



## **Inquiry into Public Procurement**

### **Response of the Law Society of Northern Ireland**

40 Linenhall Street  
Belfast BT2 8BA  
Tel: 02890 231614  
Fax: 02890 232606  
Email: [info@lawsoc-ni.org](mailto:info@lawsoc-ni.org)  
Website: [www.lawsoc-ni.org](http://www.lawsoc-ni.org)

## **RESPONSE OF THE LAW SOCIETY OF NORTHERN IRELAND**

- 1.1 The Law Society is the professional body established by Royal Charter and invested with statutory functions in relation to solicitors (primarily under the Solicitors (NI) Order 1976, as amended). The functions of the Law Society are to regulate responsibly and in the public interest the solicitors' profession in Northern Ireland and to represent solicitors' interests.
- 1.2 The Law Society represents over 2,200 solicitors working in some 550 firms based in over 74 geographical locations throughout Northern Ireland. Members of the Society represent private clients in legal matters. This makes the Society uniquely placed to comment on policy and law reform proposals.
- 1.3 The Society welcomes the opportunity to make a submission to the Assembly Committee for the Department of Finance and Personnel's inquiry into Public Procurement Practice in Northern Ireland. The Society has previously and continues to raise it's concerns in relation to current Government practice in the procurement of legal skills with the Department and welcomes the opportunity to raise it's concerns with the Committee.

### **Current Practice of Public Procurement in Relation to Legal Services**

- 2.1 A solicitor's firm may be classified as a small or medium sized enterprise as defined by the European Union.<sup>1</sup> The role of solicitors' firms in the economy is often underestimated, however the existence of a well skilled legal sector is a prerequisite to a vibrant economy. Solicitors' firms advise clients including businesses on legal matters ensuring legal certainty for business ventures and facilitating commerce.
- 2.2 A number of solicitors' firms have raised concerns with the Society in relation to their

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<sup>1</sup> Companies classified as small and medium sized enterprises as defined officially by the EU as those with fewer than 250 employees and which are independent from larger companies.

experience of the tendering process for the provision of legal services to Government in Northern Ireland. The Society fully understands the legal framework which governs the procurement process and EU provisions governing the free movement of goods and has had regard to these in drafting its submission.

### **Relevant Expertise and Personnel Expertise**

2.3.1 The experience of solicitors' firms based in Northern Ireland suggests that in assessing relevant expertise and personnel expertise, including knowledge and skills an overemphasis is placed on experience of having provided legal services relating to large scale Government projects in other jurisdictions. Expertise gathered providing legal services on smaller scale Government projects and even large scale private client projects in this jurisdiction often is underestimated. This is particularly true of contracts for the procurement of legal services relating to Private Finance Initiative (PFI) and Public Private Partnership (PPP) projects.

2.3.2 This emphasis places Northern Irish firms at a competitive disadvantage to larger firms based in England and Wales who often have particular experience of providing services relating to large scale Government contracts of high value. This is despite the fact much of the expertise required to provide such services can be developed by providing services relating to smaller scale projects and to large scale private client projects. The Society's view is that the consideration of relevant expertise should place a greater emphasis on the legal issues advised on rather than simply the quantum of the relevant project. Whilst this factor may be of significant relevance in the assessment of other service providers, for legal services it is the legal issues advised upon which are of greater importance than the quantum of the specific project.

2.3.3 Current criteria further appear to fail to acknowledge expertise of local law and practice. Northern Irish based firms have an integral knowledge of local law and practice, having such expertise greatly enhances their ability to advise Government

and ensures costs are kept to a minimum. Solicitor firms based in England and Wales when awarded a contract to provide a Government Department in Northern Ireland with legal services often rely on Northern Irish based firms to provide knowledge and expertise in the local law. Whilst collaborative initiatives such as these can bring benefits to all parties it is considered that local firms are well qualified to provide the full range of services required of Government, including those relating to PFI and PPP projects.

## **Cost**

2.4.1 The current criteria, despite the emphasis placed on value for money, weigh costs at only 20% of the tender. The Society considers this weighting not to be in the public or taxpayer's interest. It places Northern Irish based firms who are able to offer better value for money than larger firms in England and Wales at an unfair disadvantage. The Society queries why current practice so greatly undervalues the costs savings offered by Northern Irish firms given their broad base of relevant skills and experiences.

## **Insurance**

2.5.1 Legal firms providing legal services to Government are required to have a sufficient level of professional indemnity insurance cover to protect Government against any risk emerging in the provision of their services. This ensures protection of public funds and interests should any difficulties arise.

## **Final Comments**

3.1 The Society considers the current criteria are set in such a way as to under value the benefits which local firms can bring to Government. Local firms have a well developed broad base of legal skills and have developed expertise through advising both private and public clients in complex legal matters. The Society considers the current criteria undervalue the expertise which local firms hold and fail to take account of the costs savings they may offer.

3.2 The current criteria prevent the growth of the legal sector in this jurisdiction in contradiction to the Northern Ireland Executive objective as outlined in its Programme for Government 2008 –2011 of growing the private sector and the local economy.