

European Medicines Agency Bid

Minister

You may recall that when we updated you earlier this week, we explained that we were working to fast-track the securing of professional PR/comms advice to support the bid. To do this we have to proceed on the basis that this is a matter of national urgency and that the requirement for urgent provision of this service could not have been foreseen far in advance. A memo on this matter was submitted to the Secretary General yesterday and he has now approved the proposed approach, which will involve a small number of potential providers being invited to tender, an expeditious but fully transparent selection process and then the early commencement of the provision of the supports required.

The Secretary General's approval note (see below) makes this conditional on an early Memo for Information of the Government on the overall EMA process as well as the urgent securing of PR/Comms support and your support for the overall course of action.

I would be grateful for your agreement at the earliest opportunity.



Fergal Goodman


3 March 2017

Memorandum

To: Fergal Goodman
CC: Rúnai Aire. Malachy Corcoran
From: Jim Breslin
Date: 03/03/2017
Re: EMA Relocation bid – Procurement of Public Relations & Communications Support

I refer to Mr Corcoran's submission on the above (copy attached) and agree to the proposal set out, subject to the following:

1. The telescoped procurement process to involve the invitation of 5 or more companies and a fully transparent selection process in line with normal practice i.e. award criteria agreed and notified in advance, competitive scoring based upon proposals submitted, documentation of process, etc.
2. That further consideration be given to the position after June 2017 to avoid any extension not encompassed in the original contract award. This could involve a full competitive process being put in place in advance or a run-off period after June being included in the original tender specification whereby an option is included for services at a lower level to be utilised while a new procurement process is undertaken.
3. A Memo for Information to be submitted to Government as soon as possible providing an overall update on the EMA bid (including the need for whole-of-government support) and referencing the hiring of PR/Communications support on grounds of urgency.
4. The Minister having no objections to the above, based upon the national priority and urgency attached to Ireland's EMA bid process.


3 March 2017

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1. Fergal Goodman A. Sec
 2. Jim Breslin. Secretary General

File Ref: MED/INF/0/140120

2nd March 2017.

Re: EMA relocation bid- Procurement of Public Relations and Communications Support.

Background

1. The Government decided on 25 October 2016 (S180/20/10/2055) that Ireland should prepare a bid for Dublin to be selected as the new location for the European Medicines Agency after the UK exits the European Union. An interdepartmental and interagency group was established in line with the Government Decision and is working to develop the bid.
2. It is apparent, from the work undertaken to date, that competition between Member States to be selected as the future location for the EMA is already intense. Some countries are emerging as strong candidates and are mounting strong and well-resourced campaigns (with in some cases special envoys having been appointed and already working to promote their country's bid across the EU). Ireland is seen internationally as having a very good case, so it is imperative that this is communicated effectively as well as continuing to be supported strongly at Government and diplomatic level.
3. When the interdepartmental group was set up, no information was available as to the timescale for a potential decision by the EU Council, nor was any detailed information available about the likely process of selection. Good indicative (but nonetheless not definitive) information about these matters has been obtained in the course of interaction at ministerial and official level with the EU Commission during January and February 2017. In particular, it has been established that it is likely that, following the initiation by the United Kingdom of the Article 50 process, the Commission will engage with the EU Council with a view to prompting the beginning of a time-defined selection process. This will most likely involve the promulgation of key criteria to be met by candidate countries or cities and potentially a short-listing process based on these. This is expected to be followed by consideration by EU Council. Following a series of meetings at ministerial and official level, including with the EU Health Commissioner, Agriculture Commissioner and the European Medicines Agency itself, there are strong indications that, following the initiation by the UK of the Brexit process, the formal process in relation to the relocation of UK-

based EU agencies will commence and could be completed as early as the June 2017 EU Council meeting.

4. In these circumstances, and given the significant strategic benefits which would accrue to Ireland if it were decided to relocate the EMA to Dublin, the Interdepartmental group considers it essential that professional public relations and communications advice is procured as a matter of urgency, such that such a service can be in place within a matter of a not more than three weeks. In order to achieve this it will be necessary to select PR and communications supports for the bid without a full-length competitive procurement process. Clearly it would not make sense to enter a full competitive process such that the required service would only become available after the key period for promotion of the Irish bid had passed.
5. From initial research done by a number of members of the interdepartmental group, a monthly spend of up to €20,000 might be required, for a period of three to four months initially, i.e. to the end of June. The position could be further assessed at that time, depending on how the bid and decision-making process has evolved.
6. In the event of an EU Council decision not being made in June 2017, the position in regard to on-going retention of the PR/Communications Consultant would have to be reviewed. The action to be taken would likely be influenced by a number of considerations including;
 - (a) The anticipated timetable for such a decision and the degree of certainty on this;
 - (b) The nature of any ongoing competitive selection process;
 - (c) The extent of any ongoing need for PR and communications support;

It may be possible, if the expectation was that a decision would be made in the short-term after June, that the contract could be extended under procurement rules. However, if a longer timeframe is indicated, the immediate need for PR may subside allowing for a reassessment of the requirements and a further full procurement process could be initiated if required.

Procurement

7. The European Union (Award of Public Authority Contracts) Regulations 2016 (SI 284/2016) states (Section 27 (3) Open Procurement)

“Where a state of urgency duly substantiated by the contracting authority renders impracticable the time limit laid down in paragraph (1) (b), the contracting authority may fix :

- (a) a time limit which shall be not less than 15 days from the date on which the contract notice was sent:
- (b) a time limit for the receipt of tenders which shall not be less than 10 days from the date on which the invitation to tender was sent."

8. This division has considered carefully the case for the award of a contract without a full competitive process and the official guidance in place which indicates that in cases where a contracting authority opts to award a contract without a competitive process on grounds of urgency, care should be taken to ensure that the circumstances for invoking urgency or extreme urgency are justifiable. In the case of contracts both above and below the EU threshold, the factors giving rise to urgency must be serious, unforeseeable and not due to action or inaction on the part of the contracting authority concerned.

9. In my opinion we can meet this test, essentially because of the dynamic nature of the process and the fact that key information (albeit still not definitive) as to how the process may play out has only become clearer in recent weeks. The conditions which would underpin a determination by the Department as contracting authority that a state of urgency exists and which renders the time limits impracticable are:

- It is not clear when the British Government will trigger Article 50 to commence the process of leaving the EU;
- It is not clear when the decision will be made about the new location for the EMA but there are strong indications that it could be as early as June 2017;
- There are no clear criteria for the decision-making process. This means we have to be flexible and responsive in our approach and need to have, at hand, the resources and supports to respond as short notice to developments in relation to the decision making process;
- It is now becoming clear that competitor countries are well resourced and already have a presence in Brussels putting their case. The Dublin bid must be able to compete for coverage in order to be seen as a realistic option;
- The resources do not exist in the Department to support the multi-faceted approach called for in this case and some elements must be outsourced;
- The Government decision to put Dublin forward as the new location for the EMA must be supported by a strong, professional campaign if it has to have any chance of success. A full-scale procurement process will not allow Ireland to be 'on the ground' quickly and would seriously disadvantage the Irish bid.

Permission sought


- 10. Permission is sought to issue an invitation to a small number of companies (3-5) to undertake the work required. 10 days will be allowed for receipt of proposals. The specification issued will list the work required as:
 - i. Advising on the presentation of Dublin's attractiveness as a location for the EMA to the audiences;
 - ii. Assisting with the design of Ireland's bid;
 - iii. Working to influence key decision-makers/influencers in Dublin, London and Brussels and elsewhere as may be necessary. This includes political representatives, staff of the EMA, media, industry and officials in Brussels. This work will complement and amplify the diplomatic and political efforts to influence the selection of Dublin as the new home to the EMA;
 - iv. Analysing the strengths and weaknesses of rival Member States' bids;
 - v. Monitoring media and other commentary about the process and advising on management of Ireland's response; and
 - vi. Any other related work considered necessary to promote the Dublin bid.

Cabinet Handbook – Additional Procedures to apply to certain consultancies and procurements

- 11. The Cabinet Handbook sets out two circumstances where additional procedures should be applied. These are where the proposed consultancy-
 - a) comprises a significant element of direct service to that Minister or Minister of State, particularly in the PR or communications area (specifically the giving of advice, briefing, etc); and/or
 - b) where the Minister/Minister of State has suggested the name of a person(s) or enterprise(s) that might be suitable.

I am satisfied that neither of the above circumstances exist in this case. There will be no element of direct service to any of the Ministers of the Department and the Ministers will not be involved in proposing or selecting the companies to be asked to tender.

Subject to agreement that a state of urgency exists, and that the circumstances outlined at 11 above do not apply in this case, invitations to tenders will issue very quickly to a small number of potential providers, with a 10-day return, with a view to awarding a contract by mid-March.


 Malachy Corcoran,
 EMA Relocation Project Team

Additional Procedures to Apply to Certain Consultancies and Procurements

The Quigley Report has highlighted the need for special care in cases where a Minister may wish to suggest a particular person (or enterprise) for a consultancy contract or where a contract provides for services to both a Minister and the Department. At the outset it is important to stress that a Minister should not take any action that might interfere with the conduct, in accordance with the relevant guidelines, of a fair and transparent procurement process. Furthermore, the Code of Conduct for Office Holders sets out broad principles to guide Ministers in managing their responsibilities, including in relation to the appropriate use of public resources and the furtherance of the public interest. Ministers are obliged to act in accordance with the Code of Conduct. The introduction of the following procedures is subject to those over-arching principles and represents a set of requirements additional to the operative procurement guidelines, compliance with which remains the responsibility of the relevant Department or Office. These procedures do not dispense with any requirements as contained in relevant Administrative Budget provisions for sanction by the Department of Finance for expenditure. Any such requirements must be satisfied separately.

Additional Procedures Circumstances in which they should be applied

The following procedures should be applied in situations where a proposed consultancy (or any proposed contract for services), whether short term or for a longer period.

- a) comprises a significant element of direct service to that Minister or Minister of State, particularly in the PR or communications area (specifically the giving of advice, briefing, etc); and/or
- (b) where the Minister/Minister of State has suggested the name of a person(s) or enterprise(s) that might be suitable.

The Procedures

1. The Secretary General of the relevant Department or Head of Office (if (s)he is not already so aware) must be notified whenever the circumstances above occur.
2. The Secretary General of the relevant Department or Head of Office must inform the Secretary General to the Government.
3. The Secretary General or Head of Office should confirm to the Secretary General to the Government that arrangements for the proposed procurement will comply with national, E.U. and any other relevant requirements and will continue to be responsible for compliance with those requirements
4. If the Secretary General to the Government is of the view that the proposed consultancy comes within the definition at (a) or (b) above, (s)he will arrange for the relevant aspects to be considered within the Cabinet Secretariat. The Cabinet Secretariat may inquire about any aspect of the proposed procurement they believe to be pertinent to consideration of the matter and may, as necessary, consult the Department of Finance about same.
5. The Secretary General to the Government will then make a recommendation to the Taoiseach as to whether any special conditions should be observed in the procurement process.