



# **OVERARCHING RULES AND REGULATIONS**



## Overarching Rules & Regulations

**The National Public Procurement Policy Framework** (OGP 2018) sets out the overarching policy framework and procedures to be followed by government departments and State Bodies under national and EU rules and consists of 5 strands: Legislation; Government Policy; Capital Works Management Framework for Public Works; General Procurement Guidelines for Goods and Services; more detailed technical guidelines, template documentation and information notes as issued periodically by the Policy Unit of the OGP.

Summary Detail Provided Below (including associated internal procedure references).

### Legislation

**Public Service Management Act** (1997) Under section 4(f) and (g) responsibility for ensuring VFM outcomes rests with individual departments and offices. Departments and scheduled offices are required to provide cost effective public services, achieve better use of resources and comply with the requirements of the **Comptroller and Auditor General (Amendment) Act, 1993**. Similar rules, which require VFM outcomes, apply to bodies which are audited by the Comptroller and Auditor General.

**Public Procurement Directive 2014/24/EU** of 26 February 2014 on public procurement and repealing Directive 2004/18/EC and **S.I. No. 284/2016** - European Union (Award of Public Authorities Contracts) Regulations 2016.

**Concessions Directive 2014/23/EU** of 26 February 2014 on the award of concessions contracts and **S.I. No. 203/2017** - European Union (Award of Concession Contracts) Regulations 2017.

**Remedies Directives Directive 89/665/EEC** of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts and **S.I. No. 192/2015** - European Communities (Public Authorities Contracts) (Review Procedures) (Amendment) Regulations 2015 and amending **Directives and Regulations 2007/66/EC, 2014/23/EU, S.I. No. 130 of 2010, S.I. No. 192 of 2015, S.I. No. 326 of 2017 EU Award of Concession**



**Contracts (Review Procedures), S.I. No. 327 of 2017 EU Public Authorities' Contracts (Review Procedures)(Amendment) Regulations.**

**Prompt Payment of Accounts Act, 1997** as amended by the **European Communities (Late Payment in Commercial Transactions) Regulations 2012 - S.I. 580 of 2012** governing payment of invoices by HSE.

**Electronic Invoicing Directive 2014/55/EU** of 16 April 2014 on electronic invoicing in public procurement.

**General Data Protection Regulation (GDPR).** Under the GDPR, the activities of a data processor must be governed by a binding contract between the data controller and the data processor which must set out the types of personal data to be processed, the duration, nature and purpose of the processing and which must contain certain specific contractual provisions, set out in the GDPR. Queries should be directed to HSE's Data Protection Officer as required.

**Freedom of Information Act 2014** Section 8 of the Act sets out obligations regarding publication of (procurement) information and annual reviews of same (see Guidance below).

**Disability Act 2005** Section 27 requires the head of a public body to ensure that services provided and goods supplied to the public body are accessible to people with disabilities, unless that would not be practicable, would be too expensive, or would cause an unreasonable delay.

**Ethics in Public Office Act 1995** providing for the disclosure of interests and amendment of Corruption Acts 1889 to 1916. Section 38 (C)(ii) provides that any money, gift or other consideration that has been paid or given to or received by an office holder or special adviser or a director of, or occupier of a position of employment in, a public body by or from a person or agent of a person holding or seeking to obtain a contract from a Minister of the Government or a public body, the money, gift or consideration shall be deemed to have been paid or given and received corruptly as such inducement or reward unless the contrary is proved.



**Energy Efficiency Directive (2012/27/EU)** Specific requirements apply to contracts for buildings, energy labelled products and products covered by the Eco-design Directive and **S.I. No. 426/2014** - European Union (Energy Efficiency) Regulations 2014.

**Clean Vehicles Directive (2009/33/EC)** All contracting authorities must take emissions and efficiency into account when purchasing road transport vehicles, through specifications, award criteria or Life Cycle Costing and **S.I. No. 339/2011** - European Communities (Clean and Energy-Efficient Road Transport Vehicles) Regulations 2011.

### **Government Policy/Codes, Standards and Governance**

**The Public Spending Code Central Guidance** on: Evaluating. Planning and Managing Public Investment; Evaluating Planning and Managing Current Expenditure; Guidelines for the use of Public Private Partnerships.

**The Public Spending Code Technical Guidance** on: Quality Assurance Process; Regulatory Impact Analysis; Value for Money Review and Focused Policy Assessment; Overview of Appraisal Methods and Techniques; A Guide to Economic Appraisal: Carrying out a Cost Benefit Analysis; Central Technical References and Economic Appraisal Parameters; Public Spending Code Supplementary Guidance - Measuring & Valuing Changes in Greenhouse Gas Emissions in Economic Appraisals.

**The Public Spending Code Financial Appraisal Guidance** and template for proposals above and below €1m.

**Code of Practice for the Governance of State Bodies** (2016) (Section 8.16 to 8.21) requiring: publication of procurement policies and procedures to all staff; competitive tendering as standard; reporting of all non-competitive procurements >€25,000; and completion of a Corporate Procurement Plan. Other sections deal with property acquisition, disposal etc.

**FOI Code of Practice for Public Bodies: Model Publication Scheme** (2016) Guidance is published by the Minister for Public Expenditure and Reform in accordance with Section 8 of the FOI Act 2014. The material published under the publication scheme should be reviewed



and revised/updated where appropriate at least on an annual basis and it is recommended that in the case of procurement or purchase order spends, information should be updated on a quarterly basis. Information required includes: how HSE procure goods and services; procurement policies; a link to all current tender competitions on the eTenders website; public contracts awarded including contract type, contractor, value, award date, duration and brief description (tabular format) over €25k contracts.

## Circulars

**40/02:** Public Procurement Guidelines - Revision of existing procedures for approval of certain contracts in the Central Government sector requiring Annual Report (signed off by the Accounting Officer) and submitted to the C&AG in respect of contracts above €25,000 (exclusive of VAT) awarded without a competitive process.

**01/11:** Model Tender and Contract Documents for Public Service and Supplies Contracts.

**02/11:** Additional Arrangements for ICT Expenditure in the Civil and Public Service.

**05/13:** Procurement of Legal Services and Managing Legal Costs. The circular reminds public bodies of their obligations to ensure that their procurement of legal services complies with the rules and guidelines on public procurement and outlines appropriate competitive procedures that can be used in the engagement of legal services.

**13/13:** The Public Spending Code: Expenditure Planning, Appraisal & Evaluation in the Irish Public Service - Standard Rules & Procedures.

**16/13:** Revision of arrangements concerning the use of Central Contracts put in place by the National Procurement Service. Government policy is that public bodies, where possible, should make use of all such central arrangements. Where public bodies do not utilise central procurement frameworks they should be in a position to provide a VFM justification.

**10/14:** Initiatives to Assist SMEs in Public Procurement 2014. Advertising requirements >€25,000 on [etenders.gov.ie](http://etenders.gov.ie).



**01/16:** Construction Procurement - revision of arrangements for the procurement of public works projects.

**02/16:** Arrangements for Digital and ICT related Expenditure in the Civil and Public Service.

**08/18:** Construction Procurement Reform - amendments to the Capital Works Management Framework to reflect the introduction of Sectoral Employment Orders in the construction sector and amend the Comparative Cost of Tender exercise.

**20/19:** Promoting the use of Environmental and Social Considerations in Public Procurement. The purpose of this Circular is to promote the wider use of environmental and social considerations in public procurement with specific regard to the Climate Action Plan 2019. Buyers are required to consider including green criteria in public procurement processes in specified circumstances and to incorporate relevant green procurement measures into their planning and reporting cycles.

## **Internal Procedures**

### **National Financial Regulations (NFRs)**

The National Financial Regulations (NFRs) are the HSE's key control documents for staff when undertaking financial decisions and transactions.

The National Financial Regulations (NFRs) are divided across the list below and can be accessed [here](#)

A - Internal Controls Framework and Principles

B1 - Procurement

B2 - Income, Charges and Debtors

B3 - Employee Administration and Payroll

B4 - Travel and Subsistence



B5 - Banking, Cash and Card payments

B6 - Section 38 and 39 Arrangements

B7 - Property and Equipment

C1 - Patients' Private Property and Finances

C2 - Community Residence Finances

D - Financial Reporting

## **HR Policies & Procedures**

Codes of Standards and Behaviour

Fraud & Corruption Information and Guidelines for Staff

Employee Handbook

Protected Disclosures of Information in the Workplace

Disciplinary Procedure for Employees

## **General Procurement Guidelines**

**OGP Public Procurement Guidelines for Goods and Services** promote best practice and consistency of application of the public procurement rules in relation to the purchase of goods and services.

**OGP Guidance on Framework Agreements** outlines the procedures for establishing frameworks, types of frameworks (single supplier, multiple suppliers) and procedure for award of contracts based on frameworks.



**Capital Works Management Framework:** developed to deliver the Government's objectives in relation to public sector construction procurement reform. It consists of a suite of best practice guidance, standard contracts and generic template documents.

**EU Commission Public Procurement Guidance for Practitioners** on the avoidance of the most common errors in projects funded by the European Structural and Investment Funds (EC).

**National Disability Authority (NDA) Guidance on Procurement and Accessibility** (2012) guidance is for staff in public bodies responsible for carrying out and managing the procurement of services and goods.

**Buying Innovation: The 10 Step Guide to SMART Procurement and SME Access to Public Contracts** sets out the range of actions that should be considered at each step of the procurement process with the aim of stimulating innovation in the economy and better solutions to public service needs.

**European Commission Buying Green Handbook** (2016) guidance to public authorities on how environmental considerations can be included at each stage of the procurement process in the current EU legal framework (adopted in 2014) including practical examples.

**Green Public Procurement** (2021) EPA guidance and accompanying criteria supporting the inclusion of sustainable and green practices into public sector procurement procedures.

**Green Tenders - An Action Plan on Green Public Procurement** (2012) objective is to assist public authorities to successfully plan and implement green public procurement (GPP) by highlighting existing best-practice and outlining further actions to boost green public procurement.

**Buying Social - A Guide to Taking account of Social Considerations on Public Procurement** (European Commission)(2021)The purpose of this document is to raise public buyers' awareness of the potential benefits of SRPP and to explain in a practical way the opportunities offered by the EU legal framework.





**Guidelines for the engagement of Consultants and other external support by the Civil Service** (2006) covering business case approval, the procurement process, and contract management.

**Ethics in Public Procurement** (2005) provides information to assist public sector buyers to conduct purchasing in a way that satisfies probity and accountability requirements.

**Guidelines for Fighting Bid Rigging in Public Procurement** (OECD) includes details on: common types of bid rigging; industry characteristics that support collusion; tips to reduce risks including the importance of staff awareness.

**Managing Conflict of Interest in the Public Sector - A Toolkit** (OECD) provides a set of practical solutions for developing and implementing ways to manage conflicts of interest.

**Application of Concession Contracts Information Note** (OGP 2018) distinguishes between the new Concessions Directive 2014/23/EU intended for large-scale, long-term, complex contracts predominately in infrastructural development with significant risk transfer, e.g. Public Private Partnerships and the normal service type concession contract such as a canteen service at a facility covered in the main Classic regime (Directive 2014/24/EU).