



26 January 2023

Chairman,
Public Accounts Committee,
Leinster House,
Kildare Street,
Dublin 2

Dear Chairman,

At the Public Accounts Committee meeting on the 14th December in the context of the discussion on Office of Public Work's (OPW) 2021 Appropriation Accounts I was asked to follow up and revert to the Committee with respect to two issues:

- i. Submission from the OPW and the Office of Government Procurement (OGP) with respect to Government's public works contract.
- ii. Timeline for the submission of a recommendation to the Minister for Public Expenditure and Reform regarding the Crossmolina Flood Relief Scheme.

Submission from the OPW and the OGP with respect to Government's public works contract

I am informed by the OGP that following a meeting at official level the OGP received a submission from the OPW by email on 1 April 2021 regarding government's public works contract. The OGP is involved in a comprehensive thematic review of the manner in which public works projects are procured.

There are many elements to the review which encompasses both the engagement of contractors and the consultants who make up the design teams for public works projects. Objectives have been set for the review which will result in progressive reforms to the manner in which public works projects are procured in the coming years. A number of themes are progressing at present with some partially complete:

- A review of professional indemnity insurance requirements for consultants and contractors concluded in May 2022 with Circular 05/2022.
- A review of the manner in which inflation is handled in consultancy and construction contracts is underway and a number of measures were introduced in 2022 with further measures envisaged early in 2023.
- A pilot digitalisation scheme for the prequalification process aimed at significantly reducing the administrative burden for those participating in public tenders is currently underway.

Stage 1 is complete and a business case for a defined digital solution is being prepared. Subject to approval and funding it is hoped that the solution will be operational by early 2024.

- A strategy for the adoption of Building Information Modelling (BIM) will be published early in 2023 and engagement is ongoing with the Build Digital Project on developing supports for building clients, contractors, sub-contractors and suppliers.
- The manner in which consultants are engaged is being reformed with a view to improving information outputs to enable BIM, life cycle costing and project delivery. Stakeholder engagement on emerging proposals will commence in Q1 2023 with the intention of publishing new requirements by year end.

Whilst the OGP has overall responsibility for construction procurement policy, the review is being conducted with the support of the Government Contracts Committee for Construction (GCCC) which is a forum for considering matters related to construction procurement policy. It has representatives from all of the main capital spending departments, including the OPW, and matters such as those raised by the OPW in their submission to the OGP are regularly raised and discussed at meetings.

A number of the matters contained in the OPW's submission have already been given active consideration at the GCCC whereas others are being addressed later in the review programme. The OPW, and all other members of the GCCC, will have ample opportunity to contribute to any recommendations that may be made to amend the manner in which public works projects are procured.

Timeline for the submission of a recommendation to the Minister for Public Expenditure and Reform regarding the Crossmolina Flood Relief Scheme.

The OPW is responsible for maintenance of arterial drainage schemes under the Arterial Drainage Act 1945 and is obliged to maintain all rivers, embankments and urban flood defences on which it has executed works since the 1945 Act. The Minister for Public Expenditure and Reform has statutory responsibilities with respect to confirming the commencement of river drainage and flood relief schemes promoted and developed by the Office of Public Works under the Arterial Drainage Act. This represents a very small subset of flood relief schemes, with the vast majority of schemes going through the wider planning framework.

The key role for the Minister is to ensure that any proposed scheme is compliant with the Arterial Drainage Act and associated legislation, through independent environmental impact assessments to ensure that there are no significant impacts on the environment.

On foot of the Judicial Review of the River Bride (Blackpool) Flood relief scheme, the Department of Public Expenditure and Reform consulted with the Chief State Solicitors Office in reviewing and strengthening the confirmation process to ensure that the process is consistent with the relevant legal tests as prescribed by the regulations. In the instance of the Crossmolina scheme, a further public consultation was required following the receipt of supplementary information.

The period for further consultation concluded in July 2022 and the Department has engaged independent environmental consultants to review the submissions. This review has been completed and the consultants are finalising materials to inform their recommendation to the Minister on the scheme. Under Section 7E of the Arterial Drainage Acts (as amended by the European Union (Environmental Impact Assessment) (Arterial Drainage) Regulations 2019 the Minister can make a number of decisions: make an order confirming the scheme; refuse to confirm the scheme; or refer the scheme back to the Commissioners of the OPW for revision in specified respects. On the basis of the work to date the Department expects all relevant material to inform a recommendation by the

Minister on the scheme to be provided by the consultants by end February 2023. At this point, the Minister will examine all relevant materials supplied to him and form a reasoned conclusion on the significant effects of the scheme on the environment and make a decision in accordance with Section 7E of the Act.

Yours sincerely,

Marie Mulvihill

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Climate Division

Department of Public Expenditure and Reform