



Northern Ireland
Assembly

**COMMITTEE FOR
FINANCE AND PERSONNEL**

OFFICIAL REPORT
(Hansard)

**Public Procurement Action Plan:
Update on Implementation of Committee
Recommendations**

1 March 2011

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)
Mr David McNarry (Deputy Chairperson)
Mr Paul Frew
Mr Paul Girvan
Mr Simon Hamilton
Ms Jennifer McCann
Mr Mitchel McLaughlin
Mr Declan O'Loan

Witnesses:

Mr Des Armstrong) Department of Finance and Personnel
Ms Aileen Edmund)

The Chairperson (Mr McKay):

I welcome Des Armstrong and Aileen Edmund of the Central Procurement Directorate (CPD) to the meeting. Do you want to make any opening comments?

Mr Des Armstrong (Central Procurement Directorate):

We will keep our opening comments short to allow maximum time for questions. The Committee's report has been very useful to us, because it has allowed us to shape the agenda that we have had for public procurement policy development over the past 12 months or so.

The approach that we took to the Committee's report was to break it down into a number of key themes, including improving policy and processes; maximising social benefit and building capacity for purchasers and suppliers; issues on local government procurement; collaborative procurement and efficiencies; litigations and lessons learned; and public procurement governance arrangements. We have been working our way through the 52 recommendations to produce a substantive response. Hopefully, you will have seen in the paper that went to you the things that we can accept and go forward with and the things that we might have issues with in the outworkings of the recommendations.

Ms J McCann:

I welcome the report. There are some good suggestions in it. Some of those suggestions have been accepted, some have not and some are still under consideration. It is a step forward, and I know that you have been dealing with the Committee and its report and are taking it forward. Where is that now? Obviously, we are coming up to dissolution, so nothing will happen in this mandate. However, it remains an important issue, so where does it go now to get rubber-stamped or implemented by the Executive?

I also have a couple of questions to ask about the frameworks. I know you said that they are still under consideration, but do you have any sense of a timescale for when a decision could be made? Will you give an overview of where the report is and the status of your response to it?

Mr D Armstrong:

Before the mandate is over, and with the procurement board's approval, we would like to redefine the term "best value for money" so that the opportunity that exists for the sustainability agenda through public procurement can be emphasised.

The Committee's report picked up a sense of reluctance or uncertainty in some areas about what they could or could not do lawfully in the procurement process or whether there was a risk to getting value for money from the public purse. We have a revised definition of the term "public procurement", and the intention is to submit that to the Executive before the end of March for their endorsement. The procurement board has already endorsed that revised definition, and we are making some changes as a result of the final responses that are coming back from Departments. If that is approved, and if there is a clear mandate, if I can put it that way, it would work with the centres of procurement expertise and the Departments going forward.

The other area that we will have to work on quickly is a new strategic plan for the procurement board for the next Budget period, and we have plans as to how we might go ahead with that. The issues and themes that were addressed in the Committee's report will be taken forward into the new strategic plan for the procurement board. The plan will work its way forward on that basis.

Given the feedback that the Committee heard, I accept that the issue of the frameworks has been of some concern. We are doing some work on them, because we know that their use as a delivery mechanism in a number of areas is well established. Withdrawing the use of frameworks would create considerable service delivery issues. We have looked at other ways of increasing the opportunity, and, rather than going for a framework arrangement, we have gone to contract arrangements and broken up the number of contracts in the hope that we will draw a greater number of successful suppliers into those contracts. In some places, that has worked, and in some areas, it has not. Typically, a supplier will see a range of contracts, and given that it will be uncertain as to which one it will win, it will therefore be more likely to bid for one contract. If those contracts go out at the same time, it is likely that suppliers will use the same submissions. Therefore, one supplier could dominate in a series of contracts. The alternative is to break up those contracts and run them in series. However, that would produce a huge timeline that Departments would not want, because it would impact on their delivery.

Ms J McCann:

How do you see the redefinition of the term "best value for money" working in practice?

Mr D Armstrong:

It is well established that procurement competitions scope the proportion of contract awarded against price and the proportion awarded against quality. In sustainability, it is sometimes a mix between a definition in the specification, and sometimes that can come across into the quality. We would like to take that forward so that the sustainability issues will be defined as contract requirements and put into the specifications. Therefore, the specifications will state what a supplier must do, rather than seeking some sort of option that they might want to come back on. That is how we intend to deal with that. We have been in discussion with the Department for Employment and Learning (DEL) about some of the related social issues.

Ms Aileen Edmund (Central Procurement Directorate):

We hope that putting sustainability into the definition will raise its profile so that more people will think about doing it at the start of the procurement project or programme. We have talked to the Department of Enterprise, Trade and Investment (DETI) and particularly to DEL about how we might do more work together to deliver work placements so that we can use government contracts to deliver more work placements for our unemployed people and for those young people who are leaving school and university without any training. That is especially the case now, given that unemployment is raging. That would raise the profile of sustainability, and we are trying to get more Departments to think about it at the start of programmes, rather than its being something that they might do when they come to the procurement phase.

Ms J McCann:

Does that mean that it will be written into the contract that that will be a must?

Mr D Armstrong:

CPD has let a number of construction contracts over the past year or so to the value of around £210 million. In those contracts, we have put in requirements for apprentices and employment. That approach has been well tested in those construction contracts. In the area of supplies and services, we are identifying four projects from the centres of procurement expertise, and we are working with the Strategic Investment Board (SIB) to see how we might finally get an idea about how supplies-and-services types of contracts can also facilitate that type of arrangement.

Ms Edmund:

The construction contracts have been successful, because they have delivered 53 apprenticeships and 22 opportunities for unemployed people in that one year. That was very good.

Mr McLaughlin:

The Committee addressed the issue of having more robust data on the access of small and micro-businesses to public sector procurement opportunities. That has been a recurring issue with the Committee, so, whether it is perception or otherwise, in these difficult times, lots of small operations, such as social economy enterprises and micro-businesses, feel that they have had difficulty getting on the procurement ladder. How are you responding to the Committee's recommendation on that?

Mr D Armstrong:

Now that all the centres of procurement expertise and some local councils are using the eSourcing NI portal, we have found that some useful information is coming off it. With the procurement board's approval, we have described a set of data that we feel we need to collect as we go forward, but we need a system in place to collect that data. Data collection, in itself, produces a cost, and having a system in place to collect the data produces a cost. We are working on a business case on that. Anyone who looks at the most recently published annual procurement board report will see that we have been able to capture the size and distribution of contracts across Departments.

Using the eSourcing tool, we have been able to look into the various stages of the procurement process to assess what interest is being drawn from the various sectors. We did some work on that that shows a distribution of micro, small and large suppliers at the various stages, including drawing down documents, submitting to the pre-qualification process, the tender process and award. We are starting to build up that data picture to allow us to explain what is happening.

A further issue is that there have been shifts in the market, whereby larger suppliers are now bidding for smaller lots of work. They are coming with more resources for the pre-qualification process, and the issue with that is that the natural seedbed that brought small suppliers through might be displaced. Recently, the Cabinet Office announced that it will do away with the pre-qualification process for supplies and services contracts that are worth below £100,000. That opens up entirely the whole bidding process for supplies and services contracts that are below the European threshold. That has positives, in that there is no barrier to submitting a bid. The issue is that quite a lot of bidders could produce tender documents, and there is a cost to going into a tender process that has to be fully assessed and awarded on that basis.

I am afraid that, in procurement, when something is done to help in one direction, a problem is created in another area. We are looking at the opportunities for below-threshold procurement and how we might balance that with the issue of commissioning. A lot of suppliers are involved in the issue of commissioning services directly from the Department.

Mr McLaughlin:

I recognise what you are saying about opening up the process or setting lower thresholds. Part of the consequence of that would be that the big players could saturate the market. Did I understand

you correctly when you said that the business case has yet to be made and that we do not have the data management systems in place?

Mr D Armstrong:

We have identified and agreed the set of data that we need to collect. The business case is being prepared to allow us to produce the data warehouse.

Ms Edmund:

We are getting a lot of data; it is just a case of how we use and analyse it. We are preparing the business case to try to get the funds to pay for that side of the process. We are already getting a lot more information than we had, which, as Des said, is proving very useful. However, there is a limitation on how we can use that information.

Mr McLaughlin:

We are thinking about the social outcomes and specifically about perhaps encouraging or stimulating economic activity in parts of the region that need that additional bit of support. We understand that there is a broad European framework on competition law and whatever else. However, we have to try to refine our approach to get the best outcomes. If the business case is being prepared only now, does that mean that it has not been factored in to the Budget preparations?

Mr D Armstrong:

The issue to consider is the cost of the system. As well as looking at the data set, we are looking at what we can achieve with the existing systems. As I mentioned, the eSourcing tool is now providing us with some good data on the breakdown of the supplier base.

Mr McLaughlin:

How are those data being processed, if you do not have the —

Mr D Armstrong:

They are extracted from the eSourcing system.

Mr McLaughlin:

Is that the eSourcing system?

Mr D Armstrong:

Yes.

Mr McLaughlin:

Are we talking about upgrading or respecifying that software?

Mr D Armstrong:

We brought in the eSourcing tool for a licensed period, and we are now looking at how we might renew it. When we go through the procurement process for it, we will look at what added features will be brought in to the system. That might help us to improve the data that we have or those that we can get out of the system.

Mr McLaughlin:

To an extent, I welcome the information that you gave us about the pre-qualification process. There were obviously problems with that process, given that many contractors were just not able to get into the system or were effectively excluded from it for measureable periods if their bid failed. On the back of the economic downturn, that obviously had a very significant impact on them. I do not know whether opening the market up to the bigger players will do anything at all to help small and medium-sized enterprises, which were a particular focus for the Committee. I want to record again the Committee's concern about that, and I think that you should share our concern about not wanting to create any additional difficulties.

Will you explain why only seven councils are tied in to eSourcing NI? Why is there a resistance to it? Has that approach been effectively undermined, given that only a minority of the councils — just over 25% — are using it?

Ms Edmund:

Councils are not subject to procurement policy, so their joining in is voluntary.

Mr McLaughlin:

Is it the case that they see no advantage in it for themselves? Is there a way that they can be incentivised to come in? There will be a hole in the data that we are talking about if we cannot address the issues with local, as well as regional, government.

Ms Edmund:

Quite a few of the councils have chosen their own eSourcing tools. For whatever reason, they have chosen not to choose the same supplier that we use. However, I do not know whether there is much that we can do about that.

Mr McLaughlin:

For a region of this size, does CPD not consider that situation a bit ridiculous? That means that we could have eSourcing NI and 19 other different, individual systems. Are the packages bespoke or off the shelf?

Mr D Armstrong:

There is probably a history with the types of systems that the councils have used. CPD used a different type of electronic system before it moved across to the eSourcing system. So, there are products that can be bought off the shelf.

Mr McLaughlin:

Does your overview of the procurement process here not give you the opportunity to give a very strong encouragement to councils to buy into the one system and allow us to rationalise it to target initiatives, etc?

Mr D Armstrong:

CPD would be very happy if it could encourage councils to do that, but we do not have that remit.

Mr McLaughlin:

I understand that this is where we are, but how do we move from where we are to a more rational approach? This is crazy. Anybody looking at it would ask what is going on. Who can fix it?

Mr D Armstrong:

We have already demonstrated that councils can use it. I suppose that the decision as to whether to use it lies with councils.

Mr McLaughlin:

Have you met the Society of Local Authority Chief Executives (SOLACE)?

Mr D Armstrong:

We have not met SOLACE. We have been engaged with the Department of the Environment and with representatives from the councils who are dealing with the procurement issues that are on the go as part of the review of public administration. We have had a number of meetings, and we have suggested to them that the eSourcing tool seems to be working now and that there is no substantial issue with it. It is becoming the accepted portal for people looking for tender opportunities, and it links into other opportunities in a wider sense. The decision as to whether to use that still lies with the councils, and I do not have any remit to influence that.

Mr McLaughlin:

Maybe it is something that we will have to return to. I want to record my appreciation. You have responded to a number of our recommendations, and we will continue to work with some of the other outstanding matters, including that particular issue.

Mr O'Loan:

The purpose of our inquiry was to make the system of procurement much more open to small and medium-sized enterprises (SMEs). I take your earlier point about the possibility of unintended consequences if a system is changed. Do you think that the adjustments that you have made so far have made the system more SME-friendly, or have they made it more difficult and more bureaucratic?

Mr D Armstrong:

I suggest that it has helped the situation. We have produced a set of guidance notes, which are designed to produce greater consistency and transparency across the procurement process. We have reinforced the issue around the advertisement of contracts through the procurement control limits. Using the portal is a very effective way of demonstrating where the opportunities in procurement are. We have done some work on single tender actions and the control measures that are needed around those. That also ensures that opportunities are available.

We have gone through the pre-qualification process of the procurement process with representatives from the construction industry. They told us that they are content with the process that we put in place there. We have been in discussions with Scotland and Wales about supplies and services. Wales has done very good work on the pre-qualification process for supplies and

services. Scotland has started to take on board that work, and it is our intention to use the groundwork that has been done to very quickly put in place a pre-qualification process for supplies and services. Therefore, we will be covering works and supplies and services in a relatively short time.

Ms Edmund:

The eSourcing system that we have stores suppliers' information, so they do not have to put the same information in repeatedly. Once they register, that basic information will populate any tender that they go to submit.

Mr McLaughlin:

Do they get an opportunity to update it?

Ms Edmund:

Yes. We are not starting from a very low base. There is a system there, and there are standard questions that they are familiar with and can answer, and those are stored. We are trying to take it a bit further by looking at the Welsh and Scottish models and learning from those, because they have spent a lot of time and resources on developing that. I think that we can learn from that.

Mr D Armstrong:

Another area or example is health and safety in construction. Previously, suppliers had to repeat their submissions on health and safety. We now have a centralised system for that. We have approximately 160 suppliers on that, all of whom have been assessed. We know that they do not need to make a submission on health and safety, but we are making sure that it is still effective in ensuring that workers are safe on site. That is reviewed on a 12-month basis.

We are looking at those types of approaches where we can involve the supplier, get the information and then reuse it, if the supplier wants, time and time again rather than their having to make a fresh submission.

Mr O'Loan:

Several of the recommendations — I think it is five — are still under consideration. I think it says that they “will be explored.” I am a bit surprised by that. You have had the report for a long time, and I would prefer a rejection, if one was justified, instead of this halfway house. It looks

like you are kicking them into the long grass in the hope that the Committee will eventually forget about them.

For example, recommendation 10, which is for the first line of attack to be the breaking of contracts into lots if it can be done: I cannot see why you have not made a decision to accept, reject or slightly adjust that recommendation.

Mr D Armstrong:

As I mentioned earlier, in trying to come up with proposals for frameworks, we have looked at breaking down contracts into lots. We have had to run the process, look at what happened and learn from it. For example, we recently awarded five small contracts worth about £250,000 each. We ended up with one supplier getting three contracts and another one getting two. Both of those suppliers, and others that were in the process, have been involved in five tender exercises for something that, in the past, we might have rolled up into one £1.25 million contract.

As I mentioned, that creates opportunity and people can submit bids. You have to then look at the out-turn from that; we are not getting five suppliers, we are getting two, and we have involved quite a bit of activity on the supplier's side and from the assessment teams that are needed for that.

Mr O'Loan:

When will you complete that exercise?

Mr D Armstrong:

As I mentioned, the intention is to have a definitive statement on each of the recommendations by the end of March. Unfortunately, this is 1 March, but I assure you that we have been really focused on the Committee's report. If we get to the end of March with some issues still unresolved, they will be forwarded to the procurement board.

Mr O'Loan:

We have a number of centres of procurement expertise (COPEs). The Housing Executive is one, and some of its procedures were heavily criticised recently in Department for Social Development reports. NI Water is another one, and it was subject to very serious criticism just after it received its charter mark as a very special COPE. That does not give us a huge amount of

confidence in the award to a body for being a centre of procurement expertise.

Mr D Armstrong:

We picked up the issue on the accreditation process as part of the Committee's report. The procurement board has asked us to look at the accreditation process, because of the type of incidents that you referred to. We rely very heavily on the centres of procurement expertise being the controlling factor in ensuring value for money in public procurement. The centres of procurement expertise need to be able to give an assurance that they are capable of doing that.

The issue that we have had in the past with the accreditation process is that it has been focused on capability. The procurement board is now clearly saying that as we go forward it is not only capability that is required; it is application of that capability that needs to come through.

We have also looked at what happens if a centre for procurement expertise does fail and what arrangements could be put in place to allow business to continue if a centre for procurement expertise was in failure mode. The policy is that procurement is done through the centre of procurement expertise, and there would be real problems if that was withdrawn. How would the work continue, and how would those arrangements be put in place? We have done some work on how that might happen.

Mr O'Loan:

Short of that extreme step, taking the Housing Executive as an example, when it emerged that there were two critical reports, did anyone move in and say that conversations were needed to put it right, examine more broadly its expertise and get it back to a state of fitness?

Mr D Armstrong:

The Minister has made statements as to how that will happen. I assume that the action plans will be taken forward within those bodies to correct that. We have a mechanism, through the Gateway Review process, where an action plan is developed, and we can bring in external resources and experts to look at how that action plan is being applied. We need to look at the delivery confidence in an action plan and how it might correct issues.

Mr O'Loan:

It is a real worry. Recommendation 21 was about the 10-day limit. I do not object to your

rejecting the point about the 10-day limit. My mind has moved away from that, as I have previously remarked to the Committee; we should concentrate much more on the 30-day payment. What you have put in there around the condition around the fair payment charter being put into construction works contracts and so on — will that have a material effect in ensuring prompt payment to subcontractors?

Mr D Armstrong:

The 10-day limit goes beyond the contractual —

Mr O’Loan:

I am prepared to leave that aside.

Mr D Armstrong:

In terms of the process for engagement of subcontractors, it is essential that we get a proper relationship between the main contractor and the subcontractor, as subcontractors make a substantial contribution to the success of a contract. We should not subcontract to a supplier unless the terms are favourable. If we believe that we have established fair terms with the main contractor, we need to do things that push that down into the supply chain. That can be done by some of the back-to-back subcontracts that are available in construction.

We need to do similar work with supplies and services. In development at the minute is a guidance note on subcontracting and on poor performance by a supplier. We can use the fair payment process to highlight to the main contractor issues concerning the treatment of subcontractors.

Mr O’Loan:

Your response to recommendation 51 is to reject the idea of a conciliation or mediator function. We got quite strong evidence around that, and the Committee felt that there was real value in that. Can you elaborate on why you did not think that that would be helpful?

Mr D Armstrong:

The issue arises because public procurement is heavily regulated, and regulation and case law are very complex. As it develops, it actually changes the approach and the regulations. An approach that might be considered lawful one day can be moved on by case law that says that that approach

is unlawful. CPD has been testing that to see whether it could use a referral to the supplier's feedback service which the Office of Government Commerce has, to see whether an independent review would help. In some cases it has; in others it has not. Suppliers may still feel aggrieved that they have not won the process, even though an independent review says that the process was fair.

Ms Edmund:

If you think that someone has been awarded a contract who should not have been awarded it and you were a better person, that can only go to the High Court for decision, which involves significant commercial costs. Under the legislation, that can only go to the High Court. However, if there is an issue with the processes, it is covered through the ombudsman. If there are difficulties in a contract, there seemed to be nowhere else to go other than what we have suggested: arbitration or the complaints procedure, which ultimately leads to the ombudsman. Because award decisions have to be a matter for the High Court, it is difficult to step outside that.

Mr O'Loan:

I cannot remember in what terms we put the recommendation, but are there not potential disputes further down the line, as a contract works its way through, where conciliation could be useful?

Mr D Armstrong:

Once you move into contract, absolutely. The contracts should include alternative dispute resolution. The issue is just to get the contract away and into it. There are lots of contracts that have provisions for dealing with disputes — arbitration, conciliation and that type of thing. The issue here is dealing with the disagreement on the point of an award.

The Chairperson:

I thank you both for your presentation.