



**Chambers
Ireland**

Advancing business together

**Chambers Ireland Submission on Quality Procurement and
Sustainability Requirements**

July 2021

Contents

Overview	3
Chambers Ireland’s Perspective on Procurement	4
Chambers Ireland and the Sustainable Development Goals.....	4
Observations on the Corporate Sustainability Reporting Directive (CSRD)	5
Quality in Public Procurement (Contract Preparation and Award Criteria) Bill ..	7
Chambers Ireland’s suggestions on potential improvements to the Quality in Public Procurement (Contract Preparation and Award Criteria) Bill.....	9

Overview

Chambers Ireland supports the aims of the Private Members Bill (PMB) “Public Procurement (Contract Preparation and Award Criteria) Bill” and suggests that the aims of this change to procurement processes could be advanced if the bill also included:

- 1) Expansion of the social considerations criteria defined in Section 3 of the PMB
- 2) Incorporation into the tendering process of the track record of firms, including such factors as:
 - i) their engagement with frameworks they are members of,
 - ii) their delivery within terms agreed in tenders won, and
 - iii) the quality of the goods/services delivered in previous tenders
- 3) The treatment of “abnormally low tenders”, and
- 4) Ensuring that the price component of a tender is considered only after the quality elements are scored, to prevent inadvertent or implicit biases entering the tendering process.

We also note however that there are many regulatory burdens approaching for small businesses.

In particular, the Corporate Sustainability Reporting Directive (CSRD) is progressing, which will have impacts on private firms (regardless of scale) within the value chains of publicly traded firms.

We are also still awaiting the new guidelines for Green Public Procurement (GPP). Our members will need time to both train their employees, and amend internal processes, if they are to be competitive with tenders operating under such guidelines.

Contracting bodies will also need to amend their processes to assure service providers that they will implement these guidelines as (particularly smaller) firms may not want to risk investing in GPP unless there is certainty that contracting bodies require them.

It would be useful if there was a voluntary reporting code for Green/Sustainability considerations, which could operate as a core taxonomy for both public and private sectors, as this would minimise the need for duplication of efforts for businesses that are within the value chains of publicly traded firms while also trying to supply goods and services to public bodies.

Chambers Ireland's Perspective on Procurement

Chambers Ireland is the State's largest business representative network. We are an all-island organisation with a unique geographical reach; our members are the chambers of commerce in the cities and towns throughout the country – active in every constituency. Each of our member chambers is central to their local business community and all seek to promote thriving local economies that can support sustainable cities and communities.

Our member Chambers are anxious to see the effective improvements to our public procurement systems so that they deliver quality for money for contracting bodies, while also ensuring that procurement is sustainable, and internalises relevant environmental and social costs.

Chambers Ireland and the Sustainable Development Goals

Our network of chambers uses the Sustainable Development Goals to prioritise our policy analysis and recommendations with five of these being most prominent in our considerations:

- Decent Work and Economic Growth
- Sustainable Cities and Communities
- Gender Equality
- Industry, Innovation and Infrastructure
- Climate Action



Government procurement is an important factor to achieving these goals as a robust and fair procurement process is key to delivering effective and efficient public expenditure.

Socially responsible procurement underpins inclusion, action on climate, gender equality, and myriad other aims. Ensuring that this is done without unduly burdening the SME sector is vital on economic grounds and is also a necessary condition for a healthy marketplace that is of sufficient scale to offer value for money to contracting bodies.

As such, Chambers largely welcomes the proposals in the Public Procurement (Contract Preparation and Award Criteria) Bill and considers its details later in this document.

Observations on the Corporate Sustainability Reporting Directive (CSRD)

The EU is currently drafting sustainability reporting standards, which while focused on publicly traded firms, including SMEs, are likely to have an effect on privately held SMEs which are part of the supply chains of publicly traded firms.

Already many firms report that they have to participate in ESG sustainability reporting if they want to be part of the supply chain of larger firms, NGOs, and state bodies (such as our contracting bodies).

I refer the Department Annex 5 of the Commission Staff Impact Assessment on Corporate Sustainability Reporting.¹

This survey, which was organised through the European Enterprise Network, which our member chambers are participant in, included Irish firms. Almost half of the respondents currently receive requests for ESG data from stakeholders, in particular **SMEs that are part of the supply chains of larger firms are more likely to receive such requests.**

¹ <https://op.europa.eu/en/publication-detail/-/publication/5b9a0be1-a377-11eb-9585-01aa75ed71a1/language-en>

Also, the majority of the firms surveyed (68%) “would welcome the development of a simplified standard” regarding the reporting on social and environmental information.

An issue which firms are reporting is that different clients are looking for different data in different ways, in order to satisfy their own reporting requirements. The Eurochambres Network of European Chambers of Commerce (Chambers Ireland is a member) will be proposing² that if general (non-binding) reporting guidelines could be developed for SMEs, it could catalyse the standardisation of the sustainability data which are requested of them. Otherwise, the burden of different ESG reporting regimes could exclude smaller firms from the value chains of larger ones.

This is a problem which is mirrored in the procurement sector too. It would be useful if the procurement guidelines of state bodies could also become the default approach that was taken to ESG reporting. It would be even better if this could be consolidated at the EU level which would make it easier for Irish SMEs to compete in tendering competitions across the EU, both for state bodies and private companies.

The worst-case scenario for SMEs would be if such reporting regimes were developed on an ad hoc basis which would result in multiple standards wherein it would only be possible for large firms with dedicated ESG teams to compete, as only they will have the resources to tailor their data to respond to requirements of each of the client bodies.

Chambers Ireland hopes that the Department of Finance and the Department of Enterprise, Trade, and Employment can collaborate to ensure that the environmental sustainability and governance reporting requirements that will inevitably draw in the SME sector will be coherent with the State’s Green Public Procurement, and the EU’s Socially Responsible Public Procurement guidelines.

It would be of great benefit to smaller firms if the ESG data reporting requirements complemented a well-defined framework implemented by public bodies.

If such an approach which was compatible across the EU, it would be ideal.

² Forthcoming position paper

Quality in Public Procurement (Contract Preparation and Award Criteria) Bill³

Regarding the Private Member's Quality in Public Procurement (Contract Preparation and Award Criteria) Bill 2021 Chambers Ireland welcomes the direction that the is taking as it attends to some of the issues which we highlighted in our [2019 submission⁴](#).

We are strongly supportive of the principle of weighting tenders heavily in favour of quality, an approach which is coherent with the public procurement directive 2014/24/EU.

We appreciate that the PMB creates a default approach to procurement which weights quality as at least 50% of the tendering score unless an accountable person can reasonably declare that there is such little variation in terms of quality across the potential winners of the tendering process that quality is unimportant to the tender.

This seems like a good mechanism for inculcating a culture of quality across the contracting bodies.

Our principal concern over the years is that it has been possible for legal persons to be successful in tenders which were badly specified through submitting very low prices, and that this can create problems subsequently where the services that are supplied are sub-standard, or require significant amendments to the contract if they are to be delivered successfully. A scenario which ensures that extra costs are incurred by the contracting authority.

Chambers Ireland sees the appropriate weighting of quality as being a prerequisite if we are to see the State derive value for money from the procurement system.

³ <https://data.oireachtas.ie/ie/oireachtas/bill/2021/32/eng/initiated/b3221s.pdf>

⁴ <https://www.chambers.ie/wp-content/uploads/2019/06/Chambers-Ireland-Submission-to-OGP-on-SME-Procurement-April-2019.pdf>

Section 3 of the PMB seeks to resolve this by making the weighting for quality and price favour quality, a principle which Chambers Ireland supports and was calling for in the first area of concern which we notified the Offices of Government Procurement about in our earlier submission:

“Weigh quality more appropriately in tenders

When lowest price is weighted too highly, as it often seems to be at present, a low price will win most tenders, regardless of the quality of provision. In tenders, quality must be appropriately weighted so that the full life-time cost of the good/service is taken into account.”

Section 4 allows for deviation from this principle by making the waiving of the quality criteria the decision of a senior official, it seems likely that most individuals within contracting bodies will not seek to commence that process, and so ensure that quality is consistently applied across contracts, which is an approach which we support.

Section 5 seems to require that contracting bodies operate within the law. We are not sure of the effect of this section but would in general support the principle that state bodies should act within the law, both in terms of the Human Rights Act 2003, and European Union (Award of Public Authority Contracts) Regulations 2016 (S.I. No. 284 of 2016).

Chambers Ireland also welcomes the element in Section 6 that sees the Minister creating guidelines to improve the consistency with which social considerations are applied across, which was the sixth area of concern that we related to the Office of Government Procurement in 2019:

“Consistency in the award of quality marks:

Our members regularly experience different approaches to, and application of, quality marks between different Contracting Authorities and even within the

same Contracting Authorities for different projects. Contracting Authorities should adopt marking procedures which are clear and consistent.”

This suggestion is at least as important as the principle of appropriately weighting quality and price. If this approach is to be effective, the same approach to quality must be taken across all contracting bodies.

Section 7, the reporting requirement, seems appropriate too.

Chambers Ireland’s suggestions on potential improvements to the Quality in Public Procurement (Contract Preparation and Award Criteria) Bill

Regarding methods to strengthen the PMB, Chambers Ireland notes that the Commission’s “Buying Social - a guide to taking account of social considerations in public procurement (2nd edition)”⁵ (C(2021) 3573) highlights that the contract award criteria can include, among others, social objectives such as:

- Promoting fair employment opportunities and social inclusion
- Providing opportunities for social economy and social enterprises
- Promoting decent work
- Ensuring compliance with social and labour rights
- Accessibility and design for all
- Respecting human rights and addressing ethical trade issues
- Delivering high quality social, health, education and cultural services

And so, we suggest that Section 3 (3) be amended to expand the range of Social/Quality criteria that can be included in the tendering process.

⁵ <https://ec.europa.eu/docsroom/documents/45767>

We also note that C(2021) 3573 highlights how “significant or persistent deficiencies in the performance of a substantive requirement under a prior contract” are a factor which can be considered by contracting bodies. This is an element of our third concern in our 2019 submission.

“Past Performance and Service Quality assessments:

A recognition in the tendering system of the past performance and level of quality of the services which were provided will incentivise good work from service providers who want to maintain their professional relationships with contracting authorities over multiple contract cycles.”

It is essential that a quality focused procurement process discounts those that have failed to deliver to the appropriate standard on similar contracts in the past. However, such a criteria would have to be accompanied by a procurement channel wherein new entrants can participate in smaller value contracts without having to prove positive past performances, so that they can demonstrate their capacity to deliver on services to the appropriate standard.

Furthermore, should parties to a tender submit prices that are “Abnormally Low” (part of our first element of concern in our 2019 submission):

“Abnormally low tenders should also be reviewed very sceptically. Acceptance of what transpire to poor quality tenders is not in the interest of either Contracting Authority or providers in that market.”

then it is important that contracting bodies follow the investigatory process which the Commission outlines in Section 4.9 (page 79) of C(2021) 3573.

Finally, while the rest of our concerns raised in 2019 remain relevant to the procurement process in general, the only other one that pertains to the PMB is item 5:

“Two-envelope tender process for Quality/Price tenders:

Tender compliance and quality assessment elements should be concluded before the price envelope is opened and marked, and tenderers should be invited to attend the price envelope opening.”

As part of a tendering process that considers both quality and price, it is important that the scoring of the quality criteria is completed independently of the price criteria, and in advance of the consideration of any price criteria.

Should these two elements not be systematically disentangled, there is risk that implicit bias may underweight any inherently subjective elements in the quality category.