



Oifig um Sholáthar Rialtais
Office of Government Procurement

25th February, 2019

Ms Éilis Fallon
 Committee Secretariat
 Committee of Public Accounts
 Leinster House
 Dublin 2

Dear Ms Fallon,

I refer to your letters of 8th and 12th February regarding the National Children's Hospital. As indicated in my letter of 15th February, I am now responding to the issues raised in your correspondence.

1. Summary

At the outset, I would like to clarify:

1. In my letter to you of 25th January, I accept in hindsight that I should have advised that I was a member of the NPHDB having been appointed in personal capacity by the Minister for Health in 2013. My work on the Board is separate and distinct from the Office of Government Procurement's (OGP's) role in the project.
2. I am fully aware of my obligations both under the *Code of Practice for the Governance of State Bodies*¹ and *Circular 12/2010: Protocol for Civil Servants nominated to the boards of non-commercial State bodies*. The Circular clearly sets out the steps to be taken when a civil servant serving on the Board of a non-commercial State body has an unanswered concern where there is a significant public policy issue at stake. As per the Circular, the relevant Minister² must be notified without delay where:
 - i) *there are serious weakness in controls that have not been addressed despite being drawn to the attention of the Board or the Chairperson;*
 - ii) *there is a significant strategic or reputational risk to the State body that is not being addressed; and/or*
 - iii) *there are serious concerns about possible illegality or fraud occurring in a State body. A Board member may have obligations under company law (if it applies) in situations where*

¹ <https://govacc.per.gov.ie/governance-of-state-bodies/>

² The relevant Minister is the Minister under whose aegis the body falls, the Minister for Health in this case.





a State body is not being conducted in accordance with law - this may require that action be taken in addition to reporting matters to the Minister.

It is clear that the Circular places an obligation on a civil servant to bring concerns to the attention of the relevant Minister, in this case the Minister for Health, where that civil servant has concerns that a serious issue is not being addressed to his or her satisfaction by the Board and/or Chairman. I was and am satisfied that the cost issues which developed over the summer and autumn of 2018 were being appropriately addressed by the Board and the Chairman, that the HSE as the funder of the NPHDB were aware of the issues given their integration into the committee structure of the NPHDB, and that the issues were being communicated on an ongoing basis both to the HSE and Department of Health through the reporting and governance arrangements established by the Department of Health as the accountable Department for the project. This is supported by the minutes of (a) the NPHDB Board meetings and (b) both the Children's Hospital Project & Programme Steering Group and Board. In addition, the Board appointed Mazars to conduct a preliminary review into the cost escalation and to provide recommendations where appropriate.

I did not inform either the Minister for Public Expenditure and Reform or the Secretary General of that Department as I was satisfied that the NPHDB was addressing the matters and reporting to both the HSE and Department of Health. I have discussed this with the Minister for Public Expenditure and Reform who has accepted my judgement in this regard and that I have met all of the responsibilities that I have as a member of the Board. He has confirmed this in the Oireachtas.

3. The role of the Government Contracts Committee for Construction ("GCCC") in this instance was to consider a request for a derogation by the NPHDB from the use of the standard forms of contract. The derogation simply acknowledges that the particular circumstances warrant a different approach and does not approve the approach or strategy of the contracting authority. The GCCC involvement ceased in July 2016. Responsibility for the public procurement process rests with the contracting authority.

2. Office of Government Procurement

I believe it would be helpful to set out the role of the Office of Government Procurement ("OGP"). It was established to lead on the implementation of the Government's procurement reform programme. The OGP provides procurement solutions, advice, guidance and systems for public bodies, promoting good practice and proactive engagement with our sourcing partners in the Health, Education, Defence and Local Government Sectors through the Procurement Executive.

It also has responsibility for developing and setting out the overarching policy framework for public procurement in Ireland. This framework enables a more consistent approach to public procurement across the public sector by setting out the procurement procedures to be followed by public bodies.



The reform has seen the introduction of a centralised approach for common goods and services. The OGP and its sector sourcing partners in health, education, defence and local government put in place central procurement arrangements for common goods and services. Public works, with the exception of minor building works (primarily covering maintenance requirements) and a framework for rapid-build social housing, are not undertaken by the OGP or its partners.

3. NPHDB

It should be noted that the Department of Health, as the accountable Department for the project, established the reporting and Governance arrangements for the project through which the NPHDB provided regular updates to it on the project. I was appointed in a personal capacity to the NPHDB on 31st July 2013 for a period to end on 30th July 2018 by the then Minister for Health. I was re-appointed on 16th July 2018 by the current Minister for Health for a period up to 30th July 2023. As I am a member of the Board in a personal capacity, I do not represent either the Department of Public Expenditure and Reform or the Office of Government Procurement on that Board, and was appointed because of my procurement expertise. If I were to move from PER or the OGP to a different role, then my role on the Board would continue. I should also point out that I do not, nor have I ever, received any additional remuneration or expenses for my role on the Board.

The members of the Board, in line with Code of Practice for the Governance of State Bodies and the Board's own Code of Governance, have a fiduciary duty to the Board in the first instance, a responsibility to act collectively in decision making and communication, and an obligation to observe its confidentiality arrangements.

The Governance Framework for the Department of Health³ specifically requires in Section 5 that the NPHDB, amongst other named funded bodies, must comply with the Code of Practice for the Governance of State Bodies. In addition, the Code of Governance for the NPHDB⁴ clearly states that the Board has adopted Code of Practice for the Governance for State Bodies. It is clear that *Circular 12/2010: Protocol for Civil Servants nominated to the boards of non-commercial State bodies* applies in the *2016 Code of Practice for the Governance for State Bodies* as it is cross-referenced in Section 3.4. The fiduciary responsibility of Board members is set out in Section 3.1.

The protocol for civil servants participating on the boards of non-commercial State bodies is set out in Circular 12/2010 and is incorporated into the Code of Practice for the Governance of State Bodies (section 3.4). The Code sets out the duties of civil servants to the relevant Minister. In this instance, the relevant Minister was clearly the Minister for Health.

I am satisfied that the issues which developed from the end of May 2018 were being appropriately addressed by the Board and the Chairman, that the HSE as the funder of the NPHDB were completely aware of the issues given their integration into the committee structures of the NPHDB, and that the issues were communicated both to the HSE and Department of Health through the reporting and governance arrangements established by the

³ <https://health.gov.ie/blog/publications/governance-framework-for-the-department-of-health/>

⁴ <http://www.newchildrenshospital.ie/policies/code-of-governance-manual/>



Department of Health as the accountable Department for the project. I understand that the Committee has been provided with minutes of the NPHDB meetings requested and those of the governance arrangements established by the Department of Health in that regard.

4. Capital Works Procurement Policy

Public works procurement is covered by the Capital Works Management Framework (“CWMF”) which consists of a suite of best practice guidance, standard contracts and generic template documents. It is mandatory for use on all projects delivered under the Exchequer-funded element of the public capital programme. The CWMF is maintained by the Construction Policy Unit of the OGP in consultation with the Government Contracts Committee for Construction (“GCCC”).

With the exception of the framework arrangements for rapid-build social housing, the OGP has no direct involvement in works procurement. Capital works are procured directly by the many public bodies tasked with delivery of the public capital programme. However, officials in the Construction Procurement Policy Unit of the OGP regularly provide advice on procurement strategies and contractual matters to those same public bodies. While the OGP provides advice on these matters, the system of accountability is maintained and the public body, as the decision-maker, retains accountability.

4.1. Public Works Contract

The public works contract is a key component of the CWMF. The suite of public works contracts includes ten forms of construction contract, six of which are lump sum, fixed-price contracts⁵. Two are for site and building investigation works⁶, one is for maintenance and refurbishment works⁷ and the last is for large, complex infrastructure works⁸.

4.2. Government Contracts Committee for Construction

The GCCC is a consultative forum for the discussion and development of policy in the tendering and contracting of all aspects of construction projects. Membership of the committee includes representatives of all the main capital spending bodies and it possesses considerable expertise across the different sectors of activity in the construction industry. The Chair and the Secretariat to the GCCC is provided by the OGP. The current membership of the GCCC is attached at Appendix I.

I am not a member of the GCCC but did attend one meeting on 5th June, 2013 in response to an invitation from the GCCC to outline my plans for the establishment and role of the OGP. That meeting was held prior to my appointment to the NPHDB at the end of July 2013.

⁵ PW-CF1 – PW-CF6 inclusive

⁶ PW-CF7 & PW-CF8

⁷ PW-CF11

⁸ PW-CF10



4.3. GCCC engagement with NPHDB

The engagement between the NPHDB began at my initiation as a member of the NPHDB in October 2013 in order to ensure that the procurement policy and strategy aligned with government procurement policy. The engagement with the GCCC ended in July 2016 as the procurement process for the main contract commenced. It is normal for the engagement process with the GCCC to end at this point in the process. In addition, I was involved as a NPHDB Board member in a number of procurement workshops organised by the procurement sub-committee of the NPHDB between January and May 2014. These workshops were also attended by an official from the Procurement Policy Unit of the OGP along with other legal and procurement experts who were not on the NPHDB or employees thereof. The purpose of these workshops was to explore the options in relation to the optimum procurement approach for a project of the scale, complexity and programme timescale of the hospital. I did not participate in the formal application process to the GCCC which commenced in May 2014. I set out at Appendix II the extent of the engagement between the Procurement Policy Unit in the OGP, the GCCC and the NPDHB.

4.4. Derogation from use of standard contracts

Department of Finance Circular 33/06, which introduced the suite of public works contracts, requires the use of the fixed-price, lump sum contracts as a default for capital projects. However, a mechanism exists to seek a derogation from the use of these forms through an application to the GCCC. The role of the GCCC in this regard is set out in Circular 40/02. This process has been availed of by sanctioning authorities for large or complex projects or for those with specific requirements which do not naturally fit with the standard 'lump sum' contracts. There have been twelve derogations sought and granted by the GCCC⁹ since 2011 and these have dealt with diverse circumstances such as energy retrofits for the Sustainable Energy Authority of Ireland; remediation works at an abandoned mine for the Department of Communications, Climate Action and the Environment; Haulbowline Island Remediation works for Cork City Council; and works at the GPO for An Post for the 2016 Commemorations.

It is important to note that a derogation, if agreed, does not approve the approach or strategy of the contracting authority, but simply acknowledges that the circumstances are such as to warrant a different approach than the standard. The derogation is granted by the GCCC, not the OGP or the Department of Public Expenditure and Reform. It is a matter for the contracting authority and the sanctioning authority to satisfy themselves as to the adequacy of the approach with regards to compliance with procurement rules and project appraisal in accordance with the Public Spending Code.

⁹ Parliamentary Question PQ 7550/19 refers



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I trust this response is of assistance to the Committee and adequately addresses the matters raised in your letters.
Further information can be provided at your request.

Yours sincerely,

Paul Quinn,
Chief Procurement Officer,
Office of Government Procurement.



Appendix I – Current Membership of the Government Contracts Committee for Construction

Name	Technical/Administrative Position in Organisation	Department/Office
David O'Brien	Senior Construction Adviser (Chair to GCCC)	Office of Government Procurement
Eileen Dalton	Assistant Principal (Secretariat to GCCC)	Office of Government Procurement
Jim Deane	Principal Officer, Procurement Policy	Office of Government Procurement
Grainne Connolly	Engineer, Marine Engineering Division	Dept. of Agriculture, Food and the Marine
Noel Clancy	Chief Engineer, Marine Engineering Division	Dept. of Agriculture, Food and the Marine
Noel Ó Murchú	Engineer, Marine Engineering Division	Dept. of Agriculture, Food and the Marine
Deirdre Creaney	Assistant Principal, Property Management Branch	Dept. of Defence
Neil Murphy	Head of Quantity Surveying Services	Dept. of Defence
Larry McEvoy	Manager (Professional & Technical), Planning and Building Unit	Dept. of Education & Skills
Derek Kavanagh	Quantity Surveying Adviser - Housing Advisers & Building Standards	Dept. of Housing, Planning and Local Govt.
David O'Grady	Engineering Inspector Roads Division	Dept. of Transport, Tourism and Sport
Ciaran McCaffrey	Senior Manager, Capital Funding	HEA
Eleanor Masterson	Deputy Chief Architectural Adviser	HSE
Peter Finnegan	Principal Quantity Surveying Adviser	HSE
Gerard Cahillane	NDFA Head of Finance and Operations	NDFA
David Corrigan	Head of Project Management	NDFA



Appendix I – Continued

Name	Technical/Administrative Position in Organisation	Department/Office
Aidan Quinn	Principal Quantity Surveyor, Quantity Surveying Services	OPW
Colette Davis	Assistant Principal, Flood Project Management Services	OPW
Gerard Kennedy	Assistant Principal, Intermediate Projects	OPW
Gerard Harvey	Assistant Principal Architect	OPW
Geraldine Fitzpatrick	Chartered Engineer FIEI, Head of Roads Capital Programme	Transport Infrastructure Ireland
Patrick Duffy	Regional Manager	Transport Infrastructure Ireland



**Appendix II – Summary of engagement between OGP Procurement Policy Unit,
GCCC and NPHDB**

With regards to the involvement of the GCCC (and the Procurement Policy unit of the OGP) preliminary engagement began as early as October 2013 with a request from the NPHDB to establish whether one of the forms of public works contract; the Public Works Contract for Early Collaboration (PW-CF10) would be a suitable form of contract for use on the St James's Campus. The use of this form requires the prior approval of the GCCC.

From this early engagement it became apparent that the scale, complexity and required delivery timeline associated with the National Paediatric Hospital presented a range of challenges from a project perspective which prompted a different procurement approach than the fixed-price lump sum approach.

An official from the Procurement Policy Unit attended a series of meetings from January to May 2014 with the procurement sub-committee of the NPHDB, of which I was also a member. These meetings were organised as workshops to consider the procurement and contract options available and were advisory in nature in order to assist the NPHDB in arriving at their procurement strategy.

The procurement for the design team which was undertaken between January and September 2014 followed the standard approach set out in the CWMF and no derogation was necessary.

The NPHDB commenced their formal engagement with the GCCC in May 2014 with a view to securing a derogation. The submission took the form of a note to the Committee setting out the broad approach being considered by NPHDB at that point in time.

A sub-group of the GCCC met with the NPHDB on the 11 May 2015 to discuss the draft strategy that was to be outlined at the GCCC meeting of 20 May 2015.

The NPHDB along with key members of their design team made a presentation to the GCCC on 20 May 2015 of their draft procurement strategy for the overall project. I did not attend the meeting.

On 6 April 2016, there was the second and final presentation by the NPHDB to the GCCC. It provided a significant degree of detail on the procurement strategy for the St James's Campus. I did not attend the meeting.

After the meeting there was some engagement on the templates for the tenders for the Satellite centres which used the standard public works form of contract PW-CF1.

Updates to the GCCC were provided by the representatives of the HSE on the GCCC with respect to the development of the procurement strategy and significant project developments such as the appointment of the design team, the grant of planning permission and the award of the works contract.



The involvement of the OGP's Procurement Policy Unit and the GCCC ceased from July 2016 as the procurement process for the main contract got underway.

In February 2017 the Phase A construction contract was awarded by the NPHDB.