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To Heads of Departments¹

Circular 10/14: Initiatives to assist SMEs in Public Procurement

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1. In the context of the reform of the Public Service and the establishment of the Office of Government Procurement, it has been decided to update and strengthen measures aimed at facilitating SME participation in Public Procurement in order to reinforce their application across the public sector. This circular therefore replaces Department of Finance Circular 10/10 and applies to all public sector bodies. The Capital Works Management Framework (CWMF) suite of guidance, standard contracts and generic template documents will continue to apply to works and works related services as set out in Circular 06/10. They are available to download from the website www.constructionprocurement.gov.ie.

2. The Programme for Government identified the role public procurement can play as an instrument to support innovation and allow greater access for SMEs, including Micro-Enterprises, to the public sector market. As part of the Public Service Reform Plan, the Government established the Office of Government Procurement (OGP) to drive a new consolidated and integrated approach to public procurement. The OGP is committed to ensuring that SMEs are fully engaged with public sector procurement and the opportunities presenting. In conjunction with the Department of Jobs, Enterprise and Innovation, the OGP has set up a high level group on SME access to Public Procurement. The focus of this group is to develop and monitor strategies for SME access to public procurement. The group also has regard to the Government's Action Plan for Jobs and specifically those actions aimed at maximising procurement opportunities for SME in the public sector.

¹ The term "Department" encompasses Departments and Offices.

3. The guidance in this circular is designed to further enable SMEs in competing for public contracts. This is in line with EU policy on increased SME participation in public procurement. At all times this guidance is to be implemented by buyers in accordance with the principles of EU law, and in a manner that is fully compliant with EU public procurement law and national guidelines. All public sector procurement contracts within the EU, irrespective of value, are covered by the principles set out in the Treaty on the Functioning of the European Union (TFEU) of non-discrimination, equal treatment, proportionality and transparency. Regulations, circulars, guidelines and standard forms in relation to procurement of goods and general services are available on the OGP website at: www.procurement.ie and for construction works and related services at www.constructionprocurement.gov.ie.

4. As a general principle, the guidance sets out positive measures that buyers should take to promote SME involvement in public sector procurement.

4.1 **Market Analysis**

Buyers should undertake market analysis prior to tendering in order to better understand the range of goods and services on offer, market developments and innovation, what commercial models are available, the competitive landscape, and the specific capabilities of SMEs etc. Initial consultation with the market should not have the effect of precluding or distorting competition. To ensure transparency, any information provided by the buyer during this process should be circulated to any potential tenderer.

The OGP has established Category Councils for 16 categories of goods and services bought by the Public Service². Details of the categories are set out in Appendix 1. The role of each Category Council is to develop commercial strategies for sourcing goods and services in their category in line with the needs of customer organisations and in the context of obtaining best value for money. Each council is made up of members who are nominated by the departments and agencies that are the main users of the category. This initiative strengthens the professional approach that Government is now attaching to public procurement. Buyers can contact the Category Council lead (support@ogp.gov.ie) to understand how their needs align to the Category Council strategy or may be met by an existing framework or contract.

4.2 **Sub-dividing Contracts into Lots**

The sub-division of contracts into lots facilitates access by SMEs, both quantitatively (the size of the lots may better correspond to the productive capacity of the SME) and qualitatively (the content of the lots may correspond more closely to the specialised sector of the SME). Lots may be also decided on a geographic basis, a work package basis, an internal organisation structure basis, etc. Buyers should, where reasonable

² The CWMF will apply to the Category Council for Minor Works and for construction-related services procured by the Category Council for Professional Services.

and without compromising efficiency and value for money, consider breaking contracts into lots, enabling smaller businesses to compete for these elements. Buyers must consider the aggregate value of the lots required to deliver a single national requirement when deciding whether a contract needs to be advertised on eTenders and in the Official Journal of the European Union (OJEU).

4.3 **Consortium Bids**

SMEs are encouraged to consider using consortia where they are not of sufficient scale to tender in their own right. Template tender and contract documents allow for consortia to tender for public procurement opportunities. Suppliers considering forming a consortium to bid for public sector opportunities should seek legal advice in relation to the structure and operation of the consortium to ensure that it is fit for purpose and complies with their legal obligations particularly in relation to competition law.

4.4 **Less use of “restricted” tendering and greater use of “open” tendering**

Buyers should use open tendering for contracts below €134,000 (exclusive of VAT) in the case of advertised contracts for general goods and services. In the case of advertised contracts for works and works related services, separate guidance in relation to thresholds will issue shortly. Above these levels buyers should decide which tendering procedure is most appropriate in each case. This provision will continue to be kept under review in the light of its impact on operational efficiency, fairness to SMEs and value for money.

4.5 **Capacity Requirements**

Buyers should ensure that any capacity levels set for candidates/tenderers are relevant and proportionate to the circumstances of a particular contract. For example, where experience is specified as a qualifying or competitive criterion, it should not be framed in such a way as to unduly narrow a field of eligible tenderers by specifying an exact work type or industry. Buyers may consider the previous experience of individuals who have formed a start-up SME that has yet to establish a track record as a company.

Documentary evidence of financial capacity to undertake a project should not be sought by buyers early on in the procurement process. Instead candidates/tenderers should declare that they meet the minimum standards required by the buyer and will produce the necessary documentation (e.g. bank statements, audited accounts, proof of professional indemnity, etc.) when provisionally short-listed in a restricted procedure or when chosen as the successful tenderer in an open procurement competition.

The CWMF for works and works-related services includes a suite of standard pre-qualification questionnaires and standard declarations as well as standard Instructions to Tenderers and Forms of Tender. These are available to download at www.constructionprocurement.gov.ie under Pillar 2/ITTs; Pillar 3/Questionnaires.

Associated guidance on Minimum Standards for Pre-qualification are available under Pillar 4/Guidance.

4.6 **Turnover requirements**

Buyers frequently use the ratio “company’s turnover to contract value” as a measure in deciding whether a business has the financial capacity and strength to perform a contract. In assessing the financial capacity of a supplier to do a job, buyers, as a matter of general policy, should not for routine (e.g. low-value, high volume) goods and services competitions set company turnover requirements at more than twice the estimated contract value. This is in line with revised EU rules and is designed to support SME involvement in public procurement. The turnover limit for Framework Agreements should be set in general vis-a-vis the likely size of individual contracts or drawdowns in the framework. It is appreciated that for non-routine services and goods competitions it may be necessary to apply higher turnover requirements.

The CWMF for works and works-related services includes detailed guidance on Minimum Standards for Pre-qualification of Works and Consultants, which are available to download at www.constructionprocurement.gov.ie under Pillar 4/Guidance.

4.7 **Innovation**

The Government recognises that creative ideas for new and innovative solutions and products often come from SMEs. Buyers should, where possible and appropriate, encourage new and innovative solutions by indicating in tender documents where they are prepared to accept reasonable variants to the specifications. Alternatively or in addition, requirements may, for example, be set out in terms of a deliverable which allows tenderers to provide creative and innovative solutions. This output-oriented approach may enable buyers to concentrate on the functional requirements of a product they would like to have but leaves tenderers the freedom to develop new, innovative goods or services which might better correspond to the actual need of the buyer. SMEs can contact the Category Councils (support@ogp.gov.ie) identifying innovative offerings that they can offer.

4.8 **Framework Agreements**

Breaking framework agreements into lots can be an effective way of opening up opportunities to SMEs. Depending upon requirements, framework agreements can be divided into lots on the basis of geography, specialism and/or value. This can encourage a range of SMEs to bid for business appropriate to their capacity, specialism and location.

eTenders assisting SMEs

5. The OGP will continue to promote the optimum use of the eTenders portal as a tool for facilitating the involvement of SMEs in public sector procurement. The use of electronic tendering aligns to the Government's e-commerce strategy and reduces costs for buyers and suppliers. It also fulfils new EU obligations in relation to data capture and measurement, and creates a useful audit trail and enables future proofing and streamlining.

5.1 Advertising of contract opportunities to promote SME participation

Buyers continue to be required to advertise all contracts for supplies and services with an estimated value of €25,000 (exclusive of VAT) and upwards on www.etenders.gov.ie. The advertising threshold for works and works related services remains at €50,000 (exclusive of VAT). As before, buyers should extend the use of the eTenders website to include tenders for low value purchases where possible. Buyers should be aware that for supplies of goods and general services that the eTenders system supports quick quotes for tenders under €25,000 (exclusive of VAT). This facility is available in an efficient, quick and simple manner utilising data from registered SMEs under a multiplicity of categories. The running of a mini-competition from an existing framework on eTenders is also a quick and easy process to follow.

5.2 Publication of Contract Award Notices

Buyers are required to publish all Contract Award Notices over €25,000 on the eTenders website on completion of the award. This is a separate step to publishing on the OJEU and will facilitate measurement of SME participation in public procurement. This provision will be effective from 1 August 2014.

5.3 Registration and Email Alerts

OGP encourages suppliers to register with accurate company information on www.etenders.gov.ie to ensure maximum exposure to tendering opportunities within their sector. Email alerts are provided to registered suppliers in relation to procurement opportunities arising in their respective areas as determined by the Common Procurement Vocabulary (CPV) codes they have selected for their company profile on eTenders. Registered suppliers should critically analyse the range of CPV codes attaching to their registration to maximise the extent of e-mail tender opportunity alerts and to ensure they are selected as part of a relevant quick quote. The more company information entered, the more exposure a supplier may have to opportunities as buyers use eTenders to search for relevant suppliers for quick quotes.

5.4 Supplier Data Bank

In relation to goods and services, buyers should encourage suppliers to upload their business details (tax clearance, insurance, health and safety and financial data) on the eTenders system. This data will automatically reload when the supplier revisits the

site to tender for other contracts. This facility is aimed at easing the administrative burden of suppliers competing in multiple tenders.

5.5 **PINs**

Buyers should communicate long term purchasing plans to the market as early as possible by publishing Prior Information Notices (PINs) on the eTenders website. The OGP recognises that communicating long-term procurement plans to the market, gives the market time to react and develop solutions. This is particularly important in the case of large and complex contracts, where SMEs might need time to find partners for joint or consortia bidding. PINs reduce the time required for responses when publishing relevant RFTs.

5.6 **Requests for Tenders/Expressions of Interest (RFTs/ EOIs)**

Buyers should publish RFTs or EOIs on eTenders for direct downloading by suppliers.

Standard Instructions to Tenderers and Forms of Tender for works and works-related services are available as part of the CWMF, and are available to download at www.constructionprocurement.gov.ie under Pillars 1 and 2.

5.7. **Online submission of Tenders**

For goods and services buyers should promote the online submission of tenders by suppliers as the norm as a means of simplifying the tendering process and reducing the costs of tendering.

Insurance

6. Buyers should only require such types and levels of insurance which are proportionate and reasonable in the context of the particular contract. Factors which may be considered by buyers for the supply of goods and general services should include: the risks involved, the value of the contract and the subject matter of the contract. The required insurance coverage will vary from contract to contract as will the style of insurance cover available to suppliers, particularly in relation to professional indemnity risks. Any requirement for insurance cover should be signalled in the tender documentation. Tenderers should be asked to declare that they can obtain such cover but should not generally be required to have it in place at the time of tendering. Documentary evidence of the required insurance will only be required when a candidate has been identified as a successful tenderer in a procurement competition. In carrying out competitions for the acquisition of routine low-to-medium-risk goods and services buyers should use Appendix 2 as a guide to assessing insurance level requirements. For bespoke and or complex competitions or if the buyer has concerns with regard to any aspect relating to subject matter of the procurement then buyers (covered by the State Claims Agency) should contact the State Claims Agency for assistance in setting appropriate insurance levels. In addition other tenderers not covered by the State Claims Agency are asked to contact their risk management department or relevant insurance advisor to determine

the appropriate levels of cover. Guidance for works and works related services are available on www.constructionprocurement.gov.ie under Pillar 4/Guidance Notes on Minimum Standards for Pre-qualification for Works Contractors and Construction Service Providers.

Life Cycle Costs

7. The EU public procurement directives offer the possibility to award contracts either on the basis of the lowest price or on the basis of the most economically advantageous tender (MEAT). Where the award of contract is based on MEAT, the buyer, where appropriate, should take into account not just the current but the whole life-cycle costs. This allows buyers to take account of various elements relating to the subject-matter of the contract, including, for example quality, technical merit, functional characteristics, running costs, cost-effectiveness, after-sales service and technical assistance, etc. Where appropriate buyers should seek full life-cycle costing solutions in their tender documents.

No Charging for Tendering Opportunities

8. Buyers must not use arrangements which involve candidates/ tenderers having to pay so as to access competitions for public contracts. Such charging would represent a particular problem for SMEs. This does not preclude buyers from seeking a deposit for hard copies of tender documents which is refundable upon receipt of a bona fide tender.

Feedback

9. In order to prepare for future bids, it is very helpful for an unsuccessful tenderer to see which aspects of its bid were considered strong by a buyer and which aspects were considered weak. For contracts above EU thresholds for which advertising of contracts in the Official Journal of the EU is obligatory, buyers are required to give appropriate feedback to companies who have participated in a public procurement competition. For all other contracts buyers are strongly encouraged to provide written feedback as a matter of good practice.

Dissemination and Implementation of Circular

10. You are requested to bring this circular to the attention of
- (i) all staff in your Department who are involved in any aspect of procurement,
and
 - (ii) all State bodies, Offices and Agencies under the aegis of your Department.

Enquiries

11. Any queries in relation to the operation of this circular regarding goods and general services can be addressed to support@ogp.gov.ie. Queries in relation to works and works-related services should be emailed to: construction@per.gov.ie. Queries in relation to specific central procurement frameworks should be channelled through www.procurement.ie.

Mise le meas,

Paul Quinn
Chief Procurement Officer

Appendix 1 – Category Councils

The goods and services currently bought by the public service can be grouped into 16 categories.

Eight of these categories cover goods and services that are common across the public service. When fully established, the OGP will put in place contracts for these categories from which all public service bodies will buy.

The other eight categories of goods and services are predominately sector-specific. These categories will be procured by the retained sector procurement functions on behalf of all public bodies.

OGP Led Categories	Sector Led Categories
<ul style="list-style-type: none">- Professional Services- Facilities Management and Maintenance- Utilities- ICT and Office Equipment- Marketing, Print and Stationery- Travel and HR Services- Fleet and Plant- Managed Services	<p>Local Government</p> <ul style="list-style-type: none">- Minor Building Works and Civils- Plant Hire <p>Health</p> <ul style="list-style-type: none">- Medical Professional Services- Medical and Diagnostic Equipment and Supplies- Medical, Surgical and Pharmaceutical Suppliers <p>Defence</p> <ul style="list-style-type: none">- Defence and Security <p>Education</p> <ul style="list-style-type: none">- Veterinary and Agriculture- Laboratory, Diagnostics and Equipment

For purchases that are not covered by an OGP framework/contract, and which represent a reasonable level of expenditure, the OGP is developing a **spot buying** capability. For non-repeating low value purchases that are not covered by an OGP framework/contract, the customer organisations can avail of the OGP's low value **purchasing cards** framework.

The management of capital works contracts under the Exchequer Investment Framework 2012-2016 will continue to be managed by the relevant Departments, Offices and Agencies using the Capital Works Management Framework suite of documents.

Appendix 2: Guide to Setting Insurance level Requirements

The matrix below can be used as a general guide to setting insurance level requirements for routine low-to- medium-risk goods and services.

Type of Insurance	Indemnity Limit
Employer’s Liability	€12.7m
Public Liability	€6.5m
Environmental Indemnity	€2m
Professional Indemnity	Contract Value (min. €50,000)
Product Liability	Contract Value (min. €50,000)