

**Submission to the
Public Accounts Committee
on
Issues regarding Public Procurement**

5th March 2015

INTRODUCTION

The Small Firms Association (SFA) is the “voice of small business” in Ireland and internationally, with 8,000 members and 7 affiliated organisations in all sectors and parts of the country. We specialise in the provision of valuable business focused advice, developing connections for our members, and effective public representation of small business issues which allow us to influence government policy.

Ireland is a nation of small businesses. We have 200,000 businesses in Ireland, of which 97% have less than 50 employees (small) and 84% have less than 10 employees (micro). We provide 56% of private employment – that’s jobs for some 862,175 people. An additional 49,195 people are self-employed. Each year in the region of 13,000 new businesses start-up.

Small businesses truly are the engines of our economic recovery. We have a vital role to play in terms of employment generation, especially in regional towns and villages and rural Ireland.

In **2013**, the published data suggests that **28% of tenders are being awarded to countries outside of Ireland**, up from a **previous high of 18%** recorded. Ireland frequently tops the list of countries most likely to award to non-national countries and this trend is increasing all the time. This is completely unsatisfactory. We need to put supporting Irish SMEs at the heart of all Government policy making.

SOME PROGRESS

We welcome this opportunity to appear before the PAC to give evidence on issues in public procurement. Shortly after PAC’s hearing on public procurement in April 2014, to which we made a written submission, a revised Circular was published by the Government, which improved the Guidelines on allowing SMEs access to public procurement. We acknowledge too the establishment of the SME Working Group on Public Procurement by the OGP, on which we are represented by Ian Martin, SFA National Council Member and MD of Martin Services and Patricia Callan, SFA Director, which has been useful at resolving some issues and inputting into policy and operational developments. We also engaged with the Competition and Consumer Protection Commission on developing the guide to “Consortium Bidding”.

However, despite these efforts, it is clear to us that there has been no tangible improvement in SME access to public procurement over the past year, and that both Government Policy at a high level and the practical implementation of the Circular which aims to support small firms access public procurement needs to be changed. Indeed the “Consortium Bidding” guide, whilst a useful summary of the law in the area, by no means makes the reality of consortium bidding any easier for small firms to successfully engage in.

CURRENT ISSUES

Public procurement is an essential element of delivering better public services in Ireland. It ensures value for money for taxpayers and the efficient allocation of resources, thereby enhancing the quality of public services and improving economic growth, competitiveness and job creation.

However, continuing Government policy on the need to save money in public procurement whilst valid should be clearly aligned to its enterprise support and job creation agenda. In its pursuit of the cheapest price, the Government is neglecting the fact that this will not deliver

either the quality, cost in use savings or service levels it desires, but will result in lost jobs here at home.

Centralised large aggregated contracts make it increasingly more difficult for small innovative companies to compete and this means a serious potential loss of business. There are serious difficulties in small firms collaborating to make joint tender bids as they are likely to fall foul of Competition Law and do not have the skills necessary to do this at present. It is our belief that the Government should delay the roll-out of the National Framework process until these issues have been addressed satisfactorily.

Other issues include the length of the procurement process, the cost of bidding, the contract size and despite improvements in Circular 10/14, the financial/administrative requirements on many tenders are still in breach of this policy.

The current public procurement system offers a wide range of possibilities to improve tendering conditions for SMEs, without damaging competitiveness or creating unfair advantages. However, difficulties are present both at contracting authority and at supplier level and the SFA believes that a focused approach along with education and training is necessary from both parties.

What Contracting Authorities Could Do

While contracting authorities try to promote SME inclusion through strategies including the size of contracts issued; encouraging multi-supplier framework agreements; and simplifying the tender documents there are other factors which could be considered:

- Contracting authorities should be encouraged to detail their procurement strategy and the steps they are taking to ensure greater inclusion of SMEs in the procurement process. This information should be detailed in all strategy documents/annual reports and placed onto relevant website/s.
- A barrier often raised by SMEs is the bureaucratic nature of the tender application process. To lower this administration burden, contracting authorities could accept a compliance schedule from suppliers. In such a schedule, a supplier can outline the selection criteria that they meet without producing the evidence. Then, prior to the award being formally made, the supplier most likely to be awarded the contract should be obliged to produce evidence to back up any claims made.
- The Government should publish data on the value and volume of contracts awarded to Irish vs. overseas companies and by company size. The results should be benchmarked internationally, and appropriate targets set for procurers here on SME market share. This target would place an obligation on a public body, which over an agreed time period would award a percentage of procurement contracts to the SME sector. These targets should form part of the Departmental performance reviews.
- A target should also be introduced to ensure that specific allocations of public tenders are decentralised. This would increase the use of regional and local SME industries for public procurement.
- Easier rules for the establishment of consortia could be introduced, e.g. by accepting that not all members of a consortium must fulfil all requirements as regards economical, financial, technical or professional capability. This would be another way to enhance the participation of SMEs.

- If a company is removed from the authorised suppliers listing, a full and thorough investigation should be undertaken by the contracting authority to ensure that the company has been given every opportunity to state their case and to ensure that a company is not being treated unfairly.
- Contracting authorities should not be allowed to operate any “volume rebate structure”. This practice forces a company to reimburse the contracting authority if their annual spend is greater than they had originally projected.

Targeted Measures

The SFA believes that advanced education and training is a core issue for both buyers and suppliers in the procurement chain.

Training for contracting authorities should encourage them to understand and adapt to SME needs; to develop the skills necessary to enable them to choose the most economically appropriate procedures and to optimise their project planning.

SMEs need to develop the knowledge and skills to allow them participate successfully in modern procurement procedures.

Information provided should include:

- Regional subsidized basic training on tender application completion and highlighting the most common errors made;
- making SMEs aware of the opportunities and the benefits of subcontracting to primary suppliers, whilst at the same time giving them advice on how to secure their IP from exploitation by the primary supplier, which is a key risk identified;
- clearer advice and training for small firms on the formation of joint ventures, consortia or partnerships which might enable SMEs to join the contract chain at the prime or subcontracting levels
- assisting SMEs to enhance their commercial skills to enable them to identify suitable subcontracting opportunities and to compete successfully for them.
- obligatory detailed feedback to all SMEs who submit tenders on the reasons they were unsuccessful.

One of the biggest challenges for SMEs is the ability to create the scale necessary to compete successfully in global markets. The issue of public procurement is among the primary reasons why companies cannot become large companies of scale from Ireland on the global market. Having won business from their own public service is an important credibility issue when many of these companies seek to supply the public service in export markets. However, the ability to win business in the public sector at present is proving ever very difficult for the majority of small firms.

CONCLUSION

Our members right around the country and in every sector are concerned at the over dominance in this policy debate of the Government saving money at all cost. They are concerned that far from encouraging SME participation, Government policy is now to effectively prohibit small companies from tendering for public contracts, in the move to centralise government procurement into large-scale contracts that they will be ineligible to apply for. Current Government Policy on Procurement has the potential to eliminate small businesses from the tendering process, resulting in business closures, job losses, regional imbalance and ultimately less competition in the marketplace.

It is essential that the new procurement system is designed from a *think small first* perspective, as recommended by the EU, and that actions are put in place to remove the barriers raised against small businesses around the country. A full appeals mechanism should also be implemented forthwith, which would include mandatory feedback on all lost tenders, more scrutiny and transparency throughout the system, an internal appeals procedure in each department and the opportunity to appeal to an Ombudsman.

We trust that the members of the Public Accounts Committee will act to ensure that SMES become centre-stage to public procurement policy, achieving real value for the taxpayer, as a consequence.

For further information, please contact:

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APPENDIX 1: Sample Specific Examples cited by SFA members in response to a consultation undertaken in mid-February 2015.

CASE 1: Re. Price Priority / UK competitor

As a result of our recent experiences of public procurement policies we as a company have regrettably made a decision not seek any further public sector contracts, and to focus our activities in the private sector as we have a better chance of gaining their business over public sector business. We are fortunate to deal with some world class organizations who value the work we do for them and who are prepared to work with us in helping grow our business. Regrettably, our experience of public sector contracts is that it is all about the price.

Let me give an example. Recently we lost a public sector contract due solely to price. A UK provider, eager to absorb a large percentage of the Irish market, are offering an overseas service but at an incredibly low price. The Local Authority in this instance had a 60% weighting toward price in their tender document, so regardless of receiving top marks for service/quality/qualifications/capacity etc. we could not EVER win the contract unless we were prepared to operate it at a loss. While no one likes to lose a contract business is business, but what I find particularly bothersome is (1) my company and I are still expected to pay our rates and taxes to support this Local Authority without them being required in any way to support us, a local business (2) the value of the contract was approximately Euro7k - 20k - that money, which was generated from my tax, which could have been used to support local jobs is now gone out of this region to the UK.

It would appear to me that public procurement is more interested in adhering to EU purchasing guidelines than engaging with local businesses. It's ironic as I was listening to all the supports being given for employment generation when at the end of the day a sensible purchasing policy would enable SME's develop and grow. I imagine I am not the first to voice such concerns.

CASE 2: Re. Circular not being followed / Irish Water specific

In relation to Circular 10/14, I will try to briefly highlight a few points as follows:

1. Paragraph 3. The principals set out in the Treaty on the Functioning of the European Union (TFEU) of non-discrimination; equal treatment proportionality and transparency are not being practiced. When a Tender is submitted the result should be on Irish Water's website clear for all to see. This is not the case.
2. The prices should only be known to Irish Water and not to others who are not on their staff.
3. Turnover Requirements: The policy of setting company requirements at more than twice the estimated contract value should not apply.
4. Paragraph 5.2 Buyers are required to publish all Contract Award Notices over 25k. This is not our experience.
5. Paragraph 9. Feedback is not given in a proper manner. It takes quite a long time to prepare a Tender, yet no courtesy is shown in responding in writing to the tenderer.

CASE 3: Re. LEOs/Skillnets – contracts too low in value to justify tendering

There needs to be a threshold BELOW which state bodies should NOT be allowed to tender.

Specifically, the Local Enterprise Offices and Skillnets continue to advertise tenders for training - down to the level of an individual workshop, which might only be for a single day (or even a half-day!).

There is no way that they can save sufficient money on the cost of the training to justify their own engagement in tendering, let alone that of the many trainers who submit tenders. And tendering is not the way that training should be purchased - especially at the micro level of individual workshops. That's a responsibility of the programme manager, who should be aware of suitable trainers in their area and have in place a mechanism for testing new trainers, rather than abdicating their responsibilities to the tendering process.

CASE 4: Re. Information Requests / Entry Criteria

We submit tender responses through the eGov procurement process fairly regularly and, to be honest, don't have that many issues or complaints about the system (except the amount of information requested and general frustrations regarding the process in the first place). On occasion the requested minimum turnover figures and/or levels of insurance cover required can be an issue but the former has been reduced a fair bit last year and isn't that much of a hindrance to us any more thankfully.

CASE 5: Re. Cleaning Supplies Tender

From what I can see there is no point in a SME tendering for this contract e.g.

1. 80% of the marks awarded will be on price - Lowest price tendered divided by the tender price.
2. Section 1.12 a section in to keep the SME sector happy, it is a bit like asking your competitor can we join your business.
3. Minimum Annual turnover between €1m & €6.4 m - is this a definition of a SME business in the procurement eyes?
4. When you look at the market sector covered by this tender this will exclude a large part of the market place to the SME business
5. I understand that the value of this contract over 2.5 years is about €25m - €10m pa even if this is shared out between 10 Companies this level of sales is high for a SME business to gear up & handle.