



Meeting of the Water Advisory Body (WAB) with EY and Irish Water

17 February 2021 2:00pm

Venue: Remote Meeting via WebEx Video Conferencing

Attended by:

Chairperson	Paul McGowan	
Members	Miriam McDonald	Michelle Minihan
	Martin Sisk	Dónal Purcell
Secretariat	John McCarthy	Colin Flood
	Darren Browne	
Ernst & Young (EY)	Barry Collins	
Irish Water	Declan Morrissey	
	Chris McCarthy	
Apologies	Neill Dalton	

Background

The Water Advisory Body (the WAB) as part of its remit under the Water Services Act 2017, commenced a review of Irish Waters procurement policies and procedures. The review is focused on the methodologies Irish Water use regarding procurement and the effectiveness and compliance of its policies and processes. Phase I of the review has been conducted through an external service provider (Ernst & Young) tendered by Irish Water on behalf of, and based on Terms of Reference set by WAB

Scope of the review

The six areas of scope as part of this internal review of Irish Water procurement policies and procedures were:

1. Irish Water's requirements and obligations regarding the procurement process.
2. Procurement contracts management policies and procedures in place and its execution of same.
3. Compliance and conformity with relevant EU Procurement Directives, relevant Framework Agreements, good practice for Governance of State Bodies and industry Peer and Best Practice from a Governance and Compliance perspective.

4. Processes and controls to support policies and the purpose of these policies, focusing on the following areas:
 - a) Preparation and issue of tender documentation and draft contract;
 - b) Process for issuing tender documentation, managing receipt of tender submissions and managing clarifications;
 - c) Process for appraisal of tenders, including competency and training of evaluation team and ensuring independence (managing conflicts of interest); and
 - d) Management of the award process.
5. Market engagement and capacity of the market to deliver Irish Water's requirements.
6. Irish Water's (and Local Authority SLA) capacity to manage its procurement requirements from a governance and compliance perspective.

The scope of the review did not include the following processes:

- Demand plan development and accuracy
- Post award variations and contract management

Detailed Observations and Recommendations

Ernst & Young produced a report "Review of Irish Waters procurement and contract policies and procedures to ensure compliance against PD02 and PD03" in December 2020.

WAB requested that Ernst and Young make themselves available for a meeting with the WAB.

Barry Collins from Ernst & Young (EY), Declan Morrissey and Chris McCarthy attended the meeting.

Presentation

Barry Collins, the representative from Ernst & Young gave an overview of the observations and recommendations laid out in the report under the six areas of scope.

Background

A high-level review of Irish Water's procurement policies and procedures is under way by the WAB.

As part of this review, it was agreed between Irish Water and the Water Advisory Board that an independent review of IW's procurement policies and procedures should be carried out. The main objective of the review was to cover:

- Irish Water procurement policies and procedures; and
- Irish Water procurement contracts management policies and procedures.

On an annual basis, Irish Water manage between 300-500 tender competitions through the Supply Chain departments. There were 470 tender competitions in 2019 and of those circa 300 were mini competitions. Tendering activity is split between the Capital and Category functions with Category consisting of five key pillars – Indirect & Professional Services, Asset & Equipment, IT, Telecoms & Customer Care, Operational Consumables & Services and Utilities Logistics & Facilities.

PD02 - Procurement Policy: this Policy sets out the procurement procedures which Ervia and its subsidiaries, including Irish Water, must follow when engaging in procurement activities of any nature on behalf of Ervia Group. The Policy is reviewed annually and submitted to the Ervia Board for approval

as required and at least every two years. The key aspects of this policy have been reviewed and discussed with Irish Water where clarifications were needed.

PD03 - Authorisation Levels and Contract Approvals: this Policy sets out the financial expenditure governance framework for activities within Irish Water and the contract approvals that need to be obtained in relation to each stage of the procurement process.

Tender sample selection

To support the review, Irish Water provided EY with a copy of the tender register for works undertaken between 2018 and 2020 with a value greater than €200k (187 tenders in total). To enable Ernst & Young test that Irish Water were managing their procurement activities in accordance with their policies and procedures a sample of projects was selected from the register. The criteria of the sample selection are outlined below:

- Tender values covering both above and below OJEU thresholds
- Tenders selected from across the different pillars (Capital Irish Water, Indirect & Professional Services, Asset & Equipment, IT, Telecoms & Customer Care, Operational Consumables & Services and Utilities Logistics & Facilities)
- Different procurement routes

Using the above criteria, the sample resulted in the following:

- 10 tenders were selected representing a 5% by volume and over 50% by estimated / award value;
- All procurement routes used (Negotiated, Framework, Mini competition, Below threshold and Open procedure);
- Tender values ranged from €2M to €104M.

Testing process

To ensure each element of the scope of works was completed, EY developed a testing process similar to that used as part of an internal audit. This involved interviewing key stakeholders within Irish Water as well as carrying out a document review of the key controls for each of the sample tenders selected.

Conclusion

The intention of the report was a high-level review of Irish Water's procurement policies and procedures. Ernst & Young advise that at a high level conclusion, Irish Water is compliant in regard to **PD02 Procurement Policy** and **PD03 Authorisation Levels and Contract Approvals**.

The report author made a number of recommendations that Irish Water could introduce to improve compliance and align with best practice in the area of procurement, such as:

- Developing a more formal and structured approach to identifying industry best practice in relation to procurement and governance with peer organisations across the country
- Updates to internal processes and controls

Irish Water Response

Irish Water advised it has been a useful process. They advised that the recommendations will be used to enhance their controls and they are happy to accept them.

Questions and Answers

The WAB members had a number of question for the author of the report:

Q. The WAB asked Ernst & Young to confirm that Irish Water are in full compliance and conformity with relevant EU Procurement Directives, good practice for Governance of State Bodies and industry Peer and Best Practice from a Governance and Compliance perspective, in particular the use of frameworks for procurement.

A. Ernst & Young confirmed that based on the high level review, Irish Water is compliant in regard to PD02 Procurement Policy and PD03 Authorisation Levels and Contract Approvals .

Irish Water gave a background into its use of frameworks to assist procurement. They advised that it is a mechanism to procure from but it is not obliged to do so. It is a way to speed up the procurement process.

Q. The WAB asked for clarification on how procurement frameworks were used in Irish Water; How a supplier was selected for a framework; What checks and balances are used to ensure fairness; and How this was assessed in the report.

A. Irish Water gave a background on the use of frameworks. Irish Water use frameworks for procurement in every area and they are typically in place for a 3-5 year period. In line with procurement legislation, most Irish Water projects are over the thresholds. In tendering a framework, Irish Water set out the minimum requirements for suppliers including the scope of works / service to be provided. Successful tenders are taken onto the framework that meet the selection criteria. Within each framework separate call-off mechanisms are detailed for awarding work. Irish Water use market engagement for strategy and feedback reasons. Irish Water also engage with suppliers on the capital frameworks annually to advise on upcoming projects. The category frameworks have more variety, so there is more frequent engagement with the suppliers on those frameworks.

The representative from Ernst & Young confirmed that once a framework is in place Irish Water are not obliged to select a supplier from it. Should the requirement be for a specialist, not addressed by the current framework, Irish Water may conduct a tender through the current policies.

There is no guarantee of any spend through the frameworks, and selections are made based on skills required, experience and rates. They advised that the use of procurement frameworks is good practice and that neither Irish Water's use of frameworks for procurement nor the level of draw down from the frameworks are of concern to them.

Q. The recommendation in 2.1 *Irish Water's requirements and obligations regarding the procurement process* and 2.4 *Processes and controls to support policies and the purpose of these policies relating to the procurement activities* state that controls should be added to the progress documents. If they are currently not in place, are Irish Water in compliance with these sections?

A. The representative from Ernst & Young advised that these recommendations were highlighted in the report as in some cases the documents were not part of the original progress documents, due to the tender being issued before the introduction of the requirement for documents, Irish Water should add them for the next round of projects.

Q. On the Ernst & Young recommendation in 2.4 *Processes and controls to support policies and the purpose of these policies relating to the procurement activities: "Where an estimate is within 10% of an OJEU threshold, consideration should be given to not using the below threshold option. Furthermore, where the scope of work alters prior to the tender document being issued to the market a review of the estimated should be carried out"*, What guarantee does this give that Irish Water will or will not use the threshold option if it is only a consideration? Is it anticipated that Irish Water would do so?

A. The representatives of Irish Water advised that there are four phases of the tender process. Phase 1 approval includes estimates for the projects. Occasionally a tender estimate is within 10% of the threshold. When this occurs, Irish Water would challenge the estimation and if there is no change, take a view, on a case by case basis, on whether to run it as if it is over the OJEU threshold. . IW will update their processes to ensure the need to challenge estimates within 10% of the OJEU threshold is made clear.

Q. Part 2.2 Phase 4, Contract Changes:

"Phase 4 is necessary when there is a material variation to the contract / framework or if an extension is required over and above that previously approved at Phase 2." How is the report defining material variation?

A. The representatives of Irish Water advised that each variation is assessed on a case by case basis.

Q. Where does this audit fall in traditional audit terms?

A. The representative from Ernst & Young stated that if this was an audit report with the Red, Amber, Green system, this would be Green result across the six categories.

Q. In relation to **PD02 Procurement Policy**, the report notes that the Irish Water representatives interviewed confirmed that they were in compliance. Did Ernst & Young form its own independent judgement on this?

A. The representative from Ernst & Young stated that based on everything tested in the audit, it is in agreement with the Irish Water representatives interviewed. The scope of the review was high level but showed good practice and consistency, legal templates and signoff thresholds through the cases reviewed and is very robust.

Q. 1.1 Tender sample selection - Can Ernst & Young clarify on this, and confirm that they had an independent review on the selection of cases?

A. Ernst & Young required Irish Water to provide the cases for review. Ernst & Young were allowed to select the cases for review. They will update the wording in the report to reflect this.

Q. There would typically be a management response to audit findings, in the absence of this could Irish Water confirm if they are going to implement the recommendations?

A. Irish Water advised that they are accepting the recommendations and have begun the process of using the enhancements described in the recommendations.

Conclusion

The WAB thanked EY and IW for their attendance and confirmed that the report, along with notes from this meeting will be published on its website.

The WAB requested that the report be finalised in the coming weeks.