

Stay competitive Public Sector Procurement

*How public sector
procurement can
contribute to improving
our national
competitiveness*

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In this article we take a look at how public sector procurement can contribute to improving our competitiveness as a nation from the perspective of both the buyer and supplier.

The Issues for the Public Sector

Public sector procurement regulations have been designed to provide transparency and equity in the procurement process, as well as to ensure value for money in public expenditure. Arguably however, the emphasis has focused on equity and transparency above value for money. Freedom of Information legislation and supplier challenges to procurement decisions have sometimes led to a “tick the box” approach to procurement, where compliance has become the end rather than the means to an end. This can result in poor value for money for the state as well as unnecessary cost and frustration for both buyers and suppliers.

In the current budgetary environment, it goes without saying that there is an urgent need to do everything possible to maximise value for money in public sector procurement. Public sector procurement practices in Ireland, led by the Department of Finance (NPPPU) and the National Procurement Service (NPS) are moving in the right direction but there is a long way to go. Comparing against other jurisdictions, it is clear that some public sector procurement practices elsewhere have advanced significantly. For example, the UK Office of Government Commerce (OGC) and their agency Buying Solutions have introduced a wide variety of national contracts and frameworks supported by innovations such as online ordering and eAuctions.

The first procurement strategy for the public sector was published in 2002 and most of the recommendations in that strategy are still to be implemented. Questions do need to be answered as to why this is the case. There is now an urgent need to accelerate this transformation. Likewise, the McCarthy Report (Bord Snip) identified the €10bn annual expenditure on procurement of products and services (excluding works) as a major area of potential savings, yet many of their recommendations, published in 2009, have not yet been actioned.

Some of the areas which need to be addressed by the public sector are:-

- Upskilling staff in professional procurement. While some progress has been made in this area, through the introduction of public procurement courses and qualifications, there still remains a major procurement skills deficit in many public sector organisations.
- Improving the quality of tender documents. Largely as a result of the skills deficit, many public sector tenders that are published are of poor quality, both in terms of stating the product or service requirements and the terms and conditions of the procurement. It is not uncommon to find tenders that include extracts from previous tender documents, specifying inappropriate or inapplicable conditions which can have the effect of precluding some of the best potential bids. Many tenders also require inordinate amounts of unnecessary information from bidders, making it difficult for small and medium-sized enterprises (SMEs) in particular, to respond.
- Improving the tendering process. Tender processes can often be long-winded and inefficient for both buyers and suppliers. I was personally involved in a tendering process where the buying team of twelve sat through eleven full days of presentations from eleven individual suppliers – each of whom had a team of at least five. A further issue is the number of tenders which are cancelled mid-stream or are never awarded, usually reflecting the inadequacy of the original business case or of the specification / approval process.

The Challenge of Winning tenders in the Public Sector

Public sector organisations are slowly but surely beginning to focus on procurement. Competition for winning business in the public sector in Ireland has intensified. There are a number of reasons for this:-

- Introducing national and sectoral contracts and frameworks. The benefits of developing category strategies and sourcing plans at a national or sectoral level are clear and well-understood. However, due to the delay in setting up the National Procurement Service (NPS), which was first recommended in the public sector by the Government in 2002, minimal progress has been made in this regard.
 - Automation and eProcurement. In most areas of the public sector in Ireland, procurement processes are predominantly manual - paper orders and invoices and cheque payments. The private sector and most other public sector jurisdictions within the EU have moved far ahead of Ireland in this regard and have reaped the benefits, not just in efficiency savings but also in price reductions. We must move on this now – there are sufficient examples of successful strategies in other jurisdictions which we could, and should, adopt.
 - Standardised terms and conditions. With the exception of the construction area, there are no standards in place for public sector contract terms and conditions. As a consequence, contracts take longer to complete, there is no consistency in the terms which can be negotiated even within the one organisation, and unnecessary expenses are incurred in legal fees for both buyers and suppliers. The NPS has recently prepared draft standardised terms and conditions for procuring general goods and services and these are currently at the consultation phase. Let's hope that they are finalised and implemented as soon as possible.
- as a way of achieving the savings demanded by the Government as a result of the budgetary situation;
 - Competition for public sector business in many categories of products and services has increased significantly in the last few years as a result of the private sector tightening its belt;
 - Most public sector business is now tendered publicly through the eTenders website. This provides wider visibility and elicits far greater levels of competition for many tenders from both local and international organisations.

All of these developments are good for the public sector. However many suppliers who heretofore had relatively stable supply arrangements with the public sector are now increasingly finding themselves facing stiff competition. For example, they are having to significantly reduce their prices or face the prospect of not retaining the business. This has particularly affected SMEs, some of whom are becoming increasingly vulnerable due to an inordinate dependence on a small number of public sector contracts.

How do SMEs face up to this challenge?

The first thing which suppliers must understand is added value to their clients and customers. Public sector buyers are seeking opportunities to reduce cost through leveraging scale and reducing the number of links in the supply chain to get as close as possible to factory gate prices. This can often favour larger, international suppliers who can leverage their own scale to pass on the keenest prices, and will tend to squeeze out some local suppliers unless they are adding real value. SMEs must face up to this question, and may need to change and adapt in order to survive. They need to identify their strengths and unique advantages and focus on these. This could involve, for example, teaming up in consortia with other suppliers, each playing to their own strengths.

The second question to be addressed by SMEs is to where to focus in terms of clients/ customers. Clearly, over-reliance on a small number of customers in any sector is risky, yet it is not possible for most SMEs to spread their net too far. There is a truism that, if the first time you hear of a tender is when it is published, you are highly unlikely to win it. The second relevant truism is that buyers buy from people, not organisations, and they are more likely to buy from people they know and trust. All of this adds up to the need for SMEs, who wish to win public sector business, to focus their resources on clearly defined targets and to get to know the relevant public sector buyers and their upcoming procurement plans.

However, the public sector tendering process can be costly and exasperating for SMEs. It is important for SMEs to understand the processes and regulations involved, because these days, with the amount of media scrutiny on public procurement through Freedom of Information requests, buyers have limited or no flexibility. I have seen suppliers, for example, submitting tenders in fixed price competitions where they believed that they could negotiate the price (upwards and downwards) once they were on the shortlist. Not so! Get to know the rules, which are based largely on EU Directives and are published on the eTenders website.

SMEs should remember that under the regulations, buyers have little or no scope to favour SMEs or local firms and are obliged to choose the bid which provides the best value for money for their organisations. However, this issue is recognised by the Government, and a report by the Procurement Innovation Group in 2009 made recommendations on how the dilemma of supporting SMEs in public procurement might be addressed. Following on from this, the Department of Finance recently issued guidance (Circular 10/10) to public sector organisations on facilitating participation of SMEs in public procurement. The guidance sets out positive measures that contracting authorities are required to take to promote SME involvement in a manner that is consistent with the principles and rules of the existing public procurement regulatory regime. The guidance also highlights practices that are to be avoided because they can unjustifiably hinder small businesses in competing for public contracts.

Among the key measures introduced are:-

- Contracts for supplies and general services with an estimated value of €25,000 or more are now to be advertised on the www.etenders.gov.ie website. Previously only contracts above €50,000 were required to be advertised in this way.
- New arrangements are being introduced whereby advertised contracts below a certain threshold must be awarded under an open procedure (i.e. without pre-qualification of tenderers). The threshold is €125,000 in the case of advertised contracts for supplies and general services and €250,000 in the case of advertised contracts for works and related services.
- Much of the documentary evidence of a tenderer's capacity to undertake a project should no longer be sought by

the contracting authority early on in the tendering process. Instead, tenderers should be asked to declare that they have the necessary capacity and that they will be in a position to produce the necessary documentation when requested. That documentary evidence (e.g. bank statements, audited accounts, proof of professional indemnity, etc.) need only be produced when a tenderer has been short-listed or is coming under consideration for the award of a contract. This approach is aimed at reducing the up-front administrative burden for businesses that are interested in tendering for contracts.

- Contracting authorities are strongly reminded that the levels they set for suitability criteria (especially in relation to a potential tenderer's turnover levels) must be both justifiable and proportionate to the needs of the contract.

These and the other measures included in the Department's guidance documents should go some way to address some of the issues outlined above.

Effective and efficient public procurement is in everybody's interest. However, there

is a difficult balance to be struck in reducing public sector procurement costs while at the same time protecting jobs in the Irish economy, in particular among SMEs. Both buyers and suppliers must play their part in ensuring that we get it right as a nation.

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