

# Executive summary of the independent review of the Tender Advisory Service

The Tender Advisory Service (TAS) is provided through the Policy Unit of the Office of Government Procurement (OGP). Its purpose is to provide an informal mechanism for potential suppliers to raise concerns in relation to a particular live tender process being carried out by the OGP or other public sector contracting bodies (Office of Government Procurement, 2016a). The service is available at only one point in the open tendering process, which is post clarification and not less than six days before the closing date for receipt of tenders.

## Aim of the review

The overall aim of the research is to conduct an independent review of the TAS and through that to:

1. provide an assessment of the contribution of the TAS to the public procurement process in the OGP including identifying strengths and weaknesses arising, and
2. evaluate whether the current design and operation of the TAS is sufficient, appropriate and proportionate in the context of similar type services elsewhere.

## Methodology

The findings from the review are based on an analysis of data from primary and secondary sources of information and it considers key issues relating to the structure, processes and outcomes from the work of the TAS. The findings are also situated within the context of the broader literature on public procurement (particularly as it pertains to SMEs), current legislation and developments in other jurisdictions, specifically in Scotland, Sweden and Canada. These jurisdictions are included as they were identified by participants in this review as examples of good practice in this area.

## Key findings

Throughout this review, participants drew attention to the overall procurement process in Ireland, which it was noted is highly regulated. It was also noted that although this is welcome, it can be very challenging for both contracting authorities and suppliers. Issues relating to the broader procurement process were raised by many participants and consideration of these as they impact on SMEs and, consequently, on the overall implementation of the TAS is set out below.

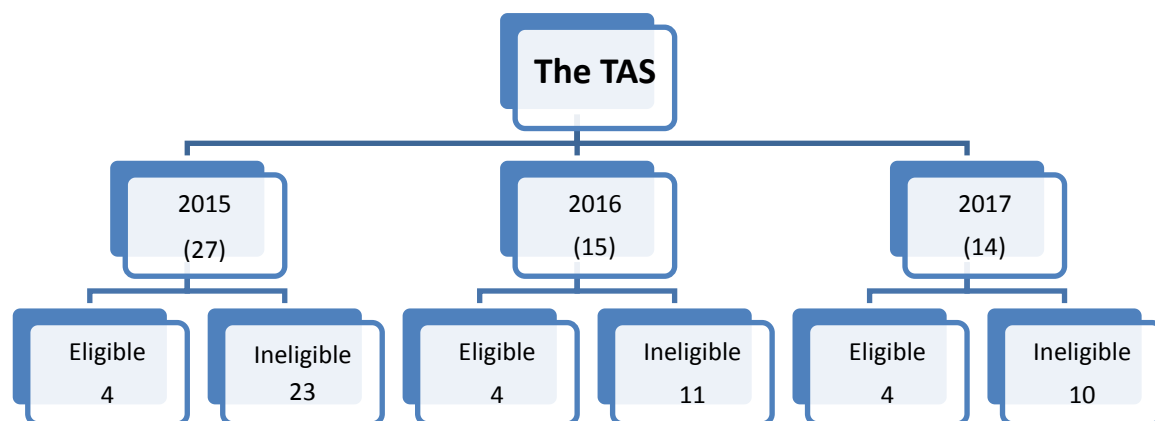
Four key issues relating to the broader context are highlighted and these are:

1. impact of recent public procurement developments in Ireland on SMEs;
2. complexity of the overall procurement process;
3. specific challenges in respect of the tender process; and
4. knowledge and expertise of the contracting authorities.

The TAS is generally considered to be a positive development in the overall procurement process. In the course of this review, four main issues were raised in respect of the structure of the TAS and these relate to the limited scope of the service, the impact of the short time period for raising queries with the TAS, the potential for a perceived lack of independence by the TAS due to its positioning within the OGP and a lack of clarity, knowledge and information about the TAS service.

### Number of requests to the TAS

The processes that take place within the TAS are strongly influenced by the number of queries that are raised for their attention. The total number of queries is presented in Figure 1.



**Figure 1: Number of the TAS queries received from Feb 2015-July 2017**

Over the period of the review, there were 12 eligible queries (Figure 1). Information on the size of the contract is available for six cases and the size ranged from less than EUR 25,000 to EUR 10 million. Response times to queries ranged from one day to 36 days and all but one query was resolved within 10 days of the query being raised.

The eligible queries raised focused on the following main areas:

- lotting strategies;
- perceptions of bias or anti-competitiveness in the tender requirements;
- clarifications sought that did not receive a response from the contracting authorities; and

- unnecessary burden in completing the tender documentation.

More than three-quarters of all queries raised were found to be ineligible, mainly because they were more suited to a general query or because of the timing of the query. All queries deemed eligible were followed up with the contracting authority. In seven cases where information was available, the contracting authority was not requested to make any change. In five cases, the contracting authority was requested to make changes.

**Assessment of the extent to which the TAS is appropriate, sufficient and proportionate**

It is concluded that while the numbers engaging with the TAS are small, the service's approach to dealing with queries arising within its limited remit have been successful and they have had a positive impact. The availability of a service during the course of the open tendering period offers a mechanism to prevent SMEs being exposed to unfair or prejudicial terms. In the absence of the TAS, the only recourse available to suppliers is the High Court system following the awarding of a contract. This would involve considerable expense and resource issues for the supplier. For those reasons, the service is considered appropriate to its purpose, meets the aims and objectives set out for it, is effective and is beneficial in the overall procurement process.

There are, however, limitations in terms of the service, including: the sufficiency of the service in the context of the overall procurement life-cycle; needs of suppliers and contracting authorities; and the need for a broader range of approaches to increasing the participation of SMEs in public tendering.

One important limitation is that the service is available for only a short period of time and is not available in the post-contract period where it is likely many more queries might arise. In addition, the short timeframe from the end of the clarification period to the close of tender resulted in the exclusion of many suppliers who raised queries. Greater awareness about the operation of the service would reduce this number, but additional steps may also be required. It is suggested that with a greater knowledge and awareness about the service, more suppliers are likely to use it, although given the experiences of the OPO in Canada, the extent of the increase in use may be less than some might expect.

With regard to enhancing the role of the TAS, there is strong agreement that the overall procurement process is complex for both suppliers and contracting authorities and it was strongly suggested that there is a requirement for a service similar to the TAS but that is broader in scope. It is, therefore, concluded that the role of the TAS service is not proportionate in the context of the needs of the overall procurement process.

While the evidence from this report suggests there is a need for a service that is broader in scope and which provides support for both contracting authorities and suppliers, the findings do not provide any clear consensus regarding the type or nature of a special administrative body which might be established to deal with procurement issues.

## Proposals for enhancing the service

The overall indications from this review are that the TAS is seen as performing a useful service despite its limited role. There are, however, ways in which its effectiveness might be enhanced and these are set out below. Some of these steps are relatively straightforward and can be undertaken without undue difficulty. Others, however, are more fundamental, affecting the nature of the service provided and will require time and reflection not just on the TAS service but on the totality of the service provided by the OGP and the role of the TAS within that. Proposals for enhancing the TAS include:

1. **At a strategic level, consider the role of the TAS in the context of a need for a broader administrative process to support suppliers and contracting authorities and to enhance the overall process.** While the TAS meets the current aim and objectives set out for it and is effective in dealing with eligible queries, it is also evident from this review, that the service is very limited and plays only a very small part in the overall procurement process. In the medium to longer term, there is a need for consideration to be given to how a more comprehensive service with a broader scope that takes account of the lifecycle of procurement and that meets the needs of both suppliers and contracting authorities can be put in place. Consideration should be given to
  - a. **Build the capacity of personnel in contracting authorities** to undertake procurement processes.
  - b. **Adopt a more proactive approach to identifying problems** arising in the procurement process. Examples of how this may be done include: having a peer review structure in place to review RFTs; taking account, in a systematic way, of the views of industry representatives; and conducting a review of a random selection of RFTs placed on the eTenders' website.
  - c. **Adopt an educative role to increase awareness** about problems arising in the tendering phase of procurement. This includes the provision of relevant information to inform workshops and seminars such as Go-2-Tender training. This may also include the development of relevant educational resources (such as fact sheets and video presentations from service users) and the utilisation of social media to support the process.
  - d. **Improve data capture and analysis** to inform the service by adopting a strategic and informed approach to data collection, data analysis and reporting on queries received.
2. In the short-term the following should be considered:
  - Improve knowledge and awareness about the service.
  - Change the title of the TAS to more accurately reflect the timing and the type of service provided.
  - Consider the timing of access to the service.
  - Reduce the dangers of perceptions arising of bias and discrimination due to the location of the TAS within the OGP.
  - Take account of the findings from this review in future developments.