection
  - By rotation
  - o A combination of all three above.
- Entry to the panel cannot have a closing date and interested parties must be allowed to apply to the panel by submitting the required criteria for entry (however it's permitted to have a closing date for a particular requirement where setting up the panel needs to have a deadline)
- Applicants who fail to qualify to the panel must be allowed to re-apply at any time and "self-clean" i.e. put right the issues that caused them to fail the qualification (e.g. gain required qualification, get tax clearance status, obtain required standards etc....
- The procurement unit should be kept informed of the creation of a new panel, the readvertising of a current panel, the change in call-off rules etc and any other material changes to the operation of the panel.
- N.B. it is not permitted to pick a contractor from the panel for no reason other than you believe
  he is suitable for the job. Normal procedures regarding quotations/tendering must be followed
  as the panel is purely to be seen as a list of candidates for tendering.

# 11.0 Quotations/Tendering for Goods & Services

#### 11.1 Policies

All goods and services being acquired on behalf of Wexford County Council are subject to a quotation or tendering process as follows:

#### 11.1.2 Quotations

Quotations are required in cases of lesser value purchases. Quotations should be obtained in writing and must be evidenced on file for audit purposes. The limits and requirements are set out in the threshold table in section 4.0.

#### 11.1.3 Tenders

Tenders relate to the process of requesting price submissions as per tender documents. Tenders are required in cases of larger value purchases. The limits and requirements are contained in the threshold table in section 4.0. Tenders are also required during the process of compiling the annual tender lists e.g.

- Small Works Tender List (controlled by Roads)
- Housing works list (controlled by Housing)
- Macadam works list (controlled by Roads)
- Etc...

Tenders are obtained through an advertised and competitive process.



### 11.1.4 Accessibility Requirements

All staff involved in public procurement exercises (quotations, annual tenders and tenders for specific items/projects/services/capital works) **shall ensure** that the legislative regulations, standards and guidelines are meet with regard to access and usability in all procurement scenarios (whether equipment purchase, goods and services sought, building works etc.), these legislative regulations, standards and guidelines, as relevant, shall be demonstrated throughout the entire tendering process, from drawing up and running tender competitions through tender evaluation, issue of contracts and contract conclusion procedures and review.

The objective of Wexford County Council is to ensure meeting the necessary regulatory compliance for all relevant legislation (e.g. Section 27 of the Disability Act 2005, Equality legislations, Building Control Act 1990-2007 and associated Regulations, and the Health Safety and Welfare at Work Act 2005) and where practicable to achieve best practice standards for Universal Design, accessibility and usability for all.

#### 11.1.5 Value for Money

It is expected that all staff involved in the procurement process shall have regard to the principles of Value for Money at all times and be mindful of their role as guardians of public funds. Value for money should be based on life cycle costing and not just initial purchase price. Life cycle costing should take all costs of ownership into account including:

- Initial purchase price
- · Cost of consumables
- Maintenance costs
- Disposal costs
- Costs associated with poor quality/poor performance
- Cost of tendering

#### 11.1.6 Specific Legislation

It is expected that all staff involved in the procurement process shall have regard to the requirements/obligations under specific legislation including:

- Freedom of Information Acts 1997 & 2003
- Disability Act 2005
- Health & Safety at Work Act 2005
- Data Protection Acts 1988 & 2003
- Access to Environment Regulations 2007 2014
- Equal Status Acts 2000 to 2008

Refer to Appendix G for details of legislative considerations.

## 11.1.7 Fragmentation of Purchasing

Fragmentation of purchasing requirements for the purpose of circumventing the procedure will not be permitted under any circumstances.

#### 11.1.8 Collusive Tendering

Collusive Tendering is defined as the illegal practice among companies, making tenders for a job, of sharing inside information between themselves, with the objective of fixing the end result. Those



involved in procurement have a responsibility to watch out for such actions and to take appropriate care in their tender process to prevent this activity.

#### 11.1.9 Economies of Scale

Where practical, all sections should consider availing of economies of scale and other economically advantageous measures, including cross directorate/departmental procurement.

### 11.1.10 Maintaining Records

All tenders/quotations must be retained until the relevant accounts have been audited or reviewed by the Internal Auditor, Local Government Auditor and E.U. Auditor, where appropriate. Records for all steps in the procurement process should be maintained, printed out and held on file.

#### 11.1.11 Guidelines for advertising tenders

Tenders for **supplies and services** over the value of €25K are to be advertisement on <a href="www.eTenders.ie">www.eTenders.ie</a> using the standard RFT templates which can also be found on eTenders.ie or <a href="www.procurement.ie">www.procurement.ie</a>. Tenders valued under €25K can also be advertised if required for example if a further reach is deemed necessary. All completed documents should be forwarded to the procurement mailbox at <a href="mailto:procurement@wexford.ie">procurement@wexford.ie</a>.

Tenders for **works** over the Value of €50k are also to be advertised on eTenders using the correct templates from the Capital Works Management Framework <a href="https://www.constructionprocurement.ie">www.constructionprocurement.ie</a>.

On receipt of the completed documents, the Procurement unit will take the following action:

- Perform a cursory review of the tender documentation to check the correct templates are being used and that the tender is generally compliant.
- Ensure that sufficient, relevant and effective selection and award criteria have been assigned and that the specification and pricing model is set out clearly
- Ensure that all assigned deadlines are of sufficient duration, that the format is correct and that the requirements are clear and understandable for the reader.

N.B. It is accepted policy of this organisation that all aspects of and responsibility for the tender process and its subsequent outcome will remain the responsibility of the section initiating the procurement. The Procurement Unit will act solely as a supporting service to assist and advise in the interest of securing the best outcome for the procurement process.

Any requirement for advertising tenders outside of this forum should be discussed with the Procurement Unit.

Closing date for the receipt of Tenders must be clearly identified on the advertisement. All advertisements should include a statement about Freedom of Information (FOI). See Appendix C for sample wording where an FOI format is not included as part of any standard contract tendering documentation.

All tender submissions whether electronic or hard copy must be received in the Procurement Unit. Late submissions will not be accepted. Once the tender deadline has elapsed, two staff members will "unlock" the tender box on eTenders and download the electronic tender submissions. Hard copy



tenders will be held in a safe until the tender deadline has elapsed. They will be opened then and witnessed by two members of staff. The opening of the tender documents will be recorded on the "Tender Opening Record for DOS" form. The receiving department will sign this form to confirm receipt of the tender and a copy will be circulated to the appropriate Director of Service.

# 11.1.12 Acceptance of Tenders

Acceptance of tenders for inclusion in the Official Procurement Listings must be accepted by way of Executive Order signed by Chief Executive or Director of Service.

Tenders valued between €50,000 and €1.5million (excl. V.A.T.) must only be accepted by way of Executive Order signed by the Chief Executive or Director of Service.

Tenders greater than €1.5million (excl. V.A.T.) must only be accepted by way of Executive Order signed by the Chief Executive.

The assessment process should be formally signed off and evidence retained on file for audit purposes.

All recommendations on tenders shall be submitted to the Chief Executive or Director of Service (as appropriate) and must include the following:

- Names, addresses and amount of tender in each case
- Recommendation as to which tender should be accepted and the reason for same
- Any other comments necessary

N.B. It is the policy of Wexford County Council to use "Open" tendering unless there are compelling reasons to use an alternative tendering procedure. Any deviation from an open tendering procedure requires the prior written approval of the Director of Service or Chief Executive.

# 12.0 Ordering of Goods & Services

#### 12.1 Policies

- The ordering of goods and services is the point of commitment to spending for this
  organisation. As such it is the central control point in the procurement process and therefore
  strong controls are crucial at this stage.
- An Official Purchase Order must be issued for all goods/services acquired from an external supplier, except where permitted by the use of another approved payment method i.e. Petty Cash, Imprest Account or Corporate Purchasing Card (CPC).
- N.B. Careful attention should be given to ensuring that all transactions are coded accurately
  and have sufficient remaining budgetary provision, save with the express approval of the
  Chief Executive or Director of Service.
- The raising of Official Purchase Orders is at all times subject to the completion of tendering/quotation requirements set out in the policies for quotations and tendering for goods and services.
- All Official Purchase Orders must be completed in full.



- The issuing of multiple purchase orders for the purpose of circumventing the procedures will not be permitted under any circumstances.
- Under no circumstances should anyone sign the name of an authorised officer to an order except him/herself.
- Copies of Official Purchase Orders issued must be retained until audited or reviewed by the Internal Auditor, Local Government Auditor and E.U. Auditor, where appropriate.
- The value of unpaid orders represents the total value of the local authority's commitments for the purchase of goods and services and as such it is crucial to good budgetary management. Therefore it is vital that every attempt is made to ensure the accuracy of these records and outstanding purchase orders should be reviewed regularly by budget holders for validation purposes
- Official Purchase Orders, which do not comply with the policies and procedures as set out in this document, will result in payments not being processed in the Finance Department.
- Where a Executive Order is required, it must be signed by the Chief Executive, Director of Service or persons delegated with such authority.
- Input of a zero amount to allow for the issue of an order is not permitted the agreed price as
  obtained in accordance with the policies for quotations and tendering for goods and services
  must be quoted on all Official Purchase Orders.
- Officers issuing orders shall be responsible for ensuring that all transactions are duly authorised in accordance with the policies set out above and that careful attention is given to ensuring that all payments are coded accurately and have sufficient remaining budgetary provision, save with the express approval of the Chief Executive or Director of Service.

# 12.2 Procedures - Ordering of Goods & Services

All official orders must be completed in full and must include:

- The name of the ordering office.
- The company name and address, which must agree with the name on the invoice and the name on the payment batch.
- All official orders are to be dated. The date in all cases to be the date the order is issued.
- The rate, agreed price and VAT and total to be entered prior to issue.
- The appropriate Product Code relating to the purchase and the appropriate General Ledger code.
- The signature of the appropriate approving officer on both the original and carbon copy.
- The original Official Purchase Order should be forwarded to the Supplier and the carbon copy retained for attachment to the payment batch.
- Official Purchase Orders must be signed in accordance with the following authorisation limits, which are set out on the following pages.

#### 12.2.1 Official Purchase Orders less than €6,500 (incl. V.A.T.)

Subject to compliance with the policies for quotations and tendering for goods and services, Official Purchase Orders in this category must be authorised by at least, Staff Officer, Assistant Engineer, S.E. technician or analogous grades, as appropriate.



## 12.2.2 Exceptions apply to Purchase Orders less than €2,500 as follows:

Official Purchase Orders in this category can be authorised by Clerical Officers in Area Offices/Machinery Yard Operations, Senior General Services Supervisors and General Services Supervisors as follows:

- (a) Where price is fixed as a result of the following and the value does not exceed €2,500 (incl. V.A.T.)
  - Supplygov.ie (Plant Hire)
  - Supplygov.ie (Supplies and Services)
  - Supplygov.ie (Tool Hire)
  - Small Works Tender List
  - Annual Stores Tender List.
  - List of Official Suppliers (to a maximum of €2,500, incl. VAT)
  - Framework Agreements, where appropriate.
- (b) Or where the total value does not exceed €150 (incl. V.A.T.)

# 12.2.3 Official Purchase Orders greater than €6,500 and less than €15,000 (incl. V.A.T.)

Subject to compliance with The policies for quotations and tendering for goods and services, Official Purchase Orders in this category must be authorised by at least, Administrative Officer, Senior Executive Engineer, Chief Technician, Procurement/Supplies Officer (Enniscorthy), Technical Services Supervisor (Enniscorthy) or Civil Defence Officer, as appropriate.

# 12.2.4 Official Purchase Orders greater than €15,000 and less than €25,000 (incl. V.A.T.)

Subject to compliance with the policies for quotations and tendering for goods and services, official Purchase Orders in this category must be authorised by at least, Senior Executive Officer, Senior Engineer or analogous grades, as appropriate.

## 12.2.5 Official Purchase Orders greater than €25,000 (incl. V.A.T.)

Subject to compliance with the policies for quotations and tendering for goods and services, Official Purchase Orders in this category must be authorised by at least, Senior Executive Officer, Senior Engineer or analogous grades, as appropriate and must be accompanied by the Executive Order relevant to the purchase signed by the Chief Executive or Director of Service as appropriate.

#### 12.2.6 Exceptions to limits

Exceptions to the limits set out above and subject to compliance with the policies for quotations and tendering for goods and services, will apply to the following items:

#### 12.2.6.1 Items from the supplygov.ie (Supplies and Services)

- Clause 804 / Screenings up to a limit of €50,000 incl. VAT
- Carriageway markings up to a limit of €30,000 incl. VAT
- o Road Chippings up to a limit of €50,000 incl. VAT



#### 12.2.6.2 Items from supplygov.ie (Plant and Machinery)

o Plant up to a limit of €10,000 incl. VAT

#### 12.2.6.3 Items from the Fuel Tender List

- Fuel up to a limit of €25,000 incl. VAT
- Small Works Tender Rates List Works to the value of €50,000 excl. VAT

#### 12.2.6.4 Other

- Public lighting infrastructural works to the value of €25,000
- Telecommunication cabling realignment works to the value of €10,000

For each of the exceptions above Official Purchase Orders may be authorised by Executive Engineer or analogous grades, the Supplies Officer (Enniscorthy) and the Technical Services Supervisor (Enniscorthy)

#### 12.2.7 Macadam Works Tenders

In the case of work procured under the Macadam Works Tender, where the value of the work is less than the EU Threshold for Supplies and Services (currently €193,000) Official Purchase Orders may be authorised by the District Engineer and Senior Executive Engineer.

### 12.2.8 Payment of Housing Grants under Sub Service A09

In the case of Housing Grants expenditure under Sub Service A09 in the local authority annual budget, Official Purchase Orders may be authorised by the Senior Staff Officer (Grade VI) Housing.

## 12.2.9 Low Value Purchasing Cards/Business Cards

For low value purchases it is often very efficient to use a LVPC (low value purchasing card). These are held by various sections depending on their need. If you feel your section has a regular need for a low value card, send a request to the procurement unit email <a href="mailto:procurement@wexfordcoco.ie">procurement@wexfordcoco.ie</a> for approval.

The Procurement Unit holds a low value purchasing card which can be utilised by a section who has a once-off or infrequent need to make a low value purchase online but not a sufficient need to hold their own card. The procedure for this is as follows:

- o Contact the procurement unit for permission to use the card, explaining the requirement and including sign off by the section head who has the necessary authority to make the purchase.
- o Decide on the purchase. E.g. for an online purchase, set up an account on the website in question, select the product and place in your shopping cart.
- Forward the confirmation email to the <u>procurement@wexfordcoco.ie</u> inbox with the details of the purchase, link to the website, username and password etc as well as the relevant charge codes.
- Forward the receipt to the procurement unit
- The procurement unit can then sign in to the website and make the purchase with their purchasing card.

The procurement unit will not release the procurement card to anyone to make a purchase other than online.



# 13.0 Receiving of Goods & Services

## 13.1 Policies

A Goods Received Note (GRN) may be defined as an electronically generated document, recording the receipt of goods/services from a supplier. The G.R.N. facility should be used to record the details included on the supplier's delivery docket, where applicable.

Before a Goods Received Note (GRN) is processed the following shall apply:

- o Goods and Services, as ordered, have actually been received
- o Goods and Services have been provided in a satisfactory condition.
- Goods and Services received must have originated with a Wexford County Council Official Purchase Order, having fully complied with the policies and procedures for quotations and ordering of supplies and services.

# 13.2 Procedures - Receiving Goods & Services

- Invoices may not be processed in the Purchase Ledger without the prior processing of a Goods Received Note (GRN)
- There are no specific authorisation limits required for the GRN process provided that both the tendering and ordering of goods and services procedures have been fully complied with.

Where the quantity of goods/services varies from the original Official Purchase Order or where there is a need to return the goods, reference should be made to the Purchase Ordering (RSS) User Manual for the appropriate procedure. See the Procurement Library on Wexford County Council's Intranet for reference documents: http://10.68.0.15/intranet/finance/procurement library.htm.

# 14.0 Paying for Goods & Services

#### 14.1 Policies

Every payment for goods and services supplied to Wexford Co. Council and submitted for processing must be supported by a fully completed voucher or invoice and the carbon copy of the appropriately signed Official Purchase Order.

Invoices received from suppliers must show the following:

- o Name and Address of Supplier and V.A.T. registration number if applicable
- Description of the goods or services, quantity and rate, total cost, V.A.T. and total amount payable
- All invoices received from a supplier <u>must</u> quote a Wexford Co. Council Official Purchase Order Number.

#### Machinery Hire invoices must show:

- Description, Type and/or capacity of vehicle(s)
- o Dates and Number of Hours/Days on hire
- o Rate per Hour/Rate per Day, as applicable
- o Plant Hire List reference number, where applicable



From time to time Wexford County Council pay non-invoice type payments e.g. refunds, grant payments, loan advances, lump sums and any statutory payments. As these payments do not relate to the supply of goods and services to the Wexford Co. Council they do not require a supporting invoice, but must be accompanied by the original document, properly authorised in accordance with the procedures set out above. This is to avoid the risk of duplicate payments.

# If in any doubt whether an invoice has already been paid you must check this before proceeding to pay.

The following are not acceptable as payment documentation:

- Photocopies or duplicate invoices unless clearly endorsed that payment has not already been made
- o Facsimile copies of invoices
- o Advice Note (Supplier notification of goods sent)
- Delivery Dockets
- Statements of Account
- o Invoices marked "This is not a VAT invoice"
- Pro Forma Invoices (An invoice presented for payment of goods or services prior to their dispatch/provision)

All payments processed must have regard to the provision of S.I. 388 of European Communities (Late payment in commercial transactions) Regulations 2002, relating to the Prompt Payment of Accounts. (Appendix A)

Each payment must be entered on a payment batch certified by the Authorised Officer, having satisfied him/herself that:

- o All payments are coded accurately and have sufficient remaining budgetary provision.
- Work, Goods or Services to which the payment relates has been received or carried out, examined and approved
- o The prices, calculations, trade discounts, other allowances/credits and V.A.T. are correct
- The payment has not been previously paid and is a proper liability of Wexford Co. Council

Payments which do not comply with these policies will not be processed by the Finance Department

### 14.2 Procedures

- All invoices must be date stamped and checked for accuracy on arrival in the relevant section.
- Invoices should be batched for processing and must include the following, where applicable:
  - Executive Order signed as appropriate by the Chief Executive or Director of Service in accordance with the policies as set out in the policies for quotations and tendering for goods and services.
  - o Reference number from any relevant procurement listing as appropriate
  - o Copy of the Official Purchase Order with the appropriate authorisation.
  - Evidence of the date that the goods were delivered or the service provided, preferably the suppliers delivery docket.
  - Where part payments arise on Official Purchase Orders, the invoice must clearly be marked "Part Payment – Official Purchase Order No.\_\_\_\_\_\_"; and may be submitted for payment with the copy of the Official Purchase Order.



- Part Payments should be recorded on the copy of the Official Purchase Order. The copy showing all payments should be submitted with the invoice for the final payment.
- When the copy of the Official Purchase Order has been submitted with the final part of the payment, no further payments may be made against that Official Purchase Order.
- Relevant Expenditure Codes. N.B. Careful attention should be given to ensuring that all payments are coded accurately and have sufficient remaining budgetary provision, save with the express written approval of the Chief Executive or Director of Service.
- o Invoices processed must only be those submitted by the supplier of the goods/service
- The invoice number as quoted by the supplier must be input in the document reference field on the purchase ledger system. (As well as a relevant reference, this will assist in minimising incidents of duplicate payments. Therefore this number must not be altered in anyway)
- All invoices within a payment batch must be certified by an officer of Wexford Co. Council.
   This certification confirms that the goods and services have been received and have met the requirements of the Procurement Policies & Procedures for receiving goods & Services.
- Payment batches must be certified by an officer of rank not less than Staff Officer. This
  certification confirms that:
  - (a) The appropriate authorisation was undertaken at Official Purchase Order stage.
  - (b) The goods and services have been received and have met the requirements.
  - (c) The invoice is attached and meets the requirements.

Officers certifying batches are further confirming that:

- (a) All relevant and appropriate documentation is attached to each invoice in the batch.
- (b) Appropriate tax rates have been applied, where relevant.
- (c) An accurate record of all invoices has been entered on the Purchase Ledger.

# 15.0 Types of Procedures

# 15.1 Open Procedure

The open procedure is the most common type of procedure and should be used where possible to allow maximum participation by economic operators. This is a single stage approach whereby any interested party may submit a tender. Tenders are usually assessed as follows:

- 1. Does the tender meet the formal requirements of the tender process (Pass/Fail)?
- 2. Assessment against the minimum financial and technical rules (Pass/Fail)
- 3. Does the tender comply with the specification?
- 4. Assessment against the pre-defined award criteria.

Draft and publish notice in eTenders/OJEU using OPEN procedure

Make Tender documents available to all either by uploading to eTenders or on request

Respond to any requests for clarification by issuing responses to all interested parties

Receive Tenders - Store in a safe location



**Open and Register Tenders** 

Assess Tenders against selection/suitability criteria

Assess those tenders that meet suitability criteria against the award criteria

Seek internal approval for award of contract

Notify Successful tenderers and unsuccessful tenderers allowing for standstill period if applicable (Note – standstill is only mandatory for EU level contracts)

Respond to any debriefing requests

Formally award the contract with the successful tenderer

Publish award notice (EU Contracts – within 48 days of contract award)

### 15.2 Restricted Procedure

The restricted procedure is a two-stage procedure where any party may apply to participate in the competition and only a certain number of qualified applicants are invited to submit a tender. You might use this in situations where you anticipate a lot of interest in the competition or where there is confidential information at stake in the tender documents that you would not want to publish in the public domain etc..

Following an "expression of interest" where certain qualification criteria is requested and assessed, at least 5 qualified applicants should be invited to tender.

Draft and publish notice in eTenders/OJEU using RESTRICTED procedure

State selection Criteria, rules and weightings in notice or qualification questionnaire

Respond to any requests for clarification by issuing responses to all interested parties

Receive applications – Store in a safe location

Open and resister applications

Assess against pre-stated selection/suitability criteria, rules and weightings – tender list of at least 5

Notify unsuccessful applicants



Issue at least 5 tenderers with tender documentation including award criteria and weightings

Receive tenders – store in safe location, open and register once closing date and time has passed

Evaluate tenders against award criteria and weightings

Hold clarification meetings, if required, prior to formal decision

Seek internal approval for award

Notify successful tenderers and unsuccessful tenderers (EU contracts take account of Standstill period)

Respond to any debriefing requests

Formally award contact with successful tenderer

Publish award notice (EU contracts within 30 days of contract award)

# 15.3 Competitive Dialogue

Set out selection criteria in Qualification Questionnaire

Publish Call for Competition in OJEU Receive Applications (30 Days)

Evaluate Responses and select suitable candidates (min 3 if available)

Issue Regret Letters to unsuccessful candidates

Apply Award Criteria to reduce participants (if necessary)

REPEAT THIS STAGE AS MANY TIMES
AS NECESSARY

Declare conclusion of dialogue and invite tenders to those deemed to have suitable solutions

Choose preferred solutions and award contract (14 day standstill)

(Issue regret letters to unsuccessful



tenderers

Publish Award Notice (issue within 48 days of award)

Option to debrief unsuccessful tenderers

# 15.4 Panels/Approved Lists

Panels and or Approved Lists are used in certain areas of Wexford Co. Council and their use may be further developed over the next few years. Panels may be used across sections within the Council as long as this usage has been stated during the establishment of the panel.

### Rules for operating panels are as follows:

- o Panel must be advertised on an annual basis
- The panel should be kept up-to-date regarding qualifying information regarding financial and technical capacity
- The number invited should ensure adequate competition and include at least 5 where available
- o Procedures should be documented and be objective transparent and proportionate
- Rules regarding "Call off" or awarding of contracts must be set out up front and adhered to at all times. These can include:
  - o Application of specific criteria based on information available
  - o By random selection
  - Bv rotation
  - A combination of all three above.
- o Panel cannot have a closing date
- o Applicants who fail to qualify must be allowed to re-apply at any time and "self-clean" i.e. Put right the issues that caused them to fail the qualification.

# 15.5 Timescales for tender process

The following table denotes the various timescales for use within the various different procedures. Wexford co. Council has adopted the national guidelines as policy and these should be adhered to unless the situation dictates otherwise and this is signed off at Director of Service level.

Procedure	Receipt of expressions of interest	Receipt of Tenders (Public Sector)
National Guidelines (Dept. recommended time scales and Wexford Co. Council's policy)		
OPEN – National	N/a	14 – 21 Days
Restricted (National)	14 -21 days	14 -21 Days
European Level (mandatory)		



Open – using eTenders for notices	N/a	35 days
Open – using eTenders for notices and	N/a	35 days
tender documents		
Restricted using eTenders for notice	30 days	30 days
Restricted using eTenders for tender	30 days	30 days
documents		
Competitive Procedure with Negotiation	30 days	At least 30 days
using eTenders for notice		
Negotiated Procedure with call for	30 days	At least 30 days
competition using eTenders		
Accelerated Restricted /Negotiated	10 days	15 days
Procedure using eTenders for notice		
Contracts awarded within framework	n/a	At least 10 days
agreements (mini tenders)		

# **16.0 Specific Considerations**

### 16.1 Taxation Issues

### **16.1.1 Taxation Liability**

It is necessary when procuring goods/services on behalf of Wexford County Council that all statutory taxation requirements are identified and complied with, e.g. Tax Clearance Certificates where total payments exceed €10,000 per annum, Subcontractors tax applicable to Contractors carrying out work on behalf of Wexford County Council, and Withholding Tax for professional services provided to Wexford County Council.

#### 16.1.2 Tax Clearance Certificates

In line with statutory requirements:

Circular 43/2006 Tax Clearance Procedures – Public Sector Contracts and Circular 44/2006 Tax Clearance Procedures – Grants, subsidies and similar type payments any revised version of the statutory requirement all staff should be aware that tax clearance certificates must be supplied where total payments to any supplier are anticipated to exceed €10,000 in any 12 month period. <a href="http://10.68.0.15/intranet/finance/creditorpayments\_guidelines.htm">http://10.68.0.15/intranet/finance/creditorpayments\_guidelines.htm</a>

Tax Clearance Certificates, where required, must be in place in advance of any contract/agreement to supply. A copy of the tax clearance certificate must be submitted to the Finance Dept (Creditors Desk) Where tax clearance certificates are not supplied, payments will be withheld once the €10,000 limit has been reached.

### 16.1.3 Sub Contractors Tax/Relevant Contracts Tax (RCT)

What is RCT?

RCT or Relevant Contracts Tax pertains to the following operations:



- Construction
- Forestry
- Meat Processing

It applies to payments made by a principal contractor (Wexford County Council) to a subcontractor under a **relevant contract** i.e. a contract for the carrying out of, or the supply of labour for the carrying out of, **relevant operations** in the **construction**, **forestry or meat processing** industries. RCT applies to both resident and non-resident contractors operating in these industries.

All construction operation payments which fall within the scope of RCT are subject to **reverse charge rules**. When a sub-contractor issues an invoice to a principal contractor (Wexford County Council) in respect of same, they should not include VAT. Instead, the principal contractor calculates the VAT on the amount charged by the sub-contractor and pays the VAT directly to the Revenue Commissioners through their VAT return. While forestry and meat processing operations also fall within the scope of RCT, the **reverse charge rule does not apply** to payments made under these headings.

### 16.1.4 Professional Services Withholding Tax (PSWT)

#### What is PSWT?

PSWT is a withholding tax to be deducted from payments made by certain bodies (accountable bodies including local authorities) in respect of professional services.

### Rate of PSWT to be deducted

The rate of PSWT deducted is the standard rate of tax in force at the date the relevant payment is made. The standard rate of income tax for the current tax year is 20%.

### From what payments is PSWT deducted

PSWT is deducted from "relevant payments". Relevant Payments are payments in respect of professional services made by the accountable persons. Note the payments need not be in respect of services provided to the accountable person. Therefore PSWT also applies where an accountable person makes a payment in respect of a professional service provided to another person.

#### Calculating the PSWT deduction

PSWT is to be deducted at the standard rate of income tax from the total amount of payment due, including any amount in respect of expenses but excluding:

- VAT
- Stamp Duties
- Land Registry Fees
- Deed of Registration Fees
- Company Office Fees
- Court Fees.



# 16.2 Value Added Tax (VAT)

Wexford County Council are required to pay VAT on goods & services procured and can only recover VAT paid in relation to specific services. VAT is normally charged and accounted for by the contractor/supplier of goods and services.

### 16.2.1 VAT Reverse Charge/Self Accounting

However, in certain limited circumstances the recipient of goods or services, rather than the supplier, is obliged to account for the VAT due. This applies:

- on the intra-Community acquisition of goods from another EU Member State •
- on receipt from abroad of Fourth Schedule services (See Appendix E for definition) or cultural, artistic or entertainment services received by a promoter from persons not established in the State
- Valuation, repair or contract work carried out on moveable goods in another State in certain circumstances
- Where goods are installed or assembled for certain designated persons in the State by a supplier who is not established in the State
- Intra-Community transport and ancillary services supplied by a non established person to an accountable person in the State
- With effect from 1 September 2008, construction services supplied to a principal contractor by a subcontractor, whether or not the subcontractor is established in the State
- On the receipt of gas through the natural gas distribution system, or electricity, from a person not established in the State by certain categories of persons in the State

### 16.2.2 Reverse Charge/Self-accounting Purchases from abroad

Generally all goods and services procured from abroad are liable to Irish VAT. Therefore procurements from abroad should be invoiced VAT free by the supplier/contractor. VAT, calculated at the rate applying in Ireland is paid to the Irish Revenue Commissioners by the Finance Department of Wexford County Council, once the supplier/contractor invoice is paid. Wexford County Council's VAT registration number for such procurements is IE8F98037V. This number should be advised to all suppliers/contractors from other EU member states and should be quoted on invoices submitted for payment by them..

N.B. These requirements are also applicable to purchases from abroad which are invoiced in Euro. In such cases the invoice must be brought to the attention of the Finance Department to ensure that all VAT legal obligations are met.

### 16.2.3 Reverse Charge/Self Accounting – Sub Contractors

It should be further noted that Section 77(1)(a) of the Finance Act 2007 provides for a change in the VAT treatment of some services received by government departments, local authorities and bodies established by statute. From 1 September 2008 Government Departments, local authorities and public bodies who are principal contractors for the purposes of RCT and who receive construction services should no longer pay any VAT over to subcontractors and instead should account for the VAT on services received from subcontractors directly to Revenue through their VAT return.



The Local authority should therefore be invoiced VAT free by the subcontractor and VAT is calculated at the appropriate rate and paid to the Revenue Commissioners by the Finance Department of Wexford County Council, once the subcontractors invoice is paid.

(See Revenue Commissioner Guidelines for a more detailed breakdown of the taxation requirements set out above or access the Finance Reference Library at <a href="http://10.68.0.15/intranet/finance/creditorpayments">http://10.68.0.15/intranet/finance/creditorpayments</a> guidelines.htm

In relation to tendering/quotations VAT law provides for equal treatment in the supply of goods & services, therefore no competitive advantage or disadvantage should arise from the correct application of VAT rules. Therefore the limits applied to tenders/quotations are exclusive of VAT while limits in relation to authorisation of purchases are <u>inclusive of VAT</u>

# 17.0 Online Procurement Tools - WWW.Supplygov.ie

The Local Government Operational Procurement Centre (LGOPC) based in Kerry Co. Council operate an online platform for submitting requests for quotations and requests for tenders from interested parties and those pre-qualified to supply to Local Authorities. We are encouraged to use this system which is an excellent tool for procuring works, supplies and services from pre-qualified suppliers. There are two types of requests that an L.A. can submit. They are Request for Tender (RFT) and Request for Quotation (RFQ).

# 17.1 Requests for Tender (RFT)

The LGOPC have implemented a number of framework agreements for various categories of goods and services related to minor building works & civils and for plant hire. This means that for certain categories, a pre-qualified list of suppliers exist from whom you can request mini-tender submissions online via <a href="www.supplygov.ie">www.supplygov.ie</a>. Only those admitted to the framework can submit a min-tender in this situation and the procurement is governed by the rules of the framework.

Examples of pre-defined framework agreements available to us on www.supplygov.ie are:

Supply of Bitumen Emulsions 2016	Footpath, Roadway Restoration and Ancillary Works
Fuel 2015/2016	Irish Water Plant Hire Services 2014 Region 4
Mechanical Road Condition Surveys Regional & Local Road	Plant Hire Services 2015
Ready Mix Concrete (Supply) 2015/2016	Regional Training – Environment
Regional Training – Roads	Regional Training – Water
Road Making Materials (Supply and Placement) 2015/2016	Road Making Materials (Supply Only) 2015/2016
Road Marking Services 2014	

Contact the Procurement Unit for any queries related to the use of the system.

# 17.2 Requests for Quotation (RFQ)

Quotations can be used where the annual aggregated value for the goods/works/services does not exceed €25k and where the required goods/works/services are not available through the frameworks.

A request for quotation differs from a request for tender in that the economic operators who may respond to your RFQ are not members of a pre-defined framework agreement. These economic



operators may join up on supplygov.ie at any stage by meeting the qualification criteria. They will indicate the regions they are interested in quoting for (e.g. which Local Authorities) and the categories that they will supply to. When a buyer (the local authority) submits a request for quotation, the relevant operators will receive notification and can decide whether they wish to provide a quotation to that request. A comparison tool is available to the buyer and normally the lowest price will be accepted and an order placed with that operator. The benefits of receiving quotations via this method include:

- Only pre-qualified suppliers are permitted to quote
- No need for you to search for suppliers to request quotes from
- A history is maintained for your future reference and for audit purposes
- Suppliers know that there are many others bidding against them and this can drive better value for money
- Everything is done on-line so there is no need for you to manage letters, quotations etc on a paper trail.
- Compliance with Government direction and with procurement rules

# Categories of supplies/works/services available to us for immediate quotation via supplygov.ie include the following:

Request for Quotations (RFQ) Categories		
Archaeological	BER Assessment	
Blockwork/Brickwork Construction	Breathing Apparatus	
Chimney repairs, inspections, cleaning	Concrete Products Supply Only	
Consultancy Services	Courier Service	
Diving/Civil Engineering Works	Drainage Pipes, Ducts and Fittings Supply Only	
Ecologist	Electrical Goods	
Electrical Services	Environmental Clean-Up	
Environmental Solutions	Fencing Products	
Fencing Services	Fire Service	
Flooring Contractors	Garage Services	
Graphic Design	Hardware	
Instrumentation Supplies and Services	Investigations/Surveyors	
Irelands Best Young Entrepreneur	KCC Conservation Services	
Kitchen Suppliers	Laboratory Analysis	
Laboratory Supplies and Services	Landfill Supplies	
Landscaping Works	Library Supplies & Services	
Lifting equipment & Manual Handling	Locksmith	
Manhole, Gully & Waterworks Covers	Mobility Access	
Motor Accessories	Oils, Grease, Antifreeze and Wood Pellets	
Painting Contractors	Passenger Lift Maintenance	
Plastering	Plumbing Services	
Portable Canteens/Portaloos/Site Sto	Printers	
Public Lighting	Quantity Surveying Services	
Retexturing Work	Road Safety	
Road Signage	Security Systems	
Small Schemes	Steel Fabrication Works	
Stone wall construction	Street Furniture	
Student Enterprise Awards	Testing of Road Materials	
Timber	Tool Hire & Purchase	
Tools	Traffic and Warning Lights	
Traffic Counters	Training Courses	



Tyres	Valuers
Waste	Water Coolers
Water Fittings	Water Mains
Water Meters	Water Pumps
Water Safety	Water Services backfill/restoration materials
Water Treatment Tanks	Water/Waste Water Services/Treatment
Well Boring/Drilling	Well Testing

If you feel you have a requirement to use supplygov as a procurement tool, please contact the Procurement Unit who will set you up and walk you through the system.



# Appendices



# **Appendix A – Prompt Payment of Accounts Act**

PROMPT PAYMENT OF ACCOUNTS ACT 1997 AS AMENDED BY EUROPEAN COMMUNITIES

LATE PAYMENT IN COMMERCIAL TRANSACTIONS

REGULATIONS 2002 S.I. 388 OF 2002 PROCEDURES

- In order to avoid attracting penalties under the above act, the following procedures were introduced from the 2 January 1998 and amended from June 2010.
- All invoices <u>must</u> be registered as soon as they are received. Each invoice <u>must be date stamped</u> with the date of receipt.
- The date of receipt of the invoice <u>must</u> be entered as "Prompt Payment Date" and the date of the actual invoice is to be entered in the "Document Date" on the Invoice Entry screen.
- The "Credit Terms" field will be used to generate the "Payment Due" date. For noncontract invoices, enter 23 (7 days contingency being allowed). For contract invoices, enter the relevant credit terms, less 6 days.
- o If an invoice is disputed, Register Amendment must be used to change the "credit terms" field to "999". This will prevent the invoice from being selected for interest calculation, and from appearing on warning reports. The date returned should be entered in the "Narrative field".
- When a disputed invoice is returned and is correct, the invoice should be date stamped with the new receipt date. When amending the Register, either replace the "999" Credit Terms with "23" or amend the "Document Date" to the new receipt date with Credit Terms set to "7" – whichever will generate the later date.
- Where some of the entry information is not known (e.g. P.O. number, GL Code) the invoice should be registered immediately and amended later.
- Where receipt of an invoice precedes receipt of goods or services, the invoice should be registered as above and the document date should subsequently be amended to be the date of receipt of goods, with the original invoice date being recorded in the "Narrative" entry field.
- Each Purchasing Location will run a report each week, listing outstanding invoices, which will attract penalty interest if not paid in the following payment run. The Finance Department will receive a full listing for each Location.
- A report will be run centrally each week, as part of the Payment Processing procedures, listing all invoices paid in the run, which had exceeded the prescribed date. A file will be extracted from the system containing this data, which will form the basis for payment of penalty interest accrued.



# Appendix B – Procedure for Receipt of Tenders in Wexford Co. Council

- o Tenders shall be kept for safety in a locked box between times of receipt and opening.
- Tenders shall be opened at a meeting but if Chief Executive is satisfied that for urgent reasons they should be opened before a meeting, he may do so in the presence of any Member of the Council.
- A schedule of the tenders opened shall be submitted to the meeting at which opened or the following monthly meeting of the Council.
- Tenders shall be examined by the Council's staff and shall be open to inspection by Members if such inspection is requested.



# **Appendix C - Freedom of Information**

### (a) Suggested Wording for inclusion in public advertising seeking quotations

Wexford County Council is an FOI body. When quoting, please indicate what parts of the quotation are commercially sensitive and should be kept confidential should the Council receive an FOI request relating to the quotation.

Please note that in the event that no information is identified by you as sensitive, with supporting reasons, then it is likely to be released in response to a request under the Freedom of Information Acts.

# (b) Suggested Wording for inclusion in public advertising for tenders where full details are supplied in the tender documents

Wexford County Council is an FOI body. When tendering, tenderers should indicate what parts of their tenders are commercially sensitive and what parts they consider should be kept confidential should the Council receive an FOI request relating to the tender. Further information on FOI is contained in the tender documentation.

# (c) Suggested Wording for inclusion in public advertising for tenders where full details are not supplied in the tender documents or where FOI is not included as part of any standard contract tendering documentation.

Wexford County Council undertakes to use its best endeavours to hold confidential any information provided by you in this tender subject to the Council's obligations under law including the Freedom of Information Acts 1997 and 2003. If you consider that any of the information supplied by you in this tender should not be disclosed because of its sensitivity, you should, when providing the information, identify same and specify reasons for its sensitivity. Wexford County Council\*\* will consult with you about this sensitive information before making any decision on any Freedom of Information request received. In the event of a decision to release particular information provided by you, you will have the option of appealing the Council's decision to the Information Commissioner.

Please note that unless information is identified by you as sensitive, with supporting reasons, then it is likely to be released in response to a request under the Freedom of Information Acts.



# Appendix D - Guidelines on Record Keeping

Records are more than just data or information. They are created and retained for specific business reasons (e.g. to provide evidence of business activities, to record an organisation's policies and how they evolved, and to comply with regulations). Records are also inextricably linked with the business functions and activities that they document, and the organisational units that create and maintain them.

A good records management strategy is required to facilitate good recordkeeping and to manage efficiently the records that are produced and maintained within an organisation. Staff must develop a new recordkeeping awareness to cope with the demands for transparency and accountability on local authorities and to ensure compliance with administrative, fiscal, legal and other requirements.

The following are important record keeping considerations for anyone involved in the procurement process

- Sufficient records should always be maintained to show the evaluation of different options, including rejected options
- Language should be clear, factual and objective
- Conclusions, Decisions and judgements should always be explained and justified in terms of facts
- Where a final decision is taken, reasons for the decision should be recorded and should include references to any other material used in reaching the decision.
- "Post-it" notes are to be used with care if placed on files and they should never be used to record important information. Where "post-its" are used they should be attached securely to the relevant file. Please note that a "post-it" note, once retained, is a record for the purposes of Freedom of Information.



# **Appendix E - Fourth Schedule Services**

Fourth schedule services are so called because they are listed in the Fourth Schedule to the VAT Act 1972 (as amended). The general rule for services is that they are taxable at the place where the supplier is established, or where the work is actually carried out. Where Fourth Schedule services are supplied to a VAT registered customer established in another Member State of the E.U., the customer must account for VAT on the supply. Fourth schedule services are generally intellectual or intangible by nature i.e. consultancy services, banking, financial and insurance services.

A number of services, all of which are listed in the Fourth Schedule to the VAT Act are deemed to be supplied in the place where the customer is located, provided that they are supplied for business purposes within the EU, or for any purpose outside the EU.

#### The services affected are:

- o Transfers and assignments of copyrights, patents, licences, trademarks and similar rights,
- Hiring out of movable goods other than means of transport,
- Advertising services,
- Services of consultants, engineers, consultancy bureaux, lawyers, accountants and other similar services, data processing and provision of information (but excluding services connected with immovable goods),
- o Telecommunications services,
- Radio and television broadcasting services,
- o Electronically supplied services,
- the provision of access to, and of transport or transmission through, natural gas and electricity distribution systems and the provision of other directly linked services,
- Acceptance of any obligation to refrain from pursuing or exercising in whole or in part, any business activity or any such rights as are referred to in the first bullet point above,
- Banking, financial and insurance services (including reinsurance and financial fund management functions, but not including the provision of safe deposit facilities),
- The provision of staff,
- The services of intermediaries who act in the name and for the account of a principal when procuring for him or her any services specified above.

Please see VAT Information Leaflet 'Fourth Schedule Services' for further information at www.revenue.ie



# Appendix F - Implications of the EU "Remedies Directive"

The following is provided by way of guidance in respect of the EU "Remedies Directive and should not be considered a legal interpretation. Staff involved in procurement where the EU "Remedies Directive" is relevant should ensure that they are fully aware of any legal implications in respect of their particular procurement exercise.

A standstill period is now formally imposed by the New Directive at European level, legislating for the Alcatel decision, European Court of Justice Case C81/98 Judgement dated 28th October 1999, having been implemented into Irish law in December 2009.

Those who tender on a regular basis for public contracts will be familiar with the "standstill" or "Alcatel" period between notification of the decision to award a contract and contract signing.

The Remedies Directive requires Member States to provide a minimum standstill period from the day after the contract award decision is sent to tenderers.

# Some important considerations in relation to the Directive include:

- o The objective of the standstill period is to allow for effective pre-contractual remedies
  - Irish Regulations require a minimum 14 day period where electronically transmitted (16 days otherwise) from the day following publication of a valid standstill notice.

<u>Note:</u> Contracting Authorities can impose a longer period or can extend the standstill period to take account of particular circumstances.

- A contract <u>must not</u> be concluded with the successful tenderer during the Standstill period nor must the contracting authority negotiate contract terms in that period or allow any work to commence.
- The standstill period will not commence until the day after the award decision (referred to hereinafter as the "standstill notice") issues to tenderers and candidates concerned.
- Therefore the service of a valid standstill notice, compliant with the obligations imposed by the legislation, is critical.
- The standstill notice must give sufficient information to enable an unsuccessful bidder to decide whether there are grounds for seeking a review.
- The standstill period should be specified in date form (e.g. the contract will not be concluded until after the XX day of XXXX 20XX )
- Article 41 of the Procurement Directive applies and thus concerned tenderers and concerned candidates must be informed of:
- Decisions reached (Art 41.1)
- Summary of reasons for rejection (Art 41.2)

Article 2a of the Remedies Directive and Regulation 6 of the Irish Regulations provide for this obligation.

For concerned tenderers who have submitted an admissible tender the reasons for rejection (Art 41.2) to include characteristics and relative advantages of tender selected name of successful tenderer or parties to framework agreement statement why works, supplies or services do not meet performance or functional requirements. The key difference between the old obligations and those of the New Directive is that the information required to be furnished [pursuant to Art 41(2)] has now to be given to allow the Standstill period to commence. This is in contrast to the Procurement Directive requirement that the information pursuant to Art 41(2) be furnished on request from the party concerned.



New Remedies available to the courts for breaches of Procurement Rules include

- o Ineffectiveness of the contract.
- o Alternative Remedies or Penalties including monetary fines
- o Ancillary Remedies

"Ineffectiveness" is a mandatory setting aside of contracts and is available in respect of the following types of improperly awarded contracts:

- o illegal direct awards
- o failure to comply with the standstill obligations
- concluding contract while internal review pending
- o concluding contract following application to the Court but before Court has made its decision
- o breaches of the rules pertaining to permissible call off or draw down contracts

The Court MUST make a Declaration of Ineffectiveness where:

- 1. There is an unjustified award of contract without OJEU contract notice
- 2. There is a breach of the standstill / suspension obligations <u>combined with another</u> infringement and
- 3. There is a breach of the rules for awarding "call offs" (above thresholds) under a framework agreement or dynamic purchasing system

Unless there are overriding reasons relating to the General Interest

The Court has discretion to make a Declaration of Ineffectiveness where:

- There has been a breach of the standstill / suspension obligations without another infringement [alternative penalties must be applied pursuant to Regulation 13(1)(a)] and
- Notice was given to unsuccessful tenderers in the case of "call offs"

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Regulation 12 of the Irish Regulations provides for prospective (into the future) ineffectiveness. Therefore, where a contract is entered into following an illegal or non compliant procurement process the High Court will have jurisdiction to declare that the contract in question is void as of the date of the order.

Where a Court considers that there are overriding reasons for allowing a contract to continue the Court may

- o impose "Alternative Remedies" by way of monetary fine (up to lesser of 20% of the contract value or €1 million) or
- o terminate the contract illegally awarded or
- o shorten the duration of an illegally awarded contract

Regulation 9(1) of the Irish Regulations provides that the High Court may

- $\circ\quad$  Set aside, vary or affirm a decision to which the Regulations apply,
- o Declare a reviewable public contract ineffective and
- o Impose alternative penalties on a contracting authority and make any necessary consequential order.

### Damages will not constitute an alternative penalty

The Irish Regulations provide that the High Court is the body charged with reviewing challenged decisions of contracting authorities.



The time limit for taking action for an Order of Ineffectiveness is 30 days from the date following the date of publication of the award notice or from the date of issuing the standstill notice.

There is a provision that, in all other cases, there is a six month limitation period from the day following the date of the conclusion of the contract.

Application [subject to any order of the Court made under Regulation 10(2)] for review of a decision of a contracting authority under the Irish Regulations shall be made;

- a) within 30 calendar days after notification to the applicant of the decision or
- b) within 30 calendar days after the applicant knew or ought to have known of the alleged infringement

<sup>\*\*</sup>This time limit is provided for at Regulation 5 in the Irish Regulations



# **Appendix G - Other Legislative Considerations**

### **Disability Act 2005**

Part 3 of the Disability Act 2005 places significant responsibilities on public bodies to make their services accessible to people with disabilities. The overall objective is that each local authority will ensure that, as far as practicable, any new service or built facilities provided by it after the commencement of the Act is/are accessible to persons with disabilities. Under section 27 of the Act each public body is required to ensure that both the goods supplied and services provided to it are accessible to persons with disabilities, <u>unless</u> it would not be practicable or justifiable on cost grounds or would cause an unreasonable delay in making the goods or services available. This will relate to a wide range of goods and services including equipment, materials, information technology, etc.

Section 27 of the Disability Act 2005 came into operation on 31 December 2005 and all procurement exercises on behalf of Wexford Co. Council must have regard to the legal obligations under the terms of this legislation.

### Safety, Health and Welfare at Work Act, 2005

Section 8 of the Safety, Health and Welfare at Work Act (SHWW Act), 2005 requires every employer to ensure; so far as is reasonably practicable, the safety, health and welfare at work of all of his or her employees. The obligations, among other things, cover:

Ensuring safety and prevention of risk from the use of any substances or articles,

Providing safe systems of work,

Provision of adequate instruction, training and supervision and any necessary information, the design, provision and maintenance of (i) safe workplaces (ii) safe means of access to and egress from the workplace and (iii) safe plant and machinery,

To obtain, where necessary, the services of a competent person to assist in ensuring the safety, health and welfare of his or her employees

All staff involved in public procurement exercises (quotations, annual tenders and tenders for specific items/projects) shall take cognisance of relevant health and safety requirements throughout the entire procurement process.

### **Data Protection**

Data Protection is the means by which the privacy rights of individuals are safeguarded in relation to the processing of their personal data. The Data Protection Acts 1988 and 2003 confer rights on individuals as well as placing responsibilities on those persons processing personal data. All staff involved in the procurement process should have regard to data protection requirements, where applicable. Further details on data protection can be accessed at <a href="https://www.dataprotection.ie">www.dataprotection.ie</a>.

The new EU directive on Data protection due to be transposed by 2018 will come into effect once transposed into Irish Law. The subsequent new legislation and regulations will then supersede the current ones.



### **Equal Status**

The Equal Status Acts 2000 to 2008 promote equality of opportunity and prohibit discrimination in the provision of goods and services, accommodation and educational establishments in terms of age, disability, family status, gender, marital status, membership of the Traveller community, race (including nationality), religion and sexual orientation.

The Equal Status Acts apply to people who:

Buy and sell a wide variety of goods;

Use or provide a wide range of services;

Obtain or dispose of accommodation;

Attend or are in charge of educational establishments.

Discrimination is particularly prohibited in relation to the area of advertising and publicity materials.

Details on the Equal Status Acts 2000 to 2008 including exemptions are available in an information booklet on the Acts published by the Equality Authority. <a href="https://www.equality.ie">www.equality.ie</a>

### **WEEE Regulations**

### **Procurement of Electrical & Electronic Equipment**

Obligations under the Waste Management (Waste Electrical and electronic Equipment) Regulations 2005 (WEEE Regulations) came into force on August 2005. The regulations require Government Departments, State Bodies and Local Authorities to ensure that they are sourcing only from registered suppliers.

It is suggested that all requests for tender for the supply of EEE should include a requirement for compliance with the WEEE Regulations as a prerequisite for submission of a tender application.

### **Green Procurement**

### **Maximising Wexford County Council Energy Efficiency**

"Green procurement is a process whereby public and semi-public authorities meet their needs for goods, services, works and utilities by choosing solutions that have a reduced impact on the environment throughout their life-cycle as compared to alternative products/solutions". Source "Green Procurement — Guidance for the Public Sector" — Environmental Protection Agency. <a href="http://www.epa.ie/pubs/reports/other/corporate/olg/greenprocurementguidanceforthepublicsector.html">http://www.epa.ie/pubs/reports/other/corporate/olg/greenprocurementguidanceforthepublicsector.html</a>

The Irish Government has committed to achieving a 20% reduction in energy demand across the whole of the economy through energy efficiency measure, by 2020 and is challenging the public sector to achieve a 33% reduction in public sector energy usage over the same period.

In accordance with departmental circular letters purchasers in the public sector should consistently specify environmentally advantageous criteria in their specifications to encourage the economic provision of environmentally superior goods and services. Additional Guidance on Green Procurement can be obtained in the:

Further guidance related to the inclusion of Green Procurement within the policies of Wexford County Council will issue.