



# **Wicklow County Council**

## Supplier Information

November 2014

## INTRODUCTION

The purpose of this booklet is to help prospective suppliers to Wicklow County Council to understand the Council's procurement and purchasing processes.

The Procurement Function of Wicklow County Council is committed to the procurement of supplies, services and works in the most efficient and effective way to achieve the lowest cost, consistent with quality that meets or exceeds end user requirements in the delivery of services to the citizens of County Wicklow.

The Council is also conscious of its obligations to ensure that its procurement processes are open and transparent, and that suppliers understand how to do business with us.

The purpose of this booklet is to provide prospective suppliers with an overview of Wicklow County Council's requirements regarding public procurement regulation, taxation, employment and other law.

The booklet has been prepared to give general information and guidance as part of our ongoing policy to facilitate suppliers in doing business with us.

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**Head of Finance**

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## What is “procurement”?

Procurement is the process through which Wicklow County Council buys its supplies, services or works. Wicklow County Council purchases a vast amount across these categories. The Council’s procurement revenue spend in 2013 was approximately €31 million. 1,392 core trade suppliers were engaged.

## Governing Regulations

The Procurement Function of Wicklow County Council operates in compliance with all relevant European, National and Local procurement legislation and guidelines. The Council’s procurement rules and procedures are governed by regulations of:

1. EU directives
2. National regulations & guidelines
3. Wicklow County Councils policies and procedures

## Where do we advertise our tenders?

- Wicklow County Council will often seek quotes from suppliers; where the value does not exceed €5,000 (excl VAT) for supplies, services & works, typically three verbal quotes are invited.
- For supplies and services above €5,000 (excl. VAT) and below €25,000 (excl VAT); and for works between €5,000 (excl VAT) and below €50,000 (excl VAT) typically not less than three written quotes are invited.
- All contracts above €25,000 (excl VAT) are advertised through the Irish Government procurement portal **www.etenders.gov.ie** in accordance with circular 10/10 – *facilitating SMEs in public procurement* issued by the Department of Finance. Advertising thresholds are shown on page over. All suppliers are encouraged to register with e-tenders and that they monitor the website on a regular basis to identify tendering opportunities.
- If a contract is above European threshold, it is advertised on e-tenders and also in the supplement to the Official Journal of the European Union (OJEU)/TED) (see table over)
- Tender documents are usually made available at no cost on **www.etenders.gov.ie** and any interested party can obtain them and submit a tender
- Tenders are invited in Euro only and only bids in Euro will be accepted
- All payments are made to suppliers by means of Electronic Fund Transfer (EFT)
- It is Wicklow County Council policy to participate in National and Regional Frameworks where possible and value for money can be demonstrated. Suppliers are encouraged to tender for these Frameworks when advertised, typically by the Office of Government Procurement (OGP) or the Local Government Sector Operational Centre (LA Quotes). These Frameworks are also advertised on e-tenders and/or OJEU/TED.

## EU Directives on Public Procurement:

The EU Directives are legally binding in relation to public procurement in the areas of supplies, services and works. The requirements of the Directives also apply when Wicklow County Council is acting as a Utility Organisation. Wicklow County Council is obliged to advertise in the Official Journal of the European Union (OJEU/TED) for contracts above certain values. See over for information on advertising thresholds and types of procedures.

**Effective from 1st January 2014:****Supplies & Services**

Less than €5,000	Verbal quotations from 3 known suppliers (verified in writing by fax or email)
€5,000 - €25,000	Minimum 3 written quotations from known suppliers
€25,000 - €125,000	Must use formal tendering via national advertising <b>www.etenders.gov.ie</b> Must use OPEN procedure
Supplies and Non-Engineering Service Contracts greater than €125,000 but less than EU threshold	Must use formal tendering via e-tenders – choice of procedure (voluntary to OJEU)
Contracts above EU thresholds (€207,000)	Must use formal tendering via e-tenders – with notice being sent to OJEU – choice of procedures

**Works**

Less than €5,000	Verbal quotations from 3 known suppliers (verified in writing by fax or email)
€5,000 - €50,000	Minimum 3 written quotations from known suppliers
€50,000 - €250,000	Must use formal tendering via national advertising <b>www.etenders.gov.ie</b> Must use OPEN procedure
Contracts between €250,000 and EU threshold (€5,186,000)	Must use formal tendering via e-tenders – choice of procedure (voluntary to OJEU)
Contracts above EU thresholds (€5,186,000)	Must use formal tendering via e-tenders – with notice being sent to OJEU – choice of procedures

**Tendering Timescales**

Wicklow County Council is bound to certain timescales under procurement regulations. Different rules apply to different contract types, therefore the turnaround time between advertising and awarding a contract may differ depending on which rules apply. Where contracts are subject to EU rules and advertised in the OJEU/TED, the advertising procedures are more time consuming and the process can take at least three to four months.

## Overview of minimum timescales in calendar days:

Procedure	Receipt of Expressions of Interest	Receipt of Tenders
<b>Local</b>		
Quotations / Tenders (Verbal or in writing)	N/A	No minimum / maximum timescale
<b>National (recommended)</b>		
Open – National	N/A	21 days
Restricted – National	21 days	21 days
<b>European (Mandatory – based on issuing notices via approved eSender such as eTenders)</b>		
<b>OPEN</b>		
Open – using eTenders for notices	N/A	45 days
Open – using eTenders for notices and tender docs	N/A	40 days
<b>OPEN WITH PIN</b>		
Open – with a PIN Notice published 52 days before the call for competition	N/A	22-36 days
Open – with a PIN Notice and using eTenders for notices and tender docs	NA	10-24 days
<b>RESTRICTED</b>		
Restricted for using eTenders for notice	30 days	40 days
<b>RESTRICTED with PIN</b>		
Restricted with PIN published	30 days	22-36 days
<b>NEGOTIATED / COMPETITIVE DIALOGUE</b>		
Negotiated / competitive dialogue	30 days	No time scale but at least 10 days recommended
<b>ACCELERATED RESTRICTED / NEGOTIATED – PUBLIC SECTOR</b>		
Normal	15 days	10 days
When notice sent using eTenders	10 days	10 days
<b>UTILITIES</b>		
Normal – Restricted / Negotiated	30 days	24 days / or less by mutual agreement
Urgent (Accelerated) – Restricted / Negotiated	15 days	10 days
<b>CONTRACTS AWARDED WITHIN FRAMEWORK AGREEMENTS</b>		
Once framework has been established	N/A	No timescale set but at least 10 days recommended

## Types of Notices:

Tender notices are advertised on e-tenders via [www.etenders.gov.ie](http://www.etenders.gov.ie) and include:-

- **Prior Indicative Notice (PIN)** – these are sometimes published in order to advertise to the market contracts which may be awarded over the next 12 months. PINS may be used for supplies, services and works. Publication of PIN is compulsory only where the contract authorities take the option of shortening the time limit for receipt of tenders. In these instances, the PIN must have been dispatched more than 52 days and not more than one year prior to the call for competition (tender advertisement). Publication of a PIN does not constitute a guarantee or commitment to proceed to contract. PINS may also be used to invite parties to a technical dialogue to assist the organisation in developing a specification. It must be followed by a full contract notice if proceeding to a formal process.
- **Tender Notice** – when tenders are being sought, a Notice is published on [www.etenders.gov.ie](http://www.etenders.gov.ie) in respect of individual contracts which come within the scope of the relevant Directives.
- **Contract Award Notice** – after individual contracts have been awarded, a Notice giving the result of the tender competition is published on [www.etenders.gov.ie](http://www.etenders.gov.ie) In accordance with circular *10/2014 – initiatives to assist SMEs in public procurement* issued by the Department of Public Expenditure and Reform, all contract award notices over €25,000 will be published on e-tenders. This is a separate step to publishing on the EU thresholds, and will facilitate SME participation in public procurement.

## Types of Procurement Procedures:

Depending on the type and value of the proposed contract, a number of different types of procurement procedures can be used:

1. **Open** – a single stage approach where all interested parties may submit tenders
2. **Restricted** – a two stage approach whereby the initial requirement is to seek expressions of interest from the market re their financial and technical capacity (selection criteria). Following evaluation a number that are deemed qualified under the selection criteria will be invited to tender. These tenders will then be assessed against the award criteria.
3. **Competitive Dialogue** – contracting authorities may advertise their requirements and enter into dialogue with interested parties – this is used in the case of particularly complex contracts where the use of open or restricted procedures would not allow for successful award of contract
4. **Negotiated** – contracting authorities may use this procedure only in special circumstances where irregular or unacceptable tenders have been received in response to an Open or Restricted Procedure. Utilities may use the Negotiated procedure with a call for competition without any need for justification

## **Compliance with Employment, Taxation and other Law:**

### ***Employment:***

Suppliers to Wicklow County Council are required to be compliant with Irish Employment Law. In this regard, tenderers must provide a statement, where requested, confirming that they have taken account of their legal obligations regarding employment protection and working conditions relating to supplies, services and works contracts with Wicklow County Council; and that the employees of the company are treated in full compliance with Irish Employment legislation and rights. This is usually provided in the form of a self-declaration document. This legislation includes Employer Equality Act 1998, Equal Status Act 2000, Equality Act 2004, Minimum Wage Act 2000, Employment Regulation Orders of the Irish Labour Court, The Working Time Directive, and Safety, Health and Welfare at Work Act 2005; and any other legal obligation deemed appropriate. The declaration will also include provision to ensure that any subcontractors used for the contract will also be treated by the same standards. Failure to provide a statement of compliance with all relevant legal employment requirements will render the tender non-compliant.

### ***Procedural Agreement for use of outside contractors on construction projects:***

The 1997 Analogue Agreement provides that where local authorities advertise on a public basis inviting applications from contractors, details regarding successful tenderers would be forwarded to nominated personnel representing trade unions who are party to the agreement. Local Authorities are required to issue a copy of the contractors agreement as part of tender documentation. Where a contractor fails to provide the required information to the local authority or where they fail to adhere to the provisions of the contractors agreement such non compliance may be considered by the local authority in the awarding of future contracts. Local Authorities are required to issue information to nominated persons from the trade unions as provided for in the contractors agreement.

### ***Tax Clearance Requirements:***

Tax compliance is a standard requirement for all companies who do business with Wicklow County Council. All payments made by Wicklow County Council to *suppliers for the provision of goods and services* fall within the scope of the guidelines of Finance Circular 43/2006 regarding tax clearance procedures. The tax clearance requirement applies even where the provision of goods or services is not the subject of a formal written contract.

In accordance with Section 1095 of the Taxes Consolidation Act, 1997, where total payments to a supplier are expected to equal or exceed €10,000 (incl of VAT) in any 12 month period, the supplier is obliged to provide Wicklow County Council with a current tax clearance certificate. The €10,000 threshold applies to individual payments or cumulative payments over any 12 month period.

Contractors for works contracts must hold either a current tax clearance certificate, or demonstrate a satisfactory level of contractor tax compliance (see Relevant Contracts Tax - RCT). For the purpose of tax clearance, a contractor includes any individual, partnership or company, whether resident in Ireland or otherwise.

Wicklow County Council is prohibited from transacting business with any supplier who cannot meet these requirements. Payments under a contract are conditional on the supplier being in possession of a valid certificate at all times.



At tender submission stage, a contractor may complete a self-declaration regarding tax clearance. However, prior to the award of the contract, the preferred bidder must submit a current version of either tax clearance certificate, or, if an RCT contract, a subcontractor's Notification of Determination, both of which must be in the name of the successful party.

The issue of tax clearance certificates is the responsibility of the Revenue Commissioners and applicants must deal directly with the Revenue Commissioners in this regard. A tax clearance certificate is usually issued for a 12 month period, but on occasion it may be issued for a shorter period. The Revenue Commissioners have the power to revoke a tax clearance certificate at any time. Further details can be found at [www.revenue.ie](http://www.revenue.ie)

### ***Relevant Contracts Tax (RCT):***

Relevant Contracts Tax (RCT) applies to payments made by a principal contractor (Wicklow County Council in this instance), to a sub-contractor, under a relevant contract. A relevant contract is a contract to carry out, or supply labour for the performance of a relevant operation in the construction, forestry or meat processing industry. RCT applies to both resident and non-resident sub-contractors.

Subcontractors will have to pay a tax at 0%, 20% or 35%. The Revenue Commissioners determine the rate for each individual contractor.

Before a relevant contract is awarded, subcontractors at 0% or 20% can produce a Subcontractors Notification of Determination, issued by the Revenue Commissioners showing the rate to demonstrate their satisfactory tax compliance. Wicklow County Council can accept this notification in lieu of tax clearance in cases where it has been issued within the previous 30 days.

Where a rate of 35% has been determined by the Revenue Commissioners for a subcontractor, they have not demonstrated a satisfactory level of subcontractor tax compliance and are deemed to not have tax clearance. Wicklow County Council will not be in a position to make payments to subcontractors who have a rate of 35% and who do not hold a tax clearance certificate.

Wicklow County Council is obliged to register every RCT contract with the Revenue Commissioners before payments can be made under the contract. This came into effect on 1st January 2012. At the time of payment, Wicklow County Council will apply the tax deduction rate to the subcontractor as advised by Revenue. Revenue will then automatically credit the subcontractor's tax record with any tax deducted.

### ***Professional Services Withholding Tax:***

Professional Services Withholding Tax (PSWT) is a type of withholding tax that Wicklow County Council must deduct in respect of payments for the provision of professional services supplied to the Council, its agents or subsidiaries.

PSWT is a deduction on account, made at the point of payment, of the final liability of the person who provides the professional service. It is deducted from the total amount of the payment for professional service involved, including, in general, any amount in respect of reimbursement of expenses, outlay or third party costs, but excluding any VAT charged by the person providing the service. The deduction of PSWT is determined by the nature of the service being provided.

The rate at which PSWT is deducted is the standard rate of income tax in force at the date on which payment is made. This rate is currently set at 20%. The person providing the service must provide Wicklow County Council with his/her Personal Public Service Number (PPS No.); in the case of a company, its tax reference number or in the case of a partnership, the partnership's tax number.

When making payment, Wicklow County Council will give the supplier providing the service a Form F45, confirming the amount of the payment and the amount of PSWT withheld. The supplier can then submit this form to the Revenue Commissioners, who will determine whether a tax credit or tax refund is due to the supplier.

***Process if Tax Certification cannot be produced:***

In the instances where a preferred supplier in the tendering process cannot produce the appropriate tax clearance, it may be necessary for Wicklow County Council to:

- Postpone the awarding of the contract
- Exert pressure on the firm to make arrangements with the Revenue Commissioners to clear tax arrears before the contract is awarded
- Award the contract to the next most suitable tenderer if appropriate
- Cancel the competition and hold a new competition

***Publication of Purchase Orders over €20,000:***

In its Programme for Government, the government agreed that they would require the publication of all purchase orders greater than €20,000, with the intention to enhance the transparency of public sector procurement. This commitment was reiterated in the Public Sector Reform plan.

The Reform Plan commitments are interpreted as referring only to payments for goods, services or works procured. Purchase Orders, which are precluded under the Freedom of Information legislation, have been excluded. Information is published quarterly in arrears (six weeks after the quarter ends).

***Freedom of Information:***

Freedom of Information (FOI) legislation applies to Wicklow County Council. Information may be requested on records relating to a tendering procedure under the FOI Act. Certain records may be exempt from the provisions of the Act on grounds of confidentiality or commercial sensitivity. Suppliers will be requested to indicate, with supporting reasons, any information included with their tenders which they wish to be regarded as confidential. The FOI Officer for Wicklow County Council will normally consult with a tenderer before deciding on whether to disclose such information on foot of an FOI request. However, no category of tender related records is subject to either release or exemption as a class. Therefore each record must be examined on its own merits.

## **Payment Terms on award of contract:**

### ***EFT (Electronic Funds Transfer)***

All payments by Wicklow County Council are made by EFT and suppliers will be required to complete the bank mandate setup form in order to facilitate payment.

### ***Invoices***

All invoices must be forwarded to Accounts Payable section of Wicklow County Council, and must include valid purchase order numbers (7 digit number beginning with 4 or 2). Wicklow County Council will return invoices to suppliers if they do not quote valid purchase order numbers. Wicklow County Council runs a weekly payment run with funds transferred into supplier's bank accounts on a Monday.

### ***Public Sector Purchasing Cards (Low Value Purchasing Cards)***

Wicklow County Council proposes to implement the use of Purchasing Cards in the coming months. These cards will be used to purchase a limited range of low value supplies. With the implementation of this scheme, it is envisaged that there will be significantly improved cash flow to the SME sector as it is envisaged that suppliers will be paid within 4 days of the transaction taking place.

### ***Prompt Payment of Accounts Legislation***

Payment of invoices by Wicklow County Council is governed by the Prompt Payment of Accounts Act, 1997 as amended by the European Communities (Late Payment in Commercial Transactions) Regulations 2002.

## Appendix 1 Wicklow County Council - Procurement Supplier Charter

### Our Corporate Procurement Objective:

The Procurement Function of Wicklow County Council is committed to the procurement of supplies, services and works in the most efficient and effective way to achieve the lowest cost consistent with quality that meets or exceeds end user requirements in the delivery of services to the citizens of County Wicklow.

The Procurement Function of Wicklow County Council operates in accordance with the following values:

- Compliance with all relevant European, National and Local procurement legislation and guidelines.
- Value for Money – to achieve the optimum balance of quality and whole life cost to meet the business needs of the Council.
- All procurement shall have regard to the principles of European public procurement: freedom of movement, freedom of establishment and freedom to provide services; and the basic principles therein of transparency, equal treatment, proportionality and mutual recognition.
- To minimise the Authority's exposure to procurement risk by the adoption of the appropriate risk management strategies.

### The Council's commitment to suppliers is to:

- Ensure appropriate contact points for procurement related enquiries are published in tender documentation and enquiries are responded to in a courteous and timely manner
- Simplify the tender process where possible; publish guidance; provide clear specifications; where possible avoid unnecessary onerous contract terms and only ask for information which is required for legal, monitoring and evaluation purposes
- Offer constructive feedback to suppliers
- Carry out procurement activity to the highest ethical standards; adhere to all relevant legislation and encourage a wide and diverse range of suppliers to compete for Council business
- Declare any conflicts of interest
- Be transparent on the level of risk transfer to suppliers
- Where possible and without compromising efficiency and value for money, the Council will consider breaking contracts into Lots, enabling smaller businesses to compete for these elements.
- Where invoices are not in dispute, strive to meet contractual payment terms, in accordance with the Prompt Payments of Accounts Act 1997 (as amended)
- Work with suppliers throughout the life time of contracts to deliver value to both parties
- Provide feedback mechanisms for current and potential suppliers to engage meaningfully with the Council.

**The supplier's commitment to the Council is to:**

- Seek to deliver value for money, continuous improvement and innovative solutions throughout the life of the contract
- Ensure compliance with all relevant legislation and recognise the Council's duties under EU and Irish Law in respect of procurement activity
- Operate with competency and efficiency and to the highest standards of professionalism and integrity, with particular regard to their employees and suppliers/sub-contractors, but also in their dealings with the Council's customers and staff
- Ethically manage all elements of their supply chain including protection of workers' pay & conditions, non use of child labour & commitment to environmental responsibility
- Engage with feedback mechanisms provided by the Council to promote collaborative non-adversarial approach to dispute resolution
- Inform the Council as early as possible when issues and problems arise, so that we can work together and find a mutually satisfactory solution
- Conduct communications with the Council in a courteous and timely manner
- Declare any conflicts of interest
- Avoid engaging in any activity which might reasonably be interpreted as an attempt to affect the impartiality of Wicklow County Council employees
- Work with the Council to achieve positive social, economic and environmental impacts on the community and wide environment in County Wicklow.

**Together we will endeavour to:**

- Deliver quality goods, services and works on time & within budget
- Reduce cost & eliminate waste through continued improvement of procurement practice.

