



Kildare County Council Procurement Procedures 2018

1	Introduction	4
2	General Procurement Rules.....	4
2.1	Key Principles.....	4
2.2	Threshold Values	5
2.2.1	Below EU threshold (excl. of VAT) – National Rules.....	6
2.3	Framework Agreements (FAs) and Dynamic Purchasing Systems (DPS)	6
2.4	Construction Related Professional Services	7
3	Duration of Contracts	8
4	Separation of Duties	8
5	National and Sectoral Frameworks.....	8
6	Open versus Restricted Tendering Processes	9
6.1	Open Process	9
6.2	Restricted Process	10
6.3	New Procurement Procedures	10
6.3.1	Competitive Procedure with Negotiation.....	10
6.3.2	Competitive Dialogue	11
7	Current National Legislation	11
8	Employee Responsibility	12
9	Accessibility in the Procurement Process.....	13
10	Green Procurement	15
11	SME Participation.....	15
12	FOI Legislation	16
13	Distinguishing Services, Supplies and Works	17
14	Receipt of Tenders	18
14.1	Late Tenders	19
14.2	Opening and Examination of Tenders	19
15	Evaluation of Tenders.....	20
15.1	Standstill Period	21
16	Awarding of Contract	22

17 Mini Tenders Competitions under Framework Agreements..... 22

1 Introduction

The purpose of this document is to clearly detail Kildare County Council (KCC) Procurement/Purchasing procedures including threshold limits, tendering requirements and the responsibilities of all employees at all stages of the procurement and purchasing process. These procedures are adopted by a Chief Executive Order Number. Additions and modifications to these procedures can only be processed via the Procurement Officer and approved by the Senior Management Team.

2 General Procurement Rules

2.1 Key Principles

It is very important that the public procurement function is discharged honestly, fairly and in a manner that secures best value-for-money for the council. The council must be cost effective and efficient in the use of resources whilst upholding the highest standards of probity and integrity and compliance with relevant public procurement rules and regulations. In order to ensure that this is the case, all staff involved in procurement and in particular in tendering must be familiar with the relevant EU rules and national circulars (all of which are available on the Procurement Portal on the Intranet) and also the material covered in this document in order to strive to be compliant with regulation whilst ensuring a value-for-money approach to procurement.

The general principles of proper procurement practice, which are the cornerstone of Public Procurement EU Regulations, are equally relevant to all purchase decisions made by staff:

Free Movement: References to a particular product name or make, or to national standards in the absence of the words 'or equivalent' can restrict free movement.

Mutual Recognition: allows for a diversity of standards to exist but requires equivalent standards from all member states of the EU to be recognised. This could refer for example, to product specifications or to personnel qualifications.

Non-Discrimination and Equal Treatment: Effectively the council must ensure that the treatment of products, services and suppliers is no less favourable to non-domestic suppliers as to that afforded to domestic suppliers.

Proportionality: The most far reaching of the general procurement principles, proportionality requires that measures are (i) appropriate to achieve the objectives they pursue and (ii) do not go beyond what is needed to attain those objectives.

Transparency: Covers the requirement to advertise competitions, inform the market on marking schemes, the need for clear selection and award criteria etc, clear specifications of what is being procured and notifications to successful and unsuccessful bidders on competition outcomes.

2.2 Threshold Values

Works		
Contract Notice	€5,548,000	Threshold applies to Government Departments and Offices, Local and Regional Authorities and public bodies
Supplies and Services		
Contract Notice	€144,000	Threshold applies to Government Departments and Offices
Contract Notice	€221,000	Threshold applies to Local and Regional Authorities and public bodies outside the Utilities sector
Utilities		
Works Contracts / Prior Indicative Notice	€5,548,000	For entities in Utilities sector covered by Government Procurement Agreement (GPA)
Supplies and Services	€443,000	For entities in Utilities sector covered by GPA

2.2.1 Below EU threshold (excl. of VAT) – National Rules

	Advertising Requirement	Amount (excl. of VAT)	Rule	Requirement
Goods and Services	Quotations	Below €1,000	National	One quotation from a reputable supplier.
	Quotations	€1,000 - €5,000	National	Quotations from not less than three reputable suppliers. Lowest Price or MEAT
	Quotations	€5,000 - €25,000	National	Quotations from not less than three reputable suppliers. Lowest Price or MEAT
	eTenders	€25,000- €144,000	National	Circular 10/14 – Open procedure & MEAT
	eTenders	€144,000 - €221,000	National	Choice of procedure – MEAT – strongly recommended to voluntarily advertise in OJEU
	eTenders (OJEU)	>€221,000	EU	<i>Above threshold – OJEU – choice of procedure – MEAT</i>
Works (& related services)	Quotations	Below €5,000	Local	One quotation from a reputable supplier.
	Quotations	€5,000 - €10,000	National	Quotations from not less than three reputable suppliers. Lowest Price or MEAT
	Quotations	€10,000 - €50,000	National	Quotations from not less than five reputable suppliers. Lowest Price or MEAT
	eTenders	€50,000- €250,000	National	Circular 10/14 – Open procedure & MEAT
	eTenders	€250,000 - €5,548,000	National	Choice of procedure – MEAT – strongly recommended to voluntarily advertise in OJEU
	eTenders (OJEU)	>€5,548,000	EU	<i>Above threshold – OJEU – choice of procedure – MEAT</i>

2.3 Framework Agreements (FAs) and Dynamic Purchasing Systems (DPS)

- An FA is established on foot of a competition, very often based on an actual job with additional ‘basket of goods’ items included to achieve cost certainty across a range of services/works/goods. The winning Tenderer gets the initial contract and Tenderers 2 to ‘x’ get onto the FA. The value of ‘x’ varies but is typically less than 12. For the

duration of the FA (maximum 4 years) all work must be offered to all participants on the FA (in the case of a mini competition) or given directly to the preferred supplier in the case of a FA set up using the Cascade method.

- A Dynamic Purchasing Scheme (DPS) is akin to an EU level Panel. It begins with an advertisement on the OJEU of the intention to create a DPS setting out the nature and scope of the goods, services or works to be covered. Similar to a framework, qualified members of the DPS are eligible to compete for contracts, however, unlike a framework, members can be added to the DPS list over the duration of the DPS and there is no max duration to the time a DPS can operate. The operation of a DPS must be electronic. The actual operation is similar to the traditional restricted procedure in that stage one is a pre-qual stage to gain admittance to the DPS while stage 2 is the individual competition for work. Within the DPS there can be sub-sections referring to specific areas within an overall area of work, for example, there could be a DPS for Housing Maintenance and a sub section of this same DPS relating to insulation works. Vendors could then apply for membership of the overall 'panel' and membership of the 'sub-panel' and be evaluated against separate specific pre-qual criteria for both. The actual award of work under a DPS is done by inviting **all** qualified vendors for the particular DPS or sub-section of the DPS to participate.

2.4 Construction Related Professional Services

The activities covered by this category of service are expert technical service activities related to the delivery of public works contracts which include those listed in Annex II of Directive 2014/24/EC (architectural services, engineering services and integrated engineering services, urban planning and landscape engineering services, related scientific and technical consulting services, technical testing and analysis services).

3 Duration of Contracts

Generally, Frameworks should not run for more than 4 years. Any longer may be deemed uncompetitive. In certain cases contracts may be for longer periods, for example a Design Build Operate (DBO) contract could last for 20 years. However, anyone proposing a contract greater than 4 years must have Chief Executive approval in writing.

Extensions to contracts can be sought, for example, a 2 year contract with the option to extend to 4 years. However it is important to note that the ***cost of options to extend must be taken into account at the commencement of the procedure and checked against the threshold values detailed in this document.***

4 Separation of Duties

In order to maintain transparency and accountability throughout the tendering process, there is a need to maintain separation of responsibilities and the division of functions, in managing the process. For example, no individual employee can assume responsibility for advertising, assessing and awarding tenders without the active involvement of other employees.

5 National and Sectoral Frameworks

With the establishment of the Office of Government Procurement (OGP) and the Local Government Operational Procurement Centre (LGOPC) in Kerry County Council, a significant portion of the council's spend is being catered for by national and sectoral frameworks established by these agencies.

From the council's perspective, where there is an established framework this is the first port of call. The instruction from Government is clear in that agencies must use these frameworks

or else have a very good reason why they choose not to. If the council cannot use an established framework for whatever reason then this is the exception.

6 Open versus Restricted Tendering Processes

Once the threshold for formal tendering has been reached, the main traditional methods of processing tenders are Open and Restricted Tendering. Circular 10/14 has made the use of Open procedures mandatory for the procurement of goods and services up to €221K and for works up to €250K.

6.1 Open Process

This is a single stage process. In this process, all interested parties may submit tenders. Information on Tenderers' capacity and expertise may be sought and only the tenders of those deemed to meet minimum levels of technical and financial capacity and expertise are evaluated.

Tender documents may include:

- Specification/Works requirements
- Instructions to Tenderers
- Assessment Criteria (selection and award criteria)
- Conditions of Contract
- Pricing Schedule/Document

Note: If there are minimum requirements it is important that they are made clear in the notice or the request for tender (RFT) to avoid unqualified Tenderers incurring the expense of preparing and submitting tenders. The time limits for submission of responses are dictated by Public Procurement legislation (www.procurement.ie).

6.2 Restricted Process

This is a two stage process, whereby any party may request to participate. The first step is that the requirements of KCC are set out through a Contract Notice in the OJEU or eTenders website and Expressions of Interest (EOI) are invited from potential Tenderers, seeking information on the level of financial, economic and technical expertise and capacity.

For Works projects refer to www.constructionprocurement.gov.ie for the standard document suite used by KCC for procurement of works Contractors and Consultants.

The second step involves issuing the complete specifications and tender documents (RFT) with an invitation to submit tenders only to those who possess the requisite level of professional, technical and financial expertise and capacity.

The time limits for submission of responses are dictated by Public Procurement legislation (www.procurement.ie).

6.3 New Procurement Procedures

The 2014 regulations have introduced two new procedures that may be used by KCC. These can both be used where KCC cannot objectively define the technical means in terms of performance or functional requirements capable of satisfying their needs or objectives or cannot objectively specify the legal/financial makeup of a project, e.g. public private partnerships.

6.3.1 Competitive Procedure with Negotiation

- KCC puts out a call for competition with minimum qualification criteria set, similar to a stage 1 of a restricted competition.

- KCC evaluates the Stage 1 responses and invites a number of suitably qualified tenderers to effectively submit stage 2 tender responses based on a more detailed RFT.
- KCC negotiates with each participant, a number of times if required, using their tender responses as the basis for this negotiation. Part of this process may be to require the nominated Tenderers to resubmit further tenders.
- A final tender submission is invited from all nominated participants which cannot be further negotiated.
- Tenders are assessed and awarded.

6.3.2 Competitive Dialogue

This process is very similar to the competitive procedure with negotiation except that once the nominated Tenderers have been identified post an assessment of initial (stage 1) submissions, the council can directly enter into a dialogue with each Tenderer (terms and conditions apply) “the aim of which shall be to identify and define all aspects of the procurement”. During this phase it is likely that certain of the participants will be eliminated as during the dialogue it becomes apparent that solutions proposed are not suitable. Post the dialogue phase the remaining Tenderers are invited to submit a formal tender response which is evaluated and processed in the normal way.

7 Current National Legislation

Rules for the Procurement of Public Works and Engaging of Consultants in connection with Public Works Projects are covered by the Capital Works Management Framework (CWMF) available on the Department of Finance web site on www.constructionprocurement.gov.ie. The CWMF was introduced by the Department of Finance with the issue of Circular 6/10: Construction Procurement Reform – The New Capital Works Management Framework. This framework is regularly updated and users should refer to the web site for the most recent versions of documents and guidance.

In 2014, 3 EU Directives (2014/24/EU for public sector procurement, 2014/EU/25 for utilities and 2014/EU/23 for concession contracts) replaced the two 2004 EC Public Procurement Directives (2004/18/EC which covered the procurement procedures of public sector bodies and Directive 2004/17/EC which covered the procurement procedures of entities operating in the utilities sector).

These 2014 EU Procurement Directives were transposed into Irish Law in 2016 and 2017 by way of the following regulations:

S.I. No 284/2016 (the “2016 Regulations”)

S.I. No 286/2016 (the “2016 Utilities Regulations”)

S.I. No 203/2017 (the “2017 Concessions Regulations”)

All EU Directives / National Regulations implementing public sector procurement in Ireland can be accessed on the national public procurement website, www.etenders.gov.ie, under Guides/Legislation.

8 Employee Responsibility

It should be noted that procurement is a complex chain of events leading from the decision to procure a product, works or service to the delivery, support and maintenance of same. At the highest level, the three pillars of procurement are Compliance, Value for Money and Risk Management.

Compliance: Compliance with specific legislation that governs the rules of public sector procurement. The underlying principles are transparency, free movement, equal treatment, proportionality and mutual recognition.

Value for Money: Ensuring that best value for money is obtained on behalf of KCC (and the taxpayer).

Risk Management: Managing the risk associated with the procurement process, for example, dealing with the risks of non-availability of key items, dealing with sole or near-sole suppliers, dealing adequately with the risks of entering into contracts or Service Level Agreements with vendors etc.

Cost certainty is very important to KCC and tender documents are designed to be sufficiently detailed to ensure that the tenders submitted reflect the final out-turn cost.

9 Accessibility in the Procurement Process

Disability legislation outlines how public bodies are required to ensure that goods or services that are supplied to them are accessible to people with disabilities with certain exceptions. Section 27 (part 3) of the Disability Act states that *“Where a service is provided to a public body, the head of the body shall ensure that the service is accessible to persons with disabilities”*. This refers to both the provision of services and the supply of goods.

It is the policy of KCC to ensure that relevant accessibility requirements for people with disabilities are included in all stages of the tender process. Initially documents that are prepared on behalf of KCC for use in the procurement process aim to be usable and readable by the widest range of people as possible. KCC aims to prepare all documents to a consistent and pre determined standard.

In selecting or specifying goods and services or designing or detailing construction works, accessibility issues are considered and included where necessary. The objective of KCC is to go beyond minimum compliance with legal regulations (e.g. Part M building regulations, WAI WCAG) to achieve a high standard of accessibility for people with disabilities, where it is practical and cost-effective to do so.

Accessibility is considered, where appropriate, as a criterion throughout the tendering process from running the tender process through the evaluation of tenders, the placing of contracts to conclusion of procedures and review.

KCC aims to clearly identify accessibility requirements in requests for tenders/ contracts/ quotations where applicable. Staff preparing tenders will, from time to time, consult with external advisors and/or people with disabilities in identifying these requirements. Suppliers may be asked to highlight features of their product or service which meets accessibility requirements for people with disabilities.

Accessibility requirements are given appropriate consideration and weighting during scoring and evaluation stages. Where suppliers are asked to make presentations, accessibility can be an agenda item for such presentations.

Accessibility requirements to be included in the tender process:

Key Features:

- Consideration given to needs of product/service user
- Accessibility requirements stated in request for tenders/contracts
- Tendering organisations adhere to relevant standards and/or guidelines
- References of tendering organisation verified
- Future maintenance/development is accessibility proofed
- Technical specifications for accessibility included
- Monitoring and compliance system for purchasing is in place

10 Green Procurement

Green Public Procurement (GPP) is a process whereby public and semi-public authorities meet their needs for goods, services, works and utilities by seeking and choosing outcomes and solutions that have a reduced impact on the environment throughout their estimated economically-useful life, as compared to alternative products/ solutions. Prices of the goods/ services/ products should reflect environmental costs. The integration of environmental criteria into all stages of public procurement processes is encouraged in KCC. In specifying such criteria, the spread of environmental technologies and the development of environmentally sound products are also encouraged. Where possible, the use of all types of environmentally friendly products – energy efficient, water conserving, recyclable, non-toxic, low in emissions of volatile organic compounds, are encouraged whilst balancing the impact on up-front and ongoing costs to the organisation.

When deciding on environmental award criteria and their relative weighting buyers only consider criteria which are relevant to the contract, proportionate to the contract, and objectively measurable.

When looking at cost, buyers consider the 'whole-life cost' and not just the initial purchase price. The cost, for example, of purchase, training, installation/commissioning, operating (energy efficiency, spare parts), maintenance, and end of life / disposal are also considered.

11 SME Participation

SMEs can find it more difficult to win public sector business. It is particularly important to KCC that small and medium sized businesses (SMEs) are not hindered in competing for contracts that they could perform effectively.

Circulars 10/10 and 10/14 contain a range of measures that aims to encourage SME participation in public procurement competitions. From the KCC's perspective the main action items are:

- Introduce competitive tendering for below threshold procurements. This is mostly done via the Request For Quotation (RFQ) process and is relatively easy for the SMEs to participate in.
- Look for innovation in the SME sector. Again, for below threshold spend items, very often SMEs have products and services that are innovative and cost effective and their participation in the public procurement process is encouraged.
- Use 'Lots' to break down larger planned purchases where this is practicable and desirable. Very often an SME can offer part of a service more effectively and in a more responsive manner than a single larger market player.

12 FOI Legislation

FOI legislation may be requested on records relating to a tendering procedure. However, very often certain records may be exempt on the grounds of confidentiality or commercial sensitivity.

Kildare County Council have a Publication Scheme concerning the information of the Council in conformity with a Model and Guidelines issued by the Minister for Public Expenditure and Reform under Section 8 of the Freedom of Information Act, 2014.

Information on how KCC procures goods and services are detailed on the FOI Procurement Section of www.kildare.ie/countycouncil through the publication of procurement procedures along with an up-to-date listing of current competitions on eTenders with a value of greater than €25,000 (exclusive of VAT); details of which are available on www.etenders.gov.ie.

On a quarterly basis, details of public contracts awarded for values over €25,000 (exclusive of VAT) are published on the FOI Procurement Section of www.kildare.ie/countycouncil.

These details include:

- Whether this is an award for a single contract or an award from a framework,
- Name of winning contractor and legal address,
- Value of the contract (exclusive of VAT),
- Type of Contract (works, supplies, services),
- Contract Award Date,
- Duration of contract in months,
- Brief description of contract.

13 Distinguishing Services, Supplies and Works

Whilst the procurement of items of services, supplies and works in isolation is aligned to a clear set of procurement rules, the following rules apply where there are elements of two services in the one intended purchase.

- A public contract having as its object both products and services is to be considered a “public service contract” if the value of the services in question exceeds that of the products covered by the contract and vice versa if the value of the products exceeds the services it shall be defined as a public supply contract.
- In terms of works, a “work” means the outcome of building or civil engineering works taken as a whole that is sufficient of itself to fulfil an economic or technical function (which could include related supplies and services).

- Certain service contracts may include works which, if the works are incidental to the principal subject matter of the contract, does not justify qualifying the contract as a public works contract (e.g. facilities management).

Under the Directive 2014/24/EU contracts can be modified, without a new procurement procedure, up to a limit of 10% of the initial contract value for service and supply contracts and 15% of the initial contract value for works contracts .

14 Receipt of Tenders

Tenders and requests for quotations with an anticipated value of up to €25,000 excl vat for goods and services and up to €50,000 excl vat for Works should be returned directly to the section dealing with the tender. Sections should put in place procedures to receive and store tenders which are returned directly to their section. All tenders advertised on eTenders/OJEU must be received through Corporate Services and should follow the procedures set out below.

Tenderers should pay particular attention to a Tender's **closing date and time**. Late tenders will not be accepted and will be deemed non-compliant and will not be evaluated. However, they may be opened to determine the identification of the tenderer in order to inform them of their late status where they have not identified themselves on the outside of their submission material.

Guidance on the rules in relation to the tender competition should be clearly outlined in the Instruction to Tenderers (ITT) or the Request for Tenders (RFT). The procedures set out below for the receipt of tenders by KCC should be strictly adhered to. The outside of the envelope or box that contains the tender should clearly identify:

- The title of the tender.
- The name of the person to whom the tender is to be returned (The County Secretary).
- The receipt address.

- The date and the time for receipt of tenders.
- The Tenderer should also be requested to put their name and address on the outside of the tender submission in case their tender is to be returned to them unopened otherwise the tender may have to be opened to identify the Tenderer.

Tenders are regarded as having been received when they are date stamped at the public counter at **Corporate Services**. The public counter at Corporate Services is only manned between 9.00am and 5.00pm. The receipt signature and a receipt time are recorded on the tender envelope or box. An official clock visible from the public counter will display the correct time. A receipt should be given to the Tenderer if requested. Tenders will be stored in the Tender Room in Corporate Services as soon as they are received.

14.1 Late Tenders

All tenders received after the tender return date and time will be registered as late when the tenders are being opened. A late tender will never be evaluated. However, it may be opened to determine the identification of the tenderer in order to inform them of their late status where they have not identified themselves on the outside of their submission material.

14.2 Opening and Examination of Tenders

The need for a formal opening procedure for tenders arises from the need to demonstrate transparency. The section that originated the tender competition should contact the SEO in Corporate Services within two days of the tender return date to arrange for the tenders to be retrieved and opened. At least two people should be in attendance when the tenders are retrieved and opened. This should be the County Secretary or an appointed replacement and a representative of the Section that originated the tender. A standard schedule for recording the opening of the tenders should be used. The title of the tender should be recorded on the schedule.

If any tender is recorded as having been delivered after the time for receipt of tenders then that tender should not be opened. The tender is still given a number on the schedule but is noted as being late.

15 Evaluation of Tenders

Tender evaluation processes can have the following four steps depending on the complexity of the tender and the nature of the award criteria:

- Checking that tenders are substantially responsive (Admissible Tenders).
- Technical Evaluation (Qualitative)
- Commercial Evaluation
- Scoring, Report and Approval

A number of these steps can be combined where tenders are not complex or of relatively low value.

The evaluation of tenders will take place in the section originating the tender. With tenders where the award criteria is simply the lowest price then that price is recorded. A minimum of two people should be present when recording the price. The attendance should be noted and signed. If a detailed pricing document is included as part of the tender return then the pricing document of the lowest priced tender should be examined in detail to check for errors or omissions.

Formal evaluation of high value tenders, i.e. above €25,000 for goods and services and above €50,000 for works, being evaluated on the basis of the most economically advantageous tender where there are both Selection/Qualification and Award Criteria, the evaluation will require the assembly of a panel of evaluators (minimum of two persons). The composition of and the number of evaluators on this panel will depend on the complexity and value of the tender but evaluators should have the combined knowledge and expertise to competently assess the tenders received. The evaluation team may include a competent person from outside the area directly involved with placing the contract. The attendance should be noted and signed. Any possible conflict of interest or bias on the part of the evaluation team should be declared so that the process is not compromised. It is also important that if an outside subject matter expert is employed that the section running the competition satisfies itself in

advance that the expert has the necessary qualifications and experience to be part of the assessment team particularly when this expertise is being relied on for example, to apportion technical marks to a Tenderers solution.

Every tender should be evaluated by every evaluator so that each person can assess the relative merits of each proposal. If this is not possible then each tender should be evaluated by at least two evaluators. The evaluation team should assess and score tenders together and agree on a consensus score to be awarded under each criterion. Average scores should be avoided.

The evaluation process must be objective, transparent and based solely on the weighted award criteria in the invitation to tender. No new criteria or sub-criteria can be introduced or considered regardless of the content of the tender submissions received. For EU level tenders a brief note of the significant decisions (elimination of tenders etc. along with reasons) should be recorded.

It is KCC recommended practice that outside of the CWMF, that the following format is used to apportion marks for price:

Price Mark = lowest price x number of available marks divided by price of tender being marked.

15.1 Standstill Period

The standstill period is the time period in calendar days between the decision to award a contract and the conclusion of the contract. The standstill period begins on the day after the day on which each Tenderer concerned is sent a notice as outlined above. The standstill period is only mandatory for EU level contracts. The minimum standstill period is 14 calendar days if the notice is sent electronically and 16 calendar days if the notice is sent by any other means. A contract cannot be awarded before the expiry of the chosen standstill period. The contracting authority may observe a voluntary standstill period for all national tenders below

threshold, typically 5 days. A contract cannot be awarded before the expiry of the chosen standstill period.

16 Awarding of Contract

The successful Tenderer will typically be provisionally notified by way of Letter of Intent and for EU tenders the relevant standstill period should be observed. Following receipt of the information requested, the contracting authority will typically issue a Letter of Acceptance. The Letter of Acceptance is a binding contract.

17 Mini Tenders Competitions under Framework Agreements

Where mini-tender competitions are being run under an FA **all** of the framework participants are invited to tender. It is however not mandatory for framework participants to submit a tender for every competition.