



SOCIETY OF  
**CHARTERED  
SURVEYORS**  
IRELAND



Client Guide

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CAPITAL PROJECTS:  
PROCUREMENT  
& TENDERING STRATEGIES

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## ABOUT THIS GUIDE:

This quick reference guide is intended as an outline of the key procurement and tendering strategies to be considered when undertaking a capital construction project in Ireland. The guide is aimed at Clients and Industry Professionals.

It is not the intention of this guide to replicate the large volume of material available in respect of procurement and tendering rather to provide a summary guide of the options available.

At the outset, it is useful to distinguish between Procurement and Tendering in the context of the construction process in order to understand the two processes and how they relate to each other.

**Procurement\***: Procurement is the overall act of obtaining goods and services from external sources (i.e. a building contractor) and includes deciding the strategy on how those goods are to be acquired by reviewing the client's requirements (i.e. time, quality and cost) and their attitude to risk.

**Tendering\***: Tendering is an important phase in the procurement strategy but procurement involves much more than simply obtaining a price. Tendering is:

- the bidding process, to obtain a price; and how a contractor is actually appointed.

## ROLE OF CHARTERED QUANTITY SURVEYOR

The Chartered Quantity Surveyor is an expert in the procurement and tendering of construction works and related services and can provide professional advice in relation to the selection of the appropriate procurement and tendering strategies and management of these processes through the project cycle.

## PUBLIC SECTOR & PRIVATE SECTOR VARIANCES

Procurement and tendering strategies and procedures vary between the public and private sectors. The public sector has prescribed processes and procedures by virtue of defined guidance, contracts and legislation. The private sector has a wider array of procurement and tendering strategies with the ability to develop bespoke models to suit the particulars of individual projects.

\*RICS Professional Guidance, UK "Tendering Strategies, 1st Edition"

# 1.0 PUBLIC SECTOR

As outlined, procurement in the public sector has prescribed processes and procedures. We outline below the mandatory requirements and source of information in respect of the detail of same. In addition, we summarise the procurement & tendering options available in the public sector and their associated advantages and disadvantages.

## 1.2 Public Procurement - Mandatory Requirements

The fundamentals of Public Procurement as set out in Directive 2014/24/EU are that the award of public contracts by or on behalf of Member States' authorities has to comply with the principles of the Treaty on the Functioning of the European Union (TFEU), and in particular the free movement of goods, freedom of establishment and the freedom to provide services, as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency.

For public contracts above a certain Threshold (as detailed below) publication of the tender opportunity is obligatory in the official Journal of the EU. In this regard the government have a public procurement portal [www.etenders.gov.ie](http://www.etenders.gov.ie) on which Contract Notices are required to be published (and it also facilitates the publication on the OJEU website) which is mandatory above set thresholds. Table 1 below sets out the current national and EU advertising thresholds. The Directive 2014/24/EU has been transposed into Irish Law by Statutory Instrument S.I. 284 of 2016 European Union (Award of Public Authority Contracts) Regulation 2016.

**Table 1: EU Thresholds ( Euro excl. VAT) above which advertsing of contracts is the Official Journal of EU (OJEU) is obligatory. (Valid from 1 January 2018-31 December 2019)**

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

For works, supplies and services below the Thresholds, tendering procedures need to comply with the principles of the Treaty on the Functioning of the European Union (TFEU). In summary, the TFEU can be complied with by following the Irish Government general guidelines on procurement:

- For Supplies and Services – Public Procurement Guidelines for Supplies & Services July 2017 as published by the Office of Government Procurement (OGP)
- Circular 10/14 - Initiatives to Assist SMEs in Public Procurement of 2014 published by the Department of Public Expenditure and Reform
- For Construction Works and Related Services see the Capital Works Management Framework (CWMF).

The CWMF was introduced by the government in 2007 to increase value for money and cost certainty on construction projects. The CWMF website [www.constructionprocurement.gov.ie](http://www.constructionprocurement.gov.ie) contains consultant and contractor contracts, associated model forms/template documentation, pre-qualification documentation and a suite of guidance notes. It should be noted that the CWMF is a live portal and guidance is updated on an ongoing basis.

### 1.3 Procurement Strategies

The suite of public sector works contracts includes two primary procurement strategy options:

- a. Employer designed construction contract.  
Under the employer designed contract the Contracting Authority appoints a design team who fully design the project and tender the Works to a main contractor.
- b. Contractor designed (Design & Build) construction contract - Under the contractor designed construction contract the Contracting Authority will typically appoint a design team to obtain statutory consents and then tenders the project to a main contractor with either the design team novated to the contractor or retained to provide technical advisory services during the construction contract (in the case of the latter the contractor will be required to appoint their own design team to adopt the tender design and complete same).

The Public Works Contract suite also contains an Early Collaboration contract which is envisaged as only being considered on high value (> €100m) or highly complex projects and requires specific approval from the Government Construction Contracts Committee (GCCC). It should be also mentioned that a further strategy utilised in the public sector is that of Public Private Partnerships (PPP) which incorporate Design, Build, Finance & Operate elements. PPP projects are typically used for €100m+ infrastructure or general building bundles and are sanctioned at government level.

For the purposes of this guidance note we have not reviewed the Early Collaboration contract or PPP options due to their limited usage and level of sign off required.

Table 2 on page 6 sets out the primary advantages and disadvantages of the public sector procurement strategies.

Once the primary procurement strategy is selected it should be refined to select the appropriate contract from the suite of 11 No. available. There are variants of contracts available within these two strategies to take account of if the project is building or civil engineering, the project value range and if a framework or term maintenance contract. The CWMF website contract notes and guidance provide further detail in relation to the selection of the appropriate contract variant.

Visit [www.constructionprocurement.gov](http://www.constructionprocurement.gov) to access consultant and contractor contracts, associated model forms / template documentation, pre-qualification documentation and a suite of guidance notes.

## 1.4 Tendering Strategies

Upon selection of the procurement strategy the next step is to select the tendering strategy for implementation of the same. While the Law (Directive and the Irish SI) makes available a wide range of procurement procedures to Contracting Authorities (open, restricted and a number of negotiated procedures) the CWMF guidelines advocate an open or a restricted procedure.

### a. Open Procedure

The Open Procedure is a single stage process where the Contract Notice is published with the necessary Suitability Assessment Questionnaire documentation and Tender documentation uploaded and interested parties submitting their tender by the stated deadline.

### b. Restricted Procedure

The Restricted Procedure is a two stage process where stage one comprises the publication of the Contract Notice with the necessary Suitability Assessment Questionnaire documentation by the stated deadline. Upon receipt the Contracting Authority conducts an evaluation and applicants ranked, with the shortlist concluded (numbers to be stated in the contract notice).

As noted above, public procurement procedures also provide two additional tendering strategies c) Competitive Dialogue and d) Negotiated Procedures however these are rarely if ever used for construction works or related services. Should Open or Restricted Procedures not meet the requirements of a project, specific advice should be obtained in relation to these options.

Under the public procurement procedures Contracting Authorities should be aware that for projects over the EU thresholds (see Table 1 earlier) they are covered by the Remedies Directive.

Under the Remedies Directive, the tendering candidates become the 'policeman' for the system. The Directive requires the Contracting Authority (CA) to issue a notice advising all unsuccessful tenderers of the reasons they did not win the tender and further the CA is obliged not to enter contracts with the successful candidate for a period of 16 days from the day after notification (or 14 days if sent electronically) thereby giving the unsuccessful candidates an opportunity to challenge the CA appointment. Subject to their being no objection and the necessary Contracting Authority approvals being in place, the contract may be awarded and to conclude the process a Contract Award Notice should be published on the etenders website and OJEU website as appropriate.

For procurements above the EU thresholds (see Table 1) there are statutory time periods for the pre-qualification and tender stages – these are set out in Table 3 on page 6.

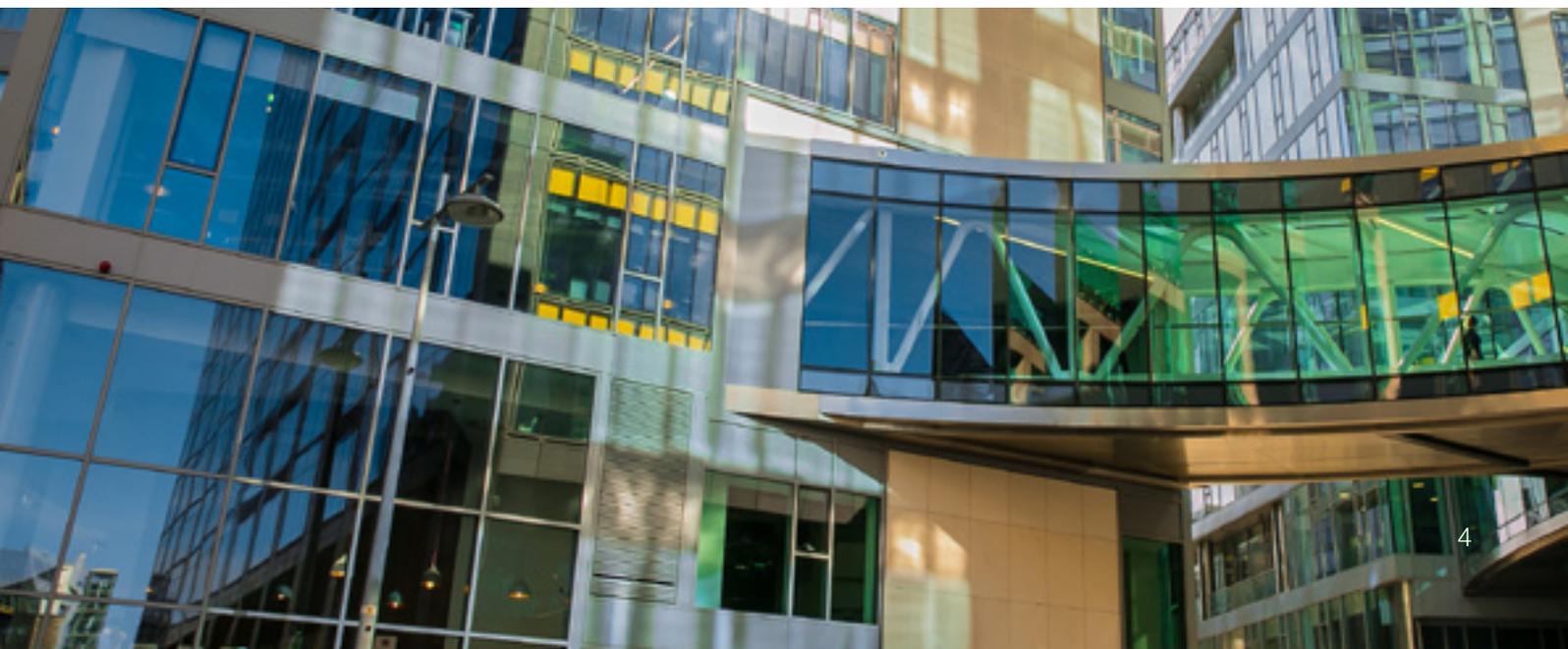


Table 2: Public Procurement & Tendering Strategies Review

	Procurement Strategies		Tender Strategies	
	Traditional (Employer-Designed) Contract Procurement Strategy	Design & Build (Contractor-Designed) Contract Procurement Strategy	Single Stage (Open Procedure) Tendering	Two Stage (Restricted Procedure) Tendering
Advantages	<p>Maximum control of design &amp; specification</p> <p>Contract requires design complete prior to tender enabling maximum cost certainty</p> <p>Original design team retained client side for project duration</p> <p>Suited to complex design projects and those requiring extensive client consultation</p> <p>Complete design enables preparation of Bill of Quantities and maximum cost breakdown / transparency for valuing change</p>	<p>Enables incorporation of contractor buildability in design</p> <p>Has programme advantages as enables tendering earlier and design to continue during construction</p> <p>Greater risk transfer and single point of responsibility during construction phase</p> <p>Reduced pre-contract fees / costs for client</p>	<p>Enables maximum competition / value for money through open tendering</p> <p>Can reduce procurement programme compared to Restricted Procedure</p> <p>Allows / encourages new entrants opportunity to tender in the market</p>	<p>Shortlists the contractors best suited to the project to tender</p> <p>Encourages stronger / more established contractors to tender</p> <p>Suited to complex projects requiring contractor expertise</p>
Disadvantages	<p>Project programme can be lengthy by comparison as design must be complete prior to tendering.</p> <p>Client retains risk / responsibility for design</p> <p>Full design cost incurred prior to tendering</p> <p>Does not easily facilitate contractor buildability proposals</p>	<p>Less flexibility / more cost associated with post-contract changes</p> <p>Less suited to more complex design &amp; stakeholder engagement projects</p> <p>Risk of disjointed approach to design due to split preparation of same / or change of client mid-project (if design team novated)</p>	<p>Open tendering may discourage higher grade contractors from tendering</p> <p>Higher risk of an abnormally low tender being submitted if larger tender list, with potentially less experienced contractors bidding</p>	<p>Extended procurement programme for two stage restricted procedure process.</p> <p>May not achieve most competitive tender due to restricted tender list</p>

**Table 3: OJEU Minimum Time Requirements (Public Procurement Guidances for Goods and Services - OGP/ DPER Version 1: July 2017)**

Open Procedure	If Electronic Tender Permitted	If Urgent +	Where Pin ++ Published	If Subcentral Authority**
Minimum time limit for receipt of tenders 35 days	Minimum time limit for receipt of tenders 30 days	Minimum time limit for receipt of tenders 15 days	Minimum time limit for receipt of tenders 15 days	-
Restricted Procedure				
Minimum time limit for requests to participate 30 days	-	Minimum time limit for requests to participate 15 days	Minimum time limit for requests to participate 30 days	Minimum time limit for requests to participate 30 days
Minimum time limit for tenders 30 days	Minimum time limit for tenders 25 days	Minimum time limit for tenders 10 days	Minimum time limit for tenders 10 days	Minimum time limit for tenders to be set by agreement with tenderers  In the absence of agreement Minimum time limit 10 days

**See notes below:**

These are minimum time limits. When fixing the time limits for the receipt of tenders and requests to participate, contracting authorities must take account of the complexity of the contract and the time of required for drawing up tenders.

- + This shorter time limit is allowed where a state of urgency duly substantiated by the contracting authorities renders the minimum impracticable.
- ++ This shorter tendering time limit is allowed where contracting authorities have published a prior information notice which was not itself used as a means of calling for competition, provided that all of the following conditions are fulfilled:
  - a) the Prior Information Notice included all the information required in section 1 of the PIN notice referred to in the Public Contracts Regulations, insofar as that information was available at the time the prior information notice was published;
  - b) the Prior Information Notice was sent for publication between 35 days and 12 months before the date on which the contract notice was sent.
- \*\* sub central contracting authorities' mean all contracting authorities which are not Government authorities.



## 2.0 PRIVATE SECTOR

The private sector affords greater flexibility in the formulation of procurement and tendering strategies. Nonetheless there are a number of industry standard approaches which are typically considered and these are set out below along with their primary advantages and disadvantages. The industry also publishes via The Liaison Committee (a committee established by Constituent bodies of RIAI, SCSI, CIF, EI & ACEI) a Code of Practice for Tendering and Contractual Matters which can be found on [www.liaisoncommittee.ie](http://www.liaisoncommittee.ie).

### 2.1 Procurement Strategies

Similar to the public sector, the private sector also use employer designed (Traditional) and contractor designed (Design & Build) strategy options. In addition, the private sector also utilise a procurement strategy involving employer design where the tendering is advanced ahead of the design completion with a main contractor based on competitive tendering of preliminaries, management fees and potentially minor builders work followed by phased tendering during the Works by the client of works packages which are in turn appointed by the main contractor. This strategy is referred to as Management Contracting.

A variant of this strategy, Construction Management, is also available to the private sector whereby all works contractors are appointed directly by the client and the construction manager is acting in a consultancy capacity.

Table 4 on page 9 sets out the primary advantages and disadvantages of the private sector procurement strategies.

### 2.2 Tendering Strategies

The tendering strategies adopted in the private sector include the two options (single stage and two stage) available in the public sector, albeit often with less formality and without public advertisement. The private sector has two additional tendering strategies which are widely used, Early Contractor Involvement (ECI) and Negotiation.

#### a. Early Contractor Involvement (ECI)

ECI, which is sometimes also referred to as Pre-Construction Services, is where the client tenders an initial contract during the design stage of the project for a main contractor to provide expertise, principally in respect of buildability, programme and cost. This initial ECI contract is then followed by the main contract to construct the Works which is usually, although not compulsory, concluded with the ECI contractor. To maximise continuity and retention of project knowledge the ECI tendering strategy is usually combined with a management contracting procurement strategy which allows the management contract costs to be tendered early and could in turn be tendered in conjunction with the ECI Contract.

#### b. Negotiation

Negotiation, as the name indicates involves the client and contractor entities entering into discussions to define / confirm the client requirements and agree commercial and contractual terms in respect of the proposed project. This tendering strategy is often used for follow-on contracts where a competitive tendering process has been used on an initial contract and can be used with any of the procurement strategies although most frequently with management contracting where large elements of the contract would be tendered to sub-contractors.

Table 5 on page 10 sets out the advantages and disadvantages of the available tendering strategies having regard to the potential procurement strategy selected.

**Table 4: Procurement Strategies Review**

	Traditional (Employer-Designed) Contract Procurement Strategy	Design & Build (Contractor-Designed) Contract Procurement Strategy	Management Contracting	Construction Management
Advantages	<p>Maximum control of design &amp; specification</p> <p>Contract requires design complete prior to tender enabling maximum cost certainty</p> <p>Original design team retained client side for project duration</p> <p>Suited to complex design projects and those requiring extensive client consultation</p> <p>Complete design enables preparation of Bill of Quantities and maximum cost breakdown / transparency for valuing change</p>	<p>Enables incorporation of contractor buildability in design</p> <p>Has programme advantages as enables tendering earlier and design to continue during construction</p> <p>Greater risk transfer and single point of responsibility during construction phase</p> <p>Reduced pre-contract fees / costs for client</p>	<p>Enables fast-tracking of programme through phased completion of design / tendering</p> <p>Client retains control over appointment of works packages contractors</p> <p>It is suited to projects with complex specialist elements</p> <p>Reduced pre-contract fees / cost for client</p> <p>Enables incorporation of contractor buildability in design</p>	<p>Enables fast-tracking of programme through phased completion of design / tendering</p> <p>Client retains control over appointment of works packages contractors</p> <p>It is suited to projects with complex specialist elements</p> <p>Reduced pre-contract fees / cost for client</p> <p>Enables incorporation of contractor buildability in design</p> <p>Can reduce overhead costs through engaging consultant construction manager in lieu of management contractor</p>
Disadvantages	<p>Project programme can be lengthy by comparison as design must be complete prior to tendering.</p> <p>Client retains risk / responsibility for design</p> <p>Full design cost incurred prior to tendering</p> <p>Does not easily facilitate contractor buildability proposals</p>	<p>Less flexibility / more cost associated with post-contract changes</p> <p>Less suited to more complex design &amp; stakeholder engagement projects</p> <p>Risk of disjointed approach to design due to split preparation of same / or change of client mid-project (if design team novated)</p>	<p>Cost certainty is reduced as completion of design and tendering is phased and extends into the construction period</p> <p>Client retains risk / responsibility for design</p> <p>Can involve substantial client involvement thus less suited to inexperienced clients</p>	<p>Cost certainty is reduced as completion of design and tendering is phased and extends into the construction period</p> <p>Client retains risk / responsibility for design</p> <p>Can involve substantial client involvement thus less suited to inexperienced clients</p> <p>Increased risk of gaps in contracted works due to large number of works contracts assembled</p>

Table 5: Tendering Strategies Review

	Single Stage Open Tendering	Two Stage Restricted Tendering	Early Contractor Involvement (ECI)	Negotiation
Advantages	<p>Enables maximum competition / value for money through open tendering</p> <p>Can reduce procurement programme compared to restricted tendering</p> <p>Allows / encourages new entrants opportunity to tender in the market</p>	<p>Shortlists the contractors best suited to the project to tender</p> <p>Encourages stronger / more established contractors to tender</p> <p>Suited to complex projects requiring contractor expertise</p>	<p>Enables contractor input into design and buildability</p> <p>Enables faster programme as ECI can allow pre-ordering of long lead items</p> <p>Suited to complex projects requiring contractor expertise</p> <p>Usually combined with 2 stage approach, shortlists the contractors best suited to the project to tender</p>	<p>Enables contractor input into design and buildability</p> <p>Enables faster programme as negotiations can achieve early commencement</p> <p>Suited to complex projects requiring contractor expertise</p> <p>Suited to repeat projects where cost data and trust have been established with partnership approach</p> <p>Can foster risk sharing approach</p>
Disadvantages	<p>Open tendering may discourage higher grade contractors from tendering</p> <p>Higher risk of an abnormally low tender being submitted if larger tender list, with potentially less experienced contractors bidding</p>	<p>Extended procurement programme for two stage restricted <b>tender</b> process.</p> <p>May not achieve most competitive tender due to restricted tender list</p>	<p>May not achieve most competitive tender, usually combined with two stage process and restricted tender list</p> <p>Typically combined with management contracting procurement strategy and thus less cost certainty due to phased design and tendering</p>	<p>Potentially reduced value for money due to lack of competitive tendering process</p> <p>Not suited to public sector projects</p> <p>Typically combined with management contracting procurement strategy and thus less cost certainty due to phased design and tendering</p>

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## ABOUT THE **SOCIETY OF CHARTERED SURVEYORS IRELAND**

The Society of Chartered Surveyors Ireland is the independent professional body for Chartered Surveyors working and practising in Ireland. Working in partnership with RICS, the pre-eminent Chartered professional body for the construction, land and property sectors around the world, the Society and RICS act in the public interest: setting and maintaining the highest standards of competence and integrity among the profession; and providing impartial, authoritative advice on key issues for business, society and governments worldwide.

Chartered Quantity Surveyors can provide clients with expert advice in regard to the selection of the most appropriate procurement and tendering strategies for their projects having regard to the particular drivers and constraints.

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