



Public Procurement

Brief for Oireachtas Members

8 December 2016

AV Room – Leinster House 1430 -1530

Minister of State Eoghan Murphy

Executive Summary

1. Procurement Reform

Procurement is a key element of the Government's Reform agenda. Given the volume of spending, €12bn per annum on goods, services and works, it is essential that a strategic approach is adopted and value for money is achieved. The OGP was established to drive the reform agenda, adopt a strategic approach and professionalise public procurement, leverage the State's spending power and deliver significant savings to the State

2. SME Access

Significant work has been undertaken by the OGP to ensure that public procurement is accessible by all businesses, including SMEs. Specific measures to support SME participation include undertaking market analysis prior to tendering to understand the competitive landscape, setting proportionate eligibility requirements, e.g. turnover and insurance, breaking tendering competitions into lots, e.g. by sector, region, value, and actively engaging in a range of events to foster awareness and encourage engagement, e.g. encouraging businesses to register on eTenders, the Government's national tendering platform. Specific supports are also provided by InterTrade Ireland (ITI) and Enterprise Ireland (EI) to assist SMEs in preparing for public tenders.

There is a perception that the move towards aggregation will mean that competitions will be won by larger foreign companies to the detriment of the SME Sector. While the OGP has stimulated the market, and there will obviously be more winners than losers, this is not borne out by the facts to date. 95% of the spend analysed is with firms with an Irish base, the majority of spend is with the SME Sector, 68% of OGP Framework Members are SMEs and 63% of these Frameworks have multiple lots.

3. Social Clauses

The Government is keen to explore the scope for including social clauses in public contracts where they are linked to the overall contract objective, e.g. urban renewal, and there are appropriate monitoring processes in place. This is a complex area and social clauses come at a premium. Therefore, we need to ensure that value for money is not adversely affected; additional costs are not placed on domestic suppliers relative to other potential suppliers; contracts are of a minimum scale to absorb the increased administrative requirements; and the targeted benefit is capable of being measured and monitored during the execution of the contract. In this context also, care must be taken not to disproportionately impact on SME's bidding for public contracts.

4. Next Steps

The OGP will continue to proactively work to drive the procurement reform programme. The State must get value for money from the €12bn annual expenditure on goods, services and works while also taking account of the impact on the SME Sector and wider societal concerns.

Briefing

1. Government Procurement Reform Programme

Procurement is a key element of the Government's Public Service Reform agenda and is a very significant portion of overall spending. The State buys everything from pens and paper, through to ammunition and surgical equipment. In fact, we spend €12bn every year on goods services and works. In this context, it is essential that the Public Service operates in a co-ordinated and efficient way and delivers sustainable savings for the taxpayer. That is why the Office of Government Procurement (OGP) was established.

The OGP commenced operations in 2014 and, together with four key sectors (Health, Defence, Education and Local Government), has responsibility for sourcing all goods and services on behalf of the Public Service. In addition, the OGP also has responsibility for procurement policy and procedures for the entire Public Sector.

Through the OGP and the sector-retained procurement functions, the Public Service speaks with "one voice" to the market for each category of expenditure, eliminating duplication and taking advantage of the scale of public procurement to best effect. This move is in line with best practice in the public and private sector and is part of the continuing reform programme being driven by the Department of Public Expenditure and Reform.

2. EU Treaty and Directives

The award of public contracts has to comply with the principles of the Treaty on the Functioning of the European Union, and in particular the free movement of goods, freedom of establishment and the freedom to provide services, as well as the principles deriving from these, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. Even in the case of procurement which might not be subject to the full scope of the Directives, the EU Commission and European Court of Justice (ECJ) have ruled that the Treaty principles must be observed. Basically, public procurement cannot discriminate or exclude businesses from participating in tender competitions on subjective grounds. The Directives as transposed into Irish law set out the legal framework for public procurement which must be complied with so advertising, setting the award and evaluation criteria and publishing award notices etc. are legal requirements. Failure to comply may result in legal challenges from unsuccessful tenderers or the European Commission.

3. OGP Mission

The Government established the OGP to:

- Deliver better value and sustainable savings for the taxpayer
- Integrate procurement policy, strategy and operations
- Enable consistency and standardisation of approach to public procurement
- Deliver broader policy goals in a consistent fashion
- Strengthen procurement spend analytics and data management

4. Framework Agreements (FW)

Framework Agreements are established through competitive procurement processes and are agreements with suppliers or service providers which set out terms and conditions under which specific purchases can be made during the term of the agreement. Frameworks Agreements are put in place by Central Purchasing Bodies such as the OGP and public sector clients can then draw down goods and services from the suppliers on the Framework by means of direct draw down or by mini-competitions. Use of FWs will ensure compliance with relevant EU and National public procurement requirements.

Framework Agreements:

- **Deliver value for money:** Aggregating different purchasers' potential needs means individual purchasers can buy goods and services at prices below those normally charged, or with special added benefits and/or more advantageous conditions.
- **Are compliant:** OGP FWs are fully compliant with procurement regulations.
- **Are faster:** OGP FWs remove the need for contracting authorities to conduct full tender exercises or lengthy supplier evaluations, saving the time and costs associated with procurement exercises
- **Have less risk:** Each of the suppliers on the framework has been subject to a rigorous procurement process, ensuring that they offer the scope and quality of goods and services required. Terms and conditions are already established and agreed. This removes the need to re-draft terms for each procurement undertaken.
- **Leverage scale:** The public sector has substantial purchasing power, spending in the region of €8.5bn each year on goods and services, in addition to expenditure on public works. This expenditure is funded by the Irish taxpayer and represents a very significant portion of overall Government spending. OGP FWs harness the opportunity to leverage this purchasing power and thereby ensure that value for taxpayer money is achieved.

5. Programme for Government - Procurement Commitments

The Programme for Government states the following in relation to procurement:

Government Procurement and Smaller Businesses

The public procurement market in Ireland is worth roughly €8 billion a year (for goods and services) or over €20 million a day. To improve access to smaller Irish businesses we will:

- *Facilitate quarterly meetings of the SME Advisory Group, chaired by a Minister of State at the Department of Finance / Public Expenditure and Reform, so that the voice of Irish SMEs can be heard by Government and the Office of Government Procurement*
- *Commission an external review of the TAS (Tender Advisory Service) model by 2017*
- *Continue to develop measures to support SMEs in accessing the public procurement market*
- *Conduct a consultation on the merits of establishing a Procurement Ombudsman*
- *Refine the new procurement structures in place, such as the OGP, as they bed down and make adjustments according to best international practice and in conjunction with Irish businesses*

Minister of State Murphy presented his proposed holistic approach to meeting these commitments at the SME Working Group (see section 6 for details of membership) in October.

He is chairing the SME Working Group where he hears at first hand from industry representatives. An independent review of TAS will be conducted next year with the draft terms of reference to be circulated to the SME Working Group for their consideration. The OGP will conduct an evaluation of the review arrangements currently in place for public tenders such as the clarification process, TAS, and the remedies directives to assess if they are sufficient, appropriate and proportionate. Are additional review processes required balancing the need for appropriate appeal mechanisms with the need to deliver projects on the ground? What is the problem we are trying to address? What happens in other jurisdictions, for example in Wales, Northern Ireland, Scotland, Austria, and Sweden? The pros and cons and costs and benefits of any recommended approach will be set out. Consultation will be through the SME HLG and Working Groups to ensure input from industry representatives and public sector practitioners.

6. SME Access to Public Procurement

a. OGP Approach

The OGP takes a balanced approach to delivering value for the taxpayer and ensures that public procurement is accessible by all businesses, including SMEs.

This is done by:

- Undertaking market analysis prior to tendering in order to better understand the range of goods and services on offer; market developments and innovation; what commercial models are available; the competitive landscape; and the specific capabilities of SMEs etc.
- Setting proportionate eligibility requirements, for example insurance and turnover, to support SME participation
- Breaking tendering competitions into smaller lots (for example, by sector, region, value etc.) to actively encourage SME participation and to align with the capacity and capability of the marketplace
- Actively engaging in a range of events to help foster awareness of and to encourage engagement in the public procurement process
- Supporting supplier awareness of eTenders, the Government's national tendering platform (etenders.gov.ie)

By ensuring our processes are open, transparent and fair, the OGP delivers quality sourcing solutions in accordance with EU and Irish laws.

b. SME Working Group

The SME Working Group was established to address issues affecting SME participation in public procurement. Representatives include the Department of Jobs, Enterprise and Innovation, Enterprise Ireland (EI), InterTrade Ireland (ITI), the Competition and Consumer Protection Commission (CCPC), the Irish Business and Employers' Confederation (IBEC), the Small Firms Association (SFA), the Construction Industry Federation (CIF), Chambers Ireland and the Irish Small and Medium Enterprises Association (ISME). This Group is chaired by Minister of State Murphy in accordance with the Programme for Government.

c. SME High Level Group

The OGP and the Department of Jobs, Enterprise and Innovation set up the High Level Group on SME Access to Public Procurement in 2013. The focus of this Group is to develop policies to support SMEs in accessing public procurement opportunities. The Group consists of representatives from OGP, the Department of Jobs, Enterprise and Innovation, EI and ITI and is chaired by the Chief Procurement Officer. A Progress Report launched in January this year gives information on the work of the High Level Group to date, which included:

- Monitoring the delivery of commitments in the Action Plan for Jobs in relation to SME access to procurement and developing further strategies to improve SMEs access
- The introduction of Circular 10/14: Initiatives to assist SMEs in Public Procurement (updating Circular 10/10)
- How SMEs can access public procurement opportunities via the OGP Published Schedule, eTenders, the Government's national tendering platform and OGP's Helpdesk
- The Meet the Buyer Programme, which allows SMEs to gain direct access to Public Sector Buyers
- Training and Developments opportunities to assist SMEs to develop their tendering skills and build consortia.

d. Public Sector Spend and Tender Analysis Report 2014

Minister of State Murphy launched the OGP's Public Service Spend and Tendering Analysis for 2014 Report in September. The report analysed data (€3.9bn of expenditure) from across the public service on where public funds are spent on goods and services. Key findings in the report include that 95% of the State's expenditure is with firms within the State and the majority of the spend analysed is with SMEs.

e. Tender Advisory Service (TAS)

TAS, launched in December 2014, provides an informal outlet for potential suppliers to raise concerns in relation to live tender processes. The service became operational with effect from 1 February 2015 and is managed by the OGP. The OGP has conducted a review of the first year of operation. The report concludes by recommending that the service should be continued for another year and efforts should be made to increase awareness amongst both supplies and buyers. Initial feedback from industry representative bodies has been positive. The Programme for Government provides for an external review of TAS and this will be undertaken in the New Year.

f. Public Procurement Opportunities

The introduction of the TAS and the on-going quarterly publication of a pipeline of projects by OGP are measures aimed at encouraging businesses and SMEs to participate in the tendering processes. It is also very important that SMEs develop the knowledge and skills to allow them participate successfully in modern procurement procedures. This is being addressed by the work carried out by both Enterprise Ireland and InterTrade Ireland in organising "Go-To-Tender" workshops, "Meet the Buyer" events and consortia training aimed specifically at the SME sectors. Suppliers including SMEs are encouraged to fully use e-Tenders and avail of its facilities in relation to registration, e-tendering and automatic alerts in relation to future tendering opportunities.

g. Some notable statistics

It is accepted that putting contracts out to competition to ensure value for money will stimulate the market, and that in any competitive process, there will be more losers than winners, e.g. sporting analogy, only one team can win the world cup or All-Ireland. The incumbent may not be successful in the competition. However, they and other suppliers in the market or locality will be able to compete for the business. The candidate with the best quality / price offer will be successful.

There is a perception that the move towards aggregation will mean that public tender competitions will be won by larger foreign companies and that the SME Sector may be crowded out of the market. However, this is not borne out by the facts to date. For example, 95% of the spend analysed is with firms with an Irish base. It should also be noted that there are a lot of lower value opportunities for the SME Sector as only contracts valued above €25k have to be published on the eTenders, the Government's national tendering platform. There is also a perception that lowest price is the most important factor in competitive processes but this is not the case; it is the best quality / price ratio that is used in the majority of cases with quality being the most important factor. Some statistics are set out below:

- 95% of the analysed spend is with firms with a base in the State;
- The majority of the spend analysed is with SMEs;
- Total number of OGP Frameworks (FWs) to date – 94;
- 68% of OGP Framework members are SMEs;
- 89% of OGP FWs were established with a mix of both quality and cost as award criteria with the median split was 60/40 in favour of quality; and
- 63% of OGP FWs have multiple lots, facilitating SME access.

7. Social Clauses

The Government is keen to explore to scope for including social clauses in public contracts where they are suited to the objective of the contract and would have the greatest impact. In this context, the OGP is examining social clauses with a view to assessing where they can be deployed to contribute to employment or training opportunities for the long term unemployed. It is important to adopt a targeted approach to the use of social clauses in contracts where employers are likely to be hiring additional workers to deliver the contract. This is likely to mitigate the risk of displacing workers already in employment while offering the opportunity of assisting with labour activation measures for the long-term unemployed. The approach was piloted in the Grangegorman Development and the Devolved Schools Build Programme. Experience of these pilots have been positive and is contributing to the development of policy on this issue. However, this is a complex area and account must also be taken to ensure that:

- value for money is not adversely affected;
- additional costs are not placed on domestic suppliers relative to other potential suppliers;
- contracts are of a minimum scale to absorb the increased administrative requirements; and
- the targeted benefit is capable of being measured and monitored during the execution of the contract.

In this context also, care must be taken not to disproportionately impact on SME's bidding for public contracts.

It should be pointed out that social clauses come at a premium and that the SME representative bodies have significant concerns that such clauses will mitigate against their members.

8. Construction Procurement

All public capital projects are required to adhere to the Capital Works Management Framework (CWMF) which contains an integrated set of contractual provisions, guidance material, technical templates and procedures which cover all aspects of the delivery process of a public works project from inception to final project delivery and review. The OGP will be developing a Medium Term Strategy for the procurement of public works projects in light of the new directives and the considerable number of developments in the construction industry in recent years.

9. Next Steps

Ireland's procurement reform programme has been successful in establishing new structures and building momentum but, of course, more needs to be done. Frameworks must balance value for money with social considerations and SME access. The OGP will continue to engage with the business and SME sectors and strive to enhance the measures already in place to support SME access to public procurement opportunities.