

PUBLIC PROCUREMENT AND SMEs – AN UPDATE

BACKGROUND

This paper provides a short update to research paper [119/08](#). Since that paper was produced there have been two significant developments in the public procurement field which are of relevance to the Committee for Finance and Personnel's Inquiry into Public Procurement.

Part A) 'Accelerating the SME economic engine: through transparent, simple and strategic procurement' was published by the UK Treasury in November 2008.¹ This was the report of the Glover Committee, which was an advisory committee tasked by the Chancellor to provide recommendations on reducing barriers to SMEs competing for public contracts.

Part B) 'Using Public Procurement to Stimulate Innovation and SME Access to Public Contracts' was published by the ROI Department of Enterprise, Trade and Employment in July 2009.² This was the report of the Procurement Innovation Group, established by DETE with the objectives to:

- Raise awareness of the benefits of using public procurement to stimulate research and innovation;
- Identify obstacles or problems in the current procurement process which impede opportunities for innovation;
- Examine the potential of the Public Procurement Directives to ensure a level playing field for all innovative companies wishing to participate in public tendering;
- Create an environment in which the potential of innovation for public procurement can be realised; and
- Make recommendations on how objectives may be achieved.

PART A: ACCELERATING THE SME ECONOMIC ENGINE

The report contained twelve recommendations for improving SME participation. These are summarised in the box below:

¹ The document can be downloaded from the Treasury website at: http://www.hm-treasury.gov.uk/glover_review_index.htm

² The document can be downloaded from the DETE website at: <http://www.entemp.ie/publications/trade/2009/procurementinnovationgroup.pdf>

Box 1.A: Summary of recommendations

Improving SME participation in public procurement is best achieved by making the market work effectively to allow SMEs to compete effectively for contracts. This requires that opportunities should be transparent, the process as simple as possible, and that a strategic approach to procurement encourages innovation and gives SMEs a fair deal when they are sub-contractors. In detail:

Transparency

1. By 2010, contract opportunities above £20,000 across the whole public sector should be advertised electronically with standard indicative contract value ranges, and accessible through a single, free, easy to search online portal.
2. Government should issue all tender documentation electronically by 2010 and this should be kept as brief as possible. Businesses should be permitted to tender electronically for all public sector contracts by 2010; no "paper only" tenders should be required after this date, with an ambition for all tenders to be electronic by 2012.
3. Details of contract awardees should be published online in a standard format within 48 days of contract signature, accessible via the single portal by 2010.
4. Tendering opportunities thought especially suitable for SMEs or consortia of SMEs should be flagged by the procurer during the advertising process. Government should provide strategic and detailed guidance for procuring authorities on assessing suitable contracts for flagging, based on risk, value and market maturity.

Simplicity

5. Qualification criteria that are not specific to a sector should be standardised and incorporated in all pre-qualification questionnaires so that businesses do not need to repeatedly submit the same core information in different formats.
6. Procurers should give businesses the opportunity to provide details of all previous relevant experience when bidding for contracts, not just public sector experience. This should be taken into account when selecting successful tenderers.
7. Procurers should ensure that, where they rely on a particular accreditation scheme or standard as part of the process of prequalification or contract award, that they take a flexible approach. Businesses should be given the opportunity to provide evidence that they can meet the contract requirements by reference to other similar equivalent accreditations or standards they may already hold – especially where these have been recognised or required by other public sector procurers.

Strategic Procurement

8. Departments should use their Innovation Procurement Plans to set out how procurement aligns with their overall commercial strategy, encourages innovation and gives advanced notice of long-term procurement plans.
9. Government should encourage wider use of outcome-based specifications across the public sector, as a means of driving innovation.
10. Government should expect and enable prime contractors to make their sub-contracting opportunities accessible through the single, online portal created in Recommendation 1.

11. Through contract management, Government should ensure that SMEs and other firms acting as sub-contractors obtain contract conditions, including promptness of payment terms, that are no worse than those applicable to the prime contractor.

Measurement

12. The Committee recommends that all central government departments should report annually on the value of their contract spend with SMEs, creating a reliable single source of quantitative data which can be used to inform future policy decisions and evaluate the recommendations in this report.

The UK Government **accepted all of the recommendations.**³

HOW THE RECOMMENDATIONS RELATE TO THE CFP INQUIRY

It is immediately apparent that a number of the recommendations are designed to address issues that have been raised by witnesses in the course of the Committee's current inquiry. In the analysis below, references are made to particular stakeholder's evidence. This is not intended to be an exhaustive analysis but instead to give a flavour of the range of issues raised locally by a variety of witnesses. The full text of the written evidence is/will be available on the Committee's web pages at: http://www.niassembly.gov.uk/finance/2007mandate/finhome_07.htm

Comment [c1]: At the time of writing submissions are not available on the website.

Recommendations One to Three are all related to the accessibility and timeliness of information in relation to tender documentation. These issues were raised by Lestas Consulting in its written evidence. Among others things it called for "consistency in approach across public bodies when tendering under EU thresholds and [...] an open, objective and transparent procurement process".

Similarly, the Royal Institution of Chartered Surveyors called for "consistent application of evaluation and assessment criteria, tender documentation and constructive debriefs" across all Centres of Procurement Expertise.

The Chartered Institute of Purchasing and Supply stated its support for "clear guidance written from the supplier's viewpoint in plain English."

Recommendation Four is aimed at increasing visibility of contracts that are thought to be especially suitable for SME through a process of flagging. The Independent Consultant Adviser Group argued that contracting authorities should "identify specialised components of projects and consider tendering them separately".

The Chartered Institute of Purchasing and Supply highlighted the CompeteFor website created by the Olympic Delivery team that is intended to match companies to opportunities in the London 2012 supply chain. This was identified by them as an area for immediate action in Northern Ireland.

The NI Construction Industry Group suggested that "consideration should be given to separate minor works frameworks."

Recommendation Five suggests standardisation of some pre-qualification information to reduce the need for repeated re-submission of the same information. The CBI Northern Ireland reported that its survey of business highlighted this issue in

³ Source: HM Treasury

Northern Ireland. It called for “reduced information demands” and noted that “businesses applying for public work across a number of procurement bodies are faced with different requirements and formats, even for submitting the most basic company information”.

In a similar vein, the Federation of Small Businesses NI called for the introduction of a “universal pre-qualification questionnaire that [...] would only have to be filled in once and then logged for future bids.”

Recommendation Six suggests that all relevant experience should be taken into account when assessing a bid, not just public sector experience. This issue was raised by The Independent Consultant Adviser Group in its written evidence. It was argued that “relevant and demonstrably applicable transferrable experience” should have equal value in the assessment process.

Similarly, the Law Society of Northern Ireland suggested that when assessing relevant expertise contracting authorities placed “an overemphasis [...] on experience of having provided legal services relating to large scale Government projects in other jurisdictions” and that “expertise gathered on a smaller scale Government projects and even large scale private client projects in this jurisdiction often is underestimated.”

Recommendation Seven requires contracting authorities to take a flexible approach to accreditation schemes or standards in the bidding process. Bryson House highlighted a lack of independent accreditation as a particular barrier to social enterprises. It recommended “lower thresholds or greater flexibility [...] to encourage social enterprises to participate.”

Recommendation Eight relates to Innovation Procurement Plans which each UK Government department is required to produce. There appears to be no equivalent requirement in Northern Ireland.

Recommendation Nine encourages use of outcome-based rather than process-based specifications. The NI Council for Voluntary Action stated that the public sector “is not good at focussing on outcomes” and that after a contract is signed and being delivered “they demand information on many process issues and may audit the same project up to four times per year.”

Recommendations Ten and Eleven relate to the accessibility of sub-contracting opportunities and the terms of sub-contracts. The Federation of Small Businesses NI argued that “if large contractors are used, they should in turn be required to advertise for their subcontractors, and to select from them on a Value-for-Money basis.”

Similarly, the Chartered Institute of Purchasing and Supply suggested that “making awarded contracts more publicly available could allow SMEs access at the second tier supplier level.”

Recommendation Twelve advised that all central government departments should report annually on the value of contracts with SMEs. Lestas consulting argued central government in Northern Ireland “needs to provide statistics on how successful small companies are on getting onto the framework but more importantly, how successful small companies are at securing contracts from the framework.”

IMPLEMENTATION OF THE RECOMMENDATIONS

Recommendation One was implemented through the removal of the registration fee on www.supply2.gov.uk which carries notices in relation to below-threshold tenders.⁴

The Office of Government Commerce (OGC) has taken forward implementation of Recommendation Seven. It produced 'procurement policy notes' on accreditation⁵ and standards⁶ in August 2009. It is clearly too soon to assess whether the policy intention of implementing the recommendation will be effective and what improvements might result for potential suppliers.

A number of other draft documents were published for consultation in relation to Recommendations Two to Seven under the following titles: contract award notification; electronic tendering guidance; contract flagging and supplier selection guidance, and; below threshold pre-qualification questionnaire guidance.⁷ These consultations closed on 18 September 2009, so these items remain works-in-progress.

The remaining Recommendations (Eight to Twelve) relate more to strategic than to technical issues. Responsibility for implementation is spread across government and over a longer timeframe.

PART B: USING PUBLIC PROCUREMENT TO STIMULATE INNOVATION AND SME ACCESS TO PUBLIC CONTRACTS

This report contained a number of key findings:

1. Public sector officials are very often risk averse.
2. Obstacles such as risk aversion arise from lack of practical experience and expertise on the part of procurers rather than from any legal considerations.
3. There is little hard empirical evidence to assess the precise effects of current public procurement practices regarding stimulating innovation.
4. It is frequently the supplier who identifies and initiates the innovation, rather than the procuring organisation.
5. Engagement with the market prior to tender is an essential component of SMART procurement as it enables the procurer to understand and identify what is available and whether alternative solutions exist.
6. Current trends in public sector procurement towards larger and longer contracts, and rationalizing the number of suppliers, means that smaller businesses often find the resulting contracts too large for them.

⁴ <http://nds.coi.gov.uk/content/detail.aspx?NewsAreaId=2&ReleaseID=405668&SubjectId=2>

⁵ http://www.ogc.gov.uk/documents/commodities_database/PPN_09_09_Third_Party_Accreditors.pdf

⁶ http://www.ogc.gov.uk/documents/commodities_database/PPN_10_09_Policy_on_Standards_and_References.pdf

⁷ http://www.ogc.gov.uk/creating_opportunities_for_smes_and_third_sector_organisations_access_for_all_-_documentation_for_consultation.asp

7. Laying down overly restrictive selection criteria could exclude young, innovative enterprises

The conclusions and recommendations based on these findings are contained in the box below:

1. A key to successful procurement for innovation is the “intelligent customer” who is able to demand, source and identify potential new solutions, and can specify and manage contracts of this kind throughout their lifecycle.
2. Professionalise the procurement function within the public sector and thereby raise the role and profile of the function.
3. Each public sector organisation with a substantial procurement budget should embed the “*Buying Innovation - 10 Step Guide*” into its procurement procedures.
4. Measures to improve the quality of procurement information available would reduce perceived disadvantages experienced by, in particular, small and micro enterprises.
5. Sub-dividing contracts into lots and thereby further opening the way for SMEs to participate will broaden competition.
6. Subcontracting opportunities should be encouraged and made more visible.
7. The eTenders website should include a highly visible section to advertise low value contracts.
8. Contracting authorities should avoid disproportionate qualification and financial requirements in their tender documents.

Also published in July 2009 was a ten-step guide to procuring innovative products – mentioned above in recommendation three.⁸ This guide sets out how contracting authorities in the Republic of Ireland should approach their procurements.

In relation to SMEs there are a number of identified key steps, such as being open to consortia bids from SMEs; splitting tenders into lots; making sub-contracting opportunities more available and so on, which echo the recommendations contained in the box above.

HOW THE RECOMMENDATIONS RELATE TO THE CFP INQUIRY

Examination of the key findings and recommendations shows that many are aimed at addressing similar issues as the Glover recommendations considered above. A number of the key findings are also similar to the issues raised by witnesses in the course of the Committee’s Inquiry, although the focus of this work was somewhat different: there is a focus in the terms of reference on innovation, rather than the Committee’s focus on improving wider social outcomes.

IMPLEMENTATION

The report and its findings were only published a short time ago, so any assessment of its impact is not yet possible.

⁸<http://www.entemp.ie/publications/trade/2009/buyinginnovation.pdf>

A number of specific aims has been identified in relation to the report. These are to:

1. redesign the e-tenders website and facilitate more detailed reporting of statistics. The new website will also be more SME friendly;
2. draft new policy guidance in relation to issues such as financial criteria and other qualification requirements;
3. organise networks of procurement professionals;
4. develop targeted and accredited procurement training and education measures, and;
5. streamline tender and contract documentation across the public sector.

Responsibility for implementation rests with the National Public Procurement Operations Unit (NPPOU) in the Office of Public Works. No overall timeline for implementation has yet been established but the Procurement Innovation Group will continue to meet every six months to monitor implementation and will report on progress to the Tánaiste.⁹

October 2009

⁹ Source: communication from DETE