

# TENDER ADVISORY SERVICE

Report on Operation of the Service 2015 – 2016



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## Executive Summary

The *Tender Advisory Service* (TAS) was launched in December 2014 by the Minister of State with special responsibility for Public Procurement, Mr Simon Harris, T.D. The purpose of the service was to provide an informal outlet for potential suppliers to raise concerns in relation to a particular live tender process carried out by the Office of Government Procurement (OGP) or other Public Sector contracting bodies. The service became operational with effect from 1 February 2015 and is managed by the OGP.

The service accorded with the commitment made by the OGP in the Government's *Action Plan for Jobs 2014* to pilot informal procedures for engagement between tenderers and contracting authorities to provide clarity and advice in relation to criteria included in tendering notices. It also provides an important channel for companies, in particular SMEs, to raise issues during the bidding process and have these concerns addressed.

Suppliers availing of the service must have exhausted the normal clarification process provided for in the public tendering process. The scheme does not impede the rights of suppliers to pursue their rights formally under the Remedies legislation.

This review covers the first year of operation. Twenty seven suppliers engaged in the service. Twenty three of these were deemed ineligible as suppliers had not engaged in the clarification process, had missed the deadline (six days before closing date for receipt of tenders) or were general procurement queries. Following TAS consideration of the four deemed eligible, one contracting authority extended the tender closing date and broadened the tender specification, another reconsidered its lotting strategy and no action was considered necessary in the remaining two cases.

The report concludes by recommending that the service should be continued for another year and efforts should be made to increase awareness amongst both suppliers and buyers.

## 1. Background

The Tender Advisory Service (TAS) was established as a pilot programme, in consultation with SME stakeholders, to address concerns in relation to perceived barriers for SMEs in competing for tender opportunities. The Office of Government Procurement (OGP) as part of the Action Plan for Jobs 2014, designed the programme to give an informal cost effective outlet for potential suppliers to raise concerns during a particular live tender process. The objectives of the initiative are to act as an impartial broker between suppliers and contracting authorities during a tender process thereby improving communications and engendering a consistent approach to how procurement processes are carried out across the public service.

It is worth noting that TAS is offered in addition to pre-existing avenues available to suppliers who wish to raise concerns in respect of a public service tender process. These include:

- the query/clarification period set out in the Request for Tender (RFT) documentation;
- the standstill period (post evaluation, pre-award); and
- the EU Remedies Regulations.

The objectives of the TAS Pilot were to be achieved by:

- answering general queries made by potential tenderers;
- channelling more complex queries to the relevant contracting authority for direct reply to all interested parties; and
- communicating with contracting authorities to suggest improvements/changes to information contained in tender documentation where it is considered appropriate and reasonable to do so.

### 1.1 Outline of how the Tender Advisory Service Works

Potential suppliers who have concerns over a particular tender process liaise with TAS. TAS officials within the OGP contact the relevant contracting authorities to clarify or query tender documentation and, where necessary, make suggestions to contracting authorities aimed at resolving the concerns that have been raised. In certain complicated cases an Expert Panel can be engaged to provide advice. To ensure fairness and transparency any clarification arising from this service must be communicated to all parties. The service is informal in nature and does not have any legal authority to overturn any decision that has already been taken by the responsible contracting authority. Under EU and National rules, contracting authorities are responsible for their own decisions relating to the tendering process. However, in the interests of best practice, the contracting authority should comply with any suggestion made by this service. The primary goal is to improve communication between suppliers and contracting authorities that maximises all avenues for dealing with issues arising.

## 2. Report Coverage

This report reviews the operation of the service from 1st February 2015 to 31st January 2016. Information included in this report is presented in an anonymised manner to protect the identity of the relevant parties.

## 3. The Tender Advisory Service

The Tender Advisory Service is an informal service provided free-of-charge to suppliers to facilitate them in raising concerns in relation a live tender process carried out by contracting authorities across the public service (excluding commercial semi-states bodies). The outcome of a TAS procedure is communicated to all parties. TAS does not have the legal authority to overturn any decision that has already been taken by the responsible contracting authority. However, in the interests of best practice the contracting authority should comply with a suggestion made by this service. It is worth noting that engagement with the service in no way impedes the rights of individuals to pursue their rights formally under the Remedies legislation.

### 3.1 Process

Most tender competitions have a period of time to allow suppliers raise queries and clarification about particular aspects of a tender process. In order to ensure all parties get equal information, the contracting authority publishes the response to such queries.

Suppliers actively engaged in a live tender process can avail of TAS. In cases where the normal avenues of communication, i.e. the clarification stage, have been exhausted, but while the tender process is still ongoing, suppliers can submit a request to the Tender Advisory Service who can engage on their behalf to, if possible, address the concerns raised. Suppliers wishing to raise a concern or query a live procurement process are required to complete a Standard Enquiry Form and contact OGP's Customer Service Desk. A member of the Customer Service Team assesses each enquiry to ensure that the enquiry meets the eligibility criteria (i.e. where normal avenues of communication have been exhausted) prior to forwarding the enquiry to TAS in the Policy Unit.

Once an enquiry has been received by TAS, contact will be made with the relevant contracting authority. TAS liaise with contracting authorities on behalf of suppliers to clarify or query tender documentation and, where necessary, make suggestions to contracting authorities aimed at resolving concerns that have been raised. If an enquiry is judged to be complex, TAS may refer it for review to a member/s of the Expert Panel set up for this purpose.

### 3.2 TAS Eligibility Criteria

As stated previously TAS is focused on a specific period of a live tender process. This is because there are alternative procedures that take place before and after the TAS process. These are the clarifications process before TAS and the Standstill period after TAS. Both of these parts of the tender process are provided for in legislation. Therefore, in order for a query to be addressed under TAS interested suppliers must meet the following criteria:

- their enquiry is in respect of a Request for Tender (RFT) that has been published and the supplier has a registered interest in the specific tender process;
- the supplier has already availed of the clarification process set out in the (RFT) documentation but is not satisfied with the response from the contracting authority; and
- the supplier has completed an Enquiry Form and forwarded it, and accompanying documentation, to TAS at least 6 days prior to the tender closing date - this timeframe is necessary to facilitate alternative procedures referred to above and is also optimum for all interested tenderers to make the changes that may be necessary following a TAS process.

<b>TAS Eligibility Criteria</b>
Request for Tender (RFT) must have been published on or after 1st February 2015.
Can only be used up to six days before closing date for receipt of tenders
Supplier must have availed of the query/clarifications options that exist for the tender, i.e. the supplier must have made contact with the contracting authority setting out their concerns about the RFT documentation
Where the opportunity to deal with issues under the queries and clarifications period has concluded without any response from the contracting authority in relation to a reasonable query or clarification
Standard Enquiry Form (see appendix A) must be used

### 3.3 Expert Panel

Members of the expert panel can be called on to review complicated enquiries which have not been resolved following an initial contact by TAS with the relevant contracting authority. The expert panel is made up of procurement officials who have wide experience in public procurement and who are working in either the Office of Government Procurement or the sector sourcing organisations of Defence, Education, the Health and Local Government. An expert will be asked to consider an enquiry for a tender competition which has arisen in an area other than their own.

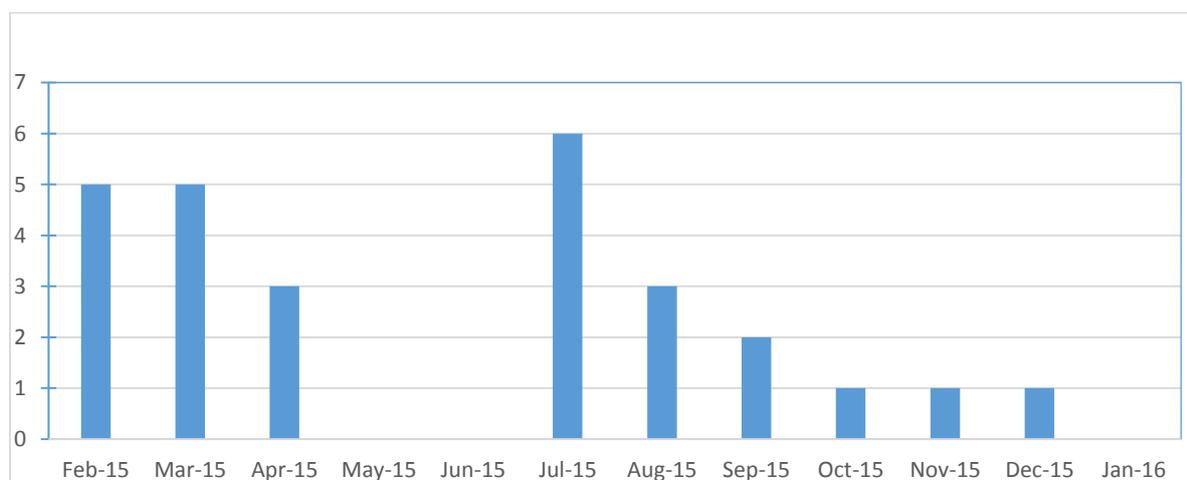
### 3.4 Processing time for Enquiries

In order to avoid a delay in the tender process, enquiries are typically processed within 3 working days. In certain instances clarifications could take longer in view of the complexity of the tender process involved. In certain circumstances OGP may request the contracting authority to consider extending the period during which tenders will be accepted where this is feasible. Any decision to extend the time is however solely a matter for the contracting authority. TAS ensure that any enquiry a supplier has made is handled in good faith and will not in any way disadvantage the supplier in the future. Availing of the service does not in any way impede the rights of individuals to pursue their rights under the Remedies legislation.

## 4. Tender Advisory Service Activity

### 4.1 How many enquires has TAS considered in 2015 – 2016

During the first year of operation, 27 suppliers engaged with the service. Table 1 below provides a breakdown by month of the number of enquires dealt with by TAS since the service was launched on 1st February 2015.



**Table 1: Breakdown of enquiries by month**

While there were no enquires received by TAS during May and June 2015, the analysis web traffic to the TAS webpage during this period was consistent with other months. There is more information regarding website visits later in this report

### 4.2 Who has contacted TAS?

During the first year of operation TAS received enquiries from suppliers in the following categories:

- Office Furniture and Equipment
- Transport

- Book sellers
- IT Services
- Scientific Equipment
- Medical Supplies
- Construction Services

In addition to queries from suppliers, TAS also dealt with a number of enquiries from contracting authorities in relation to the operation of the service.

#### 4.3 Number of Enquiries by Sector



**Table 2: Number of Enquiries by Sector** (There were a further 9 enquiries received which were of a general nature and were not sector specific, so were not included in Table 2).

#### 4.4 The value of the contracts that have been subject to TAS enquiries

The following table gives a breakdown of the approximate contract values (ex VAT) that were subject to enquiries, ranged in value from €126,000 to €40,000,000. In some cases the contract value was not provided. The table shows that the vast majority of enquires were in respect of contracts above the Official Journal of the European Union (OJEU) threshold of €130,000 (2015) for supplies and services. Notably, half of the enquiries raised were in respect of tenders which were sub-divided into lots.

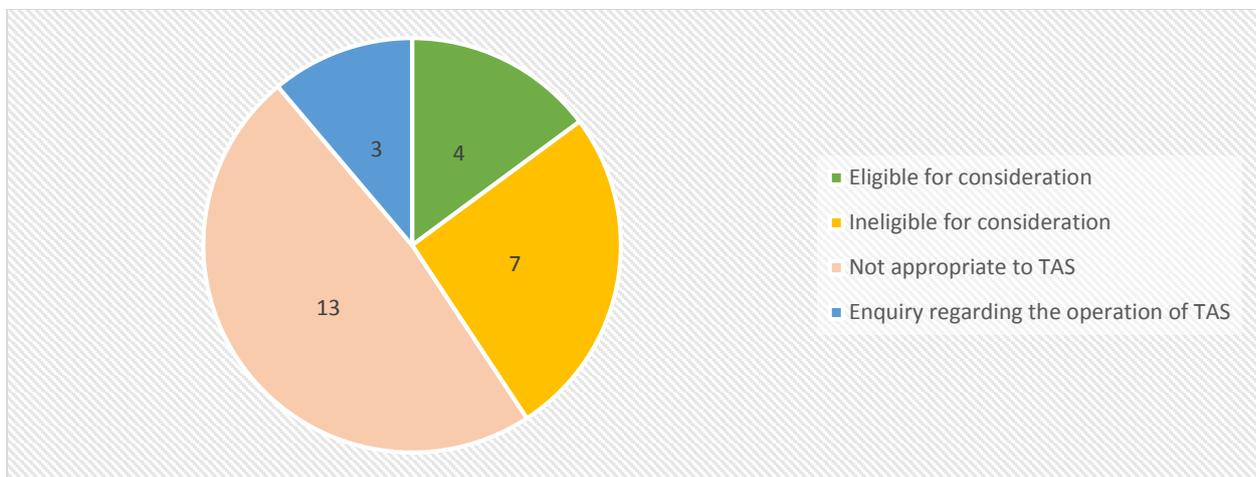
Value of Contract	No of Lots	Value range of Lots
€126,499	Single Lot	
€318,500	Single Lot	
€345,000	Single Lot	
€445,000	Single Lot	
€2,900,000	3	€550,000 – €1,7500,000
€9,000,000	9	€25,000 – €250,000
€24,750,000	10	€750,000 – €8,000,000
€40,000,000	2	€4,000,000 - 36,000,000

**Table3: Value of known contracts**

#### 4.5 Nature of Enquiries dealt with by TAS

Between 1st February 2015 and 31st January 2016, TAS received 27 enquiries. The enquiries raised were concerned with:

- the perception that a tender excluded SMEs;
- general queries on thresholds;
- the perception that a tender favoured the incumbent;
- whether the proposed terms in the tender pack would be negotiable;
- a tender appearing to ignore Circular 10/14 when carrying out market research;
- a tender appearing to be uncompetitive due to the size of the lots;
- the evaluation or technical criteria chosen; and
- the remit of TAS.



**Chart 1. Breakdown of Enquiries considered Eligible/Ineligible**

A significant number of enquiries were of a general public procurement nature and therefore do not require the TAS service (13). Others were general queries in relation to the TAS service itself (7). Three of the enquiries did not meet the eligibility criteria.

#### 4.6 Eligible enquiries raised by suppliers

Of the 27 enquires dealt with by TAS four queries were eligible for an intervention. The four queries raised were in relation to concerns regarding:

- tender specification;
- the terms and conditions set out in the tender documents;
- the use of lotting; and
- requests for sample work.

Following an analysis of each query, TAS liaised with the relevant contracting authority. These engagements resulted in the following outcomes:

- a contracting authority broadening the tender specification and extending the tender closing date;
- a contracting authority reconsidered its lotting strategy, which led to a further subdivision of a lot; and
- in the remaining two cases, having assessed the queries and liaised with the contracting authorities, no action was considered necessary.

Further information on the eligible enquiries can be found in Appendix 1.

#### 4.7 Enquiries outside the scope of the TAS service

The remaining queries were deemed outside the scope of the service, for reasons including:

##### 7 Ineligible Enquiries

- the supplier had not engaged the existing query/clarification process which is part of the tendering process; or
- the supplier had engaged with TAS too late i.e., following the tender closing date. In such cases this has to be dealt with as part of the standstill period which is provided for under EU legislation (The Remedies Directives).

##### 13 Not Appropriate for TAS – General Procurement queries

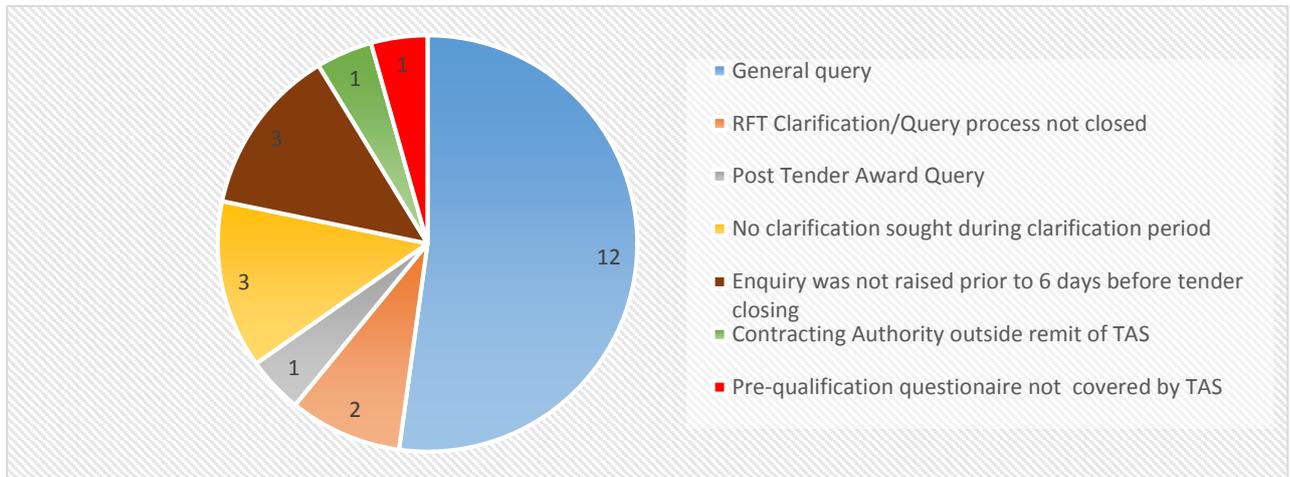
- the issues raised were of a general nature i.e. not specific to an actual live tender process.

##### 3 Enquiries

Related to the operation of TAS.

It is important to note that these queries were addressed but were not actual TAS queries.

The following chart gives a breakdown of the reasons why enquiries were outside the scope of the TAS service.



**Chart 2: Reasons for Enquiries being considered Ineligible**

In instances where the queries were outside the scope of the TAS service, suppliers were redirected for answer either to the OGP Customer Service Team or the contracting authority dealing with the specific tender.

## 5. Web Page Usage

Information regarding the operation of TAS, FAQs and the Enquiry Form can be found on the OGP website at: <http://www.procurement.ie/news/2143>. During the first year of operation the TAS page within OGP's website site had 1,432 visits. Table 3 gives a breakdown for all users, new users and returning users.

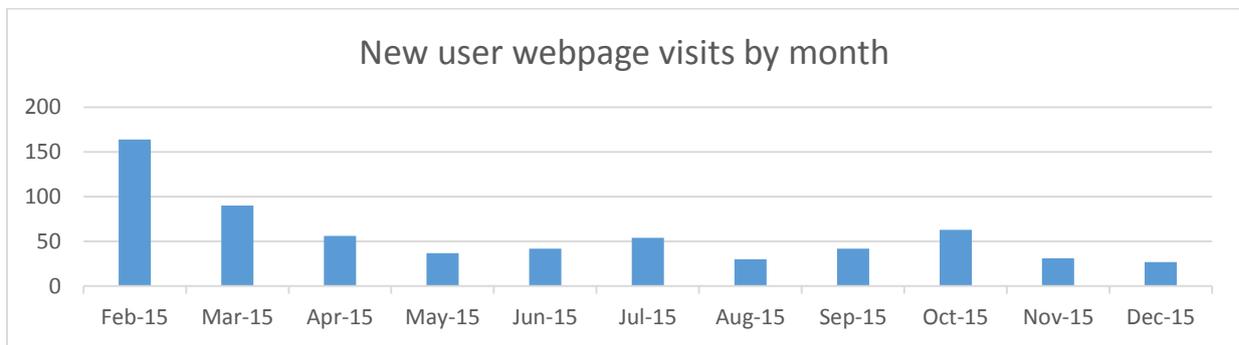
Total Visits	1,432
New Users	766
Returning Users	666

**Table 3: Breakdown of visits to the TAS webpage on the OGP Website**

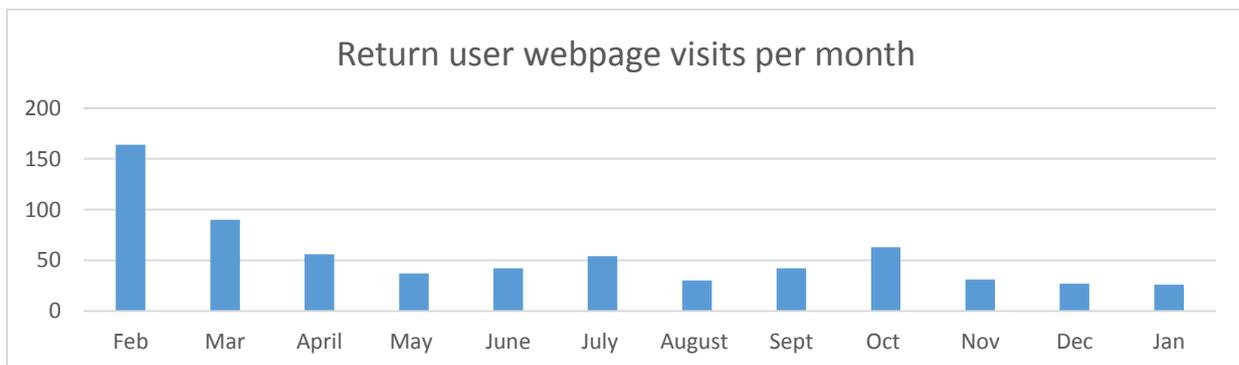
Table 4 below provides a breakdown by month of the total number of visits. As expected, interest peaked in February and March 2015 following the introduction of the service. Since the launch of the TAS Service the webpage has attracted an average of 88 visits per month, excluding Feb & Mar 2015 (See Table 4). While Tables 5 and 6 show the number of new and return user to the webpage during the 1<sup>st</sup> year of operation.



**Table 4: Number of OGP webpage visits by month**

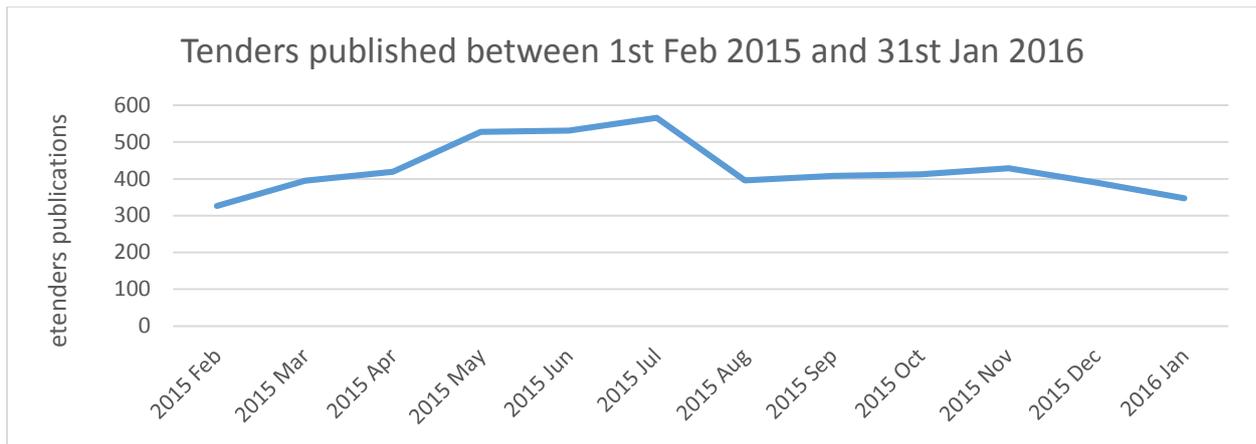


**Table 5: Number of OGP new user webpage visits by month**



**Table 6: Number of webpage visits by returning users by month**

Information regarding the Tender Advisory Service is also accessible on the front page of the Government’s national eProcurement portal, eTenders. During the first year of operation of the service, there were 50,290 suppliers and 4,243 buyers registered as active on the eTenders website. There were a total of 5,147 tenders published between 1<sup>st</sup> February and 31<sup>st</sup> January 2016, a monthly breakdown of published tenders is shown in Table 7.



**Table 7: Breakdown of published tenders by month**

## 6. Conclusion

The service has met its objective of piloting an informal procedure for engagement between tenderers and contracting authorities and providing clarity and advice in relation to criteria included in tendering notices. It has provided an important channel for companies, in particular SMEs, to raise issues during the bidding process and have these concerns addressed. It has also facilitated the objective of allowing the OGP to communicate with Contracting Authorities to suggest improvements or changes to tender documentation, where considered appropriate.

After a year of operation, the Tender Advisory Service has shown that when suppliers engage with the service, even where queries are outside the scope of the service, their queries are considered and addressed in an open and transparent manner.

A key recommendation of this report is that supplier awareness of the availability of the service be increased. Currently information about the service is available on both the OGP and the eTenders websites. A number of additional ways that awareness could be increased have been identified and are listed in the recommendations.

Initial feedback from industry representative bodies through the SME Working Group has been positive. The Programme for Government recognises the importance of the SME Sector and improving its access to public procurement by facilitating quarterly meetings of the SME Advisory Group, continuing to develop measures to support SMEs in accessing the public procurement market, calling for an External Review of Tender Advisory Service (TAS), conducting a consultation on the merits of establishing a Procurement Ombudsman and refining the new procurement structures in place, such as the OGP, as they bed down and make adjustments according to best international practice and in conjunction with Irish businesses.

TAS is an important step in this regard by facilitating engagement between tenderers and contracting authorities and enhancing openness and transparency in the procurement process. In effect, it provides an additional informal review process. In order to assess if the service is delivering on its objectives an extension of the pilot for a further year is advisable to allow for the review of the service included in the Programme for Government. This will provide an opportunity for both industry representatives and Government to consider if additional review mechanisms are necessary or appropriate in an Irish context.

## 7. Recommendations

No	Title	Description	Owner	Timeline
1	External Review of Tender Advisory Service	The Programme contains a commitment to review the Tender Advisory Service	OGP Policy	2017
2	The Tender Advisory Service pilot should be extended for one more year.	Recommend to the Minister that the pilot continues for one more year. This will allow for further analysis of the service, and to increase awareness of the service.	OGP Policy	ASAP
3	Increase awareness amongst suppliers of the availability of the service	Update the website information  Include a reference to the service in RFT Template Documents, which would be eligible for consideration by TAS, subject to CSSO advice  Request Industry Representative Bodies to communicate information about the service to their members on a regular basis	OGP Policy/TAS  OGP/CSSO  TAS/SME Working Group	Ongoing  To be included in next revision  Ongoing
4	Increase awareness amongst public sector buyers of the activity of the service	Include link to this report on both the OGP and eTenders websites  Include update on the service in the OGP Newsletter	TAS/OGP Comms	Q3  Next Edition
5	Communicate successful outcomes via Case Studies on website	Update Webpage to include Case Studies	OGP/TAS	On-going
6	Provide a further report of service after the end of the pilot extension.	Report on the activity of the service annually, using information included in this report as a benchmark	OGP/TAS	Q2 2017

## Appendix 1 – Case Studies

### **Case study 1 – Specification viewed as uncompetitive**

**The enquiry** – A supplier contacted the OGP Helpdesk via email and submitted the required Enquiry Form. The query raised related to the specification that had been set out in the Request for Tender (RFT) document. In their view the specification favoured the incumbent supplier.

**TAS engagement** – TAS contacted the relevant contracting authority regarding the enquiry. The contracting authority agreed to review the specification.

**The outcome** – Having reviewed the query the contracting authority agreed to broaden the specification. The contracting authority also agreed to a further recommendation from TAS and extended the deadline for receipt of tender. These changes were communicated to all potential suppliers by the contracting authority.

### **Case Study 2 – Lotting strategy perceived as excluding potential Suppliers**

**The enquiry** – A supplier submitted a Standard Enquiry Form raising concerns in respect of lotting strategy in a live tender process. The query related to the competitiveness of the tender process as only a small number of companies could compete for the contract.

**TAS engagement** – TAS approached the contracting authority regarding these concerns.

**The outcome** - The contracting authority noted the concerns and carried out a further market review. Having re-examined the Lots, they were categorised to enable a greater number of potential suppliers to compete. This amendment to the lotting structure was notified to all potential suppliers.

## Appendix 2 – Enquiry Form TAS

### Enquiry Form (TAS)

*To be completed and e-mailed to tenderadvisoryservice@ogp.gov.ie*

#### Your contact details

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**Name:**

**Company/Tenderer:**

**Address:**

**Email address:**

**Telephone number:**

**Details of contracting authority (e.g. OGP, HSE, LA, Education, etc.)**

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**Contracting Authority:**

**Buyer/Contract Manager's name:**

**Email address:**

**Telephone number:**

#### Tender details

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**Tender reference:**

**Tender type (i.e., goods, minor works or services):**

**Value of tender, if available:**

**Stage the procurement activity is at:**

*Please advise us of any impending deadline, for example; for the submission of pre-qualification questionnaires or tenders or the date for the award of the contract, where known)*

#### Enquiry

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**What is the enquiry?**

**What action have you taken to date in connection with your enquiry?**

**What response from the contracting authority, if any, have you had?**

*Attach a copy (scanned or electronic) of correspondence which formed part of your clarification process with the contracting authority.*

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*In submitting your details to the Tender Advisory Service you are consenting that this information may be made available to the relevant contracting authority. Any personal information which you volunteer to the OGP will be treated with the highest standards of security and confidentiality, strictly in accordance with the **Data Protection Act 1988** and the **Data Protection (Amendment) Act 2003**.*

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