

1) *Keystone Procurement Group*

It's over the 25k I assume if they are seeking match funding of 33k. There is a material change to what was put out to market and you're right that the electrical panel is substantive in this context. We aren't in a position to rule out the lack of interest in responding to the tender specification was down to the original specification or indeed the range carried by the other invited tenderers - do we know whether they were all capable of meeting the original specification? Do we know were they all capable of meeting the revised specification. I would see this, a priori, as a material substantive deviation and as a result, the engagement on the differentiated specification with the company breaks the link between the tender they ran and the commercial engagement. They are separate processes involving materially and substantively different requirements. The original tender was probably compliant but what they did next, isn't and it falls beyond normal contract modifications that may be permissible. The lack of other bids is a compounding factor here.

In terms of remedies, they may need to pause what they are doing, no matter what their current outlay is and reinstate a tender process. If it's over €25k they should comply with normal tender rules (as adjusted for LEADER's above / below 50% rule) and re-tender this. I don't see how this could come back into compliance without doing this. The process needs to be a real process and will need to be demonstratively competitive given what has happened now.

2) *Waterford Council Procurement Officer*

Having reviewed the information provided my opinion is as follows:

1. The changes identified below represent a material change to the subject matter of the original request for quotation/tender and if they were known at tender stage may have impacted on the decision of potential tenderers about whether they would submit an offer.
2. Even though it has been indicated that the final price has remained unaltered there have been additions and omissions that effectively represent post tender negotiation which is not permitted in the regulations unless a process with negotiation is identified at the outset.
3. The changes bring into question whether value for money has been achieved which cannot be determined without a comprehensive analysis of the financial changes to the original quotation and the absence of competitive quotes.

The value of this procurement (sub threshold) while it does not incur the full rigours of the regulations does not remove the principles of transparency and equal treatment of tenders.

In view of the forgoing, I would have concerns as to the overall validity of this procurement process and if this had come to light in advance of the award of contract would have recommended retendering to include the required scope amendments.