

SME Advisory Group Meeting

Tuesday 8th September 2020

By Video Conferencing

Minutes

Attendees:

Minister of State Ossian Smyth - Chair		Jim Deane – OGP
Brendan Whelan - OGP	Fergal Grogan – OGP	Joan Grogan – OGP
Eva Dowling – D/PER	David Clarke – D/PER	Neil McDonnell – ISME
Sean Downey - CIF	Shane Conneely – Chambers	Ian Talbot – Chambers
Tonia Spollen Behrens - EI	Tom Kelly - EI	Elizabeth Bowen – SFA
Aidan Sweeney – Ibec	Laura Byrne - DBEI	Eugenia McLaughlin – OGP
Conor Byrne - OGP		

Apologies:

Margaret Hearty – ITI	Sarah Smithers – DBEI
Caroline Sweeney – ITI	Wayne Tobin – ISME
Grant Gilmore – ITI	Collette Crowne – CCPC
Declan Hughes – DBEI	Emma Kerrins – Chambers Ireland
Christine Murray – DBEI	

1. Introductions

The Minister of State welcomed the Group to the meeting, his first one to chair, and confirmed the meetings of the SME Advisory Group are to allow engagement between Government, the OGP and Industry Representatives to understand what is required to help SME access to public procurement. He recognised SMEs are the lifeblood of the economy and advised there would be large expenditure in public procurement over the coming year. He also stated that COVID had required the state to be more interventionist, and consequently public procurement has become more prominent.

Introductions followed and members of the Group congratulated the Minister on his new appointment.

2. Previous Minutes and Actions Arising

The Minister advised if there were no matters arising from the minutes of the meetings of 25 September 2019 and 4 December 2019 they would be taken as agreed. The OGP again gave the Group the opportunity to forward any comments or amendments to their office.

3. Programme for Government

The Minister confirmed one of the central commitments in the Programme for Government was a review of each framework to encompass green procurement but that the OGP need clear rules, numeric targets and metrics to determine if bids are green. They will look to the rules laid down by the Commission and the OECD and what is happening in other countries. To have impact in the green and social sphere there will be a need to have regular meetings with other Departments e.g. the Department of Social Protection to see how social considerations can be incorporated to help with employment, and to look at what is impacting on the environment so bids can be evaluated taking environmental factors into account. He was aware of the work done by the OGP and the publication in 2019 of Circular 20/19: Promoting the use of Environmental and Social Considerations in Public Procurement. He advised the Group the OGP would continue to work with the Procurement Executive and the Procurement Reform Board in this regard.

The Minister advised he recognised the incorporation of social and environmental factors makes the procurement process more complicated due to the increased criteria involved.

Ibec welcomed the green and social commitments in the Programme for Government and emphasised the work of the OGP over the previous years but stated there is a need for policy input at an earlier stage, failure in this area in the past was due to policy input being too late. They highlighted the need for early market engagement so public buyers can see what is available, and the need to move to a circular economy. Ibec also cited that procurement is not a regulator of employment so there is a need to be careful on social considerations regarding employment, and retention of staff was as equally important as creating more jobs.

The Minister stated work in this area must go beyond theory and the need for green services not just commodities and does not want to disadvantage SMEs.

ISME raised the future need for PPE and consumables and advised companies are excluded from the market due to multinationals and some companies remaining on lists when they should not.

OGP advised they were looking at contract management including in the construction sector but evidence is needed to exclude an economic operator as the burden of proof is high and they were looking at this area with regard to documentary evidence. They stated the Government was very conscious of this issue and looking at how it can be addressed. There needs to be a good reason to exclude an economic operator especially in the construction sector. It was acknowledged contracts need to be managed better and documented to enforce the contract. The Minister agreed.

The Minister stated that the supply of PPE during the pandemic brought public procurement into public focus but infection control required delivery of requirements and the necessity to obtain supplies for essential services to operate, but procurement in this area should be more orderly going forward. He advised he had spoken with the HSE who wish to purchase half of their future requirements domestically.

The Minister acknowledged the website set up by the OGP to provide a single point of contact for companies wanting to supply their goods or services during the pandemic. This had been set up in response to individuals contacting Government Departments directly, and advised that many Irish companies have and will deliver on PPE.

The Minister invited questions from the Group.

4. Covid-19

EI advised they had been working a great deal in the PPE area since March and referenced the OGP framework for PPE but stated there is a need to focus on suppliers and distributors and at the local supply base to determine if it is sustainable. Ten out of fourteen on the D/Education framework for PPE for schools are distributors not suppliers.

CIF spoke on the commitments in the Programme for Government in light of COVID. They had engaged with the OGP on advisory notes in April and May and questioned how to reopen the economy and to avoid conflicts in contracts. They stated there were no controls on costs, sub-contractors who had invested in contracts for the State which were stalled had no recourse to compensation, and ongoing concerns as to what will happen in the future. They advised the financial support scheme for SMEs should be grants not loans as many businesses will close down due to debt on their balance sheets. They emphasised the need to accelerate the capital investment plan, to front load infrastructure and have funded infrastructure for housing as there is a need for certainty in the

industry. CIF acknowledged the green commitments in the Programme for Government are important and the high focus on retrofit, but there needs to be alignment around policy. They also advised a meeting the previous week with construction stakeholders discussed the issues around professional indemnity insurance and would like to see a forum set up on the matter as it is restricting the market and he would like the Minister to put it on the radar.

The Minister asked CIF to engage with his office on the matters raised. He advised D/BEI were present at the meeting to listen to their concerns. He stated the National Development Plan was being reviewed and public and capital expenditure was being increased to €9 billion in 2021. Private and public building was being advanced through the Land Development Agency and there would be €500 million more investment in green build rather than traditional. The retrofit programme investment would be high over the coming decade in the region of €20 to €25 billion as part of the stimulus package so there was a need for an education piece to get it right.

With regard to indemnity insurance the Minister advised there was a cross Governmental body looking into this. The OGP stated they had engaged with the D/Finance on this matter and that insurance needs to be proportionate and in light of COVID there is a requirement to see what needs to be done. The Minister advised he would speak to Minister Fleming regarding this.

SFA agreed with EI with regard to manufacturers especially micro enterprises. Many of their member companies need investment and credit guarantee in response to COVID. They get the tender but cannot get investment from the pillar banks which is why micro enterprises are not pitching for public contracts, they need financing as credit will get harder over the coming year.

The Minister advised there were many schemes out there and if SFA had specific examples they should get in touch with his office.

OGP advised they had discussed at meetings of the Senior Officials Group on COVID and with the Taoiseach's Office the sustainability of PPE supply, what the demand may be, the supply base and the risk of the far Eastern market so there was a lot to consider. They were also talking with EI, DBEI and D/Health to coordinate longer-term need and were aware of the longer-term issues.

5. Brexit

Ibec advised that COVID was not the only thing impacting on supply chains and liquidity and questioned if Force Majeure could be used for COVID and Brexit. The 50% rule could not or was not being used. With regard to insurance, they said Circular 10/14 was successful in cutting the cost of bidding for companies but there is a need for alternative eligibility criteria. The Circular needs revision in light of the impact of COVID and Brexit on supply chains. It was not just an issue in the construction sphere but also goods and services and there is a need to look at advance purchasing.

The Minister stated that Brexit is an evolving situation and there were risks as we head towards 31 December. The OGP had issued an Information Note on Brexit and engaged with other Departments regarding the risks of Brexit on supply chains. The procurement rules developed are linked to trade and the WTO rules will still apply and asked if there were any questions from the group.

CIF brought up the matter of contract clauses and companies having to take on full risk which has been an issue since 2018. Due to the current uncertainty and future uncertainty surrounding the land bridge, OGP should be proactive in this area, there should be risk balance and suppliers should not have to take it all.

The Minister recognised that the OGP were aware of the challenges and that there is flexibility in contracts and not a case of one size fits all. It would depend on the goods or services involved and tariffs, regulatory divergence, exchange rates and the land bridge issue. He advised the need to use a pragmatic approach for the State, suppliers and the market but it is hard to be definitive until there is a trade deal.

The Minister thanked the Group for their attendance and input and asked them to contact his office if there were other matters they would like to raise.

6. A.O.B.

(1) Committee on Standing Orders

Ibec raised the matter of the Committee on Standing Orders which they considered could be problematic for the procurement space as it could bring added risks to bidding if a Committee had the power to compel a company before them that could result in reputational damage. They questioned what the parameters would be when going in front of a Committee and the rationale behind it, as it would be exposing the State as well as companies, and could have unintended consequences for the OGP and the State.

The Minister undertook to contact the relevant Chairs.

(2) eTenders

OGP confirmed that the consultative survey on the eTenders website was due to go live. The SME Communications Strategy Sub Group had been advised of the project at a meeting in March. The OGP (eTenders Platform Project team) were keen to hear from businesses engaged in public procurement and their views on the electronic tendering process in general. To that end, the OGP developed this online survey to help them better understand areas that might have the most impact on helping to improve business access to, and engagement with, public procurement through electronic tendering. Details and a link to the survey would be issued to the Group in the coming days and they were requested to bring it to the attention of their members. All feedback would be welcomed as part of the ongoing work to prepare for, inform the next iteration of the eTenders platform, and work in related areas.

(3) Jim Deane's Departure

Jim Deane advised the Group this was his last attendance at the SME Advisory Group meetings as he was moving to another Department. He thanked the Group for their proactive work and cooperation over the years and expressed the value of the Group as a forum for exchanging views and working together to improve SME access to public procurement. He affirmed it was an important means for the voice of industry to be heard at first hand by Government. He wished the Group well on their future endeavours and thanked the Minister for his time in chairing his first SME Advisory Group meeting.

OGP reiterated the Minister's call for the Group to engage with his office on issues they felt needed addressing.