



# Navigating Complex Public Procurement

Ensuring efficient and affordable delivery of  
major capital projects and government services



# Introduction

Public procurement can be challenging and complex, as it needs to balance the needs of contracting authorities and the process requirements stemming from the EU regulations and their transposition in Irish law. Procurement is often the most critical aspect of a new infrastructure project to ensure appropriate project delivery on time and within budget. As the public's needs continue to change and grow, there is a greater need to focus on the lessons learned.

Design, competitive dialogue (or negotiation) and evaluation & award remain the critical stages of complex procurement. Our Infrastructure & Government team discusses the important lessons learned from navigating complex public procurement at each of these stages.



## Procurement Design

The Infrastructure Guidelines published in December 2023 discuss the Project Design, Planning and Procurement Strategy in detail and suggest that it is best practice for Sponsoring Agencies to 'specify their output requirements accurately, precisely and comprehensively as early as possible in the investment proposal delivery process'. As a result, a meticulous procurement design reflects best practice in project development and is a key stage in the overall procurement process.

### Prequalification/Selection Stage

The early appointment of a project team and advisors is essential to avoid any project backtracking and to ensure that all potential avenues have been identified and analysed, particularly when it comes to early market consultation, which is an important step. This is a key lesson, as in many cases, the teams involved in procurement are brought together at the Pre-Qualification (PQ) stage or after design work and other significant decisions have been made which is too late in the process.

The procurement team must be confident with all aspects that have been agreed within the framework of selection criteria and tender submission requirements, and that framework must be adhered to strictly.

This applies to both the Economic and Financial Standing (EFS), and the technical and professional capability. EFS should be an early consideration as it will effectively future proof the award stage to those entities that have the ability to deliver, with turnover alone insufficient to future proof projects of scale. Consideration must be taken in any given project

and its industry in order to adjust to the specific challenges associated with the sector, underlying the need for a procurement team equipped with suitable commercial expertise.

### Contract Development

An important factor within contract development in a complex procurement is benchmarking nationally and internationally to capture learnings from successful projects for similar services. It is critical to engage with the contracting authorities in this matter to gain insight into their experience, evaluate where shortfalls may have been made and, overall, collect the key lessons they have learned.

The performance regime of a project or a service is essential to achieve the public service outcomes and incentivise the right behaviours from the private sector partner. It's imperative to analyse the historical data of the performance of the existing service (if there was), and to engage with the stakeholders involved in performance monitoring. Through this analysis and structured engagement, the procurement team is enabled to provide recommendations based on evidence.



# Competitive Dialogue

In the complex landscape of infrastructure procurement, effective dialogue (or negotiation as the case may be) stands as the linchpin for successful project outcomes. By adhering to a strategic framework, organisations can navigate dialogue with clarity and purpose, fostering collaboration between stakeholders and tenderers. A strategic framework for dialogue also ensures adherence to the four principles of public procurement, namely: non-discrimination, equal treatment, transparency and confidentiality.

## Clearly set out the objectives of the dialogue phase

At the onset of the dialogue phase, it is paramount to articulate and communicate clear objectives. Ignoring elements not aligned with these objectives ensures a focused and efficient process. This precision not only streamlines discussions but also minimises the risk of scope creep, keeping the dialogue on a path toward mutually beneficial outcomes.

## Align thinking within the procurement team in terms of conduct and ground rules

Aligning thinking within the procurement team on conduct and ground rules is crucial for a unified front. Clearly defining roles, from the chairperson to those responsible for raising specific points and observing, establishes a structured environment that minimises confusion and maximises meaningful outcomes.

## Site visits and tenderer briefing sessions

Site visits provide first-hand project insight, while tenderer briefing sessions foster clarity on the issued written tender documentation. Site visits specifically enhance the contracting authorities and tenderers understanding and allow to effectively tailor the procurement documentation. By integrating both of these practices, organisations elevate the dialogue process and increase the potential for successful, innovative solutions.

## Have agenda and draft/interim submissions prepared in advance

A well-prepared dialogue is a successful dialogue. Providing an agenda in advance ensures that tenderers come to the table ready for substantive discussions. This proactive approach not only enhances transparency but also emphasises the need for tangible progress rather than mere discussion. It sets the tone for a results-oriented dialogue where both parties can actively make progress.

## Breakout sessions to debrief and plan for next sessions

Breaking out into smaller sessions during dialogue serves a dual purpose. Firstly, it allows for a more in-depth exploration of specific points, enabling a comprehensive understanding of each party's perspective. Secondly, it provides an opportunity for debriefing and planning for subsequent sessions. These breakout sessions act as strategic pauses, ensuring that the dialogue process remains dynamic and adaptable to evolving circumstances.



# Evaluation and Award |

## Set up a methodology for evaluation and document it

As with any procurement, the preparation of a clear and concise evaluation methodology is crucial, as it provides the evaluators with a pre-agreed framework to satisfy competition rules around transparency and fairness. There are typically two key components to the evaluation criteria; the first looking at the quality of the tendered solutions, and the second focusing on their value for money.

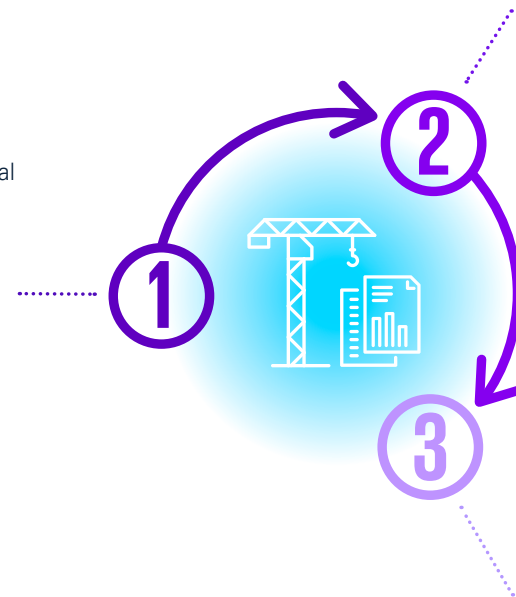
The second component consists in the price evaluation, which looks at the value for money of the proposal. Usually, the financial tender submissions take the shape of a financial model structure outlining the bidders' proposed price and their associated costs and inputs, accompanied with an appropriately developed narrative.

The evaluation of the bidders' proposed solutions is strictly based on the tender submissions and the award criteria, with precise guidance on the submission requirements and how they will be evaluated.

Within the evaluation stage, an audit trail is of critical importance in order to provide the required rationale to the procurement decisions, satisfying the legal requirements and best-in-class transparency of the public service while protecting the commercial interests of the State.

## Allow for the assimilation of evaluation findings

In order to increase the likelihood of awarding to the best combination of solution-price, the procurement team should allow time for the assimilation of their findings. It is necessary that all involved understand the requirements and the submissions from bidders, and also challenge themselves and each other to award the contract to the most suitable bidder.



## If and when delays occur, document them

An important aspect within procurement is to document any delays that occurred during the process. This is essential to allow for the assessment of any consequences that those delays might have on the operational phase. It further enables the procurement team to streamline their processes for the next project and/or share their experiences with sister organisations conducting similar projects.

## How can KPMG help?



Our team of infrastructure professionals have extensive experience providing commercial and financial advice to public sector organisations on complex procurements, as well as helping develop Public Spending Code (now Infrastructure Guidelines) compliant business cases.

We work with a wide range of clients in both the public and private sectors on various projects of differing size, scope and complexity. By combining our valuable with hands-on local experience, we can help address the challenges you face at any stage of the project life-cycle; from strategy and planning, to construction, operations and hand-back.

If you have any queries on this report or would like further information regarding your public procurement pursuits, please contact our team below. We would be delighted to hear from you.

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