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**FROM: PADDY HOEY**

**DATE: 13 JUNE 2014**

**TO: DEPARTMENTAL AND AGENCY ACCOUNTING OFFICERS AND  
FINANCE DIRECTORS**

**MEMORANDA OF REPLY TO NI ASSEMBLY PUBLIC ACCOUNTS COMMITTEE  
REPORTS**

1. A Memorandum of Reply (MOR) is the formal response to the NI Assembly, to the recommendations contained within a Public Accounts Committee (PAC) report. All MORs (and PAC reports) are circulated to accounting officers and finance directors to enable them to review the documents in the context of their own organisations.
2. Attached in the accompanying annex are links to the following PAC reports and MORs
  - Department of Finance and Personnel - Collaborative Procurement and Aggregated Demand;
  - The Agri-Food and Biosciences Institute (AFBI); and
  - PSNI: Use of Agency Staff.
3. I would draw your attention to the first of these on Collaborative Procurement, which in addition to containing a number of recommendations applicable to the wider public sector, will be of interest to all departments. Where appropriate, PAC recommendations of 'general application' have been highlighted. They include procurement, fee setting, setting budgets for R&D projects, lessons for establishing new ALBs and compliance with established controls. The most recently published NIAO reports are also listed.
4. Recipients of this letter should ensure that it is given appropriate circulation both within their own organisations and to sponsored bodies.

**PADDY HOEY**

## **Memoranda of Reply 2011/15 Mandate**

18<sup>th</sup> Report: Department of Finance and Personnel – Collaborative Procurement and Aggregated Demand (DFP)

*Some general lessons/key issues.*

**(2): The Committee recommends that, where it is not detrimental to SMEs, Departments and CoPEs should consult with CPD and if available, utilise CPD contracts when they are procuring common goods or services. If they do otherwise, their decision will need to be justified by their accounting officer. Where these contracts are not available, CPD should work to create them.**

DFP accepts this recommendation.

The Procurement Board approved the revised Strategy for Collaborative Procurement in June 2013. As a result of extensive work carried out with departments and Centres of Procurement Expertise (CoPEs), CPD are developing a Procurement Guidance Note (PGN) on Collaborative Procurement to implement the revised strategy. The PGN sets out the policy determined by the Procurement Board and will clarify the procedures for consulting with CPD and availing of collaborative arrangements. The PGN will also include details of Accounting Officers' responsibilities and the treatment of Small and Medium-sized Enterprises (SMEs). The PGN will be issued subject to Procurement Board approval in June 2014.

When the need for a common goods or services contract requirement is identified, CPD will work with CoPEs to establish contract arrangements, when it has been determined that it is appropriate to do so.

**(5): The Committee recommends that CPD and the CoPEs regularly benchmark the prices of common goods and services and share this so that they have up-to-date information to ensure that prices paid represent value for money.**

DFP accepts this recommendation.

CPD and CoPEs will agree a basket of common goods and services which will be subject to benchmarking. These products will then be benchmarked on a monthly basis by an independent organisation. This important procurement information will be shared to ensure that the common contracts represent value for money.

**(6): The Committee recommends that DFP should encourage public sector bodies to harmonise specifications for a larger number of common goods and services in order to permit more collaborative procurement opportunities.**

DFP accepts this recommendation.

As a result of extensive work carried out with departments and CoPEs, CPD are developing a PGN on Collaborative Procurement which will detail the protocol for harmonising specifications for a larger number of common goods and services. CPD will also engage

with CoPEs at the early stages of specification development for collaborative arrangements to encourage public sector bodies to harmonise their requirements. This should permit more collaborative procurement opportunities.

**(7): The Committee recommends that departments do more to ensure that arm's length bodies use the services of CPD and the CoPEs in order to achieve value for money when procuring common goods and services.**

DFP accepts this recommendation.

As a result of extensive work carried out with departments and CoPEs, CPD are developing a PGN on Collaborative Procurement which will provide advice to departments on how their arm's length bodies can access collaborative arrangements and will also outline the role of the departments to monitor and report on the use of collaborative arrangements by these bodies.

The PGN will apply to all bodies covered by NI Public Procurement Policy.

**(9): The Committee recommends that CPD and the CoPEs adopt best practice approaches when dealing with SMEs, and, in particular, implement the following aspects;**

- a. **publish specific, targeted actions aimed to increase business with SMEs generally and micro-businesses in particular;**
- b. **set targets for the take-up of public business and report annually on the value of contract spend awarded to SMEs and micro-businesses; CPD captures the value of contracts won by micro-businesses and also sets targets for their take-up of public sector contracts. The Committee would want to see these results reported annually;**
- c. **strengthen steps to ensure major contractors pay subcontractors at least within 30 days, and preferably within 10 days, as part of contract terms and conditions;**
- d. **establish and use more open frameworks which do not lock suppliers out of contracts for long time periods;**
- e. **simplify pre-qualification questionnaires, tender documentation and financial assessments;**
- f. **encourage major contractors to advertise sub-contracting opportunities in the local press where possible; and**
- g. **undertake strategic dialogue between CPD/CoPEs and smaller suppliers.**

The response to each of the aspects listed above is as follows:

- a. **publish specific, targeted actions aimed to increase business with SMEs generally and micro-businesses in particular;**

DFP accepts this recommendation.

CPD will publish actions aimed at reducing barriers to procurement by SMEs and micro-businesses. However, such actions must not contravene the fundamental European Union (EU) principles of equal treatment and non-discrimination. It would be unlawful to create a system that is designed to favour SMEs at the expense of larger firms.

Substantial work has already been carried out to simplify procurement processes to make them less bureaucratic and more SME friendly. Following work with the construction industry and business representatives, CPD has successfully implemented a number of initiatives aimed at increasing SME access to public procurement opportunities. These include:

- publication of guidance aimed at helping SMEs access contracting opportunities;
- establishing a single procurement portal where all government, agency and non-departmental public bodies contracts with values over £30,000 are advertised. Eleven of the 26 local authorities and one of the universities also use this portal;
- inclusion of a prompt payment clause as a standard condition of contract;
- standardising contract clauses across all CoPEs and simplifying procurement processes for contracts with a value below the EU threshold;
- eliminating Pre-Qualification Questionnaires (PQQs) for many supplies and services contracts below £100,000; and
- reducing liability and insurance requirements for tenderers by making them proportionate to the risks associated with the contract.

CPD will continue to streamline its processes to reduce barriers and encourage SMEs and micro-businesses to tender for government contracts.

**b. set targets for the take-up of public business and report annually on the value of contract spend awarded to SMEs and micro-businesses; CPD captures the value of contracts won by micro-businesses and also sets targets for their take-up of public sector contracts. The Committee would want to see these results reported annually;**

DFP partially accepts this recommendation.

As stated above, targets cannot be set for the take-up of public procurement. The EU Directives require public procurement to be underpinned by particular safeguards. These prevent any preferential treatment that could favour specific economic operators and guarantee sound competition between economic operators, so as to ensure that contracting authorities get the best value for taxpayers' money.

However, CPD will ensure that the measures designed to benefit SMEs within the new EU public procurement rules are fully implemented. These include the use of Lots and the further simplification of the procurement process.

Progress already made in relation to the level of contracts awarded to SMEs has been good. In 2011-12 approximately 78 per cent of all contract awards for supplies and services went to SMEs and 96 per cent to construction SMEs. This represents 56 per cent, by value, of all public contracts in NI awarded by CoPEs.

CPD will report annually on the value of contract spend awarded to SMEs and micro-businesses.

**c. strengthen steps to ensure major contractors pay subcontractors at least within 30 days, and preferably within 10 days, as part of contract terms and conditions;**

DFP accepts this recommendation.

CPD has taken steps to improve prompt payment of sub contractors by publishing PGN 06/12 “Helping Small and Medium-sized Enterprises Benefit from Subcontracting Opportunities in Government Contracts” in July 2012. This guidance includes measures designed to ensure that the conditions for sub-contracting arrangements include payment settlement terms of not more than 30 days and that performance is monitored and followed up. It also encourages adoption of the NI Executive’s 10 day policy on prompt payment on a voluntary basis. CPD has also introduced project bank accounts for construction contracts and is trialling this concept in major non-construction services contracts which involve sub-contracting arrangements.

**d. establish and use more open frameworks which do not lock suppliers out of contracts for long time periods;**

DFP partially accepts this recommendation.

Procurement regulations include strict rules for the establishment and operation of framework agreements. The regulations prohibit additional suppliers or additional public bodies being added to a framework agreement after it has been awarded. Therefore a framework agreement is effectively ‘closed’ until the framework agreement expires or is terminated. As such ‘open’ frameworks cannot be used.

However, CPD and CoPEs will consider the impact on SMEs when establishing frameworks, and deciding on their duration, to avoid locking suppliers out for long periods of time.

**e. simplify pre-qualification questionnaires, tender documentation and financial assessments;**

DFP accepts this recommendation.

PQQs are not normally used for supplies and services contracts below the EU threshold. PQQs have been simplified for all construction procurements with values below the EU threshold in agreement with the local construction industry.

PGN 04/12 “Selection and Pre-Qualification of Contractors” has been issued to ensure that PQQ requirements, including financial assessments, are proportionate to the tender.

In order to simplify tender documentation, CPD, CoPEs and the Confederation of British Industry have agreed a standard set of Terms and Conditions of Contract for supplies and services contracts. CPD and Momentum have also agreed a set of Terms and Conditions for Information and Communication Technology procurements. These will be in use across all CoPEs from 1 October 2014.

**f. encourage major contractors to advertise sub-contracting opportunities in the local press where possible;**

DFP accepts this recommendation.

CPD will continue to encourage major contractors to widely advertise sub-contracting arrangements. PGN 06/12 “Helping Small and Medium-sized Enterprises Benefit from Subcontracting Contracting Opportunities in Government Contracts” states that consideration should be given to requiring successful contractors to advertise

subcontracting opportunities and to publish their processes by which new contractors can be included on their supplier lists.

**g. undertake strategic dialogue between CPD/CoPEs and smaller suppliers.**

DFP accepts this recommendation.

CPD and CoPEs engage in strategic dialogue with the Business Industry Forum which includes a number of representatives from the small business sector (e.g. Federation of Small Businesses (FSB) and Sales Institute for Ireland). These meetings provide an opportunity for CPD to consult industry representatives on improvements to procurement processes and systems. CPD and the CoPEs also support Intertradelreland in 'Meet the Buyer' events where SMEs can discuss specific issues with procurement staff. CPD has also been consulting with FSB and other stakeholders in the options available within the new EU Procurement Directives.

A copy of the PAC Report can be accessed at:

<http://www.niassembly.gov.uk/Documents/Reports/Public-Accounts/Report-on-DFP-Collaborative-Procurement-and-aggregated-demand.pdf>

A copy of the MOR can be accessed at:

[http://www.dfpni.gov.uk/index/finance/afmd/afmd-public-audit-and-pac/afmd-memoranda\\_of\\_reply/mor\\_18th\\_report\\_1115.pdf](http://www.dfpni.gov.uk/index/finance/afmd/afmd-public-audit-and-pac/afmd-memoranda_of_reply/mor_18th_report_1115.pdf)

19<sup>th</sup> Report: The Agri-Food and Biosciences Institute (AFBI) (DARD)

*Some general lessons/key issues.*

**(2): The Committee recommends that AFBI annually review its fee setting procedures to ensure compliance with the principles of full cost recovery. AFBI should also provide an annual assurance statement on fee setting to the AFBI Board and the Department.**

DARD and AFBI accept this recommendation. AFBI will review its fee setting procedures on an annual basis and ensure they are compliant with the principles of full cost recovery. AFBI's Accounting Officer will provide an assurance on fee setting to the AFBI Board and DARD, at the end of each financial year. This will also be included in the AFBI Accounting Officer's quarterly assurance statements to the DARD Accounting Officer.

**(4): The Committee recommends that formal and robust budgets be prepared for all DARD-funded R&D projects. Given AFBI's totally inadequate performance in this area to date, the Department must carefully review initial budgets, and ensure that projects are reappraised, or subject to change control where costs exceed estimates. The Committee also recommends that DARD undertake regular compliance reviews of the enhanced oversight measures for R&D to ensure these are functioning effectively in practice. In particular, the viability of projects which fail to meet key milestones must be decisively reviewed and, where necessary, closed.**

DARD and AFBI can confirm that the majority of this recommendation has already been

implemented. Within DARD's Evidence and Innovation (E&I) processes, formal and robust budgets are established for all DARD Research & Development projects, expenditure against budget is reviewed quarterly in reports submitted to DARD by AFBI, and since the introduction of the E&I process in 2011, change control procedures have been in place although these processes are currently being enhanced.

In cases where budgets vary by more than 10 per cent during the life of the project, DARD will ensure that projects are reappraised.

DARD will undertake an annual review to ensure that oversight measures are robust and functioning effectively in practice. This will include consideration of the viability of projects whose delivery is not in line with key project milestones and, where necessary, projects which prove to be non-viable will be closed.

**(6): The Committee believes that its inquiry into AFBI has highlighted important lessons for all departments faced with the challenge of establishing new arm's length bodies. Careful and targeted planning is required to ensure that risks are identified at an early stage, and well managed thereafter. The appropriate systems, skills and resources must also be put in place from the outset to ensure that new bodies function effectively, and are properly governed.**

The Department of Finance and Personnel (DFP) will bring the Committee's recommendation to the attention of departmental Accounting Officers.

A copy of the PAC report can be accessed at:

<http://www.niassembly.gov.uk/Documents/Reports/Public-Accounts/AFBI-report.pdf>

A copy of the MOR can be accessed at:

[http://www.dfpni.gov.uk/index/finance/afmd/afmd-public-audit-and-pac/afmd-memoranda\\_of\\_reply/mor\\_19th\\_20th\\_reports\\_1115.pdf](http://www.dfpni.gov.uk/index/finance/afmd/afmd-public-audit-and-pac/afmd-memoranda_of_reply/mor_19th_20th_reports_1115.pdf)

20<sup>th</sup> Report: PSNI: Use of Agency Staff (DOJ)

*Some general lessons/key issues:*

**(1): The Committee recommends that PSNI should assess annually the value for money of the services provided. Any major changes to contracts should only be achieved through open competition, which is a fundamental principle of public sector procurement. This can result in significant savings and avoids any perception of impropriety.**

DOJ, the Northern Ireland Policing Board (the Board) and PSNI accept this recommendation.

The recommendation is already reflected in current PSNI procurement procedures and practices. The Board is responsible for ensuring that PSNI achieves value for money and in each of the last eight years, PSNI has presented a value for money report to the Board. The report, titled Annual Report on Procurement Savings and Achievements, sets out historical,

current and projected savings, together with benchmarking information against other public sector services and the private sector.

PSNI has a Service Level Agreement with Central Procurement Directorate (CPD) to facilitate all procurements with a whole life cost value over £30,000. CPD also provides procurement advice to PSNI on the application of the Public Contracts Regulations 2006 (as amended) on changes to existing contracts. This advice will include whether a variation to an existing contract is a material change and therefore deemed to be a 'new' contract. In these circumstances PSNI will develop a business case to assess the most appropriate option to fulfil this requirement. This may be through open competition or under the appropriate provisions of the Public Contracts Regulations applicable at the time.

**(2): Non-compliance with established controls is often a feature when things go wrong within organisations, and examples of this have been highlighted regularly in the Committee's reports. All public bodies, including the PSNI, should ensure not only that adequate procedures and processes are in place but also that they are adhered to consistently by staff.**

DOJ, the Board and PSNI accept this recommendation.

PSNI recognises the importance of compliance within established control frameworks. Therefore, in addition to the revised guidance and further training which the Committee noted had already been introduced across PSNI, PSNI has implemented a cycle of Control Risk Self Assessment and a programme of Internal Audit work to regularly review compliance. In addition, as part of its overall governance arrangements, PSNI has established an Audit and Risk Committee and invites an official from both DOJ and the Board to attend each meeting.

DFP agrees that all public bodies should ensure they have adequate procedures and processes in place, and that these should be adhered to consistently by staff. DFP will draw this recommendation to the attention of departmental Accounting Officers.

**(4): Procurement decisions which run contrary to CPD procurement advice should be avoided. Where such decisions are made, the reasons must be documented fully and retained on file. In the case of the PSNI, notification should also be made to the Policing Board which has a statutory duty with regards to value for money.**

DOJ, the Board and PSNI accept this recommendation.

PSNI agrees that procurement decisions which run contrary to CPD procurement advice should be avoided and where such decisions are made, the reasons will be documented and retained on file by the PSNI Head of Procurement. PSNI will also make the Board aware of such decisions as part of the Annual Report on Procurement.

In addition, if PSNI do not accept CPD advice, there is a mechanism in place whereby it is reported to the Head of the Centre of Procurement Expertise (CoPE) for resolution. If the PSNI decision is significantly inconsistent with Northern Ireland (NI) Public Procurement Policy, the Head of CoPE is required to formally write to the DOJ Accounting Officer. These will also be reported to the Procurement Board by the Head of CoPE.

DFP also agrees with this recommendation and will draw it to the attention of departmental Accounting Officers.



A copy of the PAC report can be accessed at:

<http://www.niassembly.gov.uk/Assembly-Business/Committees/Public-Accounts/Reports/Report-on-PSNI-Use-of-Agency-Staff/>

A copy of the MOR can be accessed at:

[http://www.dfpni.gov.uk/index/finance/afmd/afmd-public-audit-and-pac/afmd-memoranda\\_of\\_reply/mor\\_19th\\_20th\\_reports\\_1115.pdf](http://www.dfpni.gov.uk/index/finance/afmd/afmd-public-audit-and-pac/afmd-memoranda_of_reply/mor_19th_20th_reports_1115.pdf)

### **Recently published NI Audit Office reports**

**Improving Pupil Attendance: a follow-up report (25/02/14)**

**Belfast Metropolitan College's Titanic Quarter PPP Project (25/03/14)**

**Safer Births: using information to improve quality (29/04/14)**

**Continuous Improvement Arrangements in Policing (06/05/14)**

**Improving Social Housing Standards through Stock Transfer (03/06/14)**

Copies of the above reports are available to download from the NIAO's website at the following link:

<http://www.niauditoffice.gov.uk>