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Mr Shane McAteer
Clerk
Committee for Finance and Personnel
Room 419
Parliament Buildings
Stormont

Our Ref: CFP 141/10

15 March 2011

Dear Shane,

PUBLIC PROCUREMENT ACTION PLAN & DRAFT PROCUREMENT GUIDANCE NOTES

Following the Committee evidence session on 1 March 2011, you wrote concerning a number of outstanding issues and also attached the Committee's response to two draft Procurement Guidance Notes.

The Department's response to your letter is set out in Annexes A and B attached.

I trust that you find this response helpful.

Yours sincerely,

A handwritten signature in blue ink that reads "Norman".

NORMAN IRWIN

Points arising from the responses to the Inquiry Recommendations

General

1. Overall, what impact will the consequences of Budget 2011-2015 have on central government procurement, including the availability of the resources required to implement this action plan?

Response

In the light of the reduced level of resources over the Budget period, the application of professional procurement practice will be of even greater importance in securing value for money from the available funds. At this stage it is not envisaged that budget consequences will have a significant detrimental impact on implementation of the action plan.

Recommendation 1

2. A revised definition of “best value for money” was agreed by the Procurement Board in November 2010. Can you:

- **Elaborate on the revised definition and what changes have been made?**
- **Indicate how this might work in practice for both purchasers and suppliers?**
- **Give some indication as to when this proposal will be presented to the Executive for agreement?**

Response

At its meeting on 11 November 2010 the Procurement Board agreed a revised definition of Best Value for Money, subject to approval by the Northern Ireland Executive. The change was considered necessary to take greater cognisance of the importance of sustainable development and enable a number of the Committee’s Inquiry recommendations to be taken forward.

The definition of best value for money in procurement adopted by the Executive in May 2002, defined it as:

“the optimum combination of whole life cost and quality (or fitness for purpose) to meet the customer’s requirements”.

At its meeting in November 2010, the Procurement Board endorsed a proposed refinement of the definition of “best value for money” to read:

“the most advantageous combination of cost, quality and sustainability to meet customer requirements.”

In this context, cost means consideration of the whole life cost; quality means meeting a specification which is fit for purpose and sufficient to meet the customer’s requirements; and sustainability means economic, social and environmental benefits, considered in the business case, in support of the Programme for Government.

The revised definition does not introduce any new policy or legislation but instead specifically allows for the inclusion, as appropriate, of social, economic and environmental goals within the procurement process. The proposed refined definition clarifies and emphasises this requirement, making it more explicit that sustainability is part of the value for money process. It will require purchasers to take sustainability into account when drawing up their specifications and in turn suppliers will have to respond.

The Procurement Board recognises that a refined definition alone will not deliver the step change required in implementing and embedding sustainability. However it does help to create the public procurement environment required in order to maximise the economic and social impact from procurement expenditure.

It is also intended that a number of actions will be undertaken by CPD in support of sustainable procurement objectives. These included Procurement Guidance Notes drafted to assist procurement practitioners to reduce or

remove barriers for Small and Medium Sized Enterprises (SMEs) and Social Economy Enterprises (SEEs) competing for public sector procurement contracts and to more clearly explain the procurement tender process. Additional guidance is also being developed on model clauses and checklists to provide practical support for procurement practitioners and existing guidance on achieving best value for money will be revised to reflect the refined definition.

It is expected to present the revised definition to the Executive in late March 2011.

Recommendations 3,7,16

3. Can you elaborate on the proposals that will address the Committee's recommendations in relation to the provision of more robust data on the access of small and micro businesses to public sector procurement opportunities?

Response

Following agreement at the Procurement Board on 11 November 2010 when Members endorsed an approach to have a core set of data and take forward a data warehousing solution, arrangements for capturing key procurement data are being put in place. Data will be captured on the following procurement activities:

- Tender opportunities published, including estimated value and category
- Expressions of interest by suppliers
- Supplier Responses to Invitations to Tender (ITT) and Pre-Qualification Questionnaires (PQQ)
- Awards of contract to suppliers, including contract value.

For each of the above activities information will be recorded about the suppliers involved. This will include the organisation type, size, and geographical location.

It will therefore be possible to analyse the levels of participation and success of suppliers in all stages of procurement.

4. Have the necessary data capture and management information systems now been put in place across all the Centres of Procurement Expertise; and how will this information be standardised and monitored?

Response

The approach adopted has been to develop a common Procurement Data Model, which identifies in detail the data that needs to be captured. The model is substantially complete and is currently undergoing validation. The Centres of Procurement Expertise (CoPEs) have agreed in principle that the model will form the basis of data sharing agreements designed to ensure that the necessary data is recorded and submitted for analysis at regular intervals. Development of the model has confirmed that much of the required data is already available from e-Sourcing NI.

A business case is currently being prepared for the provision of a small data warehouse and business intelligence tools to facilitate the regular collection of data together with its routine and exploratory analysis. The Procurement Data Model has been developed with this end in mind and provides standard formats for the transfer of data from e-Sourcing NI and other systems.

The validated Procurement Data Model, data sharing agreement, and data warehouse business case will be submitted to the Procurement Practitioners Group for approval in the near future. If approval is given the data warehouse is expected to be operational later in the year.

5. How often will the data be reviewed by the Procurement Board; and will there be opportunities to use this information as a means of targeting and identifying new potential suppliers?

Response

High level data will be reviewed by the Board at its meetings, which are currently held twice yearly. The information will be used more regularly in order to inform procurement strategies.

Recommendations 9 – 12

6. The recommendations relating to the use of large framework agreements, use of alternative procurement method and breaking contracts into lots are still under consideration. Is it possible at this stage to give any indication of the nature of the proposals to be brought before the Procurement Board in June? What do you anticipate to be the timescale for implementation of these proposals?

Response

CPD has requested data from the CoPEs covering the period Jan 2008 – Dec 2010 on which to base its analysis and identify proposals for consideration by the Procurement Board.

At this stage the analysis of data from CoPEs is incomplete and proposals for consideration by the Procurement Board have not been framed. Decisions of the Board will be promulgated to the procurement community as public procurement policy notes or guidance as soon as possible after the Board meeting. Proposals will take account of consultation with industry sector groups and the need to maintain competition for future procurements.

Recommendations 13 & 46

7. Seven Councils are now using eSourcing NI to advertise procurement opportunities.

- **When officials came to the Committee in June 2010 they advised that seven councils were using eSourcing NI. What plans are there to increase the number of local authorities using this facility?**
- **Has any assessment been made of the effectiveness of councils using the eSourcing NI portal, including greater**

accessibility of procurement opportunities to small and micro businesses?

Response

Northern Ireland Public Procurement Policy does not cover local councils; they are separate entities and outside the remit of the Northern Ireland Assembly. There are no plans to increase the number of local authorities using eSourcing NI but CPD has updated DOE, Local Government Division on its plans and indicated a willingness to co operate on any joint initiatives.

Recommendation 18

8. The establishment of the Business Industry Forum for NI, for the purpose of providing suppliers of goods and services a forum through which to engage with CPD (to mirror the Construction Industry Forum) is a welcome development. Can you provide more information on the meetings that have been held to date, including areas that have been discussed and how representation is broken down amongst the various sectors of the business community?

Response

The aim of BIFNI is to develop relationships with representative bodies and sectoral groups covering key markets, with a specific focus on goods and services. The BIFNI membership is drawn from a diverse range of individual sectors. In addition to CPD, members include those CoPEs which undertake supplies and services procurement and business industry representative organisations as follows:

- Chartered Accountants Ireland – Ulster Society
- Confederation of British Industry
- External Member of Procurement Board
- Federation of Small Businesses
- Invest NI
- Institute of Business Consulting
- Institute of Directors
- Institute of Practitioners in Advertising

- Irish Congress of Trade Unions
- Law Society of Northern Ireland
- Momentum (NI ICT Federation)
- Northern Ireland Council for Voluntary Action
- Northern Ireland Housing Executive
- NI Water
- Procurement and Logistics Service
- Royal Institution of Chartered Surveyors
- Sales Institute of Ireland, Northern Branch
- Social Economy Network
- Southern Education and Library Board
- Strategic Investment Board
- Translink

BIFNI has met on 3 occasions to date, 4 June 2010, 8 September 2010 and most recently on 28 February 2011.

Areas that have been addressed include the Committee's Inquiry, the eSourcing NI procurement portal, an overview of legal challenges, standardised pre-qualification questionnaires, and Procurement Guidance Notes. At the last meeting, one of the main areas of focus was CPD's intention to promote more opportunities for training and for the unemployed in government contracts. This was supplemented by presentations from the Department for Learning and Employment on Steps to Works and ApprenticeshipsNI.

Recommendation 19

9. The Committee's recommendation that CPD and the other CoPEs consider the scope both for greater use of up-front and interim payments has been rejected. Are there any circumstances when it would be appropriate to make up-front payments?

Response

Managing Public Money NI Annex 4 Para 4.6.4 – 7 sets out the requirements when payments outside the normal pattern of expenditure are contemplated. Such payments should only be considered where a value for money case can be made for them and where appropriate safeguards are in place to deal with possible breach of contract. The document can be accessed online here: http://www.afmdni.gov.uk/pubs/MPMNI/mpmni_annexes_011210.DOC

Recommendation 26

10. The Committee welcomes the work being done to standardise the pre-qualification processes and criteria. What has been the feedback from stakeholders, and when will this be reviewed to ensure that the pre-qualification process meets the needs of both purchasers and suppliers?

Response

The review of the standard CoPE Pre-Qualification Questionnaire (PQQ) for construction works to assess its effectiveness and identify any possible improvements is currently being undertaken. This is being facilitated by CPD under the auspices of Construction Industry Forum NI (CIFNI). CIFNI agreed the Terms of Reference for the review at its meeting on the 23 February 2011. There have been a series of meetings and the review is scheduled to be completed in April 2011.

Stakeholder feedback is an important element of the review and there has been a useful and informative exchange of views with stakeholders including small, medium and large contractors and subcontractors.

It has been highlighted by industry at CIFNI that the single annual assessment of Health & Safety and use of Constructionline to set proportionate financial requirements has been of considerable benefit to the industry. CPD is now considering how other aspects of the PQQ can be made proportionate to the scale and complexity of construction projects. All stakeholder views will be carefully considered and influence the final outcome of the review.

CPD has developed a standard set of questions within eSourcing NI that can be used to support pre-qualifications within a range of supplies and services. Work is ongoing on the identification of questions for a suitable pre-qualification template. A sub group is meeting to consider a suitable model for Northern Ireland and in particular is examining the Scottish and Welsh solutions.

Recommendation 30

11. The Committee welcomes the circulation of a guidance note setting out a standardised approach to the disclosure of information throughout the procurement process.

- **Has there been any feedback on the impact of this guidance note from stakeholders?**
- **Will there be an opportunity to review/assess the effectiveness of this guidance and if so, when will that take place?**

Response

To date there has been no specific feedback on the guidance. All Guidance Notes are reviewed after being in operation for a while in order to assess their effectiveness and reflect on the experience of users and refine the Note accordingly. In the case of the disclosure of information guidance it was endorsed by the Procurement Board on 17 June 2010 and so the review will take place shortly.

Recommendation 35 & 37

12. Is the SIB toolkit on social value now publicly available?

Response

The SIB Toolkit is available on the SIB's website and the ISNI website.

13. When does CPD plan to report on the survey being undertaken to establish the extent to which social clauses have been included in

recent contracts; and how does it plan to disseminate the lessons learned?

Response

The survey on the extent to which social clauses have been included has revealed variation in the number of opportunities provided for unemployed persons and for apprentices in 2009 - 2010. It has highlighted the need to capitalise further on opportunities which become available via procurement competitions. However it is important to recognise that while CoPEs can facilitate and seek to influence the process, the decision to incorporate social clauses rests with the spending departments.

CPD will continue to proactively look at ways in which social clauses can be included in a wide range of contracts. Guidance is being developed on social clauses and checklists which will assist practitioners in formulating contracts.

A pilot exercise involving four CoPEs is being set up to test the provision of social clauses and in particular employment and training opportunities in supplies and services contracts for the future. It is recognised that by their nature these contracts are not usually so suitable as construction contracts, for the inclusion of social clauses, given that many contracts are of low value and short duration. This was reflected in the survey findings mentioned above.

Recommendations 41 & 45

14. The Committee welcomes the development of a training programme around the key stages in the procurement process.

- **For what staff grade is this training designed and will it be compulsory?**
- **Are there plans for formal accreditation following completion of the training?**

Response

The training, which is being developed to complement the key Procurement Guidance Notes, will be available to all staff who need it and are involved in

the procurement process. The subject matter of the guidance and therefore the personnel involved, will determine who attends each course, but will include procurement professionals as well as Departmental staff who will sit on selection and tender evaluation panels.

It is intended to seek Procurement Board approval to make the training compulsory but if agreed this would have to be implemented over time so that the procurement process can continue to function eg for a tender evaluation panel, at the outset it may be sufficient to have the Chair trained.

It is not intended that these courses would be formally accredited.

15. Through its inquiry the Committee endorsed the concept of a “Procurement Exchange Programme”. However the action plan states that CPD cannot be directly involved in this as there could a conflict of interest.

- **Can you elaborate on the nature of the conflict of interest?**
- **Which body or organisation might take the lead on this instead?**

Response

The Procurement Exchange Programme would involve CPD staff moving to the Private sector and vice versa. CPD has both a central policy role to play in public procurement and has staff directly involved in facilitating procurement competitions. Private sector staff who moved to CPD could potentially have access to privileged information which could offer an unfair competitive advantage in current or future competitions. This could potentially prejudice the procurement process, and would be against fundamental Treaty principles of equal treatment, non-discrimination, and transparency.

Recommendation 48

16. The Committee recognises the opportunities to realise savings and efficiencies through the procurement process. What targets have been

set in the forthcoming budget period for efficiency savings and how will these be monitored?

Response

At present no procurement target, which could contribute towards Departmental efficiency savings, has been set for the forthcoming budget period. This will be considered by the Procurement Board in developing its Strategic Plan for the next three years.

Recommendation 52

17. The Committee notes that a revised paper on the future role of CPD and its relationship with the CoPEs was sent to the Procurement Board for comment on 22 December.

- **Can you advise the Committee on the nature of these proposals?**
- **What is the next step in this process?**
- **What changes do you expect to see in the relationship between CPD and the CoPEs?**

Following the Procurement Board meeting on 22 December, proposals for the future relationships between CPD and CoPEs were reconsidered and are the subject of a revised paper which will be subject to further discussion by the Board. Next steps will depend on the outcome of those discussions.

Draft Procurement Guidance Notes

The Committee notes that in the guidance note for purchasers there is no definition of “social value” or any overt encouragement to include a valuation of social benefit as part of the MEAT process. Members note from the separate briefing paper on the implementation of the Committee’s recommendations arising from its Inquiry into Procurement, that a definition of “social value” will be included as part of the draft Sustainable Development Implementation Plan under development by OFMDFM. The Committee is of the view that it would be of benefit to both purchasers and suppliers to include this definition in these guidance notes to ensure consistency of approach across all sectors.

Members also consider it beneficial to include this definition in the guidance note for SEEs to help such organisations gain a better understanding of the requirements of government purchasing bodies. On the issue of including a valuation of social benefit as part of the MEAT process, the Committee believes that specific reference should be made to the appropriate methodologies and guidance in this regard (including the SIB Toolkit, and the Social Return on Investment Model).

The Committee also recommends that these guidance notes are supported by appropriate training for both purchasers and suppliers, again to ensure consistency of approach.

Response

The Department welcomes the comments received from the Committee on the two sets of draft guidance.

In relation to including the definition of “social value”, the Department is content to facilitate this however, the formulation of this definition is with OFMDFM and indications are that it may be some time before it is agreed. The Department therefore suggests that rather than delay the issue of the

Guidance further, it should issue now and be refreshed at a later stage to incorporate the agreed definition when it becomes available.

The Department considers that social objectives are best delivered as contract conditions and related to the performance of the contract, rather than being assessed as part of the evaluation criteria in the determination of the Most Economically Advantageous Tender, unless such objectives are directly related to the subject matter of the contract.

In relation to the training for suppliers, this is something which would be more appropriate for DETI/OFMDFM to undertake. DETI is responsible for capacity building in the SME/SEE sectors and will have a greater expertise in this area. For purchasers, the Department will consider the need to have in house training however, given the resource implications it may be more appropriate to have informal workshops, drawing on the Guidance Notes, the SIB toolkit and other sources as appropriate.