



ESPO MANAGEMENT COMMITTEE – 27 SEPTEMBER 2012

REPORT OF THE INTERIM DIRECTOR

PUBLIC PROCUREMENT AND SMALL & MEDIUM-SIZED ENTERPRISES

Purpose of Report

1. The purpose of this report is to:
 - (i) Outline the pros and cons of awarding contracts to Small & Medium-Sized Enterprises (SMEs), and in particular local SMEs;
 - (ii) Consider the accessibility of ESPO's and its members' procurement processes;
 - (iii) Suggest a number of ways by which ESPO and its members' may further develop its work with SMEs to develop their ability to win contracts.

Background

2. At its meeting on 3 November 2011 the ESPO Management Committee resolved, "That the Chief Officers Group be requested to investigate the pros and cons of, and further support that could be provided by ESPO to SMEs, and ways in which they could be helped to enter its supply chain, and report back to a future meeting of the Management Committee". The Chief Officer Group considered this issue at its meeting on 29 August 2012 and resolved to submit a report this meeting of the Management Committee for its further consideration.

Small and Medium Sized Enterprises

3. It is important to note that ESPO and its member authorities do not share a common definition of SMEs. For example, whilst some prefer the definition used by BIS¹ that considers any enterprise that employs fewer than 250 persons to be an SME, others use the European Commission (EC) definition that also incorporates annual turnover and balance sheet thresholds in Euros. Further complexity is added if the 'local' dimension is added to the SME definition, given ESPO member authorities' geographical spread.

¹ Department for Business, Innovation & Skills

4. There is now a greater incentive for councils to generate economic growth as they begin to receive a share of business rate revenues from districts within their area, instead of the formula grant from central government.
5. There is a tension between the aim to increase the value of business awarded to SMEs and the ever-increasing need to make efficiency savings; where a primary means of achieving savings is the creation of economies of scale by aggregating requirements, often through the use of framework agreements. ESPO exists to allow its members to aggregate their requirements, and endeavours to further increase this aggregation via the Pro5 collaboration.
6. Procurement legislation, in promoting the principle of non-discrimination, significantly limits the leverage councils have for increasing the amount of work that they award to local SMEs. This means that the furthest councils can go in increasing the potential for SMEs to win council contracts is generally improving their procurement processes, including making processes as clear and lean as possible, and using terminology that plays to SMEs' strengths, such as requiring "freshness", "regular deliveries" or "local knowledge".
7. In April 2011, the EC completed a consultation process relating to the reform of EU procurement legislation. The EC's initial proposals appear to be trying to increase opportunity for SMEs. However, these steps do not seem to simplify the process for them, and could be argued quite the reverse, particularly in a social care context. For example most of Leicestershire's domiciliary care spend is with SMEs, and have been supported by keeping the tendering process simple for them in terms of size, and complexity of the documentation, and by making selection based on criteria on which we know they can compete against larger organisations.
8. By introducing a more formal process they will be deterred, and with more rigid criteria many of them will struggle to even participate, let alone be successful, as completing tenders is not something they tend to be good at. (For example continuity & service user involvement & innovation in the evaluation of bids has been recognised, however there is no suggestion of how this could be done in a practical sense. At the moment, such things are taken into account using the reasoned professional judgment of appropriate officers, and a commentary on such decision making can be provided from an audit point of view.
9. However, how such things could easily be translated into a logical, evaluation matrix is unclear, and it would require a very complex scoring methodology to support it. For example, if service user choice is key, and service users participate in the process, they are not always able to rationalise their decision making, nonetheless, their views must be taken into account, and they have the ability to reject a service

provider, irrespective of the overall scoring of the remaining parts of the bid.) It is likely that it will be a number of years before the proposals are reflected in UK legislation.

10. There has been much discussion as to the value of setting a target for the proportion of work that public sector agencies should aim to place with SMEs. However, the analysis required to establish appropriate targets has not been undertaken at national, regional or sub-regional level. Also, whilst the Federation of Small Businesses favours target-setting, the British Chamber of Commerce cautions against the use of quotas, believing that the best company should win the contract, and leading academics note the tendency for target setting to tip over into box ticking².
11. Public sector organisations not only benefit SMEs through the direct award of contracts, but more indirectly, award contracts to larger organisations that in turn, sub-contract to SMEs.
12. It is important to recognise that procurement should support a council's strategies; it cannot be used in isolation. Policies on SME's, targeting local disadvantage groups, training, etc. need to be developed first of all to support sustainability. If there are well developed directories of local suppliers, training agencies, etc. it makes it easier for procurement strategies to be directed towards networks already in place. Local employment targets often reflect key industries and supply chains which procurement can support. Such key areas need to be considered and balanced against wider strategic objectives and value for money, for example, national companies with better training programmes may achieve more for the local economy than using SMEs.
13. Developing a well balanced sustainable communities approach to procurement across the consortium membership requires good contract planning and the sharing of programmes and approaches in advance of procurement need.
14. It is recognised that individual Members have already begun to engage with local SME's. This is evident because a large proportion of their spend with local SME's is via locally awarded contracts.

Pros & Cons of Awarding Contracts to SMEs

15. A table showing the general pros and cons of awarding contracts to SMEs is shown below:

² For example, Professor Smallbone, Professor of Small Business and Entrepreneurship at the Small Business Research Centre, Kingston University

Pros

- SMEs can be more innovative, flexible and customer focussed than larger organisations.
- SMEs potentially have lower overheads and therefore may be more competitive for small value contracts.
- Local SMEs contribute to local business rates, a share of which is to be received by the Council.
- A public sector contract/reference can act as a springboard for an SME in gaining further public and private sector business³.
- Today's SMEs are tomorrow's larger firms.

Cons

- The Council may miss out on economies of scale.
- SMEs are more likely to be dependent on the Council.
- SMEs are generally less financially robust than larger organisations.
- SMEs are less likely to have a Research & Development function (the cost of which larger organisations can spread across a wider customer base).
- SMEs are less able to contribute to the Council's objectives, for example, providing business continuity plans and management information relating to equality.

Accessibility of Procurement Processes

16. The obstacles faced by SMEs in endeavouring to bid for public contracts are well documented, for example, in 'The Glover Report - Accelerating the SME economic engine: through transparency, simple and strategic procurement'. Obstacles often cited by SMEs include:

- (i) Difficulties in finding information, particularly relating to contract opportunities;
- (ii) Lack of knowledge about procurement procedures;
- (iii) Application/tender submission deadlines that are too short, particularly where the intention would be to submit a joint/consortia bid;
- (iv) Prohibitive and excessive pre-qualification standards, for example, relating to financial stability;
- (v) Complex tender documentation, including the use of jargon, rather than plain English;
- (vi) Tendering costs are too high; disproportionately so, compared to larger firms;
- (vii) The aggregation (bundling) of requirements into large contracts and framework agreements;

³ Research conducted by Manchester Business School suggests about a quarter of companies that are able to provide innovative solutions to the public sector, also grow their export business

- (viii) An over-emphasis on price, rather than an analysis of both cost and quality;
 - (ix) A reluctance on the part of public procurers to consider new suppliers;
 - (x) Public commissioners and procurers limited understanding of SMEs and how they operate.
17. There are a number of examples from across ESPO's member authorities, and from ESPO itself, of actions having been taken to remove or reduce these obstacles. For example:
- (i) Signing up to the National Procurement Concordat for SMEs;
 - (ii) Provision of documented guidance (incl. sample SME-friendly contract conditions) to procuring officers on how to undertake a procurement exercise that is sensitive to SMEs [*Leicestershire*];
 - (iii) Prompts to consider SMEs are included within the governance structure/template documentation developed for scrutinising procurement exercises and contracts [*Leicestershire, Cambridgeshire*];
 - (iv) The breaking up of framework agreements so as to give SMEs an opportunity to be awarded a place on the framework [*Leicestershire*];
 - (v) Mandating the use of a specific portal for advertising contract opportunities over a certain threshold (generally, £20k total contract value, [*Leicestershire*]; proposal to lower to £10k in Cambridgeshire)
 - (vi) Flexible and proportionate financial vetting guidance that allows for a range of evidence to be submitted to substantiate an applicant's/tender's financial stability [*Leicestershire*];
 - (vii) Development of a lighter Pre-Qualification Questionnaire template to be used where likely bidders are to be from the voluntary sector [*ESPO, Leicestershire, Cambridgeshire*];
 - (viii) Development of Request of Quotation templates for lower threshold procurement exercises [*Leicestershire, Cambridgeshire*];
 - (ix) Use of 'Bidders Conferences' to provide an opportunity for potential tenderers to ask clarification questions about the requirement and procurement process following the issuing of the Invitation to Tender document [*ESPO, Leicestershire, Cambridgeshire*];
 - (x) Regular attendance at 'Meet the Buyer' events [*Leicestershire, Cambridgeshire*];
 - (xi) Delivery of 'How to do business with the Council' presentations at SME events;
 - (xii) Funding of a Countywide Infrastructure Organisation contract which includes voluntary sector capacity building [*Leicestershire*];
 - (xiii) Contribution/involvement in the sub-regional 'Selling to the Public Sector' project that involved SME capacity building and increasing buyer awareness of the obstacles faced by SMEs [*Leicester, Leicestershire*].

- (xiv) Simplified PQQ, RFQ and tender documents that have been introduced following consultation with the Federation of Small Business – (Cambridgeshire)
- (xv) Proposal to increase the limit for use of simplified quotation process to £100,000 from current £75,000 (subject to Council approval Cambridgeshire)

Further Improving Accessibility

18. There are a number of ways by which the Consortium might further improve the accessibility of its (and members') procurement processes to SMEs:
- (i) Agree a common definition of SMEs, as well as SME-related key performance indicators (including establishing baselines), across the member authorities;
 - (ii) Create a 'Procurement Charter' to which public and private sector organisations/contractors can sign up; committing them to best procurement practice, including ensuring local publicity is given to contract opportunities;
 - (iii) Ensure that the SME agenda has a bearing on the appropriate level of collaboration when developing the procurement strategy; for example, whether national, regional or local framework agreement, or contract;
 - (iv) Ensure that internal procedures (for example, the ESPO Business Case proforma) prompt consideration of the need for, and means of, making individual procurement exercises as SME-friendly as possible. Prompts may include consideration of the letting strategy, the extent to which the specification could be based on outcomes, whether to hold a Bidders Conference, SME-friendly contract conditions, allowing enough time for consortia bids⁴, and directly notifying known SMEs in the respective market of the contract opportunity;
 - (v) Develop, a co-ordinated approach to giving advanced warning of upcoming contract opportunities and the advertising of contract opportunities, including the flagging of SME-friendly contracts;
 - (vi) Implement an e-Tendering solution, preferably in conjunction with member (and other) authorities, that alerts registered organisations of contract opportunities and stores tenderers' organisation details;
 - (vii) Ensure that the new Pre-Qualification Questionnaire (PQQ), including guidance (currently being developed by ESPO) is not excessively onerous, and can be tailored to be proportionate to a particular procurement exercise (e.g. insurance requirements);
 - (viii) Include questions within the new PQQ (as optional supplementary questions) that require tenderers to explain how they select and manage sub-contractors where appropriate;

⁴ It is recognised that recent guidance from central government has encouraged reducing the duration of the procurement process and that longer processes may add cost to both tenderers and the procuring organisation.

- (ix) Evaluate the details (including finances) of all tender consortia members, rather than just the 'lead' partner (though this could be impractical and too complex; particularly risk arrangements may not be known at the tender stage);
- (x) Consider if, and how, the evaluation process can take account of the contribution made to the local economy, including SMEs (e.g. Members community strategy and targets);
- (xi) Include SME friendly contract conditions in contracts with prime contractors, where appropriate. For example, requiring the prime contractor to:
 - Apply the same payment terms as agreed with the council to the payment of the sub-contractors they use in delivering the council contract;
 - Advertise sub-contracting opportunities, relating to the council contract, on an agreed portal (for example, the appropriate Source East Midlands website).

Although laudable, imposing contractual restrictions may increase the cost of a contract. In these circumstances it may be more appropriate to provide contractors with information on the council's strategy/objectives;
- (xii) Proactively provide verbal debriefings to unsuccessful SME applicants/tenderers, rather than awaiting a request for a debrief. (Again this might increase procurement costs);
- (xiii) Develop a programme of market development/tendering capacity-building work, including delivering presentations at SME forums, attending 'Meet the Buyer' events, providing advice of how to set up consortia, creating a database of SMEs, and targeting SMEs that have previously been unsuccessful when pre-qualifying/tendering;
- (xiv) Develop and deliver a training session for commissioners that increases their awareness of the obstacles faced by SMEs, as well as the means of removing or reducing the impact of these obstacles.

Resource Implications

19. If it is determined that some or all of the listed initiatives in paragraph 13 above be progressed, then there will be consequential resource and cost implications.

Conclusion

20. The drive to make public procurement processes as accessible as possible to SMEs has gained further impetus as a result of central government policy. Whilst ESPO (and its members) have taken steps to remove and reduce obstacles, further actions could be taken to increase accessibility as highlighted in paragraph 13 above.
21. It is important to recognise that initiatives are already being undertaken locally by individual Member Authorities. It is important to encourage the sharing of best practice between Member authorities and ESPO.

Recommendation

22. It is recommended that the Management Committee considers the contents of this paper, including the potential initiatives listed for further increasing the accessibility of ESPO's (and its members') procurement processes. .

Equal Opportunities Implications

23. The subject of this paper is how to remove the obstacles that restrict SMEs' access to public procurement processes and put them at a disadvantage to larger organisations, whilst ensuring compliance with procurement legislation, including the principle of non-discrimination.

Risk Assessment

24. The potential initiatives listed comply with procurement legislation.

Background Papers

The Glover Report, November 2008 - Accelerating the SME economic engine: through transparency, simple and strategic procurement.

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