

Kevin OConnell

From: Ray Mitchell <Ray.Mitchell@hse.ie>
Sent: Monday 30 November 2020 10:27
To: Public Accounts Committee; Éilís Fallon
Cc: 'Pamela_Carter@health.gov.ie' (Pamela_Carter@health.gov.ie); Linda O'Rourke
Subject: Follow up information for PAC
Attachments: HSE Procurement Compliance Update for PAC (27.11.2020).pdf; HSE Response to PAC Re Non compliant procurement (S0084 PAC33).pdf

Categories: Correspondence for future meetings

R0223 PAC33

Dear Eilis,

I refer to recent correspondence from the PAC re procurement. Please find attached HSE response to same.

With kind regards,

Ray Mitchell

Rannóg na nGnóthaí Parlaiminteacha | Oifig an Phríomhoifigigh Feidhmiúcháin | Feidhmeannacht na Seirbhíse Sláinte | Bloc D, Ionad Gnó Gheata na Páirce | Sráid Gheata na Páirce | Baile Átha Cliath 8 | D08 YFF1 | Teil: (01) 635 2531 | Rphost: ray.mitchell@hse.ie | Gréasán: ww.hse.ie

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HSE Procurement Compliance

Response to correspondence received from Committee of Public Accounts (Ref: S0084 PAC33)

27 November 2020

Purpose of this Paper

In considering Financial Statements & Accounts laid before the Oireachtas, the Committee noted instances where the Comptroller & Auditor General drew attention to non-compliance with procurement guidelines. The purpose of this paper is to address the request from the Committee for an information note detailing the number of contracts that were non-compliant with procurement guidelines in 2019, the associated expenditure and the reason(s) for the non-compliance.

1. Background

The Code of Practice for the Governance of State Bodies (2016) provides that entities should have a contracts database/listing for all contracts/payments in excess of €25k with monitoring systems in place to flag non-competitive procurement. Non-competitive procurement should be reported in the Chairperson's comprehensive report to the Minister.

The HSE's declaration of non-compliant procurement process for contracts / payments in excess of €25k (2019) commenced in early February 2020. This process was scheduled to be completed and reported in the Chairperson's report to the Minister, as part of the submission of the Annual Report and Annual Financial Statements for 2019, by the April 2020 deadline.

The immediate need to redeploy HBS Procurement to support the HSE response to the COVID-19 pandemic interrupted this process and the timeframe above was not met. Consequently, it was not possible to provide a strong reliable estimate of the level of HSE non-compliant procurement for 2019 by the required reporting deadline. The HSE's Statement of Internal Control 2019, which is published as part of the Annual Report and Annual Financial Statements for 2019, has fully disclosed this in line with the DPER Code.

Work has commenced to ensure that the HSE will be in a position to provide a strong reliable estimate of its level of non-compliant procurement for the Chairperson's report to the Minister, as part of the submission of the Annual Report and Annual Financial Statements for 2020, by the April 2021 deadline.

2. Non-compliant procurement 2019

Prior to COVID-19, a summary report analysed a total of 21,743 contracts/invoices valued over €25k, with an overall value of €778m. Of these contracts/invoices, 1,124 were declared as non-compliant. The total value of these non-compliant contracts/invoices was €52.7m.

The impact of COVID-19 effectively stopped HSE's declaration of non-compliant procurement process in relation to 2019 and it is important to note that this analysis is only based on what was returned at a point in time.

With that in mind, the following table provides the number of contracts that were deemed non-compliant for 2019, for this sample only, with the associated expenditure for each and reason(s) for non-compliance.

No of Contracts/ Payments	Associated Expenditure €	Reason for non-compliance
217	14,262,847	Extension or rollover of existing or similar contract
527	9,260,923	Urgency
144	8,760,286	Exclusive Rights / Proprietary
59	8,364,670	Under Analysis
81	7,426,795	Special Advantage
52	2,110,358	Competition Failed
15	987,702	Additional Works or Services
20	807,396	Additional Deliveries by the Original Supplier
8	703,322	Commodity Items
1	46,267	Particularly Advantageous Terms
1124	52,730,566	

*Appendix 1 provides a definition for each of the reasons outlined above.

3. Conclusion

In conclusion, the HSE was unable to report an estimate of non-compliance with procurement guidelines for the year 2019. However, section two above provides the Committee with an analysis of the reasons for non-compliance in 2019 for the subset of contracts/invoices sampled.

The HSE has commenced a process for establishing the rate of non-compliance for 2020 contracts/invoices to ensure it can meet its reporting requirements, by the relevant deadlines, as required by the DPER Code.

Appendix 1: Definitions - reason(s) for the non-compliance.

Heading	Description
Special Advantage	Chosen supplier had special advantage due to earlier research exclusively carried out in a particular area, or had exclusive data or information required to perform particular task and therefore competition was absent. HSE can demonstrate that it could not award the contract more economically
Extension or rollover of existing or similar contract	Similar contract awarded competitively earlier and new contract is performed on the same terms
Urgency	For reasons of extreme urgency arising from events unforeseeable competitive process could not be undertaken in the time available
Commodity Items	Supplies quoted and purchased on a commodity market
Particularly Advantageous Terms	The purchase of supplies on particularly advantageous terms, from either a supplier which is definitively winding up its business activities, or the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure under national laws or regulations
Additional Works or Services	For additional works or services not included in the project initially considered or in the original contract but which have, through unforeseen circumstances, become necessary for the performance of the works or services described therein, on condition that the award is made to the economic operator performing such works or services: when such additional works or services cannot be technically or economically separated from the original contract without major inconvenience to the contracting authorities, or when such works or services, although separable from the performance of the original contract, are strictly necessary for its completion. However, for contracts above EU threshold values the aggregate value of contracts awarded for additional works or services may not exceed 50 % of the amount of the original contract
Competition Failed	When no tenders or no suitable tenders or no applications have been submitted in response to an open procedure or a restricted procedure and the initial conditions of contract are not substantially altered
Exclusive Rights / Proprietary	When, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract may be awarded only to a particular economic operator
Additional Deliveries by the Original Supplier	For additional deliveries by the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance; the length of such contracts as well as that of recurrent contracts may not, as a general rule, exceed three years



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30th November 2020

Ms. Éilis Fallon,
Committee Secretariat,
Public Accounts Committee,
Leinster House,
Dublin 2.

Re: Non-compliance with procurement guidelines (S0084 PAC33)

Dear Ms. Fallon,

I refer to your recent correspondence to Mr. Paul Reid, Chief Executive Officer, Health Service Executive and the request for a briefing note on non-compliance with procurement guidelines.

Please find attached (in a separate document) response for the attention of the Public Accounts Committee members on the matter as requested.

If any further information is required please do not hesitate to contact me.

Yours sincerely,

Ray Mitchell
Assistant National Director
Parliamentary Affairs Division

Encl.