



Feidhmeannacht na Seirbhíse Sláinte
Health Service Executive

Tender Competition Rules

HSE may supplement these Tender Competition Rules with additional comments relevant to specific tenders or develop specific rules relevant to a specific contract.

Table of Contents

1	INTRODUCTION.....	3
2	INFORMATION ON TENDERS	3
3	CONDITIONS OF CONTRACT	3
4	COMMUNICATION PROTOCOL	3
5	TENDER RESPONSE DOCUMENT.....	3
6	SUBMISSION OF TENDERS	3
7	SPECIFICATION OF REQUIREMENT.....	4
8	SCOPE OF SUPPLY	4
9	LOTS.....	4
10	PRICE BASIS	4
11	SUBMISSIONS BY GROUPS	4
12	TRANSFER OF UNDERTAKINGS - ACQUIRED RIGHTS.....	5
13	DECLARATION OF INTEREST	5
14	SOCIAL OBLIGATIONS.....	5
15	DETERMINATION OF RESPONSIVENESS	5
16	CORRECTION OF ERRORS.....	6
17	CONFIDENTIALITY	6
18	CLARIFICATION OF TENDERS	6
19	VARIATION	7
20	PRODUCT /SERVICE INFORMATION	7
21	INSPECTION/VALIDATION	7
22	POST TENDER DEADLINE	7
23	EVALUATION PROCESS	7
24	ETHICS	8
25	EXCLUSION FROM PARTICIPATION IN THE COMPETITION.....	8
26	ANTI-COMPETITIVE CONDUCT	9
27	OFFICIAL AMENDMENTS.....	9
28	CANCELLATION OF THE TENDER PROCESS	9
29	CONCLUSION OF CONTRACT	9
30	DEBRIEFING TENDERERS.....	10
31	APPEALS	10

1 Introduction

Tenderers are advised to follow the instructions outlined in this document prior to submitting their Tender. Failure to comply with these rules may, at the sole discretion of Health Service Executive (HSE), disqualify the tenderer.

2 Information on Tenders

Generally all information relating to tenders, including tender documentation, clarifications and changes, will be published on the etenders website (www.etenders.gov.ie). Registration is free of charge and there is no charge for downloading documents. HSE will not accept responsibility for information relayed (or not relayed) via third parties. If tender documents are in any way altered or edited, the subsequent tender may be deemed inadmissible.

3 Conditions of Contract

Where no specific conditions of contract are included in the tender documentation the HSE's Standard Terms for Services and Supplies shall apply, available to download on: <http://www.hse.ie>

Tenderers will be required to engage constructively with the HSE and are required to operate in compliance with the terms of the HSE's Supplier Charter, available to download on: <http://www.hse.ie>

Companies must be tax compliant and comply with all revenue legislation including but not confined to tax clearance, VAT and PAYE employer issues, available to download on the Revenue website: www.revenue.ie

4 Communication Protocol

The sole point of contact for HSE tenders is outlined in the tender documents. Tenderers must not contact any HSE personnel about a tender between the issuance of the tender document and the date of award unless previously authorised to do so by the designated HSE contact person. All communication between Tenderers and HSE related to this tender must be in writing. All Tenderers will be advised of any significant issues raised by any tenderer. Any necessary meetings or discussions will be arranged and/or facilitated by the designated HSE contact person.

5 Tender Response Document

Tenderers are required to respond in the format and manner specified by HSE. Documents in other formats may not be read and could result in your response being rejected.

6 Submission of Tenders

Late tenders have the potential to bring into question the integrity of the tendering process especially where the 'late tender' is received after bids have been opened or disadvantage other tenderers by affording the 'late tenderer' additional time to prepare a bid and accordingly may not be considered.

There may be circumstances where proportionality will, exceptionally, require the acceptance of the late submission of the whole or significant portions of a tender, most obviously where it results from fault on the part of the HSE. But, in general, even though HSE has discretion to accept late submissions as outlined above, there is no requirement to do so, particularly where it results from a fault on the part of the tenderer, would be disproportionate or unfair.

The tenderer is fully responsible for the safe and timely delivery of the tender to the specified address. Tender responses must be in English except where the law specifies other languages.

Where hardcopy tenders are required Tenderers must also be in a position to supply copies of all tender documents in electronic format on request. Unless otherwise stated or agreed, tenders shall remain valid for a period of 12 months from the closing date.

HSE is not responsible for any expenses or losses incurred by the tenderer in the preparation of tenders or participation in the tendering process.

The information supplied in response to this Tender will be regarded as forming part of any future contract entered into, at the discretion of the HSE.

7 Specification of Requirement

Specifications will generally be formulated by reference to recognised standards or in terms of performance or functional requirements. It is intended that technical specifications define all required characteristics such as quality levels, environmental performance, design (including accessibility for disabled persons), dimensions, product use, fire, safety, infection control, and packaging. It is further intended that technical specifications afford equal access for Tenderers and do not have the effect of creating unjustified obstacles to opening up competition.

Tenderers should advise HSE of any perceived gaps in the specification of requirement, including possible innovations overlooked, before the closing date for receipt of queries.

Where the HSE has quoted brand names as product/service descriptions, these are used only for descriptive purposes and are not a statement of preference. These establish the minimum specifications and requirements of the HSE, for the product/service being purchased. Tenderers are invited to submit equivalent/alternative product/service. Tenderers are requested to state exact details of equivalent or alternative product/service and give the brand name and catalogue number for all items offered.

8 Scope of Supply

Term: The contract period will not exceed three years from the date of issue of HSE's award letter, unless otherwise stated. Please note that HSE may decide to extend the contract duration by up to two additional years subject to agreement with the successful tenderer. HSE reserves the right to extend contracts to include similar goods and services.

Quantity: Unless otherwise stated any quantities shown are only estimates of total requirements during the contract period and orders will be issued to meet actual requirements during the contract period.

9 Lots

The contract may be divided into lots. The HSE reserves the right to award contracts for a given lot to two or more Tenderers, should circumstances dictate.

Where appropriate, the HSE reserves the right to divide the contract between successful Tenderers and to award all or part of the advertised tender.

10 Price Basis

Unless otherwise stated a fixed price contract is required. Suppliers shall complete a schedule of prices in accordance with stated requirements. Prices must be inclusive of delivery and all other charges but exclusive of V.A.T and expressed in Euros. Tenderers must clearly state the applicable VAT rate associated with the product, supply or service.

Price reviews will only be considered against predefined review criteria i.e. where suppliers have linked the price quoted, or a percentage thereof, to a recognised index (e.g. Consumer Price Index, Internationally Quoted Exchange Rates), and at tender stage this variation clause can be factored into the evaluation process. Such reviews if agreed will only take place annually.

11 Submissions by Groups

Groups of economic operators may submit tenders or put themselves forward as candidates. In order to submit a tender or a request to participate, these groups may initially not be required by the HSE to

assume a specific legal form. However the group selected may then be required to do so at the contract award stage, to the extent that this change is necessary for the satisfactory performance of the contract.

Tender submissions should clearly state which Tenderers are proposed to be members of the consortium, which are to be sub-contractors and how each firm would be jointly and severally liable to the HSE for the fulfilment of the terms of the contract. Subsequent changes to the members of the consortium may result in disqualification of that group.

A Tenderer may, where appropriate and for a particular contract, rely on the capacities of other entities; regardless of the legal standing it has with them. In such cases the Tenderer must prove to the HSE that it will have the necessary resources at its disposal e.g. producing an undertaking by those entities to that effect.

12 Transfer of Undertakings - Acquired Rights

For services contracted out, Tenderers must comply with HSE Specific Instructions to Tenderers relating to Transfer of Undertakings, which is available to download on: <http://www.hse.ie>

The successful candidate will be required at time of contract award to indemnify HSE fully in respect of any losses, damages, costs or expenses of any kind incurred by the HSE arising from the application of SI 131 of 2003 entitled European Communities (Protection of Employees on Transfer of Undertakings) Regulations commonly referred to as TUPE (and any subsequent amendments).

The successful candidate will be fully responsible for complying with all employment obligations, contractual, statutory or otherwise and in particular will fully comply with its obligations under the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 commonly referred to as TUPE (and any subsequent amendments).

13 Declaration of Interest

Tenderers must declare in their tender submission any conflict of interest associated with any current or previous work undertaken, or any relationship that may reasonably be perceived to potentially conflict or impact on their ability to fulfil the requirement of this procurement. In the event that the HSE considers that a conflict of interest or potential conflict of interest exists, the HSE will in its absolute discretion, decide on the appropriate course of action. Failure to disclose a material conflict of interest may disqualify a tenderer or cause the termination of any subsequent contract and entitle the HSE to seek remedies, such as cost or compensation for loss

14 Social Obligations

Tenderers are required, in preparing their tenders, to take account of their obligations relating to employment protection and working conditions that are in force and in the place where the works are to be carried out or the service is to be supplied. Failure to comply with this requirement may result in the elimination of the tender submission.

Refer to Annex A for Information Sources Regarding Taxation, Environmental Protection, Employment Protection and Working Conditions.

15 Determination of Responsiveness

After the official opening of tender submissions, the HSE will determine whether each tender is substantially responsive to the requirements of the Tender Response Document. A substantially responsive tender submission is one which conforms to the terms, conditions and instructions including but not limited to the completion and return of the Tender Response Document, without material deviation.

A material deviation is one which affects in any substantial way the price, scope, quality, completion or timing of the proposed contract to be undertaken by the Tenderer or which limits in any substantial

way the HSE rights or the Tenderers obligations under the competition. A tender submission determined to be non-responsive shall be rejected by the HSE and cannot be resubmitted. The tender submission will be considered only on the basis of the responsive contract lots.

The HSE may waive any minor non-conformity or irregularity in a submission including omitted information where such information is historical in nature and not subject to variation.

Additional documentation that may be provided must be clearly cross-referenced to the relevant selection/award criteria or sub-criteria specified in the Tender Response Document. The HSE reserves the right to seek additional information and/or interview Tenderers in connection with its assessment of their tender submission, but will not be held liable for any costs incurred in this regard by Tenderers.

16 Correction of Errors

Tenderers determined to be substantially responsive will be checked for any material errors in computation as follows:

- Where there is a discrepancy between amounts in figures and words the amount in words will govern.
- Where there is a discrepancy between the unit price and the total amount derived from the multiplication of the unit price and the quantity, the unit price as quoted will normally govern, unless, in the opinion of the technical evaluator there is a gross arithmetical error in the unit price, in which event, the extended amount as quoted will govern.
- The amount stated in the Tender Response Document will be adjusted by the Purchaser in accordance with the above procedure for the correction of errors and, with the concurrence of the tenderer, shall be considered as binding upon the tenderer.

In the event of a dispute, the original hardcopy submission (where requested) shall be the official tender response.

A tenderer not accepting the correction of errors as outlined will have his/her tender rejected.

17 Confidentiality

The HSE undertakes to hold any information provided by Tenderers on a confidential basis, subject to the HSE's obligations under law, including the Freedom of Information Acts 1997 - 2003. If for any reason, Tenderers require information provided to the HSE not to be disclosed because of its sensitive nature, then it is incumbent upon the person or body when supplying the information to make clear this request, and to specify the reason for the information's sensitivity. The HSE will endeavour to consult with any Tenderer supplying sensitive information before making a decision on any Freedom of Information request received.

The Tender Documents remain the property of the HSE and are issued only in connection with the invitation to submit a tender. The Tender Documents may not be copied or their contents may not be divulged to any third party without the prior written consent of HSE. All information contained in the Tender Documents must be treated in the strictest confidence by the Tenderer and by all the Tenderers staff. Any third party involved in completing the tender submission must also comply with these confidentiality requirements.

18 Clarification of Tenders

To assist in the examination and comparison of tenders, HSE may require Tenderers to clarify their tenders including breakdown of prices. Tenderers should be available if required, to make a presentation of their proposals to HSE at short notice, following the closing date for receipt of tenders. All costs and expenses associated with such presentations shall be borne by the tenderer.

19 Variation

Tenderers who feel disadvantaged by the terms governing this tender may make direct representations to the HSE contact for variations of the terms of this tender, provided that any variation sought shall not operate to the disadvantage of any other Tenderer. The HSE shall have the final decision on whether to vary the terms of this tender and will communicate any agreed changes to all Tenderers.

20 Product /Service Information

Tenderers may be required to provide sample product/services free of charge for evaluation by the HSE. Samples are to be delivered to whichever location is specified by the HSE contact.

21 Inspection/Validation

The HSE reserves the right to inspect the Tenderers premises to verify all information supplied. The HSE will liaise directly with the Tenderers contact on the exact detail for visiting any reference sites where applicable.

The HSE reserves the right to verify all information provided in the tender submission at any stage during the evaluation process, for the complete duration of any contract arising from this procurement process.

The HSE reserves the right to conduct any investigation or market research, if so chooses, throughout the lifetime of the Contract to ensure that the successful Tenderers are fully complying with their pricing obligations.

22 Post Tender Deadline

Please note that once submissions/tenders have been submitted, no individual negotiations other than clarifications will take place and the HSE's decision will be final.

23 Evaluation Process

The competitive process will generally involve three stages. For open procedures stages 1,2 and 3 will be conducted in one phase and for restricted procedures stages 1 and 2 will be conducted in phase 1 and only suppliers selected after stages 1 and 2 will be invited to submit information relating to stage 3. For the restricted procedure where the number of candidates to be invited to tender is limited all candidates with equal ranking will be treated equally.

Stage1 - Exclusion: Tenderers to whom any of the circumstances listed in Article 45 of Council Directive 2004/18/EC (the co-ordination of procurement procedures for the award of public works, public supply and public service contracts) apply or Tenderers who fail to sign the Supplier Declaration in the Tender Response Document will be excluded from the tender.

Stage2 - Qualitative: Tender submissions received must meet the minimum requirements outlined under the qualitative selection criteria by HSE. Tenders meeting these minimum requirements will then be evaluated under the specified award criteria outlined by HSE. In this respect it is essential that all requested information is provided in the manner stipulated by HSE.

Stage 3 - Award: During this stage, clarifications may be sought in writing (including e-mail and fax) from Tenderers which may include testimonials from customers in support of particular aspects of a tender. Deadlines will be imposed for the receipt of such clarifications and failure to meet these deadlines may result in the disqualification of the submission/tender or loss of marks. Responses to requests for clarification shall not materially change any of the elements of the proposals submitted. Unsolicited communications from Tenderers will not be entertained during the evaluation period.

The HSE may, at its discretion, request meetings with individual Tenderers during the evaluation period for the purposes of clarifying any aspect of the Tenderers proposal. These meetings will be strictly confidential and will not result in any material change to the original tender. No discussions regarding the progress of the evaluation or the Tenderers performance will be entered into. All such meetings will be held at the convenience of the HSE and the HSE will not be responsible for any costs incurred by the Tenderers.

The successful Tenderer will be informed in writing that their tender has been identified as the preferred bidder subject to the satisfactory conclusion of a contract. Unsuccessful Tenderers will also be informed in writing.

24 Ethics

Please note that canvassing or failure to comply with the Communications Protocol may result in the disqualification of your submission/tender. The tenderer must not be affected by any material conflict of interest and shall have no particular link with other Tenderers or parties involved in the project.

Any effort by the Tenderer to unduly influence any staff or agents of the HSE in the process of examination, clarification, evaluation, comparison of submissions and in decisions concerning the awarding of contracts shall have their submission rejected and may result in administrative penalties. In accordance with Section 38 of the Ethics in Public Office Act 1995 any money, gift or other consideration received from a person holding or seeking to obtain a contract will be deemed to have been paid or given corruptly unless the contrary is proven.

HSE reserves the right to suspend or cancel the tender competition or resultant contract:

- If corrupt practices of any kind are discovered at any stage of the tender process or during the implementation of a contract.
- If it emerges that the award or execution of a contract has given rise to unusual commercial expenses. Such unusual commercial expenses are commissions not mentioned in the main contract or not stemming from a properly concluded contract referring to the main contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a payee who is not clearly identified or commissions paid to a company which has every appearance of being a front company.

Failure to comply with one or more of the ethics clauses may result in the exclusion of the tenderer from other HSE contracts and in penalties.

25 Exclusion from Participation in the Competition

In accordance with article 45(1) or 45(2) of directive 2004/18/EC any firm may be excluded from participation in tender competitions who:

- Is bankrupt or is being wound up, whose affairs are being administered by the court, who has entered into an arrangement with creditors, who has suspended business activities, or who is in any analogous situation arising from a similar procedure under national laws and regulations;
- Is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or administration by the court or for an arrangement with creditors or of any other similar proceedings under national laws and regulations;
Has been convicted of an offence concerning the suppliers professional conduct by a judgement which has the force of res judicata;
- Has been guilty of grave professional misconduct proven by any means which the contracting authorities can justify;
- Has not fulfilled obligations relating to the payment of taxes in accordance with the legal provisions of the country in which the supplier is established or with those of the country of the contracting authority;
- Is guilty of serious misrepresentation in supplying the information required with regard to any of the above points (or in relation to any other aspect of this tender).

Any firm shall be excluded from participation who has been convicted of:

- participation in a criminal organisation
- corruption
- fraud
- money laundering

Tenderers must, when requested, provide sufficient information confirming that they have not been convicted of any such offence. For the purposes of this declaration, Tenderers shall mean any agent of the tenderer and any person who is concerned in the direction or management of the tenderer.

26 Anti-Competitive Conduct

Tenderers particular attention is drawn to the application of the Competition Act 2002. The Act declares it a criminal offence for Tenderers to collude on prices or terms in a public tendering procedure. Should the HSE become aware of direct or indirect communications through trade associations or otherwise between Tenderers relating to the contract or which might facilitate price collusion it shall be the policy of HSE to notify the Competition Authority and suspend such tenders. If the matter is not satisfactorily resolved by the time evaluation of all other tenders is complete, HSE will base its decision on all tenders received but not suspended.

27 Official Amendments

If it is necessary for the HSE to amend the tender documentation in any way prior to receipt of tenders, all Tenderers will be notified simultaneously. If deemed appropriate by the HSE, the deadline for receipt of tenders will be extended.

28 Cancellation of the Tender Process

In the event of cancellation of the tender process, Tenderers will be notified of the cancellation by the HSE. Cancellation may occur where:

- the tender procedure has been unsuccessful i.e. no qualitatively or financially worthwhile tender has been received or there is no response at all
- the economic or technical data of the project have been fundamentally altered
- exceptional circumstances or force majeure render normal performance of the contract impossible
- all technically compliant tenders exceed the financial resources available
- the tendered services or products are no longer required
- there have been irregularities in the procedure, in particular where these have prevented fair competition

In no event shall the HSE be liable for any damages whatsoever including, without limitation, damages for loss of profits, in any way connected with the cancellation of a tender procedure even if the HSE has been advised of the possibility of damages. The publication of a procurement notice does not commit the HSE to implement the programme or project.

29 Conclusion of Contract

The successful tenderer(s) will be informed in writing that their tenders have been accepted.

Before the HSE signs a contract with the successful Tenderer, the successful Tenderer must provide documentary proof of current insurance cover to HSE required levels, tax status and any other statements required in the tender documents. In the case of a Tenderer resident in the Republic of Ireland, it shall be a pre-condition that the Tenderer shall produce a current Tax Clearance Certificate or C2 Certificate issued by the Irish Revenue Commissioners. A non-resident Tenderer will require a

statement from the Irish Revenue Commissioners that they are satisfied as to the suitability for tax purposes of entering into the contract.

The HSE may consider a tender null and void and invite another Tenderer to sign a contract if:

- a successful Tenderer fails to provide a current Tax Clearance or Insurance Certificates within 15 calendar days following notification of acceptance of tender
- a successful Tenderer is found to have provided false information or fails to disclose a material change in Tenderers circumstances since the submission of their tender or fails to validate specific aspects of their tender on request from HSE.
- Within 15 days of receipt of the contract, the selected Tenderer does not sign, date and return the contract to the HSE.

The HSE reserves the right to put a contract in place for some, none or all of the products/services included in the specification of requirements for this tender.

Where the contract award results in a change of supplier/service provider, HSE will work closely with successful Tenderer to support an effective changeover. However due to the size and geographic spread of our customer base, potential changes to catalogues, existing stock holdings etc, supplier changeover may, at the sole discretion of HSE, be implemented on a phased basis during the initial period of the contract.

30 Debriefing Tenderers

Unsuccessful Tenderers will be advised of the contract award decision as early as is practicable. All queries in relation to contract award decisions should be directed in the first instance to HSE's designated contact.

All queries will be dealt with on an informal basis where possible. For all significant contracts the HSE will, on request, formally debrief unsuccessful Tenderers. This debriefing may take the form of a written correspondence rather than a meeting.

31 Appeals

All Tenderers have a right of review under the Directive 89/665 (The Remedies Directive) and transposing Regulations before the Irish High Court (reference Statutory Instrument No. 309 of 1994 as amended).

With regard to time limits for initiating proceedings Tenderers should refer to the Rules of the Superior Court (No.4 Review of Award of Public Contracts), 1998 (S.I No. 374/1998 as amended).

Failure to comply with any of the above rules may disqualify the tenderer.

Annex A

Information Regarding Taxation, Environmental Protection, Employment Protection and Working Conditions

The persons from whom a tenderer may obtain information about the obligations that will, during the performance of the contract, apply in relation to taxation, environmental protection, employment protection and working conditions include the following:

Taxation

Revenue Commissioners - <http://www.revenue.ie/>

- Business & Income Tax Payments Enquiries: Lo-Call 1890 20 30 70
- To enquire about employers PAYE, P35s and Benefit-in-Kind: Lo-Call 1890 25 45 65
- To enquire about tax relief at source (on mortgages & medical insurance) and Special Savings Incentive Schemes (SSIAs): Lo-Call 1890 46 36 26
- To make general enquiries about stamp duty: Lo-Call 1890 48 25 82
- To make general enquiries about CAT: Lo-Call 1890 20 11 04 or 0 353 1 8655000 for callers outside the Republic of Ireland
- To request any Revenue form or leaflet (24 hours): Lo-Call 1890 30 67 06 or 00353 1 67 44 050 for callers outside the Republic of Ireland

Environmental Protection

Environmental Protection Agency - <http://www.epa.ie/>

- **EPA Headquarters**, PO Box 3000, Johnstown Castle Estate, Co. Wexford, Tel: 053-9160600, Fax:053-9160699, Email: info@epa.ie, Lo Call: 1890 335599
- **Regional Inspectorate – Dublin**, McCumiskey House, Richview, Clonskeagh Road, Dublin 14, Tel: 01-268 0100, Fax: 01-268 0199
- **Regional Inspectorate – Cork**, Inniscarra, Co. Cork, Tel: 021-4875540, Fax: 021-4875545
- **Regional Inspectorate- Kilkenny**, Butts Green, Kilkenny, Tel: 056-7722329, Fax: 056-7765085

Regional Offices

- Annabella, Mallow, Co. Cork, Tel: 022-43865
- The Rectory, Church St., Athlone, Co. Westmeath, Tel: 0902-475722
- Mungret College, Mungret, Co. Limerick, Tel: 061-227900

Employment Protection and Working Conditions

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