

## **Employer Instructions**

### **Letter to Successful Tender (MF1.2e) – Procurement below EU Threshold – Cross Border Interest**

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#### **Introduction**

This Model Form letter is issued where the contract value is below the EU threshold and there is cross-border interest. In this instance Directive 2004/18/EC, as implemented into Irish law by SI No 329 of 2006, does not apply. However the Treaty principles particularly the principles of transparency and non-discrimination will apply.

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#### **Treaty Rules**

When the tender evaluation in relation to a procurement where the contract value is below the EU threshold and there is cross-border interest is complete, whether on the basis of the ‘most economically advantageous’ or the ‘lowest price’ mechanisms, the result should be conveyed in a letter to the successful tenderer informing it of the result of the competition. The letter should be headed ‘Subject to Contract/Contract Denied’ and it should clearly state that it is not a Letter of Acceptance and that the Employer has not accepted the tender. The letter will normally indicate that the Employer’s intention to award the contract to the tenderer is conditional<sup>1</sup> on certain obligations being fulfilled by the apparently successful tenderer before a contract is awarded (eg the provisions of bonds, insurances, tax compliance certificates, Departmental approval, etc.). Furthermore, the letter should state the standstill period applicable to the contract and when it is intended to issue the Letter of Acceptance, subject to there being no legal challenge and the obligations stated being complied with. Where the ‘most economically advantageous’ criterion has been used the letter should also state the marks given for each award criterion so as to assist the successful tenderer in improving its performance for future competitions. Model letter MF1.2e incorporates all of the requirements set out above and should be used.

#### ***Standstill Period***

*The standstill period for a contract begins on the day after the day on which each tenderer concerned is sent a notice, the letter to the successful tenderer should therefore issue on the same date as the letter to the unsuccessful tenderers.*

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<sup>1</sup> This should relate to checking that certain contract requirements can be put in place and that such requirements have been clearly identified in the tender documents. If substantive discussions take place in regard to these requirements after the issue of letter there is a real possibility that the procurement process would be invalidated.