

Employer Instructions

Letter to Unsuccessful Tenders – Procurement not Governed by EU Directives and no Cross-Border Interest (MF 1.2c)

- Introduction** Where a contract is below the EU threshold (other than contracts for mini-competitions under a framework agreement governed by the Directive) and there is no cross-border interest the rules in the Directives and the principles under the Treaty do not apply. Therefore notification to tenderers who are unsuccessful should be conducted in accordance with national rules.
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- Model letter** The letter that should issue should be MF 1.2(c). There is no legal obligation on a contracting authority to provide this information, however as a matter of best practice unsuccessful tenderers should be provided with the information set out in MF1.2(c) as soon as possible after an award has been made.
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- No standstill period** There is no standstill period required for contracts below the EU threshold where there is no cross-border interest. However it is important that MF1.2(c) is issued as soon as possible after the contract is awarded so as to enable unsuccessful tenderers to plan for future procurement opportunities that present themselves without fear of being over extended.
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- 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 and 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
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