



### **Submission on the Transposition of the new EU Procurement Directives**

Chambers Ireland is the largest business network in the State. With members in every geographic region and economic sector in Ireland, we are well positioned to understand the concerns of businesses and represent their views. We welcome Government's commitment to promptly transpose the EU Procurement Directives and the opportunity to provide some input to this process.

#### **Question 1: Environmental, Social and Labour Law**

The obligations should be implemented utilising administrative measures. The application of social clauses in public procurement contracts represents an opportunity to strategically support public policy goals through procurement. However, flexibility must be maintained as to which clauses are most suitable for which contracts. A blunt regulatory approach may reduce social clauses to an administrative requirement and dampen their potential impact.

Some consideration must be given to additional administrative and cost burdens of environmental, social, and labour clauses on suppliers, particularly SMEs. The burden of compliance must be proportional to the contract value, the size of the supplier, and the potential added value or benefit derived from the inclusion of social clauses within the evaluation procedure.

#### **Question 2: Group participation of Economic Operators**

Formal guidelines setting out the standard requirements for group participation in public procurement should be issued. This will help inform individual buyer's policies and allow some measure of consistency and standardisation across buyers, while facilitating flexibility and innovation in the formation of groups.

#### **Question 3: Electronic communications and e-procurement**

##### **Use of electronic signatures**

The market for advanced electronic signatures in Ireland is underdeveloped by comparison with many other EU States. Consequently there is almost no use of advanced electronic signatures amongst the Irish SME community and we are not in favour of the use of advanced electronic signatures in procurement processes.

## **Compulsory use of use e-Catalogues for certain types of procurements**

E-Catalogues should not be made compulsory given current levels of engagement with electronic procurement amongst SMEs.

### **Question 5: Procedures**

The Open Procedure should be the standard procedure for public procurement to encourage fair competition, and ensure equitable market access. Restricted Procedures should only be used when there are clear requirements for a restricted tender process, and these requirements should be clearly outlined in the public tender documentation.

Sub-central authorities must also ensure that their procurement procedures are robust, transparent and allow for equitable access. The minimum time limit in the absence of agreement with tenderers should be 25 days to facilitate potential suppliers the time to compile and submit tender documentation of sufficient quality to be competitive.

The possibilities presented by the Innovative Partnership procedure should be analysed fully, and pilot projects used to guide more widespread application of this process.

### **Question 6: Central Purchasing Bodies (CPBs)**

This provision should be implemented in national law to ensure the coherent and effective application of national public procurement policy. OGP must have the capacity to enforce national policy when in the public interest rather than rely on guidelines.

### **Question 7: SME access and division of contracts into Lots**

The division of public contracts into lots should be compulsory for all contracts below EU threshold, unless the buyer can provide compelling evidence that value for money or efficiency will be seriously compromised. The feasibility of dividing individual contracts into lots should be investigated in all cases.

### **Question 8: Exclusions of economic operators from public procurement for various offences, failures and transgressions**

#### **Mandatory Exclusions**

Derogations from mandatory exclusions should only be permitted under article 57(1) if there are immediate, significant and verifiable public interest considerations such as the example provided in the consultation document, i.e. the provision of vaccines in an emergency public health scenario.

No derogations should be allowed under 57(2). Public procurement suppliers should at all times be able demonstrate their compliance with national law and that they have met their obligations in terms of taxation and social security contributions.

#### **Discretionary Exclusions**

In some circumstances, buyers should have the ability to exclude economic operators from the bidding or contracting process. There should be a publicly available prescribed list of transgressions

that may warrant exclusion. The process by which an economic operator is excluded must be transparent and subject to appeal.

Transgressions such as knowingly providing inaccurate information in a tender, or a proven previous history of transgressions could be considered as sufficient to warrant exclusion.

**Question 9: Tender Assessment**

(b) Cost only or price only should never be the sole criterion for evaluating a tender. Depending on the category of purchase, criteria should always be expanded to include *inter alia* levels of service provision, cost of replacement or repair, or full life cycle costs.

**Question 10: Sub-contracting**

- (a) It should be compulsory for bidders to indicate broadly what percentage share of contract value and what specific functions they intend to subcontract, and any relevant details of subcontractors whose input could be considered essential to the fulfilment of the contract.
- (b) The contractor should be able to provide details of its subcontractors and attest to the fact that its supply chain is robust and that supplies are of sufficient quality to fulfil the contractual requirements. However contractors should not be obliged to divulge supplier details.
- (c) Contracting authorities should be required to verify that the primary subcontractors are not subject to mandatory or discretionary exclusion. The contractor should also be required to make a declaration to that effect.
- (d) Consideration should be given to requiring bidders to comply with the Prompt Payment Code of Conduct.

**Question 12: Light Touch Regime**

Unless there is a clear and well defined rationale for a buyer to have recourse to light touch regime provision, standard procurement processes should apply to ensure transparency and fair competition.