

Quigley Report Recommendations

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Heads of Departments / Offices

Quigley Report - Guidelines

A Dhuine Uasail

1. You will be aware that Mr Dermot Quigley, former Chairman of the Revenue Commissioners, conducted an inquiry in relation to procurement procedures followed in the engagement of certain public relations services in the Office of Public Works and the Department of the Environment, Heritage and Local Government in 2001 and 2002.
2. Mr Quigley's report included recommendations addressed to the Department of Finance / Government Contracts Committee (GCC). The issues to be addressed in accordance with the recommendations were as follows:
 - the justification for single tendering or for award of contracts without a competitive process on grounds of urgency or otherwise;
 - the avoidance of conflicts of interest arising from involvement in other activities during the contract period;
 - the appropriate monitoring and recording of work done under consultancy projects ;
 - the estimation of contract values and
 - reporting to a central database on consultancy projects (a requirement in the central Government sector).

A review group consisting of representatives of the Department of Finance and the GCC examined the adequacy of current guidelines in each of the areas covered by the relevant Quigley recommendations.

3. On the basis of its examination, the review group consolidated existing guidance relating to the areas concerned and augmented it where appropriate. This consolidated guidance is reflected in the attached document. While the circumstances that gave rise to its preparation relate to the award of contracts for certain public relations services in the central Government sector, the guidance has general relevance and is applicable to the wider public sector.

4. Please bring the enclosed guidance to the attention of all officers in your Department who could be involved in placing contracts and to the attention of all contracting authorities under the aegis of your Department.

The revised guidelines can be viewed or downloaded from the national public procurement website www.etenders.gov.ie (under *Guides / General Procurement Guidance*) which is the principal means of disseminating procurement information and guidance. In this regard further attention is drawn to guidance on Ethics in Public Procurement and on the use of Generic Technical Specifications in tendering for Information and Communications Technology contracts, recently disseminated through various public procurement networks and published on the website.

5. Any enquiries may be made to the National Public Procurement Policy Unit, Department of Finance (B Noone: telephone (01) 639 6216; email billy.noone@finance.gov.ie).

Mise le meas

(signed)

Jim O'Brien

Assistant Secretary

Guidance arising from Quigley Report Recommendations

1.0 Introduction

Arising from the Quigley Report recommendations, existing procurement guidelines for the engagement of consultants and use of a competitive process have been reviewed by the Department of Finance and the Government Contracts Committee. Details of the Quigley recommendations are in Appendix A for information.

The issues to be addressed arising from the recommendations are as follows:

- the justification for single tendering or for award of contracts without a competitive process on grounds of urgency or otherwise;
- the avoidance of conflicts of interest arising from involvement in other activities during the contract period;
- the appropriate monitoring and recording of work done under consultancy projects ;
- the estimation of contract values and
- reporting to the central database on consultancy projects.

This document consolidates and, where appropriate, augments existing guidelines in order to address these issues. While the circumstances that gave rise to the preparation of this guidance relate to the award of contracts for certain public relations services in the central Government sector, the guidance has wider application and should be observed by all contracting authorities.

2.0 Award of a contract without a competitive process

2.1 Current guidelines setting out the circumstances for awarding a contract without a competitive process are contained in section 4.13 of *Guidelines for Engagement of Consultants in the Civil Service 1999*, and in section 6.13(iv)(b) of *Public Procurement Guidelines – Competitive Process 2004* and all of the supplement to *Department of Finance Circular 40/02*. The relevant sections of each of these documents offer clear and explicit guidance on circumstances that would justify non recourse to a competitive process. These circumstances are consolidated in paragraph 2.2 and paragraph 2.3 below for the assistance and guidance of contracting authorities and should be complied with in full.

Awarding a contract without a competitive process

Contracts below EU threshold levels

2.2 Awarding a contract below the EU value threshold¹ without use of a competitive process should be considered only in the following instances.

- (a) Where only a proprietary product will meet requirements, such as parts or components for equipment.
- (b) Where an agent, licensee or franchise holder has sole rights to supply a service or product.
- (c) Where there is only one suitably qualified specialist in the relevant field.
- (d) Where a particular service provider possesses a special advantage due, for example, to earlier research exclusively carried out in a particular area, or has exclusive data or information required to perform a particular task. In such circumstances, it must be demonstrably clear that another service provider could not perform a contract more economically.
- (e) Where due to urgency a competitive process cannot be undertaken in the time available. What constitutes urgency cannot be specified definitively. Factors giving rise to urgency must be serious, unforeseeable and, except in the most exceptional circumstances (for instance a matter of urgent public safety or the like) not due to action or inaction on the part of the contracting authority. Occasions when it is necessary to award a contract without a competitive process due to urgency should be very rare because, under Section 5.3 of *Public Procurement Guidelines – Competitive Process 2004*, an appropriate competitive process can be completed relatively quickly below thresholds, by direct invitation to tender to a number of suitably qualified suppliers or service providers.

2.3 When awarding a contract, care should be taken to avoid entering into open-ended arrangements, for administrative convenience, that reduce or hinder competition. Market testing should be undertaken at appropriate intervals to ensure that market openness and competition is maintained.

Contracts above EU threshold levels

2.4 For contracts above the EU value thresholds, the procurement Directives list the limited exceptional circumstances where the terms of a contract may be negotiated with one contractor without advertising, i.e. without a competitive process.

The main instances where a contract may be awarded through negotiating with one contractor, without advertising, are summarised below.

¹ Current thresholds can be accessed on www.etenders.gov.ie under Guides / General Procurement Guidance.

- (a) The contract may be awarded to a particular contractor for technical reasons or for reasons connected with the protection of exclusive rights. This may occur where there is a sole licensee or franchise holder for the supply of a particular product or service or where a proprietary component or part is required for equipment (a similar requirement to 2.2 (a) or (b) above).
- (b) Where the timeframe required for an advertised competitive process cannot be met due to extreme urgency arising from events unforeseeable by the Department / Office. The circumstances invoked to justify extreme urgency must not be attributable to actions or inaction by the contracting authority. This is a similar provision to 2.2 (e) above. Such instances should be very rare as reduced timeframes can be availed of under an accelerated restricted tendering procedure in genuinely urgent cases of contracts governed by the EU procurement Directives. It should be noted that definitions of ‘exceptions’ and ‘urgency’ are strictly interpreted by the Commission and the Courts. Factors giving rise to urgency must be unforeseeable and outside the control of the contracting authority.
- (c) Due to unforeseen circumstances additional works or services not included in the original contract are necessary for the performance of the works or services concerned. This is conditional on the award being made to the contractor performing the original works or services where
- the additional works or services cannot be technically or economically separated from the original contract without major inconvenience to the contracting authorities
 - or
 - where the works or services can be separated from the original contract but are strictly necessary for completion of that original contract.

Note: the aggregate value of contracts awarded for additional works or services may not exceed 50% of the value of the original contract.

- (d) Where there is a requirement for repetitive works or services a contractor can be awarded a works or services contract for subsequent similar contracts. This provision can be used provided that the works or services are in conformity with a basic project for which the original contract was awarded under a competitive process.

Note: When tendering for the initial project, the possible use of this provision must be indicated in the tender documents and the estimated cost of such subsequent works or services taken into account for OJEU advertising purposes. This procedure may only be used during the three year period following the conclusion of the original contract.

The full provisions on negotiating contracts without competition are set out in the Procurement Directives². If a question of awarding a contract above the relevant thresholds without advertising in the OJEU arises, the circumstances should be carefully examined against these provisions.

Re – statement of the justification for use of urgency /extreme urgency

2.5 In cases where a contracting authority opts to award a contract without a competitive process on grounds of urgency care should be taken to ensure that the circumstances for invoking urgency and extreme urgency are justifiable. In the case of contracts both above and below the EU threshold the factors giving rise to urgency must be serious, unforeseeable and not due to action or inaction on the part of the contracting authority concerned. What constitutes urgency cannot be specified exhaustively but occasions when it is necessary to award a contract without a competitive process due to urgency should be very rare. This is particularly the case for contracts below the EU threshold where an approach to the market can be made relatively quickly, for example under the terms of section 5 of the *Public Procurement Guidelines – Competitive Process 2004*. In all instances of award of contract without a competitive process on grounds of urgency, the reasons for choosing the particular company involved should be noted on file. The Head of the relevant organisation should make appropriate arrangements to ensure that all such instances (whether under or over EU thresholds) are subject either to their specific approval or approval of a specified senior Manager.

3.0 Conflicts of Interest

3.1 Contracting authorities should be aware of potential conflicts of interest in the tendering process and should take appropriate action to avoid them. Care should be taken to ensure that project specifications and criteria should be as open and generic as possible in order to avoid favouring any one solution or any one party.

3.2 Particular care should be taken to ensure that objectivity is not compromised where consultants are examining and / or making recommendations in a policy environment. The tender documentation for a project should always include reference to conflicts of interest, clearly specifying that failure to disclose a material conflict of interest may disqualify a bidder or cause the termination of a contract and entitle the contracting authority to seek remedies, such as costs or compensation for loss. Tenderers should be asked to provide a declaration of non – alignment with entities or interests that could compromise objectivity.

3.3 The attention of contracting authorities is also drawn to guidelines entitled *Additional Procedures to apply to certain consultancies and procurements* relating to proposed consultancy (or other services) comprising a significant element of direct service to a Minister or Minister of State, which were approved by Government and issued by the Department of the Taoiseach. Adherence to these guidelines should

² Article 31 of Directive 2004/18/EC.

⁴ Article 9 of Directive 2004/18/EC sets out precise methods of estimation of contract values.

reduce the potential for conflicts of interest arising from involvement in other activities. They are available from the Department of the Taoiseach website www.taoiseach.gov.ie (under “Non Policy Areas” / “Government Secretariat”) and should be consulted by contracting authorities, as appropriate.

4.0 Monitoring and Recording of Work done under Contract

4.1 Section 5 of *Guidelines for Engagement of Consultants in the Civil Service 1999* emphasises the importance of project management and provides guidance on appropriate liaison, monitoring, control and evaluation of the project. A checklist for the assistance of Departments, based on this guidance, is attached to this document at Appendix B. The checklist details the responsibilities of project managers for the management of contracts and specifies the documentation that should be retained on the contract file.

4.2 For consultancy assignments which are not project based, such as those involving the delivery of a service, a written description of duties, responsibilities and expected outputs must be provided. The outputs should be measurable and payment should be on the basis of affirmation that the required level of service has been delivered.

5.0 Estimation of Contract Values

5.1 When estimating the value of a contract no project or purchase should be subdivided to avoid the application of the national rules, or where appropriate, the EU public procurement Directives. In general, where a supply or service contract cannot indicate a total price, or does not have a fixed term or has a term greater than four years, the estimated value must be calculated by multiplying the monthly value by 48. Where a project or purchase involves separate lots, the value of all lots must be included in estimating the value of the contract⁴. These estimation procedures should also be applied, where necessary, for contracts below the EU thresholds. Where there is a possibility of a further phase, or phases, of a project, contracting authorities should include these in estimating the value and refer in the notice or the tender documentation to the possibility of such additional phases being undertaken.

5.2 Any contract placed by a public body with an estimated value above the relevant financial threshold set out in the Directive must be advertised, processed and awarded in accordance with the procedures of the Directive, unless it is covered by one of the clearly defined exceptions set out in the Directives.

5.3 Some additional cost-related considerations relating to engaging management consultants, outlined in *Guidelines for Engagement of Consultants in the Civil Service 1999*, are listed in Appendix C to this document.

6.0 Central Database Reporting Requirements (applies to Government Departments and Offices only)

6.1 Since 2002 there is an obligation on entities in the Central Government sector to provide certain information on consultancy projects undertaken to a central

database managed by the Organisation, Management and Training (OM&T) Division of the Department of Finance. This requirement is stated both in the *Guidelines for Engaging Consultants in the Civil Service 1999* and in the Administrative Budget Agreements. The information required includes the name of the firm awarded the contract, the cost and purpose of the project and the name of a contact official in the awarding Department or Office. Government Departments and Offices are reminded again of this requirement. It should also be noted that the up-coming revision of the Administrative Budget Agreements will provide for periodic sample inspections of records relating to the engagement of consultants.

6.2 An evaluation of the database is being undertaken with a view to improving the structure and the categorisation of information in a more identifiable and accessible manner. The outcome of evaluation will be advised to Departments / Offices in due course.

National Public Procurement Policy Unit / Government Contracts Committee

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Appendix A

Relevant ‘Quigley’ Recommendations

- (7) *In the light of this inquiry, the Department of Finance should arrange for the Government Contracts Committee to review the guidelines for engagement of consultants to see what changes might be needed to promote best practice, especially as regards the use of single tendering on grounds of urgency or otherwise.*
- (8) *As part of (7) consideration should be given to whether any new conditions should be attached to contracts, in addition to normal provisions on avoidance of conflicts of interest, about involvement of consultants in other activities during the contract period.*
- (9) *In the review at (7), the Department of Finance should also consider giving further advice on*
- monitoring and recording of work done under contracts and its quality;*
 - how best to prepare estimates of the cost of projects so as to safeguard, as far as possible, against the value of a project exceeding the EU threshold, taking account of the legal provisions of the Directives*
 - ensuring compliance with the requirement to report consultancy projects to the central database. The content of that database should also be reviewed to ensure that it captures all relevant information.*

Appendix B

Managing Consultancy Contract (Checklist for Departments)

The responsibilities of the project manager in relation to the management of the contract will normally include:

- ensuring that each stage of the selection process is carried out correctly and is documented;
- setting up and maintaining a contract file;
- ensuring that Department of Finance sanction and other appropriate approvals are obtained;
- monitoring progress against the contract terms including the organisation of regular project management meetings;
- keeping a payment schedule;
- making sure that payments are properly approved; and
- making sure that the project is evaluated on completion.

The contract file should contain a copy of:

- the approved business case;
- the approved request for tenders, including copies of the notices which appeared in the Official Journal of the European Communities, where relevant;
- copies of the tenders received;
- minutes showing Department of Finance or other appropriate approvals;
- written agreement between the consultants and the Department/Office;
- any variations to the agreement;
- record of receipts of expenses, vouched travel and subsistence claims from consultants, where appropriate;
- record of payments made under the agreement;
- implementation plan; and
- project evaluation report.

Appendix C

Departments should ensure, in relation to all consultancy projects, that the following general criteria relating to costs are adhered to:-

- * a full breakdown of the fixed fee proposal (normally expressed as per diem rates charged in euro, for each individual involved setting out his/her level in the firm), plus VAT;
- * a statement of items not covered by the fixed fee proposal, if any with a statement of the basis on which any such items are to be charged;
- * a proposal with regard to stage payments to be made, if any;
- * a proposed cap for each fee proposal;
- * a set fee for each project is agreed in advance of any work being undertaken, no open ended contracts are awarded, no contracts are, normally, extended beyond their original terms of reference and no additional fees, other than those originally quoted for the work, are paid. The set fee may include incentive elements where these can be linked to quantifiable variations in output;
- * Department of Finance sanction is obtained, where appropriate, and adequate funds are available from the appropriate subhead (in general this will be the "consultancy services" subhead of administrative budgets);
- * a monitoring procedure forms part of the contractual agreement to ensure that the project does not run over either in terms of cost or length of time;
- * a mechanism is built into all contracts between the client Department and the consultants so that if major difficulties arise regarding the quality of the project the contract may be terminated by the Government Department without the full cost being incurred;
- * additional costs and / or expenses are included as part of the fee. Where this is not feasible, particular care should be taken to ensure that such costs are adequately vouched and are reasonable. Where additional costs for travelling and subsistence cannot be avoided, they should where possible not exceed those appropriate rates currently applying in the civil service.