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Bord Oideachais agus Oiliúna
Mhaigh Eo, Shligigh agus Liatroma
Mayo, Sligo and Leitrim
Education and Training Board

Mayo, Sligo and Leitrim
Education and Training Board

PROCUREMENT POLCY V2

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TABLE OF CONTENTS

1	Purpose.....	1
2	Definitions	1
3	Abbreviations	2
4	Regulatory Framework	2
5	Public Procurement Principles.....	3
6	Responsibility for Procurement.....	3
7	Thresholds & Timescales	5
8	Procedure Goods/Supplies and Services - CHECKLIST	8
9	Works (Building and Related Services)	17
10	Tied or Sole source	17
11	Specifications.....	18
12	National/ Sectoral Frameworks & Contracts	18
13	Selection/Pre-Qualification Criteria	18
14	Award Criteria.....	19
15	Receipt and Opening of RFQs/RFTs	19
16	Evaluation	20
17	Leasing	21
18	Management of Contract	21
19	Ethics	21
20	Record Keeping.....	22
21	Tender Documentation	22
22	Implementation and Review	22
	Appendix 1 The Procurement Cycle	23
	Appendix 2 Tender request form template (contracts above €25K).....	24
	Appendix 3 Expenditure Approval Form (EAF)	25
	Appendix 4 RFQ Sample Terms and Conditions	26
	Appendix 5 Procurement Checklist and Contract File	32
	Appendix 6 EU Public Directive (Article 84) Audit Report	32
	Appendix 7 Below EU Threshold Tender Documents	33
	Appendix 8 Above EU Thresholds Tender Documents	33
	Appendix 9 Public Procurement Guidelines for Goods and Services	33
	Appendix 10 Ethics in Public Procurement.....	34
	Appendix 11 Works (Building and Related Services)	37
	Appendix 12 Works - Invoice Approval Form	41
	Appendix 13 Sole/ Tied Supplier Request.....	43
	Appendix 14 DEROGATION	43
	Appendix 15 Template Sole/ Tied Supplier Request	44

MSLETB Procurement Policy

1 PURPOSE

The purpose of this document is to set out the policy for the procurement of goods (also referred to as supplies), services and works by ETBs and to ensure that procurement throughout ETBs is carried out in accordance with National and European Union Public Procurement Regulations & Directives, Legislation, Policy and Guidelines. There is an onus on public bodies to ensure that the public procurement function is discharged ethically, honestly and fairly in a manner that secures best value for money. This policy should be read in conjunction with ETB purchasing and financial authorisation policies.

2 DEFINITIONS

In broad terms, **'Procurement'** is the overarching function that describes the activities and processes to acquire goods and services from an external source. As distinct from "purchasing" procurement involves all the activities involved in establishing requirements, market research, approach, supplier / tender evaluation, negotiation and award of contracts through to contract management.¹

'Public Procurement' refers to the process by which public bodies purchase works, goods or services from suppliers which they have selected for this purpose. It ranges from the purchase of routine goods or services to large scale contracts for infrastructural projects and involves a wide and diverse range of contracting authorities.²

A **'Public Contract'** is a contract for the provision of works, supplies or services to a contracting authority. It includes all procurements, not just those which are undertaken on the basis of a full tendering process and formal signing of a contract.³

For the purposes of clarity, in this policy **'Tender'** and **'Tendering'** is used to describe the procedures for above National Threshold procurements (€25k supplies and services; €50k works) and **'quotations'** refers to the procedures used for below National Threshold procurements

Goods/Supplies: the purchase, lease or rental of a good or product (e.g.. vehicles, IT, stationery)

Service: provision of services such as canteen, cleaning services, legal, professional etc.

Work: building / civil engineering design and execution

Framework Agreement: an agreement between one or more contracting authorities and one or more suppliers which establishes some or all of the terms on which contracts for supplies, works or services can be entered into during the period of the agreement without further advertisement.

Budget Holder: A budget holder includes Directors of Organisation Support & Development (OSD), Schools Services (SS) and Further Education and Training (FET), as well as School Principals, Directors of Further Education Colleges, Training Centre Managers, Adult Education Coordinator's / Managers of Programmes, Outdoor Education Centre Managers and other Managers. See **Approval Authority**

¹ Guidance for Schools on Good Procurement Practices, (SPU; Jan 2017)

² Office of Government Procurement Public Procurement Guidelines for Goods and Services, more information available on www.ogp.gov.ie

³ S.I. No. 284 of 2016 European Union (Award of Public Authority Contracts) Regulations 2016

Matrix issued by the Finance Department for further details.

3 ABBREVIATIONS

MEAT: Most Economically Advantageous Tender	SRFT: Supplementary Request for Tender (sometimes referred to as 'mini-competition')
ITT: Invitation to Tender	RFQ: Request for Quotations
RFT: Request for Tender	RFI: Request for Information
PIN: Prior Information Notice	SLA: Service Level Agreement
OJEU: Official Journal of the European Union	PO: Purchase Order
DoES: Department of Education & Skills	PMO: Public Service Reform Programme Office
TRD: Tender Response Document	OGP: Office Government Procurement

4 REGULATORY FRAMEWORK

ETB Procurement policies and procedures are governed by:

1. *S.I. No. 284 of 2016: European Union (Award of Public Authority Contracts) Regulations 2016.* The EU Public Contracts Directive (Article 84) requires all contracting authorities to prepare a written report after every tender competition, other than mini-competitions conducted under framework agreements. The details of what is required in this audit report can be found at [Appendix 6](#). All other EU related legislation and directives can be found at <https://ogp.gov.ie/guidelines-sub-menu-procurement-legislation/>.
2. National Public Procurement Policy / Guidance information can be found at <https://www.etenders.gov.ie/generalprocguide.aspx>.
3. OGP Public Procurement Guidelines for Goods and Services (2017) can be found at <https://ogp.gov.ie/public-procurement-guidelines-for-goods-and-services/>
4. Departmental Circulars in relation to Procurement:
 - [DPER Circular 02/16](#) Arrangements for Digital and ICT related Expenditure in the Civil and Public Service
 - [DoES Circular 0056/2015](#) Use of Central Procurement Arrangements put in place by the Office of Government Procurement. This circular should be read in conjunction with [DPER Circular 16/2013](#) & [DoES Circular 60/2013](#).
 - [DoES Circular 18/2015](#) Code of Practice for the Governance of Education and Training Boards
 - [DPER Circular 10/14](#): Initiatives to assist SME's in Public Procurement
 - [DPER Circular 05/2013](#): Procurement of legal services and Managing Legal Costs
 - [DoES Circular 39/2011](#): Good Practice Guidelines in relation to Contracts for the Provision of Goods and / or Services
 - Capital Works Management Framework <https://constructionprocurement.gov.ie/capital-works-management-framework/>
5. **Case Law:** Public Procurement is governed by EU Directives and legislation. EU Directives require that all purchase requirements (Tenders) above "Threshold Values" currently in force, are open to European Competition. Tenders with a value above the applicable Threshold Value must be published in the supplement to the Official Journal of the European Union (OJEU) and a set process with prescribed timescales for tendering etc. need to be followed. Below EU Threshold Values, there needs to be competition to satisfy the Irish Government Procurement Rules and the general principles of Non-Discrimination, Equal Treatment, Transparency, Mutual Recognition and Proportionality must be adhered to, as per the EU Treaties.

5 PUBLIC PROCUREMENT PRINCIPLES

The Treaty of Rome on the functioning of the EU applies to all procurement activity regardless of value. The procurement of Goods/Supplies, Services or Works in the public sector must comply with the Treaty's fundamental procurement principles:

- **Transparency:** All procurement activities are open and transparent with necessary information provided to all. Procurement intentions and decisions should be advertised publicly.
- **Equal treatment and Non-Discrimination:** The same rules apply to all with equal rights of access. Decisions are to be based on objectivity and fairness.
- **Proportionality:** All measures used must be both necessary and appropriate in relation to the objective *i.e.* the award of contract. No excessive or disproportionate conditions, criteria, or rules are to be applied.
- **Mutual Recognition:** Equal validity is to be given to qualifications / standards applicable in other Member States.

6 RESPONSIBILITY FOR PROCUREMENT

6.1 THE OFFICE OF GOVERNMENT PROCUREMENT (OGP)

The OGP has lead responsibility for sourcing goods, services and works on behalf of the public service. It is Government policy that public bodies, where possible, should make use of central procurement frameworks and contracts that are put in place by the Office of Government Procurement (OGP). These central procurement frameworks and contracts are designed to optimise benefits to the public service through the strategic aggregation of its power. Further information on OGP Central Frameworks and Contracts can be found <https://ogp.gov.ie/>.

6.2 ETB BOARD⁴

ETB management and ultimately the ETB Board, should ensure that there is an appropriate focus on good practice in purchasing and that procedures are in place to ensure compliance with procurement policy and guidelines. It is the responsibility of the Board to satisfy itself that Executive Management is fully conversant with the current value thresholds for the application of EU and National Procurement Rules and that the requirements for public procurement are adhered to. Where local procurement is necessary, competitive tendering should be standard procedure in the procurement of ETBs. The Board is ultimately responsible for ensuring that the Chief Executive has instituted an adequate and appropriate system of internal control, including risk management and corporate governance, in the ETB. The work of the Audit Committee will assist the Board in this function.

6.3 EXECUTIVE MANAGEMENT

The Chief Executive is the Accounting Officer for the ETB. Reporting to the Chief Executive, the Director of Organisation Support and Development is responsible for the Governance and Management of the ETB's administration and oversees the management of the ETB's resources across the Human Resources, Corporate Services, Finance, Procurement and ICT Functions.

6.4 ROLE OF MANAGER WITH RESPONSIBILITY FOR PROCUREMENT

The manager who is responsible for the administration of Procurement reports to the Head of Corporate Services, who in turn reports to the Director of OSD⁵. The Manager is responsible for Procurement Policy, its review and management in conjunction with the Chief Executive, the Director of OSD, the Head of Corporate Services and for the following;

- Development and implementation of a Corporate Procurement Plan (when financial systems are

⁴ From Circular 002/2019 Code of Practice for the Governance of Education and Training Boards

⁵ Director of Organisational Support and Development

secured to capture the necessary purchasing data/trends required to develop same).

- Management of all quotations over €25K for goods/supplies, services and works, subject to resources.
- Ensuring the availability and dissemination of appropriate national centrally negotiated OGP frameworks and contracts for use in the purchase of supplies and services by all departments, where aggregations of budget spend yields demonstrable VFM benefit and/or such a contract reduces legal or contractual risk to the ETB.
- Ensuring that all contracts entered into by ETB maintain and protect the best interests of the ETB.
- Provision of up to date guidance on legislation applicable to ETB Procurements.
- Management of the Procurement team and thereby delivery of a professional procurement Support Service.
- Co-ordination of training for staff involved in Procurement activities throughout the ETB.
- Liaison and active involvement with Government and public sector buying Agencies / consortia.

6.5 ROLE OF BUDGET HOLDERS

Budget Holders have authority to incur expenditure on behalf of the ETB within the limits of their notified budgets and the thresholds below. They have day to day responsibility and accountability for ensuring that the Procurement Policies and Procedures are applied to all purchases of goods and services within their defined authority. They must ensure:

- The use of OGP National Frameworks/and other Central Contracted Suppliers where available.
- That any potential purchase greater than €15,000 should be brought to the attention of the Manager responsible for Procurement in a timely manner. This will ensure the procurement process can be completed and the good/service delivered also in a timely manner.
- The Budget Holder must confirm that a budget is available in order for the tender process to be activated by the Manager responsible for Procurement
- For tenders with a value of €25,000, it is recommended to complete a tender request form. See [Appendix 2](#) for template.
- Following Tender Evaluation and recommendation and prior to Contract Award approval must be obtained from the relevant Director⁶ for purchases with a value of €25,000 or more.
- Procurement competitions relating to any Building Works are not undertaken without first liaising with the Buildings Department / Designated Building Officer.
- That procurement competition within authorised budgets is carried out in accordance with this policy. See **Approval Authority Matrix issued by the Finance Department** for further details.

6.6 TRAINING CENTRE PURCHASING

Training Centre purchasing and payments are operated through SAP and these technical system processes will continue to operate in the immediate future. The purchasing teams in Training Centres will continue to report to Training Centre Managers, and must also liaise directly with the Procurement Manager, and must comply with the ETB Procurement Policy. Interim transitional arrangements, are now replaced by this ETB Procurement Policy to ensure consistency across the ETB Sector. The Manager responsible for Procurement within the ETB has overall responsibility for the oversight and review of implementation of ETB Procurement policies and procedures in all areas within the ETB.

⁶ i.e. Director of Organisation Support and Development, Director of Further Education & Training, Director of Schools

7 THRESHOLDS & TIMESCALES

A competitive process is the best method of securing value for public money and the thresholds below are the minimum standards required. The current thresholds for quotations and tenders are as follows:

	Threshold ⁹	Procedure	Publish on ETenders?	Publish on OJEU ¹⁰ ?	Procurement Authority Level
SUPPLIES & SERVICES^{7,8}	€0 - €500	Proceed with PO			Budget Holder
	€500-€5,000	One or more competitive written quotation(s)			
	€5,000-€15,000	Seek 3 written quotations by specified closing date. Follow clear process e.g. specification, evaluate, notify.			
	€15,000-€25,000	Seek 5 written quotations by specified closing date. Follow clear process e.g. specification, evaluate, notify.			Budget Holder in consultation with Procurement Manager
	€25,000-€125,000	Open Procedure (single stage no prequalification)	<input checked="" type="checkbox"/>		Director with CE Approval
	€125,000-€214,000	Choice of Procedure (e.g. open, restricted, competitive dialogue)	<input checked="" type="checkbox"/>		
	€221,000+ ¹¹	Choice of Procedure		<input checked="" type="checkbox"/>	
	> €750,000	Title III Services ¹²		<input checked="" type="checkbox"/>	
WORKS/CONCESSIONS¹³	< €50,000	Minimum of 5 written quotations			Capital Procurement Manager with Director approval
	€50,000-€2,500,000	Open procedure	<input checked="" type="checkbox"/>		Director with CE Approval
	€2,500,000-€5,548,000	Large/ complex projects: Restricted Procedure. Smaller/ straight forward projects: Open Procedure	<input checked="" type="checkbox"/>		
	€5,548,000+	Restricted Procedure		<input checked="" type="checkbox"/>	

⁷ Including ICT. However ICT projects also require liaison with DES PMO

⁸ While Contracted Training Services are subject to public procurement regulations, dedicated Contracted Training Procedures have been developed to support the implementation of the upcoming Multi Supplier Framework Agreement for Provision of Contracted Training Services, including specific requirements for contractors.

⁹ All thresholds exclude VAT

¹⁰ Via [eTenders](#)

¹¹ EU Threshold as of January 2020. EU thresholds are updated every 2 years – current thresholds available <https://ogp.gov.ie/revision-of-eu-thresholds/>

¹² Particularly relevant for services such as e.g. security, training and restaurant services. See [here](#) for regime applied (page 178) and [here](#) for list of services/ CPV codes it applies to (Annex XIV)

¹³ See <https://www.education.ie/en/School-Design/Technical-Guidance-Documents/> for latest DES TGD Guidelines

7.1 GRANTS AND ETB PROCUREMENT

In light of the additional number of grants ETBs are securing from other Department bodies and outside agencies *i.e.* Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs/Department of Youth and Children, Dormant Accounts, SEUPB/PEACE it is prudent in order to adhere to procurement thresholds and competition requirements that you review, in addition to this policy, the grant conditions and guidance issued initially at application stage and also the grant approval correspondence from the relevant Department/Agency. In some instances, the procurement thresholds will be more onerous than the guide set out at Section 7 Guide to Thresholds (above). In other instances, the ETB will be acting as an intermediary for grant administration only to third party and adhering to this policy will be expected by the third parties at a minimum

7.2 TIMESCALES¹⁴

Procedure ¹⁵	Receipt of Expression of Interest	Receipt of Tenders	+Standstill	+allow time for
NATIONAL (Non-OJEU tenders)				
National – Open (recommended)	N/A	21 days	7	• Preparing specification
National – Restricted (recommended)	21 days	21 days	7	
EUROPEAN (OJEU tenders)¹⁶				
Open – e sending notices/docs available	N/A	35 days	14	• Evaluation of tenders
Open – e sending & receiving tenders	N/A	30 days	14	
Open – PIN	N/A	15 days	14	• Contract finalisation
Restricted – e sending notices/docs available	30 days	30 days	14	
Restricted – e sending & receiving tenders	30 days	25 days	14	
Restricted - PIN	15 days	10 days	14	
				• Supply & delivery

7.3 ESTIMATING CONTRACT VALUES "CONTRACT VALUE" - LIFE CYCLE COSTING

The "contract value" must first be determined in order to ascertain the correct "procurement process" to be followed. The real contract value can only be fully determined when the "Life Cycle Costing" (LCC) of the procurement is taken into consideration. LCC evaluates the total cost of ownership (for the working life of the item(s)) and not only includes purchase price, but also includes such costs as consumables, annual maintenance contracts, repairs/spares, warranty etc. The contract value for service contracts includes the full duration of the contract *i.e.* a three-year contract is the value over the three years.

- The estimated value of a contract is based on the total amount payable including any renewal options
- It is prudent to ensure that the estimated contract value is at least 10% less than the threshold
- The total value of subdivisions (*e.g.* Lots) must be taken into account

7.4 TREATMENT OF VAT

Tenderers should be invited to express tender prices exclusive of VAT. VAT law provides for equal

¹⁴ All expressed in Calendar days and relate to goods and services. For works related timescales go to [Section 9](#)

¹⁵ For details of timeframes that apply to below EU Threshold works-specific procurements go to www.education.ie

¹⁶ In exceptional circumstances – a shorter time limit of 15 days is allowed “where a state of urgency duly substantiated by the contracting authorities renders the minimum impracticable”

treatment in the supply of goods and services. Therefore, no competitive advantage or disadvantage should arise from the correct application of VAT rules. DPER's *Public Procurement Guidelines for Goods and Services* (July 2017) refers to below EU Thresholds in terms of "**exclusive of VAT**". Department of Finance and DoES Circulars refer to contract values being "**inclusive of VAT**" for works-related contracts below EU thresholds. Latest guidance from DoES PBU is available from <https://www.education.ie/en/School-Design/Technical-Guidance-Documents/>.

8 PROCEDURE GOODS/SUPPLIES AND SERVICES - CHECKLIST

PRIOR TO BEGINNING ANY PROCUREMENT PROCESS, CHECK THE **MSLETB CONTRACTS REGISTER** (AVAILABLE ON THE WEBSITE OR FROM THE PROCUREMENT MANAGER) **AND WITH THE PROCUREMENT OFFICE** TO ASCERTAIN IF THERE IS AN EXISTING ARRANGEMENT IN PLACE FOR THE SUPPLY OF THE GOOD OR SERVICE YOU REQUIRE.

PRIOR TO UNDERTAKING A PROCUREMENT EXERCISE A CLEAR DETERMINATION OF THE NEED AND WHAT IS REQUIRED SHOULD BE ESTABLISHED AND DOCUMENTED FOR ALL PROCUREMENTS.

8.1 VALUE OF CONTRACT BETWEEN €500- €5,000 (EXCL. VAT)

REQUEST FOR QUOTATION (RFQ)

	VALUE OF CONTRACT BETWEEN €500- €5,000 (EXCL. VAT)	CHECKLIST
1	Check if ETB is utilizing a Framework or centrally procured contract for this good or service, if yes, use Framework or contracted supplier	
2	If no Framework in place, seek One or more written competitive quotation(s)	
3	<p>Quotations must be approved by the Budget Holder and a complete file of the purchasing process must be retained in the school/centre for internal checking and audit purposes.</p> <p>The quotations should include at a minimum:</p> <ul style="list-style-type: none"> - Email from Buyer to Supplier (s) including details of requirement, quantity, delivery specifications (time, date, venue), closing date, evaluation criteria. <p>In Addition to the details above, the following steps apply and must be kept on file</p> <ul style="list-style-type: none"> - Email from Supplier(s) with quotation (the responses) - Email from Buyers to Supplier accepting offer, together with emails notifying unsuccessful suppliers that they were unsuccessful. 	
4	<p>Purchase Orders (POs)</p> <ul style="list-style-type: none"> - PO No received/released from buyer to supplier - Copy invoice - Any purchase/budget approvals in writing from Budget 	

	<p>Holder, if required</p> <ul style="list-style-type: none"> - Ensure correct Coding and any cost/expenditure breakdowns for Finance office - Schools/Further Education/Admin – In order to process the payment the following documentation must be sent to Supplier Payments at St. George’s Terrace, Carrick On Shannon, Leitrim.: <ul style="list-style-type: none"> • Completed PO (V11 form) – ensure correct coding, breakdown of costs, budget holder signature updated. • Invoice – in original – copy to be retained by school centre for record keeping. For works projects – complete and submit Invoice Approval Form at Appendix 12 to the Buildings Unit. • RFQ and quotes (where applicable) – copy to be sent to Supplier payments, originals to be retained by school/centre as part of procurement pack. • The invoice must be checked back against the quote/contract and the delivery of the goods/services must be complete and evidenced prior to submitting the invoice for payment. <p>Note: A signed V11 by the budget holder is taken as confirmation that they have followed the correct procurement procedures.</p> <ul style="list-style-type: none"> - Training Centre Procurement - Purchase Orders raised in the SAP system are authorised by the Training Centre Manager (coding is the responsibility of the budget holder). The Training Centre Manager must be satisfied that these procedures have been complied prior to authorising the Purchase Order for same. 	
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8.2 VALUE OF CONTRACT BETWEEN €5,001- €15,000 (EXCL. VAT)

REQUEST FOR QUOTATION (RFQ)

	VALUE OF CONTRACT BETWEEN €5,001- €15,000 (EXCL. VAT)	CHECKLIST
1	Check if ETB is utilizing a Framework or centrally procured contract for this good or service, if yes, use Framework	
2	Business case and approval from budget holder This case will at a minimum set out the purpose of the procurement including any relevant market research, options available, requirements, and specifications with an emphasis on need. The extent of the business case will be dependent on the nature and quantum of the goods and/or services required.	
3	If no Framework in place, a minimum of three quotations must be sought from suitably qualified suppliers/providers, approved by the Budget Holder and retained in the school/centre for internal checking and audit purposes.	
4	Clear specifications and requirements must be prepared and issued to the suppliers/providers, including but not limited to, quantity, delivery specifications (time, date, venue) as well as the nature of the evaluation and award criteria (MEAT or price only)	
5	When there are changes in scope and/or additional costs, these must be resent to all potential suppliers that received the initial RFT and documented, and appropriate approvals obtained and retained on file	
6	Closing date and time for return of quotes should be specified.	
7	RFQ and responses from suppliers must be retained on file	
7	Conflict of Interest Forms to be completed by Evaluation Team prior to evaluation	
8	Evaluation based on compliance with selection criteria and award based on lowest price or MEAT (Most economically advantageous tender) as specified in the Request for Quote (RFQ).	
9	An RFQ evaluation form should be completed and approved by the Budget Holder before issuing Notification of Award Letters to the Successful Supplier and Notification to Unsuccessful Suppliers, and prior to a Purchase Order being issued.	

	<p>Note: Award and Unsuccessful letters to suppliers must be sent at the same time.</p>	
10	<p>The fully completed Purchase Order and RFQ Form must be submitted to relevant Finance Section with the Invoice for payment.</p> <ul style="list-style-type: none"> - Schools/Further Education/Admin – In order to process the payment, the following documentation must be sent to Supplier Payments at St. George’s Terrace, Carrick On Shannon, Leitrim.: <ul style="list-style-type: none"> • Completed PO (V11 form) – ensure correct coding, breakdown of costs, budget holder signature updated. • Invoice – in original – copy to be retained by school centre for record keeping. <p>For works projects – complete and submit Invoice Approval Form at Appendix 12 to the Buildings Unit. RFQ and quotes (where applicable) – copy to be sent to Supplier payments, originals to be retained by school/centre as part of procurement pack.</p> <ul style="list-style-type: none"> • The invoice must be checked back against the quote/contract and the delivery of the goods/services must be complete and evidenced prior to submitting the invoice for payment. <p>Note: A signed V11 by the budget holder is taken as confirmation that they have followed the correct procurement procedures.</p> <ul style="list-style-type: none"> - Training Centre Procurement - Purchase Orders raised in the SAP system are authorised by the Training Centre Manager (coding is the responsibility of the budget holder). The Training Centre Manager must be satisfied that these procedures have been complied prior to authorising the Purchase Order for same. 	

8.3 VALUE OF CONTRACT BETWEEN €15,001 - €25,000 (EXCL. VAT)

REQUEST FOR QUOTATION (RFQ)

NOTE: ALL PROCUREMENTS OVER € 15,000 MUST BE BROUGHT TO THE ATTENTION OF THE PROCUREMENT MANAGER

ICT PROCUREMENT – Budget Holders must complete an Expenditure Approval Form for all ICT Procurement over € 15,000, see Appendix 3 for Expenditure Approval Form

	VALUE OF CONTRACT BETWEEN €15,001 - €25,000 (EXCL. VAT)	CHECKLIST
1	Check if ETB is utilising a Framework or centrally procured contract for this good or service, if yes, use Framework	
2	Business case and approval from budget holder This case will at a minimum set out the purpose of the procurement including any relevant market research, options available, requirements, and specifications with an emphasis on need. The extent of the business case will be dependent on the nature and quantum of the goods and/or services required.	
3	An Expenditure Approval Form (Appendix 3) must be drafted and completed for all ICT purchases over € 15,000 prior to requesting quotations.	
4	Minimum of five quotations must be sought from suitably qualified suppliers/providers, approved by the Budget Holder and retained in the school/centre for internal checking and audit purposes.	
5	Specifications for the goods/supplies/works should be prepared and issued to the suppliers/providers, including but not limited to, quantity, delivery specifications (time, date, venue) as well as the nature of the evaluation and award criteria (MEAT or price only).	
6	When there are changes in scope and/or additional costs, these must be resent to all potential suppliers that received the initial RFT and documented, and appropriate approvals obtained and retained on file	
7	Closing date and time for return of Request for Quotation (RFQ) should be specified.	
8	RFQ and responses from suppliers must be retained on file	

9	Conflict of Interest Forms to be completed by Evaluation Team prior to evaluation	
10	<p>Evaluation on Lowest price meeting the specification unless MEAT was specified in the Request for Tender.</p> <p>An RFT Evaluation Form must be completed in consultation with the Budget Holder and Procurement Manager.</p>	
11	<p>All RFTs should be opened as soon as possible after the closing date. If tender received in hardcopy, the RFQ should be opened by two people to include one member of the Management Team and a staff member.</p> <p>A formal Tender Opening Report must be completed.</p>	
12	<p>The evaluation form must be completed and approved by the Budget Holder before issuing Notification of Award Letters to the Successful Supplier and Notification to the Unsuccessful Suppliers, and prior to a Purchase Order being issued.</p> <p>Note: Award and Unsuccessful letters to suppliers must be sent at the same time.</p>	
13	<p>The fully completed Purchase Order and RFQ Form must be submitted to relevant Finance Section with the Invoice for payment.</p> <ul style="list-style-type: none"> - Schools/Further Education/Admin – In order to process the payment, the following documentation must be sent to Supplier Payments at St. George’s Terrace, Carrick On Shannon, Leitrim.: <ul style="list-style-type: none"> • Completed PO (V11 form) – ensure correct coding, breakdown of costs, budget holder signature updated. • Invoice – in original – copy to be retained by school centre for record keeping. For works projects – complete and submit Invoice Approval Form at Appendix 12 to the Buildings Unit. • RFQ and quotes (where applicable) – copy to be sent to Supplier payments, originals to be retained by school/centre as part of procurement pack. • The invoice must be checked back against the quote/contract and the delivery of the goods/services must be complete and evidenced prior to submitting the invoice for payment. • Expenditure Approval Form (ICT procurement over € 15,000) – original to be sent to Supplier Payments, copy to be retained by school/centre as part of procurement pack. 	

	<p>Note: A signed V11 by the budget holder is taken as confirmation that they have followed the correct procurement procedures.</p>	
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- **Training Centre Procurement** - Purchase Orders raised in the SAP system are authorised by the Training Centre Manager (coding is the responsibility of the budget holder). The Training Centre Manager must be satisfied that these procedures have been complied prior to authorising the Purchase Order for same.

8.4 VALUE OF CONTRACT BETWEEN €25,001 - €214,000 (EXCL. VAT)¹⁷

REQUEST FOR TENDER (RFT)

- All Request for Tenders for over €25,000 must be advertised on the government procurement website www.etenders.gov.ie. All such competitions must be conducted in consultation with the Procurement Manager.

	VALUE OF CONTRACT BETWEEN €25,001 - €214,000 (EXCL. VAT)	
1	Check if ETB is utilising Framework or centrally procured contract for this good or service, if yes, use Framework	
2	Business case and approval from budget holder This case will at a minimum set out the purpose of the procurement including any relevant market research, options available, requirements, and specifications with an emphasis on need. The extent of the business case will be dependent on the nature and quantum of the goods and/or services required.	
3	Draft Expenditure Approval Form (Appendix 3) and seek approval	
4	Complete OGP template RFT document, ensure clear specifications/requirements and evaluation criteria and publish on eTenders site	
5	Evidence of any changes in spec or messages published to suppliers through eTenders (available on eTender website)	
6	Complete draft contract documents: Service Level Agreement (SLA), Terms & Conditions (T&C) and Data Processing Agreement (DPA)	
7	Record clarification requests and responses; <ul style="list-style-type: none"> ➤ At eTender stage (on eTender website) ➤ At Selection Criteria stage ➤ At evaluation stage 	
8	Open Tender Box (open through eTenders, save the report)	
9	Develop and complete Evaluation folder, record; <ul style="list-style-type: none"> ➤ Signed conflict of interest forms ➤ Signed Evaluation scoring template ➤ Any other scoring breakdowns, including any comments / notes 	

¹⁷ EU Threshold as of January 2020. EU thresholds are updated every 2 years – current thresholds available <https://ogp.gov.ie/revision-of-eu-thresholds/>

10	Complete and record Award notification letters; <ul style="list-style-type: none"> ➤ Regret (admissible) ➤ Regret (Inadmissible) ➤ Award 	
11	Observe Standstill period;	
12	Request self-declared information from successful tenderer	
13	Update SLA, T&C and DPA for execution to successful tenderer	
14	Arrange for contract documents to be completed: <ul style="list-style-type: none"> • Send contract to successful tenderer for signing and insert return date in correspondence; • When returned, arrange for contract documents to be signed by MSLETB (CE signature). • Scan copy into file • Once executed, return one copy to the successful supplier 	
15	Complete Expenditure Approval form and seek approval with all successful tender details, cost, breakdown of cost to expenditure and cost centre codes – must be completed before placing order or releasing Purchase Order number. The procedure for payment will be set out in the tender document. All V11s must quote the eTender title and reference number. For works projects – complete and submit Invoice Approval Form at Appendix 12 to the Buildings Unit.	
16	Publish Award notifications on eTenders; <ul style="list-style-type: none"> ➤ National level – contract award notice ➤ EU Level - TED form 	
17	Close off competition on eTenders	
18	Request update MSLETB Contracts Register through Procurement Office.	

8.5 VALUE OF CONTRACT OVER €214,000 (EXC. VAT)

- The EU directives applies to Contracts for Supplies and Services over €214,000. All such competitions must be advertised on the [eTenders](#) website and the [OJEU Journal website](#). All such competitions will be conducted by the Procurement Manager.

9 WORKS (BUILDING AND RELATED SERVICES)

Building Works can be defined as works wherein a material or structural element of the property would be altered.¹⁸ Building Works must not be undertaken by schools/Centres without first consulting with the Buildings Department as building works must comply with all statutory requirements including Procurement, Building Regulations, Planning Permission, Fire Certificate and Disability Access Certificate requirements. In addition, the Safety Health and Welfare at Work (Construction Regulations 2006) must be complied with and a Project Supervisor Design Process (PSDP) and Project Supervisor Construction Stage (PSCS) appointed where necessary.

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. However, as the Department of Education and Skills are the main funding body for building works to ETB schools, the DoES have taken the CWMF documents and tailored them to suit school building (Works) projects. The following two guidance documents should be adhered to in terms of Procurement of Contractors to undertake minor works in schools where financed by the DoES:

1. Technical Guidance Document TGD - 007 Design Team Procedures for Small Works.
2. DTP – 2012 Procurement of Contractors.

NOTE: The DoES are continually updating their Technical Guidance documents therefore you must refer to information at <https://www.education.ie/en/School-Design/Procedures-and-Cost-Plans/> prior to issuing documentation. For further details refer to [Appendix 10](#).

All other capital funded works outside of the DoES primary and post primary projects *i.e* Department of Youth & Affairs, SOLAS must be brought to the attention of the Buildings Department within the ETB for direction and oversight.

Works-related Timescales:

Works Type	Receipt of Tenders
Small Works Consultants <€50k	10 working days
Small Works consultants €50k to €221k	15 working days (min)
Consultants >€221k	As per EU Directive
Works Contractors <€50k	No prescribed minimum
Works Contractors €50k to €500k (small works)	15 working days (min)
€500k to €5,548,000	20 working days (min)
> €5,548,000	As per EU directive

10 TIED OR SOLE SOURCE

It is ETB Policy not to engage in Tied or Sole Source supplier relationships unless this would cause the ETB to be in breach of EU and Irish regulations. For exceptional circumstances please refer to [Appendix 1](#) for further guidance.

¹⁸ Public works contracts are contracts having as their object either the execution of works or the design and execution of works wherein a material or structural element of the property would be altered. Works are defined by reference to Schedule 1 of the *European Union (Award of Public Authority Contracts) Regulations 2016* and to the Common Procurement Vocabulary (CPV) Division 45

11 SPECIFICATIONS

In advance of seeking RFQ/RFT it is important that a clear and comprehensive list of requirements is compiled, agreed and set. It is advised that the actual requirement is neither over nor under specified. Vigilance is required to ensure that the wording used is not unnecessarily restrictive in the sense that it could or would be construed to have been drafted in such a way as to limit the number of potential suppliers.

Depending on the requirement the specification could be brief short statement but for more complex or costly requirements it should be a detailed specification. Preliminary consultation with potential suppliers may also be helpful in developing a specification and is permitted once it is sufficiently broad, does not create advantages for certain suppliers and is documented and kept separate from the tendering and award phase.¹⁹ The use of trade or brand names is not allowed without allowing for an 'equivalent'. Instead generic descriptions should be used, and if appropriate the EU Standard(s) should be quoted.

Some additional information on Specifications is included at [Appendix 2](#). The Department of Finance has published guidelines on the use of generic technical specifications, with reference to the ICT (Information & Communications Technology) Sector. See information at <http://www.etenders.gov.ie/general-procurement-guidance-2> for more information.

12 NATIONAL/ SECTORAL FRAMEWORKS & CONTRACTS

It is Government and MSLETB's policy to use centralised contracts and this is reiterated in *Circular Letter 0002/2019 Code of Practice for the Governance of the Education and Training Boards*. Where a National or Sectoral Contract or Framework exists for the supply of goods and services or works the contract will already have been subject to the necessary level of competition and should be used, once suitable to ETB requirements. In the case of a Single Party Framework it is not necessary to obtain further competitive quotations and orders may be placed directly with the supplier. In the case of Multi Party Supplier Frameworks it will be necessary to conduct a 'mini-competition'. Guidance is available on the <https://ogp.gov.ie/> and / or from the Manager responsible for Procurement.

NOTE: Where a central procurement framework or contract is not used, a value for money justification, approved by the Director of OSD, should be kept on file for audit purposes.

13 SELECTION/PRE-QUALIFICATION CRITERIA

Selection Criteria test financial, economic and technical capacity of tenderers. They ensure a robust assessment of firms. The Selection criteria must be set in accordance with the type/risks of the contract being awarded. The criteria must also contain rules/minimum levels.

The European Single Procurement Document should be used as a self-declaration approach to compliance with Article 57 of the Directive. Evidence of compliance must be sought prior to the award of contract for all above -EU threshold procurements.

¹⁹ For additional guidelines on market engagement Public Procurement Guidelines for Goods and Services on the OGP website

14 AWARD CRITERIA

It is ETB policy and best practice that Award should be on the basis of Most Economically Advantageous Tender (MEAT) unless there is a justification for choosing lowest price or the funding body sets out the criteria that must be used. Criteria other than price may be evaluated and could include:

Delivery time	Aesthetic and functional characteristics
Quality of supply / service	Technical merit
Fit for purpose / compliance with requirements specification	After-sales service / support and technical assistance
Maintenance / Support Costs	Environmental/social guidance
Upgrade path / compatibility with existing system	

When a contract is being awarded on the Most Economically Advantageous basis, the invitation to quote/tender must state all the criteria being applied in the award process, giving the relevant weightings for each criterion. A minimum of three relevant criteria should be selected.

The evaluation process must be carried out by at least two people and be approved by the authorised budget holder. The evaluation process must be demonstrably objective and transparent and based solely on the specified criteria notified to suppliers in the invitation to tender documentation. An evaluation/scoring sheet should be prepared to support the evaluation process. Examples are included in the ETB Suite of tender templates ([Appendix 7](#)). The marks awarded for price should be calculated as follows:

Total marks allowed X Lowest Price tendered	X 100 X % of

Criteria	
Price Tendered by Company Being Evaluated	

All suppliers whether successful/unsuccessful must be notified in writing of the outcome of the competition to include the mark awarded for each criterion if MEAT was used.

These are referred to as *Notification of Award Letters* and include the *Letter of Intent* and *Letter of Regret* (see [Appendix 7 and 8](#)).

15 RECEIPT AND OPENING OF RFQS/RFTS

The Procurement regulations effective from April 2016 require that electronic means of information and communication should become the standard means of exchange from 2018²⁰ including transmission of notices, electronic availability of the documents and fully electronic communication at all stages.

- All RFQs/RFTs over €15,000 should be opened as soon as possible after the closing date. If the tender is received in hard copy, it must be opened by two people to include one member of the

²⁰ By October 2018

Management Team and a staff member. A formal Tender Opening Report should be completed. Each member of the Tender Opening Team should complete a Conflict of Interest Form.

- All RFTs over € 25,000 must be opened electronically via the e-tenders tender box facility further appropriate procedures will be put in place.
- Ensure that a clear and formal, independently vouched, report of the tenders received is produced.

16 EVALUATION

The evaluation process is a set of formal defined steps to be followed by an evaluation team – to conduct an objective assessment of the responses received in response to a Request for Tender. The objective of an evaluation process is twofold:

- To select the most appropriate proposal to meet the ETB's stated requirements
- To provide an audit trail and set of supporting documentation that will support the evaluation process and final decision

The purpose is:

- To eliminate subjectivity as much as possible from the evaluation process
- To provide transparency in the evaluation process
- To ensure that all proposals are evaluated in the same fair manner
- To mitigate risk including that of a legal challenge

The steps involved in an evaluation process:

- In drafting the tender document, select award criteria *i.e* the factors by which you will determine the suitability of one proposal over another
- Establish an evaluation team and de-brief them on their roles within the team. Each member of the evaluation team should complete a Declaration of Confidentiality and Conflict of Interest form ([see Appendix 7](#))
- Upon opening of the tenders after the deadline has closed, first check each tender received for compliance – has it been received before the deadline for receipt of proposals and does it satisfy the qualification pass/fail criteria in every respect. Once this has been completed, compile a list of tenderers who have not passed the qualification stage. These need to be informed that their proposal has been deemed to be non-compliant, and outline the reasons why.
- Thereafter, the team continue with the evaluation process and score the remainder of the proposals against the pre-prepared and published award criteria.
- Upon agreement and completion of this stage, the results issue, in writing, to all simultaneously. Their result should provide details of how they scored against each award criterion, giving them details of the scoring and specific reasons why they were successful and unsuccessful.
- For contracts with an overall value of €214,000 or greater, the standstill period days needs to be enforced, in order to allow any unsuccessful company, the opportunity to appeal the result. Only after the standstill period has expired without challenge, can a contract be signed with the preferred bidder.
- It is good practice to include a standstill period in below EU Threshold procurements (€25K-€221K). The ETB Suite of templates recommends 7 calendar days.

17 LEASING

All leasing requires Board and DoES approval in advance of any lease agreement being entered into. Finance leasing is strictly prohibited. Operational leasing is commonly used to acquire equipment on a relatively short-term basis. Prior consultation with the Manager responsible for Procurement/ Finance Manager is required.

Property leasing and Procurement related issues for Property Acquisition and Disposal of Surplus Property is set out in [DPER Circular 17/2016](#)

For more information on Leasing, contact the Manager responsible for Procurement.

18 MANAGEMENT OF CONTRACT

It is the policy of the ETB to have a pro-active contract management process. Proper management of a contract especially for a high or medium value purchase will ensure your goods or services are supplied as requested, on time – every time, and help you monitor the overall performance of a supplier by:

- Keeping copies of all related documents and correspondence, filed together in a systematic way.
- Implementing a robust Service Level Agreement (SLA) where required.
- Building a good relationship with the supplier²¹; keeping lines of communication open through supplier business reviews (SBR's).
- Leaning on the supplier's expertise to build value-added measures into the relationship, while being particularly careful not to go beyond the scope of what is tendered for; resulting in having to pay more for services which were not tendered for in the first instance.
- Ensuring risks are identified and escalation procedures are in place for problems to be resolved, in a timely manner.
- Using supplier report cards / keeping a record of performance that can be reviewed with supplier when needed.
- Having a contingency plan should you be required to cancel the contract, or it is terminated early. Including a "runner up clause" in your procurement documentation may be helpful in this regard.
- Reviewing the contract's end-terms in advance to decide on the future for sourcing the goods or services in question.

In order to achieve the above, it is recommended to issue an SLA for all service contracts above €25K. See [Appendix 7 Below Threshold Tender Templates](#) for template SLA

19 ETHICS

All ETB employees involved in any way in the Procurement process shall act ethically and in particular should have regard to:

- i. Conflicts of Interest – it is the policy of this ETB to request that all evaluation team members involved in procurement over € 15,000, in advance of any evaluation process, document the consideration and declaration of possible conflicts of interest.²²
- ii. Confidentiality - Staff involved in the procurement process must also commit to maintaining

²¹ As signatories to the Payment Code, ETBs pledge to pay suppliers within the terms agreed at the outset of a contract, or 30 days, in accordance with legislation. Refer to ETB Prompt Payment Policy.

²² A template is included in the suite of ETB documents referenced at [Appendix 7](#).

- the confidentiality of information²³
- iii. Hospitality
 - iv. Inducements – ETB Employees must not accept inducements in any form from suppliers of goods and services. Inducements include special offers where the inference is that free items may be made available on a personal as opposed to business use basis.

All ETB staff must adhere to 'Ethics in Public Procurement' see <https://ogp.gov.ie/1766-2/> Policy (see Appendix 109.)

20 RECORD KEEPING

- It is a legal requirement to hold files for seven years²⁴
- EU funded programmes may require files be held for up to 22 years
- It is recommended to retain all procurement files and hard copies of winning tenders for a period of seven years after the award of contract.
- Soft copies of documents may be maintained but only where the organisation has a clearly defined policy on documentation retention²⁵

All employees involved in Procurement on behalf of the ETB must comply with the requirements of all relevant and applicable legislation. This includes, but is not limited to, general duties imposed on the ETB as a public authority.

Specific legislation impacting ETB Procurement procedures includes (but is not limited to):

- *Sale of Goods and Services Act 1980*
- *Protection of Employees on Transfer of Undertakings (TUPE) Regulations 2003*
- *Protection of the Environment Act 2003*
- *Safety, Health & Welfare at Work Act 2005*
- *Late Payments in Commercial Transactions Regulations*
- *Waste, Electrical and Electronic Equipment (WEEE) Regulations 2014*
- *Freedom of Information Act 2014*
- *Directive 2014/24/EU on Public Procurement*
- *Data Protection Act 1988 Act, as amended by the Data Protection (Amendment) Act 2003.*

21 TENDER DOCUMENTATION

For goods and services, it is the policy of the ETB to utilise the sectorally agreed ETBI suite of templates for below EU threshold (national) procurement, and the **OGP template documentation** for above EU threshold procurement [See Appendix 7 & 8](#) ²⁶

22 IMPLEMENTATION AND REVIEW

This policy will be re-viewed triennially by the Senior Management Team in line with best practice, or in light of changes in legislation and guidance from sources such as OGP, Internal Audit, C&AG, the Department of Education and Skills and the Department of Public Expenditure & Reform. The date of implementation is 20th October 2020, which is the date of adoption by MSLETB.

²³ A template is included in the suite of ETB documents referenced at [Appendix 5.](#)

²⁴ Statute of Limitations (Amendment) Act 2000 (as amended)

²⁵ Refer to ETB's Record retention Policy

²⁶ For tender documentation relating to Building works go to <https://www.education.ie/en/School-Design/>

APPENDIX 1 THE PROCUREMENT CYCLE



APPENDIX 2 TENDER REQUEST FORM TEMPLATE (CONTRACTS ABOVE €25K)

Name of Department/ School/Centre	
Name and Contact Details for Principal/Department or Centre Manager	
Description of the product/service to be procured	
Is there signed budget approval attached with this request? Yes/No	
What is the estimated contract value exclusive of VAT?	
Is there an existing contract in place? Yes/No	
Has the Incumbent been notified regarding this upcoming tender process? Yes/No	
What is the projected timeline for this requirement?	
Is TUPE likely to be an issue with the new contract? Yes/No	
Who will be leading the procurement process?	
Have you submitted a detailed specification of your requirements? ²⁷	
Budget Holder Signature	Director Signature of Approval
_____	_____
Date: _____	

²⁷ Preparing a Specification of your School/Centre Requirements: A fully detailed specification must be submitted with this request for tender form. The following elements may assist you in identifying those requirements:

1. Background information on the school/centre
2. Contract commencement date
3. Contract duration
4. Indicative value of the contract
5. What is your annual spend
6. Details of goods/services to be procured including:
 - Quantity
 - Pricing strategy (e.g. fixed fee; hourly/daily/ weekly rates; price per unit/ per head) and whether the breakdown of the total cost should include other costs (labour, delivery, disposal, retainer fee etc.)
 - Do you have a list of suppliers/ Are there many suppliers of this product/service?
 - Alternatives
 - Technical information where appropriate
 - Scope of the tender
 - Unique requirements for your school or centre
 - Standards
 - Legislation
 - Environmental Considerations
 - Garda Vetting
 - Innovation
 - Site Visits
 - Child Protection Issues
 - Site Access Issues

APPENDIX 3 EXPENDITURE APPROVAL FORM (EAF)

EXPENDITURE APPROVAL REQUEST

For expenditures of €25,000 AND for ICT expenditure of €15,000 (ex VAT) and above

INSTRUCTIONS			
When this form is required:	For proposed expenditure of €25,000 (ex. VAT) and above: <ul style="list-style-type: none"> - This form must be completed before any order is placed, following the Tender Evaluation and prior to Contract Award. - Must be completed even if using a framework / central contract. - Must be completed for procuring ICT equipment of €15,000 ex VAT and above. 		
Who completes this form:	Budget holder		
What to do with the form when it is completed:	When the supplier's invoice is being submitted for payment, it should be accompanied by: <ul style="list-style-type: none"> - This completed form - Tendering documentation - <i>Official Invoice</i> (i.e. the yellow sheet from Order Book). 		
DETAILS OF PROPOSED EXPENDITURE			
1. Name of school / centre:			
2. Proposed expenditure:			
3. Details of budget being used for expenditure:	Expenditure code(s)		Cost centre(s)
4. Details of tendering: This may comprise the following: Details of eTenders process (e.g. when advertised / eTenders reference number). Details of national / MSLETB framework being utilised Details of tendering by direct invitation (e.g. for building works between €25,000 - €50,000 ex. VAT). Please provide details of tendering process used:			
5. Chosen supplier:			
6. Total cost:	Cost ex. VAT		Cost inc. VAT
SIGNATURE OF BUDGET HOLDER			
Approval for expenditure as set out above is requested. I confirm that sufficient funds are available in the budget that I hold and that I have complied with MSLETB's Procurement Policy:			
Signed: ►	_____		
Budget Holder	<i>Signature of budget holder</i>		<i>Date</i>
APPROVALS			
Confirmation of Budget ►	_____		_____
	<i>Signature of Finance Officer</i>		<i>Date</i>
<i>I hereby approve the above expenditure as per the details provided above</i>			
Expenditure Approval(s): ►	_____		_____
	<i>Signature of Director - below €25,000 (ex. VAT):</i>		<i>Date</i>
►	_____		_____
	<i>Signature of Director AND Chief Executive - Above €25,000 (ex VAT)</i>		<i>Date</i>

APPENDIX 4 RFQ SAMPLE TERMS AND CONDITIONS

Terms and Conditions – Goods and Services

1. Price of Goods or Services

- A. In consideration of the performance by the Contractor of its obligations under this Agreement, the Price of the Goods/Services shall be as stated in the Response and, unless otherwise so stated, shall:
- (i) be exclusive of any applicable value added tax; and
 - (ii) be the entire price payable by the Client to the Contractor.
- B. No increase in the Price may be made without the prior consent of the Client in writing.

2. Specification

The description of the Goods/Services shall, subject to the provisions of this Agreement, be as specified in the RFQ and/or as agreed in writing by the Client and the Contractor.

3. Contractor's Obligations

- A. The Contractor undertakes to:
- (i) supply the Goods/Services in accordance with the RFQ, in accordance with the Client's directions and the terms of this Agreement;
 - (ii) act with due care, skill and diligence in the supply of Goods/Services and generally in the carrying out of its obligations under this Agreement;
 - (iii) comply with all local security, health and safety arrangements and policies as notified to it by the Client;
 - (iv) ensure that all goods, materials, standards and techniques used in providing the Goods/Services are of the best quality and are free from defects in workmanship, installation and design;
 - (v) supply the Goods/Services in accordance with good industry practice and comply with all applicable laws including but not limited to all obligations in the field of environmental, social and labour law that apply at the place where the Goods/Services are being delivered to/ performed, that have been established by EU law, national law, collective agreements and by international, environmental, social and labour law listed in Schedule 7 of the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016).

4. Delivery

- A. The Goods shall be delivered, and the Services shall be performed at the time(s), to the location(s) and on the date(s) specified in the RFQ or otherwise agreed in writing between the parties.
- B. The time of delivery is of essence to the Agreement.
- C. Unless expressly agreed to the contrary, the Client shall not be obliged to accept delivery by instalments. If, however, the Client does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to other rights or remedies of the Client, entitle the Client to terminate the whole of any unfulfilled part of the Agreement without further liability to the Client.
- D. The Client shall be under no obligation to accept or pay for any Goods delivered more than of the quantity ordered. The risk in any over-delivered Goods shall remain with the Contractor.
- E. The Client shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the RFQ.

5. Inspection of Goods

- A. The Client or its authorised representative may inspect (to include a call for advance samples) or test the Goods either completed or in the process of manufacture, during normal business hours on reasonable notice at the Contractor's premises (including the premises of any subcontractor or agent) and the Contractor shall provide all reasonable assistance in relation to any such inspection or test free of charge. A failure to make a complaint at the time of any such inspection or test and / or the approval given during or after such inspection or test shall not constitute a waiver by the Client of any rights or remedies in respect of the Goods and the Client reserves the right to reject the Goods in accordance with clause 5C.
- B. The Client shall not be deemed to have accepted any Goods until after the Client has inspected the Goods at its own premises and ascertained that they are in accordance with the Agreement, notwithstanding any prior acknowledgement of receipt or prior payment.

- C. The Client may by written notice to the Contractor reject any of the Goods which fail to conform to the approved sample, fail to meet the requirements of the RFQ or are not in accordance with this Agreement. Such notice shall be given within a reasonable time after delivery to the Client of such Goods.

6. Risk and Title

- A. Title shall pass to the Client on payment for the Goods.
- B. Risk of damage to or loss of the Goods shall pass to the Client upon delivery to the Client in accordance with the Agreement.

7. Supply of Services

- A. Where Services are to be provided, the Contractor agrees to provide the services promptly, in accordance with the instructions of the Client from time to time and in accordance with all applicable laws.
- B. The Contractor shall procure that all of the Contractor's Personnel engaged by it in providing the Services possess such skills, knowledge, experience and qualifications as are necessary to fulfil the Services.
- C. The Contractor agrees that the Contractor's Personnel engaged by it in providing the Services shall remain in the employment of the Contractor and nothing herein shall constitute or establish a relationship of agency or employment between any of the Contractor's Personnel and the Client. However, all the Contractor's Personnel shall, when working at the Client's premises, conform to the general working terms and conditions of the Client.
- D. The Contractor shall use its best endeavours to ensure the continuity of the Contractor's Personnel throughout the provision of the Services.
- E. The Client shall have the benefit of all representations, warranties and undertakings implied by law in relation to the Services.
- F. The Client may request the Contractor to remove from performance under the Contract any of the Contractor's Personnel, such right not to be unreasonably exercised.

8. Personnel

- A. The Contractor undertakes and acknowledges that it is responsible for ensuring that all key personnel, assigned by it to provide the Services shall be available for the term of this Agreement. In the event that any of the Key Personnel assigned by the Contractor to provide the Services under this Agreement become unable to provide the Services for whatever reason then, the Contractor acknowledges and undertakes that it shall immediately notify the Client in writing of the inability of any Key Personnel and replace that person with a person of equivalent experience and expertise ("Replacement Personnel"). The Contractor shall provide to the Client such details as the Client may reasonably require in writing regarding any Replacement Personnel. The Client shall have absolute discretion as to the suitability of any proposed Replacement Personnel.
- B. The Contractor shall comply with all applicable laws and labour standards in respect of the Contractor's Personnel and deal with any disciplinary, grievance or other employment issues referred to it by any member of the Contractor's Personnel or the Client, in accordance with proper policies and procedures at the Contractor's premises.
- C. The Contractor acknowledges and agrees that it is not intended that there should be transferred to the Client the obligations of any person as employer arising under any contract of employment, in consequence of, or in connection with, the entry by the parties into, or the performance by them of their obligations under, the Agreement, or the termination of the Agreement, or the transfer to the Client of any function to be performed by the Contractor under the Agreement. If, notwithstanding that intention, any such obligations are transferred to the Client by operation of law (whether pursuant to the European Communities (Protection of Employees' Rights on Transfer of Undertakings) Regulations, 2003 or otherwise), then the Contractor shall indemnify the Client on demand against all Losses which may be suffered or incurred by the Client arising out of or in connection with any such transfer, or any contract of employment so transferred to the Client, or the termination of any such contract of employment by the Client subsequent to any such transfer (which the Client shall be free in its absolute discretion to terminate without prejudice to its rights under this Clause).

9. Garda Vetting

If directed by the Client, it shall be a condition of the Agreement that the Contractor shall for the term of the Agreement procure that all of the Contractor's Personnel ("Relevant Persons") where any such persons may have unsupervised access to children and/or vulnerable adults in the course of the provision of the Goods/Services are subject to and shall have successfully completed a background check via the Garda Central Vetting Unit (GCVU) and the Garda Vetting process as required by The National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016. The Contractor shall be required to provide all such information and documentation as the Client may require in this connection and shall comply (and procure compliance by the Relevant Persons) with the Client's Garda Vetting/Police Clearance policies and procedures from time to time.

10. Payment

- A. Subject to the provisions of this clause 10 the Client shall pay and discharge the Price (plus any applicable VAT), in the manner specified between the parties.

- B. Discharge of the Price is subject to invoices being submitted to the Client's Contact (as set out in this Agreement or such other alternative contact as may be agreed between the parties).
- C. All and any queries relating to the invoice and/or the Goods/Services for any billing period (including whether Goods/Services have been accepted, rejected, satisfactorily repaired or replaced as the case may be) will be raised by the Client's Contact within 14 calendar days' of receipt of the invoice. In circumstances where no queries are raised within the said 14-day period the invoice will be deemed accepted. Upon resolution of any queries on the invoice to the satisfaction of the Client or upon such deemed acceptance the invoice will be payable by the Client. Payment is subject to any rights reserved by the Client under any other provision of this Agreement. Incorrect invoices will be returned for correction to the Contractor with consequential effects on the due date of payment.
- D. The Late Payment in Commercial Transactions Regulations, 2012 will apply to all payments.
- E. The Client shall be entitled to set-off any matured obligation owed by the Contractor to the Client under the Agreement against any obligation (whether matured or unmatured) owed by the Client to the Contractor.

11. Warranties, Representations and Undertakings

- A. The Contractor acknowledges, warrants, represents and undertakes that it has the authority and right under law to enter into, and to carry out its obligations and responsibilities under this Agreement and to supply the Goods/Services hereunder.

12. Remedies

- A. The Contractor shall be liable for and shall indemnify, on demand, the Client for and in respect of all and any losses, claims, demands, damages or expenses which the Client may suffer due to and arising as a result of any negligence, act or omission, breach of contract, breach of duty, insolvency, recklessness, bad faith, wilful default or fraud of the Contractor or Contractor's Personnel. The terms of this clause 12A shall survive termination of this Agreement for any reason.
- B. Should the Client find itself obliged to order elsewhere in consequence of the failure of the Contractor to deliver Goods/Services of approved quality, the Client shall be entitled to recover from the Contractor any excess prices which may be paid by the Client.

13. Confidentiality

- A. Each of the Parties to this Agreement agrees to hold confidential all information, documentation and other material received, provided or obtained arising from their participation in this Agreement ("Confidential Information") and shall not disclose same to any third party.
- B. The Contractor confirms that it is aware that the Client is subject to the Freedom of Information Acts 1997 and 2003. The Contractor shall, when providing information, identify if such information is confidential and specify reasons for its sensitivity. The Client will consult with the Contractor about such information before making a decision on any Freedom of Information request received.
- D. The terms of this clause 13 shall survive expiry, completion or termination for whatever reason of this Agreement.

14. Termination

- A. This Agreement may be terminated by the Client, without liability for compensation or damages, by serving one month's written notice to the Contractor.
- B. Either party shall have the right (in addition to any other rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages on the happening of any of the following:
 - (i) if the other party commits any serious breach or a series of breaches of any provision of this Agreement and fails to remedy such breach(es) (if the breach(es) are capable of remedy) within 30 days after receipt of a request in writing from the other party;
 - (ii) if the other party becomes insolvent, becomes bankrupt, enters into examinership, is wound up, commences winding up, has a receiving order made against it, makes any arrangement with its creditors generally or takes or suffers any similar action because of debt, or an event having an equivalent effect;
 - (iii) in circumstances where the Client becomes aware of any conflict of interest on the part of the Contractor which cannot, in the opinion of the Client, be removed by other means; and
 - (iv) in circumstances where the Client becomes aware of any registrable interest on the part of the Contractor.

15. Contract Management

- A. The Client's Contact and the Contractor's Contact shall liaise on a regular basis to address any issues arising which may impact on the performance of this Agreement and to agree milestones, compliance schedules and operational protocols as required by the Client from time to time. If requested in writing by the Client, the Contractor shall meet formally with the Client to report on progress and shall comply with all written directions of the Client.
- B. The Contractor agrees to:

- (i) liaise with and keep the Client's Contact fully informed of any matter which might affect the observance and performance of the Contractor's obligations under this Agreement;
 - (ii) maintain such records and comply with such reporting arrangements and protocols as required by the Client from time to time;
 - (iii) comply with all reasonable directions of the Client; and
 - (iv) comply with any service levels and performance indicators specified by the Client.
- C. The Contractor shall be required to hold for the term of the Agreement insurances of the nature and amount as set out in the RFQ, or as notified to the Contractor by the Client, and shall immediately advise the Client of any material change to its insured status.
- D. The Contractor shall produce proof of current insurance premiums paid upon request and where required produce valid certificates of insurance for inspection. The Contractor shall carry out all directions of the Client regarding compliance with this clause 15C.

16. Disputes

- A. In the event of any dispute arising out of or relating to this Agreement (the "Dispute"), the Parties shall first seek settlement of the Dispute as set out below.
- B. The Dispute shall be referred as soon as practicable to the Contractor's Contact within the Contractor and to Client's Contact within the Client.
- C. If the Dispute has not been resolved within fifteen (15) business days (or such longer period as may be agreed in writing by the parties) of being referred to the nominated representatives, then either party may refer the Dispute to an independent mediator, the identity of whom shall be agreed in advance by the parties.
- D. If the parties are unable to agree on a mediator or if the mediator agreed upon is unable or unwilling to act, either party may within twenty-one (21) days from the date of the proposal to appoint a mediator or within twenty-one (21) days of notice to either party that the mediator is unable to act, apply to Centre for Effective Dispute Resolution Ireland to appoint a mediator.
- E. Any submissions made to and discussions involving the mediator, of whatever nature, shall be treated in strict confidence and without prejudice to the rights and/or liabilities of the parties in any legal proceedings and, for the avoidance of doubt, are agreed to be without prejudice and legally privileged. The parties shall make written submissions to the mediator within ten (10) business days of his/her appointment.
- F. The parties shall share equally the cost of the mediator. The costs of all experts and any other third parties who, at the request of any party, shall have been instructed in the mediation, shall be for the sole account of, and shall be discharged by that party.
- G. For the avoidance of doubt, the obligations of the parties under this Agreement shall not cease or be suspended or delayed by the reference of a dispute to mediation. The Contractor shall always comply fully with the requirements of the Agreement.

17. Non-exclusivity

Nothing in this Agreement shall preclude the Client from purchasing Goods/Services from a third party at any time during the term of the Agreement.

18. Conflicts, Registrable Interests and Corrupt Gifts

- A. The Contractor confirms it has carried out a "conflict of interest" check which satisfies no compromise of any individual's impartiality, or be reasonably be perceived as doing so, in the award of a contract. Any such "conflict of interest" shall be notified immediately to the Client.
- B. In accordance with Section 38 of the Ethics in Public Office Act 1995 and 2001 any money, gift or other consideration from a person holding or seeking to obtain a contract will be deemed to have been paid or given corruptly unless the contrary is proved.

19. Equipment

- A. The Contractor shall provide all equipment and materials necessary for the provision of the Services.
- B. All equipment brought onto the Client's premises shall be at the Contractor's own risk and the Client shall have no liability for any loss of, caused by or damage to any equipment.
- C. The Contractor shall, at the Client's written request, at its own expense and as soon as is reasonably practicable:
- (i) remove any equipment which in the reasonable opinion of the Client is either hazardous, noxious or not in accordance with this Agreement; and
 - (ii) replace such item with a suitable item of equipment.
- D. The Contractor shall maintain and store all items of the Contractor's equipment within the Client's premises in a safe, serviceable and clean condition.
- E. On completion of the Services the Contractor shall remove the equipment used by the Contractor to provide the Services and shall leave the Client's premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any

damage to the Client's premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Contractor Personnel.

20. Data Protection and Security

- A. Each party shall comply with all applicable requirements of the Data Protection Laws that arise in connection with this Agreement.

21. General Provisions

- A. This Agreement together with the RFQ, any clarifications issued, and any documents identified by the Client as forming part of the Agreement comprise the Agreement and contain the entire agreement between the Contractor and the Client relating to the Goods/Services and supersedes any prior agreements, understandings, representations, warranties, undertakings or proposals, oral or written.
- B. The parties recognize that printed purchase orders, invoices and other commonly used form documents relating to the performance of any obligations hereunder may contain terms which conflict with one or more terms of this Agreement. In case of any such conflict, the relevant terms of this Agreement shall prevail.
- C. Nothing in the Agreement shall create, or be deemed to create, a partnership, joint venture, or the relationship of principal and agent, between the parties.
- D. The Contractor is deemed to be the prime contractor under this Agreement and the Contractor assumes full responsibility for the discharge of all obligations under this Agreement. The Contractor as prime contractor hereby assumes liability for Contractor Personnel and shall ensure that Contractor Personnel shall comply in all respects with the relevant terms of this Agreement, to the extent that it or they are retained by the Contractor.
- E. If the whole or any part of a provision of the Agreement is or becomes illegal, invalid or unenforceable, that will not affect the legality, validity or enforceability of the remainder of the provision in question or any other provision of the Agreement.
- F. The Contractor may not, without the prior written consent of the Client assign, transfer or create or permit to exist any right, title or interest in, to or under, any of its rights under the Agreement.
- G. The Agreement (and any non-contractual obligations arising under or in connection with the Agreement) shall be governed by, and construed in accordance with, the laws of Ireland and the Irish courts shall have exclusive jurisdiction.
- H. Notices and other communications under or in connection with this Agreement may be given in writing by hand, by ordinary pre-paid post, by facsimile or by e-mail, save that service of any notice of any claim, dispute, termination, breach or legal proceedings in connection with the Agreement shall not be made by e-mail.

22. Force Majeure

- A. Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 30 days or more the party not affected may terminate this agreement by giving 10 days' written notice to the affected party.

23. Additional Condition(s)

Non-Applicable

24. Interpretation

In these terms and conditions:

Agreement means these terms and conditions together with the Request for Quotation, any clarifications issued and any documents identified by the Client as forming part of the Agreement;

Client means the entity (school) that issued the Request for Quotation;

Client's Contact is that person identified as such in the Request for Quotation or as identified by the Client from time to time;

Contractor means the entity that responded to the Request for Quotation and identified by the Client as the preferred supplier or service provider;

Contractor's Contact is that person identified as such in the Request for Quotation or as identified by the Contractor from time to time;

Contractor's Personnel means any of the Contractor's employees, servants, agents or sub-contractors;

Data Protection Law means all legislation and regulations relating to the protection of personal data including (without limitation) the Data Protection Acts 1988 and 2003 (as amended, revised, modified or replaced from time to time), the General Data Protection Regulation (Regulation (EU) 2016/679) and all other statutory instruments, industry guidelines (whether statutory or non-statutory) or codes of practice or guidance issued by the Data Protection Commissioner relating to the processing of personal data or privacy or any amendments and re-enactments thereof;

Goods means the items specified in the RFQ;

Key Personnel means those personnel identified by the Contractor as central to the provision of the services;

Loss includes any demand, claim, proceeding, suit, judgement, loss, liability, cost, expense (including legal expenses), fee, penalty or fine;

Price means the price quoted in the Response;

Response means the response submitted by the Contractor in reply to the Request for Quotation;

Request for Quotation or RFQ means the Request for Quotation (Goods & Services less than €25,000 in value) issued by the Client;

Services means the services specified in the RFQ;

APPENDIX 5 PROCUREMENT CHECKLIST AND CONTRACT FILE

- Regulation 84 report (if applicable)
- A business case or cost benefit analysis
- All documentation that issues to the market including PIN, Contract Notice and RFT
- All clarifications sent to tenderers/candidates
- The report of the opening of the tenders
- The evaluation report
- The acceptance by senior management of the evaluation team's report
- The winning tender (or quotation)
- The Contract Award Notice
- Post Tender Clarifications
- The award letter and standstill/regret letters to unsuccessful tenderers
- The signed contract
- For Framework Agreements, all correspondence, including orders, relating to individual contracts/drawdowns – one file should be opened for the Framework Agreement and individual project files set up for each call-off contract established under the Framework
- Initial order to the contract holder for work packages/services
- All request for payment by the contract holder
- All requests for expenses, supporting documentation and vouched expense claims from the contract holder
- All acceptance notes for deliverables and services
- All correspondence with the contract holder
- **Contract Management**
- The post implementation review or reviews/reports by third parties

APPENDIX 6 EU PUBLIC DIRECTIVE (ARTICLE 84) AUDIT REPORT

This audit report should contain the following: The name of the buyer

- The subject matter and value of the contract
- The results of the pre-qualification process *i.e* the names of the successful candidates with reasons provided for selection/non-selection
- Reasons for rejecting abnormally low tenders
- The name of the preferred bidder and the reasons for selecting their tender
- The name(s) of sub-contractors and the share of the contract to be sub-contracted
- Justification, where appropriate, for the use of the competitive dialogue/competitive procedure with negotiation
- Reasons for not awarding a contract or a framework
- An explanation for not using an electronic submission
- Measures taken to address potential conflicts of interest of the evaluators
- Reasons for not using lots

In addition, buyers must maintain records of internal deliberations, records of dialogue or other meetings and details about the preparation of the procurement documents, including the setting of selection and award criteria.

Over time these procurement audits will become an important source of insight for unsuccessful suppliers. These documents may be discoverable under the Freedom of Information Act.

APPENDIX 7 BELOW EU THRESHOLD TENDER DOCUMENTS

Suite of ETB Templates for use in the procurement of goods and services below EU Threshold is available from

Head Office and ETBI. This suite contains the following documents:

- Invitation to Tender Documents for both Contracts and Frameworks
- Notification Letters
- Terms & Conditions & Service Level Agreement, including Data Processing Agreement
- Tender Response Document
- Declaration of Confidentiality and Conflict of Interest
- Open Tender Evaluation template

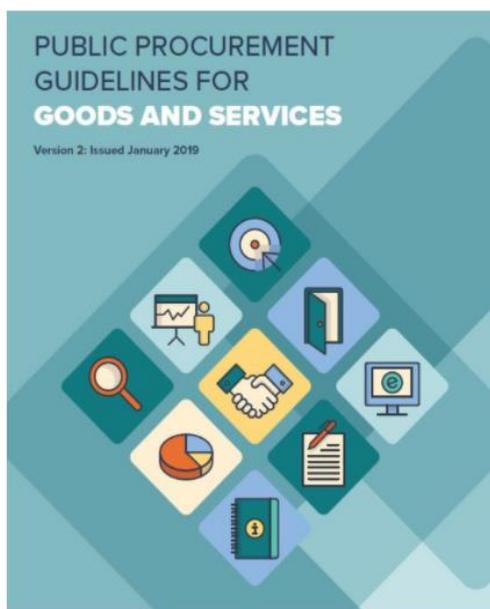
APPENDIX 8 ABOVE EU THRESHOLDS TENDER DOCUMENTS

The following templates are available from the OGP website at <https://ogp.gov.ie/templates-2/>:

- RFT – Goods
- RFT – Services
- Goods Contract
- Services Contract

APPENDIX 9 PUBLIC PROCUREMENT GUIDELINES FOR GOODS AND SERVICES

The following Guide is available from the OGP website <https://ogp.gov.ie/public-procurement-guidelines-for-goods-and-services/>



APPENDIX 10 ETHICS IN PUBLIC PROCUREMENT²⁸

1. INTRODUCTION

The purpose of this is to provide information to employees of the ETB in order for them to conduct purchasing/procurement in a way that satisfies probity and accountability requirements.

2. GUIDING PRINCIPLES

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

Probity requires the purchasing process to be conducted

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

Transparency and accountability require that the basis for decisions is demonstrably clear and objective and that the purchaser is held to account for the conduct of the procurement process. Employees involved in the procurement function must ensure that they are cost effective and efficient in the use of resources while upholding the highest standards of integrity. Procurement practices are subject to audit and scrutiny under the Comptroller and Auditor General (Amendment) Act 1993 and Accounting Officers are publicly accountable for expenditure incurred.

3. PROBITY

In the context of procurement, the aim should be that the ETB as an organisation is trusted and respected by those with whom it deals and that business is conducted by employees not only efficiently but in a fair and reasonable manner. Some of the practical implications of ensuring probity in procurement are set out in the following sub-sections.

Legality

There is an obligation on employees involved in the procurement function to exercise their powers lawfully. Compliance with national and EU legal requirements is a duty owed to contractors, suppliers, and service-providers by the ETB. Contractors, suppliers, and service-providers who have been treated unfairly or whose rights have been infringed in the public procurement process have a right to legal redress under EU remedies Directives.

A Procurement Policy has been devised in order to ensure that employees are aware of their obligations in this regard and adherence to the policy will ensure that legal requirements are fulfilled. If employees are unsure of the legal, policy or procedural requirements, they must seek advice from their line managers.

Disclosure of Interest

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

Gifts

Employees of the ETB should not accept benefits of any kind from a third party which might reasonably be seen to compromise their personal judgement or integrity. The actions of employees of the ETB

²⁸ Updated for ETBs from [Ethics in Public Procurement](#) (National Public Procurement Policy Unit, June 2005)

must be above suspicion and not give rise to any actual or potential conflict of interest and their dealings with commercial and other interests should bear the closest possible scrutiny.

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

- Gifts must never be solicited, directly or indirectly.
- Cash, gift cheques or any vouchers that may be exchanged for cash may not be accepted regardless of the amount.
- Gifts of a value exceeding €50 each or a cumulative total of €150 in a year should be refused. This policy and the ethical rules that apply to public employees of the ETB should be explained to the donor so that reasons for refusal are not misunderstood or offence caused. Particular care should be taken in relation to offers of gifts from donors who stand to derive a personal or commercial benefit from their relationship with the contracting authority concerned.
- Should a gift be received an employee may accept and retain gifts of low intrinsic value, on behalf of the ETB. For instance, diaries, bottle of wine, box of chocolates or any gift less than value of €50 subject to a limit of €150 in any one year. It is not appropriate that individual employees would personally benefit from such gifts therefore it is recommended that an impartial method of distribution of such gifts be undertaken *e.g.* raffle or donation to charity. Any such procedure must be open and transparent and the line manager will have responsibility for same.
- Employees of the ETB must never solicit sponsorship for social, sporting, charitable or similar organisations or events from contractors, suppliers or service providers. Where such sponsorship is offered, it may only be accepted when expressly approved in writing by management. (This is not intended to relate to instances of appropriate and acceptable sponsorship of projects or activities which are related to a contracting authority's official activities and are otherwise in accord with public procurement rules).
- Employees of the ETB must not seek or accept special facilities or discounts on private purchases from contractors, suppliers or service providers with whom they have official dealings. This does not preclude special arrangements for employees negotiated by the ETB on behalf of employees.

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

Hospitality

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

- The frequency and scale of hospitality is not allowed by the recipient to reach a position whereby he or she might be, or might be reasonably deemed by others to have been influenced in making a business decision as a consequence of such hospitality.
- The number of employees availing of the hospitality is kept to a minimum.
- Invitations do not include provisions deemed to be excessive, such as significant travel, overnight accommodation or trips abroad.
- Availing of the hospitality does not identify the ETB in a public way with any particular contractor, supplier or service provider.

All offers of hospitality should be reported to the line manager. Particular care should be taken where suppliers are in the process of tendering for business. In this regard, there should be no acceptance of gifts or hospitality from contractors, suppliers or service providers involved in a current tendering process.

4. TRANSPARENCY AND ACCOUNTABILITY

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

In organising the procurement function, the ETB will ensure appropriate separation of duties within the procurement cycle. In so far as possible, ordering and receiving goods and services should be distinct from payment for goods and services.

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

5. CONFIDENTIALITY OF INFORMATION

Employees involved in the procurement function must ensure that commercially sensitive information is kept secure and never used for personal gain or to prejudice fair competition. Information on individual contracts must not be given to the media or any other enquirer (except the individual contractor concerned), without the authority of the line manager.

Disclosure of supplier and tender information relating to the tender process prior to contract award, and in particular to another interested party, is strictly prohibited. After the award of contract, information may be provided in accordance with the detailed guidance on "*Notifying Tenderers and Disclosure of Information*" outlined in the booklet "*Public Procurement Guidelines – Competitive Process*" and published in the general procurement guidance section of the eTenders.ie website. Some information on the tendering process may be disclosable under FOI legislation where invoked.

APPENDIX 11 WORKS (BUILDING AND RELATED SERVICES)²⁹

9.1 Open or Restricted Tendering?

- (a) **Below €500,000 (excluding VAT):**
 - (i) For projects with a Construction value of less than €50,000 (excluding VAT) either the Restricted Procedure or the Open Procedure may be used.
 - (ii) For projects with a Construction value greater than €50,000 (excluding VAT) the Open Procedure must be used.
 - (iii) The advertising and tendering procedures set out below apply.
- (b) **Above €500,000 (excluding VAT):**
 - (i) For projects with a Construction value less than €2,500,000 (excluding VAT) the Open Procedure should be used unless the prior agreement of the Department of Education and Skills [DoES] to use the Restricted Procedure has been obtained.
 - (ii) For projects with a Construction value equal to or greater than €2,500,000 (excluding VAT) Contracting Authorities may use either the Open Procedure or the Restricted Procedure. In general, the Restricted Procedure should be used for larger and more complex projects. For smaller straight forward projects where the cost of Tendering will not be an undue burden on contractors the Open Procedure can be used.
 - (iii) The procedure set out in the Design Team Procedures DTP 2012 Procurement of Contractors, Section 3 (available at www.education.ie) is applicable for projects using the Open Procedure.
 - (iv) The procedure set out in the Design Team Procedures DTP 2012 Procurement of Contractors, Section 4 (available at www.education.ie) is applicable for projects using the Restricted Procedure.

9.2 Public Advertisement

- (a) For projects with an estimated construction value of less than €50,000 excluding VAT, advertisement on eTenders or other national medium is not required (unless there is the possibility of cross-border interest).
 - (i) If the Open procedure is used, the School and their Consultant/Design Team must put an advertisement in the local papers (including cross-border papers where appropriate) stating how to obtain the tender documents and the latest date for the return of tenders.
- (b) For projects greater than €50,000 an advertisement must be placed on eTenders.
- (c) For projects greater than €5,548,000 (excluding VAT) a Contract Notice must be placed in the OJEU journal. This can be done simply through the eTenders web-site.

9.3 Tendering for Works under €50,000 (excluding VAT)

- (a) A minimum of at least 5 quotes (in writing or by email) must be sought from suitable contractors and a minimum of 5 obtained.
 - (i) If using the Restricted Procedure, School Authorities/ Centres and their Consultants/Design Teams are required to consider any Contractor who has expressed

²⁹ From DoES PBU Technical Guidance Document TGD-007 (5th Edition, April 2016) available [here](#)

an interest in tendering for the project (*e.g.* by writing or emailing the school or consultant), and, where that Contractor meets the minimum standard required for the construction of the works, must include that contractor on the list of firms tendering for the project. There is no upper limit on the number of contractors permitted to tender for the project.

- (ii) Where the Open Procedure is being used the School/Centre and their Consultant/Design Team must put an advertisement in the local papers (including cross-border papers where appropriate) stating how to obtain the tender documents and the latest date for the return of tenders. In addition, the School and their Consultant/Design Team must directly contact any Contractor who has expressed an interest in tendering for the project (*e.g.* by writing or emailing the school or consultant) informing them in a timely manner of the tender opportunity.

In using the Open Procedure placing an advertisement does not guarantee an acceptable level of interest from contractors. It is permissible and prudent to contact suitable contractors in the general geographical area to alert them to the tender opportunity and invite them to respond to the advertisement.

- (b) If fewer than five firms submit tenders, (whether under the Open or Restricted Procedure) the Contracting Authority should only proceed with an award if it considers that there has been genuine competition and that the tender being considered for acceptance represents value-for-money.
- (c) If there is the possibility that there could be interest from another jurisdiction (*e.g.* Northern Ireland) it is important to ensure that the principles, under the Treaty of Rome, of transparency and non-discrimination are observed.

9.4 Tendering for Works > €50,000 and < €500,000 (excluding VAT)

Minimum Standards for Participation

- (a) Under the Open Procedure, all interested parties are permitted to submit tenders. This does not however mean that there are no minimum standards for participation.
- (b) For a tender to be deemed a valid tender, the tenderer must meet the minimum standards for participation published in the advertisement/Contract Notice and the Conditions for Award set out in the Tender Documents.
- (c) These minimum standards must be reasonable and should not exceed the requirements in the DoES Suitability Declaration for Small Works available at www.education.ie under School Design > Procedures and Cost Plans > Design Team Procedures.
- (d) For Projects < €500,000 (excluding VAT) all tenderers should be required to sign the DoES Suitability Declaration for Small Works and submit it with their tenders.
 - (i) By signing this declaration, tenderers are stating that they meet the minimum Standards for Participation and the Conditions for Award and confirming that (if they are the apparently successful tenderer) they will produce (within 7 calendar days) evidence of compliance with all sections of this declaration.

eTenders Advertisement

- (e) Once the Tender documents are complete an advertisement must be placed on eTenders (see Template eTenders advertisement).

- (f) The eTenders advertisement should state that the DoES Suitability Declaration for Small Works is available at www.education.ie under *School Design > Procedures and Cost Plans > Design Team Procedures* and must be signed and submitted with their tenders.
- (g) The eTenders advertisement should contain the following wording under Additional Information:
 - Important Notice:
Tenderers are required to read the DoES Suitability Declaration for Small Works carefully and to make sure that they meet the minimum standards stated therein. Tenderers who do not meet those requirements should not submit a tender as they will be excluded at award stage. All Tenderers are liable for their own costs of tendering.
- (h) In using the Open Procedure placing an advertisement on eTenders does not guarantee an acceptable level of interest from contractors. It is permissible and prudent to contact suitable contractors in the general geographical area to alert them to the tender opportunity and invite them to respond to the advertisement.

Tenders

- (i) An adequate period of time must be allowed to tenderers for compiling and submitting their tenders. The minimum period to be allowed is 15 working days (except in the case of emergency works where a reduced period may be used).
- (j) Tender submissions should be in writing (not by email)

Tender Assessment

- (k) Tenders received on or before the due date and time should all be opened together after the closing date for receipt of tenders, and only by a nominated official of the School Authority in the company of the Consultant(s). All details must be recorded, checked and signed by all present.
A Conflict of Interest and Confidentiality Declaration must be signed by all members of the Evaluation Team.
- (l) A signed *DoES Suitability Declaration for Small Works*³⁰ must be included with each Tender submission. Any tenderer who has not submitted the signed suitability declaration and the signed Form of Tender with the price clearly stated (either in words or numbers) should be excluded.
- (m) The lowest qualifying tender (*i.e* not excluded at (k) above) is the apparently successful tenderer or preferred bidder.
- (n) The Preferred bidder's pricing document should now be opened and any arithmetical errors, low rates or un-priced items noted.
- (o) The preferred bidder should now be contacted and asked to provide (within 7 days) the information required in the *DoES Suitability Declaration for Small Works*. (The template Letter of Intent at [Appendix D](#) should be used)
 - (i) At the same time, if his/her Form of Tender has been modified in any way (*e.g.* additions omissions or amendments, he/she should be given the opportunity (in writing) to

- withdraw those qualifications. (If any such qualifications are not withdrawn, the tender should be rejected.)
- (ii) Any arithmetical errors, low rates or un-priced items should be brought to the preferred bidder's attention and he/she should be given the opportunity (in writing) to stand over or to withdraw his or her tender. He should not be allowed to correct his or her tender.
 - (iii) Where a tender is so low that the Consultant(s) considers that viability may be compromised, detailed discussions with the contractor must take place. If the contractor is prepared to stand over his/her tender the Consultant(s) must be satisfied that the contractor has comprehensive knowledge of the extent, scope and nature of the works and of post contract cost control procedures, that he/she has demonstrated the adequacy of his/her tender and has the financial capacity to complete the project.
- (p) When the evidence of compliance with the *DoES Suitability Declaration for Small Works* has been received, it should be examined and verified.
- (i) The preferred bidder should not be excluded on a technicality (before excluding the preferred bidder clarification should be sought for such non-compliance items).
 - (ii) However substantive non-compliance items (*e.g.* complete failure to demonstrate H&S competence or no track record of projects of a similar size and complexity) are a basis for exclusion and are not matters of clarification).
 - (iii) If clarification is sought on any item and the issue is not resolved by return the preferred bidder should not be given a further chance.
- (q) If the preferred bidder is deemed to be non-compliant, that tenderer should be excluded and the next lowest tenderer should be deemed to be the preferred bidder. The process from 4.5(n) to 4.5(p) should be repeated until a qualifying preferred bidder is established
- (r) Except where a tender is withdrawn or deemed to be non-qualifying (as above) the Design Team must not pass over the lowest or any tender, due to any other reasons without prior consultation and agreement with the Planning and Building Unit.

9.5 Works > €500,000 (excluding VAT)

- (a) For guidance on using the Open Tendering Procedure refer to the Design Team Procedures DTP 2012 Procurement of Contractors, Section 3 (available at www.education.ie).
- In using the Open Procedure placing an advertisement on eTenders does not guarantee an acceptable level of interest from contractors. It is permissible and prudent to contact suitable contractors in the general geographical area to alert them to the tender opportunity and invite them to respond to the advertisement.
- (b) For guidance on using the Restricted Tendering Procedure refer to the Design Team Procedures DTP 2012 Procurement of Contractors, Section 4 (available at www.education.ie).

Note: All tenders must comply with the EU Public Directive (Article 84) Audit Report Requirements as well as the Public Spending Code.

APPENDIX 12 WORKS - INVOICE APPROVAL FORM

Corporate Services Buildings and Procurement Unit June
2020



**Procurement and Buildings
Unit Invoice Approval Form**

Contract Details:		
Location/Centre:		
Contract Reference:		
Budget Holder:		
Cost Centre:		Expenditure Code:
SIN No:		
Procurement Details:		
Expenditure Approval *		Date:
form completed(Yes/No)		
Payment Approval:		
Total Contract Amount:		
Amount paid to Date:**		
Total Amount of Invoice:		
Payment Recommended:		
Payment Approved:		

* **Expenditure approval forms to be filled prior to payment of invoices**

for all expenditure over €25k

See attached final account sheet for breakdown of payments

**

The invoice will be checked against the quote/contract to ensure consistency

Corporate Services Buildings and Procurement Unit June 2020



msletb

Bord Oideachais agus Oiliúna
Mhaigh Eo, Shligigh agus Liatroma
Mayo, Sligo and Leitrim
Education and Training Board

**FET Building Projects
Final Account Sheet**

Centre Name

Contract Ref/Project Title

	Expenditure Code	

Cost Centre

Total Capital Amount Granted:
(Or Budget Allocated if non capital)

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Total Contract Amount Architect	
Architect Fees Paid	Date

Total Contract Amount Build	
Contractor Fees Paid	Date

***NOTE;** An excel version of this document is available on request from the Buildings Unit in Corporate Services.

APPENDIX 13 SOLE/ TIED SUPPLIER REQUEST

Where it is necessary to deal with a tied/sole supplier, service provider or contractor, arrangements which provide best value for money should be negotiated. Care should be taken by an end user when they face a supplier, service provider or contractor with an exclusive right to provide a particular supply or service. Open-ended arrangements with these exclusive distributors should be avoided where possible as they reduce or hinder competition. These types of arrangements are in breach of both Government Guidelines and EU Directives. Appropriate marketing testing (*i.e* open and competitive tendering) should be undertaken at appropriate intervals to ensure market openness and competition is maintained. Such Contracts should not roll over for more than three years.

Where it is necessary to deal with a sole supplier, this should formally be requested in writing and submitted for approval to the Manager with Responsibility for Procurement and the relevant Director.

A template form is included at Appendix 12.

Awarding of a contract below the EU value threshold and without use of a competitive process should only be considered in the following instances: -

1. Where only a proprietary product will meet requirements, such as parts or components for equipment.
2. Where an agent, licensee or franchise holder has sole rights to supply a service or product;³¹
3. Where there is only one suitably qualified specialist in the relevant field.
4. Where continuity of supply or service is required in order to ensure value for money. Such contracts require the prior approval of the Director of OSD or the Chief Executive.

APPENDIX 14 DEROGATION

A derogation may be granted in cases where due to urgency a competitive process cannot be undertaken in the time available. Factors giving rise to urgency must be serious, unforeseeable and, except in the most exceptional circumstances (for instance a matter of urgent public safety or the like) not due to action or inaction on the part of the contracting authority. Awarding of such contracts without a competitive process must be approved in writing by the relevant Director in the case of contracts less than €25,000 (supplies & services) and €50,000 (works) or the Chief Executive in the case of contracts above €25,000 (supplies & services) and €50,000 (works). Relevant proof/documentation must be held on file for auditing purposes.

³¹ Some examples include City & Guilds, QQI, ECDL etc

APPENDIX 15 TEMPLATE SOLE/ TIED SUPPLIER REQUEST

This form must be completed where the intention is to obtain a single quotation or tender.

Suggested Supplier:

Please specify the type of purchase:

- Goods
- Services
- Works

Please specify the type of supplier

- Sole Supplier
- Tied Supplier

Full description of goods / services / works

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Estimated Value:

Reason:

Because it is contrary to achieving value for money through open and fair competition, single supplier action should normally be avoided. Please give full details of the reason why you believe that there is only one supplier for the item mentioned above and that no alternative is available:

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Request:

Name	ROLE/ POSITION	SIGNATURE	DATE

Approval:

	BLOCK CAPITALS NAME	SIGNATURE	DATE
Manager			
Director			