



Northern Ireland
Assembly

**COMMITTEE
FOR THE OFFICE OF THE
FIRST MINISTER AND DEPUTY
FIRST MINISTER**

**OFFICIAL REPORT
(Hansard)**

Procurement Process

1 December 2010

NORTHERN IRELAND ASSEMBLY

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FOR THE OFFICE OF THE FIRST MINISTER AND
DEPUTY FIRST MINISTER**

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Members present for all or part of the proceedings:

Mr Tom Elliott (Chairperson)
Dr Stephen Farry (Deputy Chairperson)
Ms Martina Anderson
Mr Allan Bresland
Mr William Humphrey
Mrs Dolores Kelly
Mr Danny Kinahan
Mr George Robinson
Mr Jimmy Spratt

Witnesses:

Mr Des Armstrong) Department of Finance and Personnel
Mr Stewart Heaney)

The Chairperson (Mr Elliott):

Des and Stewart, you are very welcome. I would be grateful if you would give us a 10-minute presentation and leave yourselves available for questions. The meeting will be recorded by Hansard.

Mr Des Armstrong (Department of Finance and Personnel):

Thank you very much for allowing us to come along to talk to you. We submitted a paper to the

Committee last week, and I hope that members have had a chance to read it. Therefore, depending on what the Committee prefers, we are available to answer questions now or to take members through that paper.

The Chairperson:

Perhaps you would spend a few moments taking us through the paper.

Mr D Armstrong:

We picked up on a number of issues that the Committee raised during the evidence session on 30 June and provided some detail on the Committee's concerns. The key issues are: the Committee's interest in how small and medium-sized enterprises (SMEs) can carry out tender opportunities for government construction contracts; the treatment of subcontractors by main contractors; and the benefits that sustainability clauses can bring through the procurement process.

We recognise that SMEs are a major player in the economy in Northern Ireland and that public procurement expenditure has a major impact on that economy. We recognise, too, that we need to create a procurement system and process that allows access for SMEs. In the area of construction, there has been quite a bit of interest in how the frameworks assist in the delivery of programmes and projects and in the impact that they have on those that are not on those frameworks. As the Committee knows, there have been a number of legal challenges against the frameworks. We recognise that the economy is now in a different position — there is less activity in the construction sector — than it was when we set out to put those frameworks in place. However, we, and the rest of the centres of procurement expertise (COPEs), are clear that, in bringing forward a procurement strategy, we need to consider how it will impact on the local marketplace and ensure that it does not preclude local players.

We have also increased the visibility of government contracting opportunities. We have issued a guidance note on control limits, which states that all procurement opportunities over £30,000 must be advertised publicly, and we have put in place a new sourcing tool to allow us to do that. In doing so, we have centralised the visibility of contracting opportunities.

The issue of subcontractors and main contractors is important. We recognise that, although not all SMEs can take up a direct contract with government, many opportunities exist for them in

the supply chain. The performance of the supply chain has a direct impact on how successfully projects and programmes are delivered. The relationship between subcontractors and main contractors is an area of interest for us as we go forward, and we are focusing on making main contractors advertise their subcontracting opportunities and on ensuring that subcontractors are treated in a reasonably fair manner in relation to the conditions of contract and payment practice. We have some work to do in that area, but we are committed to doing it.

The final issue is that of social clauses. We have talked to the construction industry over a period and now have a set of broad agreements on how the industry can help to deliver social, economic and environmental measures through construction projects. The Central Procurement Directorate (CPD) has been putting those requirements into contracts for a fair period now. We have awarded about £210 million of contracts of various sizes and included those clauses in the contracts. The issue from the industry side is that, when those contracts are let, we must ensure that the commitments in the contracts are delivered.

That, I hope, was a reasonable summary of the points.

The Chairperson:

Thank you very much, Des. To be fair, the issue is, broadly, one for the Department of Finance and Personnel. However, this Committee and particularly the Strategic Investment Board (SIB) raised a number of issues. What mechanism exists in the procurement system to advise SMEs or to assist them in getting on to the select lists?

Mr D Armstrong:

We have done a fair bit of work on allowing access to the procurement system. As part of the work that we did with the construction industry, we set up a task group that drew in representatives from the industry and government construction clients. We reviewed the procurement process to identify potential barriers that would prevent SMEs from tendering for contracts. The pre-qualification process has been revised and agreed with the industry, and the industry tells us that that process is now fit for purpose and presents SMEs with opportunities to bid.

We have also been encouraging SMEs to join together to form consortia so that they have the size and capability to bid for individual projects. There have been some such bids, even in the

frameworks that were unsuccessful because of legal challenges. Smaller companies have come together to form a consortium that allowed them to bid for contracts. CPD has also attended a number of events at which buyers were brought in to allow us to explain the procurement process. Stewart has done quite a bit of work on that.

Mr Stewart Heaney (Department of Finance and Personnel):

Since March 2008, we have attended more than 40 meet-the-buyer events that involved some 2,300 industry representatives. Typically, those events set out the procurement process, demonstrate how suppliers can engage through the e-tendering portal and provide guidance, tips and hints on the way through the process. The events also point out that, during the procurement process, it is important to seek clarification on issues about which they are unsure. Three particular events, held jointly with the Construction Employers Federation, were attended by between 300 and 400 people. Those events walked suppliers through the new pre-qualification process, and the feedback was that the industry found them useful and beneficial. It is important that we engage with the industry at such events.

The Chairperson:

When you mention the construction industry, who exactly are you talking about?

Mr Heaney:

The Construction Industry Forum for Northern Ireland (CIFNI) is the main body that we use to engage with the construction industry. The forum is chaired by Des and draws its representatives from the Construction Industry Group for Northern Ireland (CIGNI), which includes a number of colleges such as the professional college that represents architects and engineers; the Construction Employers Federation, which is the principal representative of the main contractors; specialist subcontractors college representing as mechanical, electrical and structural engineering firms; product suppliers' colleges representing organisations such as the quarry products industry.

The Chairperson:

Are they broadly content with the process as it is delivered now? I still hear concerns, many of which come from the construction industry, that, because of the criteria, companies that do not have the experience or record of work cannot get on to the select lists. It is almost a vicious circle; unless a firm has experience and a track record, it cannot get on the list, and there is nothing there to help them unless they team up with a bigger firm as the minor partner.

Mr D Armstrong:

The industry has confirmed that the pre-qualification process is in place. We need to ensure that, in establishing criteria that will allow firms to bid for work, there are no barriers. For example, if a firm is required to have experience of building social housing, but has private sector housing experience, a social housing requirement among the criteria would present a barrier. Similarly, if a firm that tenders to build a school has experience in building sizeable institutions, such as prisons or hospitals, that should not present a barrier. We must consider the experience that exists in the company and decide whether it is relevant to a particular project.

In the past, some procurement practices may well have led to that type of situation, in which people focused on a particular sector or type of delivery, and those criteria would have been rolled out as part of normal practice. However COPEs are now aware that we need to ensure that such barriers are not put in place. I always tell the construction industry that, if it alerts us to examples of the existence of such barriers in any particular projects, we will talk to the individual COPE, or, if it is within CPD, we will look at how that documentation is put together. The main driver is to open up competition and to ensure that any barriers that exist are justifiable. We spend public money, and, therefore, we must ensure that companies are competent to deliver projects. However, we must also ensure that we do not put in place unnecessary barriers.

Ms M Anderson:

Thank you for your presentation, Des and Stewart. I have a number of questions, which I will try to get through quickly. You referred to the pre-qualification process. Can you tell us how many SMEs that were not on the list previously were able to get on to it as a result of the system that has been in place for quite some time? How many of them secured recent contracts? We are trying to circulate as much money as possible in the local economy, notwithstanding the European guidelines under which we must operate. I am interested in access, goods and services, and meet-the-buyer events. What have been the outworkings of those events for the industry? What are the evidential outworkings of your work and the changes that have taken place during the past year or two?

My final concern is about the revised sustainability documentation that some people are talking about, particularly with regard to the 40-week placements for apprenticeships. Forty weeks do not constitute an apprenticeship. We have all had experience with the New Deal. A

40-week placement will not cut it, particularly if labour value is taken into account, as opposed to the entire contract. Given the level of unemployment here, I am concerned that that marks a shift in the wrong direction.

Mr D Armstrong:

By way of an example on your first point about SMEs, of the nine construction works contracts that CPD awarded during the current financial year, eight were awarded to local firms and one to a firm from the Republic of Ireland.

Ms M Anderson:

Were those eight local firms on the list prior to that, or were they new entrants?

Mr D Armstrong:

We cannot provide that detail at today's meeting. We could, however, investigate that. The Committee for Finance and Personnel has highlighted to us the need to collect more data on the procurement process to create visibility on that sort of issue. Therefore, some work is ongoing to agree the set of data collection that would be needed, which we would, then, be able to publish as part of the annual report on procurement. We can go back and look at the information that we can get from COPEs and bring that together in an answer for you. Stewart has details that relate specifically to CPD. However, if you want us to find out whether those firms were new entrants to the procurement process, we would have to do some groundwork.

As regards the review of sustainability, at its most recent meeting on 11 November, the procurement board agreed a set of procurement guidance notes that are to be applied by Departments. COPEs will assist to ensure that that happens. CIFNI's proposals for social, economic and environmental measures were included as part of a guidance note on construction procurement. Therefore, the procurement board has now confirmed the original set of requirements that are in place for apprenticeships and unemployed people as those with which the Departments must work.

At the same time, we must recognise that those requirements were put in place at a time when the construction marketplace was buoyant. The feedback from the industry is that those requirements might present difficulties in the current economic climate. Stewart has been working with the industry to determine whether we can review how effective those requirements

are and whether we should bring forward new requirements.

Ms M Anderson:

That is what concerns me, Des. You might bring in new requirements that damage what the Executive are trying to do, particularly given the level of unemployment in the North and the pool of expertise among people who used to work in the industry and are now unemployed. Those people need help as well as those who require training and skills to become part of any kind of workforce. Therefore, I am concerned that you are changing the requirements. The tail cannot, and should not, wag the dog. The government are spending the money, and, therefore, they should be able to set the specifications in the tendering process so that they can deliver on other elements, such as social and economic justice.

Mr D Armstrong:

That is a valid point. The construction industry told us, in general terms, that, if government want a particular service or facility to be delivered, the industry will work to that as long as it is clearly specified. It is sensible to go back to the industry leaders to get feedback on the condition of the construction industry, and that must be brought into the debate.

We have had strong representations from some clients who do not want to move away from the original agreements and would, in fact, like them to be enhanced. We have always said that those arrangements with the construction industry are the basic arrangements; there is nothing in them that prevents clients from taking the particular focus that they want to take in the procurement process. That may have an impact on how the market responds to a particular procurement, and for example, it might be that fewer firms are willing to tender.

Ms M Anderson:

In this climate, I doubt that.

Mr D Armstrong:

Yes, the current climate is extremely difficult. That is why we must try to work with and support the industry.

Ms M Anderson:

This is about supporting the industry, recognising the people out there who need support and

trying to see how we can do that in an effective and efficient way.

Mr D Armstrong:

As I said, the procurement board has signed off on the original arrangements. If we want to change those, we will have to get the procurement board's approval. We need to keep on board with the industry and try to make sure that we can get into a position in which what is agreed across government construction clients has the support of the industry. That is a better position in which to be. However, at the end of the day, you might ask who the customer is.

Ms M Anderson:

Will the information on how many SMEs have benefited be shared with the Committee?

Mr D Armstrong:

As I said, we have some work to do, with a complex set of data, to make that information available. We are trying to use our e-sourcing system to give us that type of information.

Ms M Anderson:

I find it a wee bit strange that you have a tracking system in place but are not tracking that kind of information in your own COPE. You will know that people are keen to have that evidence.

Mr D Armstrong:

We have that information for CPD. If you want a complete answer, we will work with the other COPEs to provide it to you.

Dr Farry:

You are welcome, Des and Stewart. It is probably at least six months since the Finance Committee published its report on the inquiry into procurement. Will you give us a flavour of how you have addressed the recommendations of that report, particularly those that relate to this Committee's responsibilities, which centre on social clauses and sustainability?

I have two specific questions on the social clauses from the two ends of the spectrum. First, how do you go about enforcing social clauses? If a company says that it will take on a certain number of apprentices, how can you ensure that it does so? Secondly, at the other end of the spectrum, is there any evidence that the use of social clauses has a detrimental effect on the price

that contractors charge? I appreciate that, in a fluid economic situation, it is difficult to disaggregate all of that information. If the cost increases, is that mitigated or balanced out by the training benefits that, in turn, have a helpful effect on other aspects of the public purse, such as less state support being required for training?

Mr D Armstrong:

The Committee for Finance and Personnel produced a report with 54 recommendations to be taken forward by a range of bodies. Not all of them, thankfully, were directed at CPD or the centres of procurement expertise. The aim of the Committee report is to create a procurement community that has a focus on maximising the benefit that procurement can have for the economy in Northern Ireland, as set out in the Programme for Government. It will also create a clear focus on the items of policy that can be delivered through procurement.

There are benefits of joining up government: if a Department has a responsibility for apprenticeships and there is a demand on the construction industry to provide apprenticeships, that brings government together. When the report was published, we were able to accept 30 recommendations as being worked on or already being implemented through drafts of guidance notes on procurement. We broke up the remainder of those recommendations, and we are working on them. Our target is to have a substantive response to each of those recommendations by the end of March next year. The Committee for Finance and Personnel was impatient with us in that regard.

Dr Farry:

Absolutely.

Mr D Armstrong:

I can understand that, but we have made good progress.

At the procurement board meeting on 11 November, we put forward a proposal to change the definition of best value for money. The current definition is the optimum combination of price and quality to meet the end user's requirement. It rolls off the tongue. The putting together of price and quality may enable us to bring socio-economic and environmental measures into the procurement process. The procurement board has agreed to support a recommendation to the Executive to change the definition to state more explicitly that price, quality and sustainability

should be taken together. That is a substantial change because it highlights the fact that contracts must include pricing, quality and sustainability elements. We will wait for the Executive to take that decision. We need to make sure that it complies with managing public money, and so forth.

The Chairperson:

Will you clarify how that differs from the current criterion?

Mr D Armstrong:

The current criterion is a combination of price and quality, which should allow the Departments to include socio-economic and environmental considerations in the specification. The change will state more explicitly that business cases must identify the sustainability measures that will be brought through as part of the contracts. It will lift sustainability and give it some weight, alongside price and quality, in the consideration.

We have to recognise that virtually all contracts in Northern Ireland are awarded on the basis of a quality submission, a pricing submission and sustainability in the social clauses. The premise is, therefore, that, unless the contractor delivers all three elements, best value for money will not be achieved. We must look at how contracts are managed. The construction industry says that, if a level playing field is created and government are seen to be a demanding client, the industry will respond. The guidance that we produced on contract management states that those elements are as important as placing brick on brick and that the social clauses must come through. Pricing, obviously, is also a key consideration.

The contractual position is that there are defaults under the contract, and contract management has to be applied to the contractors. At the moment, we are considering potential ways to affect the opportunities of contractors who have defaulted to bid for future government work. The procurement regulations are not particularly helpful in allowing us to exclude suppliers. We always try to work with contractors to get them to comply but, in the event of a breakdown and their not delivering successfully, we can move to terminate a contract. That type of issue must be taken forward and factored into what tendering opportunities contractors will get. If we can produce a system that works like that, it would be a key lever.

Dr Farry:

You will appreciate that that differs considerably from a situation in which a clerk of works

inspects a wall to determine whether it is built to specifications and whether it is straight or crooked? That is fairly straightforward, and the whole culture of the industry is based around those types of judgements. However, it is, perhaps, more difficult to assess whether an employee is an apprentice, long-term unemployed or has been in the company for many years. That may require a different kind of monitoring.

Mr D Armstrong:

I agree with you. The first thing is that we have to get project managers to recognise that that is an important topic. Then we can rely on the contractor to provide reports. To make that work, we need other agencies of government supporting contractors with the delivery. When it comes to monitoring apprenticeships, there may be an agency that knows the detail of apprenticeships, and the provision of unemployed people could be done through the agencies that are set up to do that type of work. We are pushing on to the agenda of project managers that it is an important issue, and it needs to be reported in the same way as they look at the work programme to see whether they are running short of bricks for a wall.

That requires a little change in culture. Those are new arrangements that are being taken forward, and we need to make sure that people are trained in contract management to recognise that as an important issue. Similarly, payment practices and the treatment of subcontractors fall into that category. In the past, perhaps government did not make an issue of looking into the supply chain and did not recognise the benefits that could be delivered, but the situation is different now. We are using procurement differently, and we need to recognise that some of the practices of the past must change.

One of the odd things about the enforcement issue is that, if we tried to introduce a financial penalty because someone did not provide an apprentice, for example, it may not work because that is a relatively low-value area of pricing. That is the feedback that we are getting. The clear feedback from those who were involved in CPD's pilot on the unemployed a while back was that it did not cost much to produce employment plans and that bringing people on board did not cost an awful lot. However, we expect all of the sustainability issues to be outlined in the business case.

Mr Humphrey:

Thank you all for the presentation. I think that I picked up that you had awarded contracts to the

value of £10 million.

Mr D Armstrong:

No; it was £210 million.

Mr Humphrey:

Sorry. Mindful of that level of potential investment in the Northern Ireland economy, I would like to ask a couple of questions. Given the Chairperson's earlier valid point, is there a focus on concentrating on establishing relationships with local companies? Several companies have told me how difficult it is to gain access to the process. Given the economic climate that prevails in Northern Ireland at the moment and the huge amount of money that £210 million is to the local economy, is there a focus on buying locally?

Mr D Armstrong:

No. We must be clear that the procurement process and the European directives on procurement prevent that type of focus. There are real dangers in trying to take such an approach.

The main driver on the directives is to open up and support the single market across Europe. In 2002, when Executive agreed the public procurement policy in Northern Ireland, the total public procurement spend across Europe was €1,500 billion, and only 14% of that was being advertised. Therefore, the directives are specifically set to ensure that there is open competition, no discrimination, equality of treatment and transparency. Those are the key issues.

Mr Humphrey:

I cannot imagine that that is applied in countries such as France or Spain.

Mr D Armstrong:

In respect of the procurement process, it does not matter whether people are from Lisburn or Lisbon. When the process starts, people have to be treated equally. The good thing is that, in that competitive, fair, open and transparent process, Northern Ireland firms have done very well.

Mr Humphrey:

What percentage of contracts goes to local firms?

Mr D Armstrong:

In respect of the Central Procurement Directorate, around 78% of supplies and services contracts have gone to local suppliers or suppliers with BT-type addresses. On the construction side, it is more than 90%.

Mr Humphrey:

I appreciate that it is taxpayers' money, so there must be value for money. However, there is a huge onus on us to ensure that local companies get fair and equitable treatment. Therefore, I welcome the work that you have been doing in reaching out at the 40 meet-the-buyer events.

It is important that we get the balance right between value for money and cost-effectiveness. An organisation that I am involved in recently purchased computers because they were the most competitively priced. The fact that the system is rubbish and that I have to spend money to replace it is a false economy. I sat on a government cross-border body until recently, and, for a time, I was chairperson of its audit committee, and I was always concerned that we went for the cheapest but not necessarily the best. I know that it is difficult for organisations, especially when it is government money, to stand over expenditure on more expensive products, but if they last longer and do a better job, are they not more cost-effective? How do you get the balance there?

Mr D Armstrong:

I will explain how the procurement process would typically address that. When a competition is run, there is a clear split between the level of assessment on the quality of the submission and the level on price. Therefore, we normally work on some sort of price:quality ratio, which varies depending on the type of job. What then typically happens is that a submission is required on how a supplier will fulfil the contract, and those details are assessed separately from the price. It is only when the two elements are brought together that the most economically advantageous offer is achieved.

On many occasions, the lowest price is not taken. It is a combination of the quality and pricing assessments. However, I agree with you. The old saying is that if people spend too much, they lose something, but if people spend too little, they lose the lot because they end up with a product that does not fulfil their requirements. That is the danger.

Mr Humphrey:

Finally, given that we are talking about public money, does CPD stretch into working with the Housing Executive?

Mr D Armstrong:

No.

Mr Humphrey:

I know that the Housing Executive is not the Committee's direct responsibility, but, as an elected representative, I know that from time to time some Housing Executive contractors do not deliver. That is not the best use of public money. That matter should be examined to ensure that a value-for-money assessment is conducted on contractors employed by organisations such as the Housing Executive because, frankly, many of them do not deliver.

The Chairperson:

That will be taken on board by members and fed back.

Mr Spratt:

I apologise for being late; I was held up at a Policing Board meeting. Thank you for your presentation. My question is probably more relevant to DFP, but I will ask it anyway. It relates to an issue that most of us have dealt with: small contractors who work for large contractors on jobs on which the large contractors are paid in stages, as is the case in all those contracts. My question concerns the fair payment charter and the project manager. In the past, smaller contractors experienced major difficulties in being paid upfront, despite the fact that a main contractor had been paid in stages for various elements of the job, and small contractors had completed their bits and pieces. How is that working out with the charter? How does the project manager check to make sure that payments are being made? What sanctions are there on major contractors who are not paying small contractors? I think that it is the exception rather than the rule, but it still happens. A small business can have its lights put out overnight because of a bad payment. I know of one case in local government in which the main contractor went belly up at the end of a job. He was accused of having walked away with "whatever", and a range of small contractors were left in a very serious situation, particularly given the present economic climate.

Mr D Armstrong:

I will give you an update on the charter. We have done a number of things. Payment practice in the construction industry has been recognised as an issue, and we intend to introduce legislation to try to address some of those issues not only in the public sector but in the private sector. Sometimes, the dynamic is the driver that produces that type of behaviour. If people are driving contractors into giving them the lowest price possible, those contractors need to be sure of the cash flow, and a culture in which payments to subcontractors are held back becomes the norm. That is what happens.

We have used more modern construction contracts, in which payments to the main contractor are evidenced by payments to subcontractors. Therefore, the dynamic changes immediately. Before main contractors are paid, they need to demonstrate, through an open book process, that they have paid their subcontractors. That system works on sizeable contracts. The cost of running that type of open book arrangement can be difficult for smaller projects. That is one approach that has been taken to change the dynamic.

The Chairperson:

Has the open book process been implemented in any cases? Has it been tested?

Mr Heaney:

The NEC3 type of contract has a number of options. Option C is geared around the open book process, which is widely used. It has been used in a number of current projects, and it has been used in the past by others.

Mr D Armstrong:

That system changes the dynamic. Why would a contractor hold back payment on a subcontractor? The cash flow situation becomes slightly different, but it can be used on sizeable projects only.

Mr Heaney:

The fair payment charter is for government contracts, and it was agreed with the Construction Industry Forum that it would be introduced from March 2010. Contracts in which that has been included are now being awarded, having allowed time for procurement. We agreed with the forum that we will review the effectiveness of the fair payment charter before its next meeting in

February, but we recognise the stigma attached with small subcontractors. If they raise those issues, future engagement with that contractor can be problematic. The concept of a client's project manager requesting reports from the contractor, going over those reports on payment at the project meetings is crucial in putting the issue on the agenda. Furthermore, that will be followed through and periodic checks will be carried out. The subcontractor will be told that the main contractor has said that he or she has paid the subcontractor, and the subcontractor will be asked whether that is the case. That process is starting to kick in, and we will work with the industry to review that over the coming months.

Outside government contracts, or across all contracts, we are also amending the Construction Contracts (Northern Ireland) Order 1997. The Construction Contracts (Amendment) Bill, which is currently at Consideration Stage, is designed to improve payment practices through the greater use of adjudication and clarification of the level of payment that is due and when it is due. It will also provide greater rights to firms to suspend work when they are not being paid. Those statutory measures are designed to apply across all contracts and not just government contracts. The combination of what is happening in government contracts and changes in legislation will, we hope, improve that process.

Mr Spratt:

Are sanctions available?

Mr Heaney:

Under an NEC3 contract, a subcontractor is automatically eligible for interest payments on a default payment. That ties in with Des's earlier point; when a contractor has a poor payment record, we need to engage with the industry to determine how that might affect future procurement opportunities with government. That is an important area of work; we need to consider all aspects of poor performance, whether that be payment, the delivery of sustainability, poor workmanship or whatever.

The Chairperson:

There is a problem in that smaller contractors in particular are sometimes reluctant to make complaints about the withholding of payments by bigger companies in case they do not get another contract. We need to consider how to discuss those issues with the industries. Many smaller contractors come to us for help, but they do not want to complain directly to bigger

contractors.

Mr Heaney:

That is why we put the onus on a client's project manager to ask that question. Rather than the subcontractor having to raise it, the client will raise it.

Mr Bresland:

Thank you for your presentation. Are any Departments using in-house services rather than the procurement process?

Mr D Armstrong:

Had you any specific area of work in mind?

Mr Bresland:

No.

Mr D Armstrong:

In the past, the Central Procurement Directorate used a framework to bring in design consultants to help on projects, because we had more work than we had capacity to handle in-house. We have our own in-house resources, but we have seen a bit of a downturn in our workload, which has had an impact on putting work out to the external market.

The Chairperson:

There is another way to put that question: are more services being contracted out through procurement, or are more being provided in-house than was the case five years ago? I assume that things are moving in the opposite direction.

Mr D Armstrong:

The projects that were badged as reform projects, in that they brought forward the records management system and the new accounting system, were largely outsourced. There is a mix of contractual arrangements in that situation. In general, there has been more outsourcing over the past while, and specific workload issues are being addressed in that way.

Ms M Anderson:

I want to ask you about the process in which SMEs come together in clusters to maximise the opportunity to obtain a tender and the kind of training that takes place. Are you involved in anything, for example, like the renaissance of Atlantic food authenticity and economic links (RAFAEL) project, which was used by the Department of Agriculture and Rural Development and the Department of Health, Social Services and Public Safety to supply food to patients at the Royal Victoria Hospital? It is my understanding that — I am not sure that my information is accurate — the food came from Wales. The Departments worked with the food suppliers and the hospital to obtain local produce. The SMEs came together, and training was offered. We are talking about the three elements of sustainability that the procurement process could be used for.

I wonder whether that is a pilot. Has it been rolled out? Can you use opportunities such as that for SMEs to come together and avail themselves of those kinds of contracts? Has CPD any involvement in the training of SMEs so that they can maximise those opportunities?

Mr D Armstrong:

We need to be careful with the procurement process. When that starts, CPD and the COPEs must be clear that all the bids coming in should be handled in exactly the same way. When contracts are awarded, there are opportunities for other agencies to support SMEs in getting into the supply chain. We provided some guidance on the procurement of food.

However, you are asking about upskilling suppliers to allow them to bid. We are working with the Department of Enterprise, Trade and Investment (DETI) to see how we can line up the procurement process in a fair and consistent way. We are trying to facilitate, through engagement with another agency, how suppliers might be upskilled, either for bidding for a main contract or for involvement in a subcontract.

In Wales, resources have been set aside to examine how contracts are awarded, what is in them and what can be provided locally.

The Chairperson:

I assume that there is no difficulty with individual Departments upskilling their representatives, or people from their industries, to help them to do that.

Ms M Anderson:

I wonder what is stopping us from doing what Wales does. Is this an opportunity to learn from what happens elsewhere and apply it to the North? If it happens in Wales, it is not at variance with EU legislation. How do we work in a new and innovative way, as outlined in the Programme for Government, to deliver for local SMEs? If it is being done in Wales, can we get a sense of the impact of that? Perhaps we can use a similar approach here.

Mr D Armstrong:

There are opportunities in the supply chain. That is what we have been saying. If we consider direct awards to main contractors, that produces a smaller number of hits than there are within the supply chain. That is why it is important that the supply chain operates effectively and that local suppliers are alerted not only to opportunities for a main contract but to what might be in a subcontract. CPD is not resourced, and may not be best placed, to do that. It produces a conflict of interest for us. However, we are talking to DETI about upskilling suppliers. There is an issue about how we make available or visible to the business community of Northern Ireland what is being purchased in the contracts and how they might get into that.

Mr G Robinson:

I also want to ask about contracts. In some cases, subcontractors are, to be blunt about it, cowboys. Who is responsible? Do main contractors put sanctions on subcontractors if they do a botched job? I am thinking of road projects in which a main contractor lets some of the work out to subcontractors, and sometimes that work leaves a lot to be desired.

Mr D Armstrong:

We promote the concept that the conditions of contract between a subcontractor and a main contractor should be similar to those between government and the main contractor. We believe that the benefits of the partnering approach that government has with a main contractor should flow down through the supply chain, so that conditions of contract and payment, and so forth, should be fair and reasonable.

Subcontracting is a feature of the construction industry. That is how the industry is organised. It would take a tremendous reshaping of the industry for it to use direct employees. That would have an impact on many businesses. However, in government, we should not accept a subcontractor who is of a lesser standard than a main contractor. The main contract may include,

as a part of the assessment, the subcontractors whom the contractor intends to use. However, if another subcontractor is needed for some reason, subcontractors who are of a lesser standard than a main contractor should not be accepted. That is not delivering on the price and quality bid that was made.

Mr G Robinson:

Sanctions may apply; is that right?

Mr D Armstrong:

Non-performance by a subcontractor will run up as a non-performance against the main contractor. Contract management should address that issue through a main contractor, either by removing the approval to use that subcontractor and finding a replacement or having a main contractor carry out remedial work.

Mr Kinahan:

Is there an independent review system? The Radox bid the other day was under the impression that £9 million could have been saved and 200 jobs created. The company that was awarded the contract actually uses the Radox diagnostic system. We have basically shot ourselves in the foot. We have gone for something that is more expensive and lost out on jobs. Is there a review system that allows us to go back to ensure that we get it right each time or to find out the real reasons why a bid was not successful?

Mr D Armstrong:

Unsuccessful tenderers have a direct opportunity for legal challenge through the legislation; they can exercise that right. As well as that, each COPE should have a complaints procedure in operation, whereby individual suppliers can complain if they feel that treatment has been unfair and needs be resolved. Those complaints are gathered up, and a summary is provided to the procurement board. The procurement board will see all those complaints.

CPD has a two-stage process. The first is to try to resolve the issue with those involved in the procurement. If that does not work, the supplier will complain. I will ask the divisional director to carry out an investigation and to report back to the supplier with the reasons why the complaint was, or was not, upheld. If that does not resolve the issue, I have an agreement with the Office of Government Commerce (OGC) to which I will refer its supplier feedback service. It will carry

out an independent review of the papers and report back, either in favour or against. There are a number of mechanisms beyond the legal challenge.

The Chairperson:

Thank you very much.

Ms M Anderson:

May I ask a question on that issue? I am trying to understand the complaints procedure. Is the COPE complaint procedure in place for contractors whose tender was unsuccessful, or is it for those who were awarded the contract but then have a complaint? You probably recognise the fact that SMEs do not generally complain about main contracts. I have heard time out of numbers that SMEs do not want to bite the hand that feeds them. They are frightened that complaining might impact them negatively. Are you identifying a gap in which CPD does not receive complaints from SMEs? We all hear about such complaints across our constituencies. Are you conscious of that? Are COPEs partly there to afford that kind of engagement? If that is not happening, they need to be more proactive.

Mr D Armstrong:

We produced guidance notes on the disclosure of information throughout the procurement process. There should be a consistent approach to that across COPEs. It is good practice for us, as procurement professionals, to invite debriefs. Suppliers can come in and be told how and why their bid's scoring was deficient. That allows suppliers to improve, and some have really taken it to heart. Even when suppliers have a winning bid, they will want to know, through a debrief process, how their bid could be better. We are considering how we might encourage suppliers who have an issue with the procurement process to flag it up at the earliest possible opportunity.

It is pretty disastrous if suppliers start to raise issues when they are already in the award process. That simply holds up the awarding of a contract. I would much prefer it if we put out a document and that suppliers came back to say that they did not like a certain element or that we need to think about another element again. That will at least allow us to correct genuine mistakes. If clarification is needed, we can consider that and make the process more efficient. It is odd: we do not like complaints, but complaints are opportunities for us to learn. If we consistently receive complaints on a certain issue, we will examine those complaints and try to change the process.

The Chairperson:

Thank you very much, Des and Stewart. That was very useful and helpful.