

Consultant Engagement Review

For the attention of the Office of Government Procurement

24th June 2019

Engineers Ireland welcomes the position paper 'Consultant Engagement Review', published as part of the development of the next generation of the Capital Works Management Framework being undertaken by the Office of Government Procurement (OGP) in consultation with the Government Contracts Committee for Construction. We also welcome the opportunity to engage with this process.

Engineers Ireland assembled views from representatives of our Civil Division, Local Government Division, Structures & Construction Division, Roads & Transport Society and Geotechnical Society. The advisory group included Chartered Engineers from the private sector (small and large consulting engineering firms), actively involved with the tendering for public works services contracts, and the public sector (Government Agencies, Local Authorities), actively involved in procuring services contracts ranging from small to very significant project scope. This submission is structured as responses to each of OGP's four proposals. A number of other/general comments are also offered.

Better Project Briefs - OGP Proposal

The OGP will prepare a template Definitive Project Brief for publication under the CWMF which will be mandatory for all Consultant Technical Professional (CTP) procurements. The template will be structured to encourage comprehensive analysis by contracting authorities, elements of the template that are not addressed or that lack definition will impact on the project's risk rating.

Better Project Briefs - Engineers Ireland response

It is agreed that improved Project Briefs will improve outcomes. Improvements in the Project Brief will also have direct impacts on the other review topics, including the creation of improved Scope of Service for CTP appointments and clarity on the disciplines needed for project delivery, which in turn facilitate more realistic pricing by CTP tenderers.

However, we consider that a focus on the Definitive Project Brief as the primary mechanism for achieving improved outcomes may be too late in the process to achieve the desired outcome.

The Definitive Project Brief is created following completion of the Concept/Feasibility/Preliminary Design stages. Engineers Ireland consider that improvements earlier in the process are also necessary to achieve the stated goals of the Review.

It is therefore recommended that the Review also consider the needs, and benefits, of improved Project Planning, in particular the setting of the project parameters, the project definition activities, the Preliminary Project Brief and the Preliminary Output Specification.

Engineers Ireland considers that the opportunities to secure best value for money for a proposed Project are greatest during Project Planning. This is the 'creative' part of the process, and it is at this stage that the quality and relative experience of the CTP to the process can have the greatest impact. It is during Project Planning that the CTP can consider and develop novel or innovative solutions so as to achieve better outcomes, if afforded the flexibility needed to do so.

Once the Definitive Project Brief has been developed, to the correct level of detail, the subsequent stages (e.g. Design, Tender and Construction) can be undertaken with greater certainty in terms of scope, a much reduced level of residual risk and therefore cost.

Another area for improvement could be the creation, and maintenance, of a Risk Register earlier in the process. Currently the guidance envisages the creation of a Risk Register following completion of the Preliminary Design Report. The management of risk (including programme risk, scope risk, cost risk etc.) should commence at the start of the Project Planning stage. It should, ideally, be created first by the Client, with management and development of it subsequently either being retained as a Client function or passed to the lead CTP at each stage, and updated at appropriate intervals.

At a minimum, a comprehensive Risk Register should exist upon completion of the Preliminary Design Report which quantifies the impact of each risk, the party responsible for/best suited to manage each risk item, the impact of each risk item in terms of programme or budget etc.

It is noted that the Position Paper includes a number of Ancillary Review Topics. One of these is the fee that should apply to early stage services, with a suggestion that a percentage fee may be more appropriate. It is difficult to see how this could work in practice for early-stage appointments, as until the Preliminary Design has been completed there will be no sufficiently detailed cost estimate. At best there will be a budget, however, this is unlikely to be sufficiently accurate to permit the determination of CTP fees.

Alternative fee mechanisms for early-stage appointments should be considered which better reflect the level of quality, skills and experience required of consultants at this stage in the process. The nature of the early-stage appointments is likely to preclude lump-sum/fixed fee arrangements, and are more likely to be amenable to either time and materials appointments, or a combination of lump sum and Time & Materials appointments. The ability to afford flexibility to the earliest but less resource intensive stage of the project development is likely to yield much greater certainty in terms of reaching the optimal solution selection.

Better Scope of Service - OGP Proposal

The OGP will publish standard scope of service provisions which will be mandatory for all design team procurements. The OGP will investigate whether a standard scope of core services for typical architectural; civil, structural and building services engineering and quantity surveying services can be defined for each stage of a project. The document will present the service requirement in a consistent fashion across all sectors. The intention being to give tenderers confidence in the service provision being sought once they are familiar with the format. There will be provision for additional [defined] services such as PSDP, Assigned Certifier, BIM, design team leader, conservation, etc. as well as bespoke project requirements. It will be considered whether the templates should allow scope for amendments in certain areas so that non-standard services can be included.

Better Scope of Service - Engineers Ireland response

Engineers Ireland is supportive of the proposed standardisation of the Scope of Services, however, it should be recognised that many appointments are for advisory/consultancy services which may not be readily amenable to standardised scope documents.

The proposed approach will result in a substantial suite of documents to ensure that all of the disciplines that may be required for Project delivery are included. It is also likely that different standardised Scope documents will be required to reflect project scale (e.g. Minor Works, Major Works, etc.) and services type (e.g. Advisory Services, Design Services, Construction Supervision, etc.).

The development of standardised Scope documentation will also facilitate greater clarity on the roles, obligations and inputs required of the Contracting Authorities. Clarity on the obligations of all parties can only yield benefits in reducing misunderstandings which, in turn, can result in delays or overruns.

In order to ensure that some flexibility is included in the standardised Scope documents, consideration could be given to including a project-specific schedule which could be appended to each standard Scope document. This would facilitate CTPs in readily identifying where the Scope includes elements that fall outside the standard Scope.

The experience of Engineers Ireland members is that some organisations, in particular those with a well-defined area of responsibility, have developed their own standardised Scope documents which are well understood by the Contracting Authority's staff and by CTPs. Where issues do arise, it is the experience of our members that Contracting Authority has limited experience in the procurement, resulting in nonstandard and bespoke documentation being created.

We would recommend that any proposed standardised Scope of Service documents should seek to emulate best practice in this area, with appropriate dissemination, including training on best practice guidelines.

One innovative approach that could be adopted is the development of an interactive web-based portal to provide support to Contracting Authorities, with the process of developing procurement documentation broken down into logical steps and with in-built error-checking procedures and with each step in the process validated prior to the next step commencing.

More Realistic Pricing by Tenderers - OGP Proposal

The OGP propose that in tandem with development of template standardised scope of service documents, as noted above, template standard pricing documents be developed and published on the CWMF website. These template documents will be mandated for use by all Contracting Authorities. The template pricing documents will be companion documents to the scope of services templates.

More Realistic Pricing by Tenderers - Engineers Ireland response

Engineers Ireland is supportive of the proposal to develop standardised pricing documents. These should be directly linked to the standardised Scope documents also proposed.

It is felt that there is an opportunity in the development of these standardised pricing documents to review how Contracting Authorities might be better equipped to assess “Abnormally Low Pricing” as part of the procurement process.

Alternative tender evaluation mechanisms to mitigate against abnormally low pricing may also be trialled on non-complex low risk projects with a view to building confidence on their robustness and building on the experience gained in other procurement jurisdictions.

Engineers Ireland’s Northern Ireland Region, in conjunction with our fellow professional bodies in the construction sector, have been working in partnership with the Central Procurement Directorate (CPD) to find pragmatic solutions to some of the biggest challenges facing the industry linked to public procurement (see Appendix). One of the key priorities of this extensive engagement has been to agree procurement methodologies where the lowest price is no longer the determining factor in the award of contracts, in other words, to agree how to halt the race to the bottom. These methodologies have now been agreed.

The proposal for CPD to begin a pilot has received the overwhelming support of all of the professional bodies in Northern Ireland through the Construction Professionals’ Council NI. Under the pilot construction services contracts to be awarded by CPD, both above and below the EU threshold, will be awarded in one of the following ways:

- Projects with no quality assessment at tender stage will be awarded on the basis of the Mean Narrow Average calculation;
- Projects with a quality and price assessment at tender stage will base the price score on the Mean Narrow Average calculation; or
- Projects with a fixed fee tender will be awarded on the assessment of quality only.

The fundamental shift is that the best price will no longer be the lowest price but the price that is closest to an average. The average that will be used is a ‘narrow average’. The lowest price and highest price are not part of the calculation to establish the ‘narrow average’. The first CPD procurement that will use the Mean Narrow Average is currently at prequalification stage. OGP and should monitor this mechanism, deriving relevant lessons for the Republic of Ireland.

Better Project Delivery Team Definition - OGP Proposal

The OGP will consider the potential to have an incremental approach to procuring project delivery teams, i.e. below a defined value the Contracting Authority are open to pursue a single point procurement model, once over a defined value certain key role must be procured separately such as, Quantity Surveyor or Employers Representative, and once above a max value all key roles must be procured separately. In addition, the OGP will consider whether pure design functions should be procured separately to non-design functions at certain project cost increments. Where it is considered a suitable model to have separate procurements for key roles the OGP look into the suitability of Project Team Agreements to be entered into by the key members. The OGP will also consider whether it should be mandatory for Contracting Authorities to issue Responsibility Matrices for Project Teams in order to limit or remove the trapdoors through which tasks fall between CTPS within a Project Team.

Better Project Delivery Team Definition - Engineers Ireland response

Engineers Ireland consider the proposal to procure single-point CTP appointments for smaller Projects, and multiple separate CTP appointments for larger projects, to be sensible. However, some thought will be required as to whether all disciplines for larger projects should be directly appointed by the Contracting Authority. For some ancillary services, the benefits and efficiencies which can accrue from existing team relationships should not be overlooked.

Where separate CTP appointments are deemed necessary, there arises a need for a strong project/programme management function as the risks associated with the interfaces between disciplines increases. This could be fulfilled by the Contracting Authority or may require a separate appointment. At a minimum, a well-defined, possibly standardised, responsibility assignment (RACI) matrix should be created to clearly define the roles/responsibilities of all parties, including the Contracting Authority.

Appropriate matrices for each standardised Scope could be prepared to assist Contracting Authorities in determining the disciplines required for a particular project, and to assist in efficient project execution.

Other/general Engineers Ireland comments:

1. A standard method should be created for the calculation of inflation which is applied to fees. A more proportionate means of the application of indexation to professional services should be considered that reflects the nature of the services provided, and appropriately allocates the finance risk between the client and service provider alike in terms of the anticipated programme. This would avoid potential client / service provider disagreements and further mitigate risks that may arise in the aforementioned project risk register.
2. An opportunity to improve efficiency in the procurement of Public Works exists by enhancing/developing the online tendering portal to permit all submissions to be completed interactively. Any online tendering process implementation could improve efficiencies for CTPs by allowing automatic completion of basic information from the CTPs portal account (e.g. company name, registered address, CRO number, Tax number, etc.). In addition, functionality which allowed the re-use of information from previous tenders/submissions (e.g. key personnel) would contribute to overall efficiency.

Some Engineers Ireland members have referenced the procurement portals of the international multi-lateral development banks as examples of online procurement portals with this type of functionality.

3. There should be an acknowledgement that certainty about the ultimate construction costs will only increase over time and as the project development stage matures. During early project stages, it is likely that a range can be determined, however an accurate estimate at Preliminary Design is unlikely given the many variables over the remaining project stages and the nature of the proposed comprehensive risk register.

Appendix - Mean Narrow Average calculation

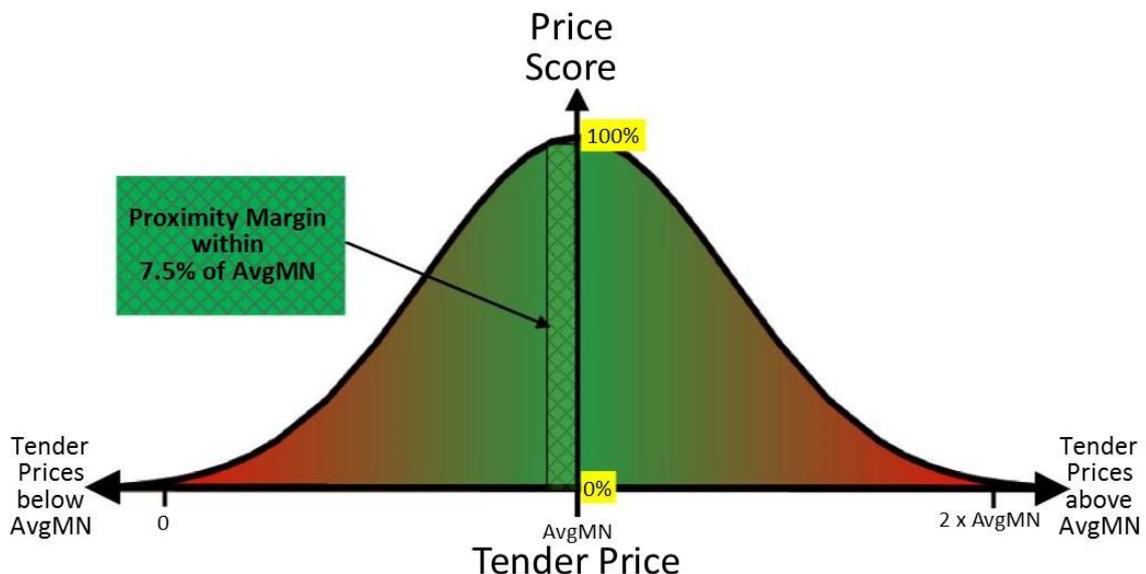
The tender submitted which is closest to the average of the tenders submitted, having discounted the highest and the lowest, will be awarded the contract (in a lowest price competition) or the highest price score (in a price/quality competition). It is proposed that this revised price scoring methodology should be piloted for below threshold price only and above threshold price/quality assessed competitions.

Discounting the lowest and highest tenders, the Mean Narrow Average (AvgMN) is calculated by aggregating the remaining tender sums and dividing by the number of these tenders. One point is deducted for each percentage point above or below this average.

$$\text{Price Score} = 100 \times \left(1 - \text{Absolute} \left(\frac{\text{Tender Price} - \text{AvgMN}}{\text{AvgMN}} \right) \right)$$

Notes:

1. The Absolute value is the non-negative value of a number. Consequently, no matter whether the Tender Price is greater or less than AvgMN, the Absolute value shall never be a negative number and will be subtracted from 1.
2. Where the Tender Price is greater than or equal to twice AvgMN, then the Price Mark shall be set to zero.
3. In the case of price only assessed procurements, the tender price that is closest to the AvgMN will be the winning tender, unless a lower tender is within the Proximity Margin of AvgMN in which case it will win. The Proximity Margin shall be set at 7.5% of AvgMN.
4. In the case of competitions to be assessed on the basis of price and quality, the tender price that is closest to AvgMN will achieve the highest price score. As this score will be added to the quality score to determine the MEAT, the inclusion of a Proximity Margin is not considered necessary.



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About Engineers Ireland

With over 25,000 members from every discipline of engineering, Engineers Ireland is the voice of the engineering profession in Ireland. Engineers Ireland was established in 1835 making us one of the oldest and largest professional bodies in the country. Members come from every discipline of engineering, and range from engineering students to fellows of the profession.

Our responsibility is to

- Promote knowledge of engineering
- Establish and maintain standards of professional engineering and engineering education
- Provide opportunities for Continuing Professional Development (CPD)
- Maintain standards of professional ethics and conduct
- Ensure that professional titles are granted to qualified candidates
- Act as the authoritative voice of the engineering profession in Ireland

Our Vision Statement

Engineers Ireland: a community of creative professionals delivering solutions for society.

Our Mission Statement

Engineers Ireland is an organisation that enables the engineering community to progress their professional development, make an impact on society and encourage and educate the future generations of engineers.