

Employer Instructions

Letter to Unsuccessful Tenders (MF1.2b) – Procurement not Governed by EU Directives

Introduction

The content of the letter to unsuccessful tenderers will depend on whether the contract being awarded is above or below the EU threshold, and also whether or not it is excluded from the rules in the Directives. The Directives referred to are Directives 2004/18/EC, as implemented into Irish law by SI No 329 of 2006, and Directive 2007/66/EC, as implemented into Irish law by SI No 130 of 2010. Where the contract is excluded from the rules in the Directives or is below the EU threshold (other than contracts for mini-competitions under a framework agreement governed by the Directive) the rules in the Directives will not apply and notification/debriefing will be conducted in accordance with national rules (and EU general principles where the contract is potentially of cross-border interest, see below).

Informing tenderers and candidates

When the tender evaluation in relation to a procurement not governed by the rules in the EU Directives is complete, either on the basis of 'the most economically advantageous' or 'lowest price', the result should be conveyed in a letter to all the unsuccessful tenderers that have made admissible tenders.

Model letter MF 1.2(b)

The letter that should issue to unsuccessful tenderers should be based on Model Form MF 1.2(b) and should be sent before the letter of acceptance issues to the successful tenderer (see further below). If the award criterion is the most economically advantageous tender, then the marks of the unsuccessful tenderer for each award criterion (including sub-criteria) should be given. The letter should also identify who the successful tenderer is. If the award criterion is price only then, where the tender is a lump sum, the letter should state the tender price of the successful tenderer.

Standstill period

For contracts above the EU threshold, the period between issuing notification of the outcome of the process and accepting the winning tender is prescribed by Directive 2007/66/EC, as implemented into Irish law by SI No 130 of 2010. For contracts below the EU threshold, the authority should consider in the context of each contract what the appropriate period should be, and amend the letter accordingly.

Treaty principles and cross-border interests

In the case of contracts being procured that are below the EU threshold and there is a possibility of cross-border interest from bidders based in another EU member State, it is important that the Treaty principles are observed. These principles include transparency, proportionality, non-discrimination and fairness.

Continued on next page

Letter to Unsuccessful Tenders – Procurement not Governed by EU Directives Continued

SMEs

Even where Treaty principles do not apply, it is Government policy to ensure that a competitive process is used in the procurement of all public sector contracts, that there is no discrimination against particular sectors and, in particular, that the interests of small to medium enterprises are properly respected. The rules regarding advertising thresholds for the procurement of works contracts are set out in section 3.2 of *GN 2.3 Procurement Process for Works Contractors* which is available under the Capital Works Management Framework on the Department of Finance website www.constructionprocurement.gov.ie

Debriefing meetings

Debriefing meetings are not normally conducted for contracts below the EU threshold as such meetings can incur unnecessary costs for both the unsuccessful tenderers and the contracting authorities and, given the nature of the procurement involved, the debriefing letter will normally have sufficient information in it to allow the tenderer assess how it may best improve its performance in future competitions.

[END]