

Chapter 16 Prisons

Procurement in the Irish Prison Service

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16.1 In general, the principles underlying public procurement are that the process should be open, transparent and competitive. In order to ensure that any departures from these principles are reported, Accounting Officers complete and submit an annual return in respect of contracts exceeding €25,000 awarded without competition⁴⁷.

16.2 In the course of audit of the financial records of the Irish Prison Service (IPS) it was noted that there were major contracts in place with Glenbeigh Construction Ltd. (Glenbeigh) for various capital projects within the IPS.

16.3 The projects in question were initiated under a tender put to the market on 2 July 2004. The tender notice, published in the Official Journal of the EU (OJEU), designated the procurement as a framework agreement. The works tendered for were priced at €2.1 million by the successful bidder. In the period 2004 to 2007, projects with an estimated value of €97 million, excluding VAT, were commenced, using the initial procurement as a basis to set rates and prices to the extent that relevant elements had been specified and priced in the initial tender process. Ultimately, 73⁴⁸ projects took place at 15 prisons or IPS offices, with some of those projects being service wide. Figure 54 sets out the total outlay over the period 2004-2007. Annex A describes the works in more detail.

Figure 54 Works Completed 2004 to 2007

Facility	Total value of contracts	Number of contracts
	€m	
Castlerea Prison	42.07	13
Special Service Wide Projects	20.90	5
Loughan House	12.58	7
Shelton Abbey	5.71	2
Mountjoy Prison	4.43	12
Portlaoise Prison	3.78	6
Cloverhill Prison	1.61	5
Midlands Prison	1.48	1
St Patrick's Institution	1.31	5
Wheatfield Prison	0.85	3
Cork Prison	0.77	3
Beladd House, Prison Service Training Centre	0.74	2
Limerick Prison	0.52	4
Building Services Division	0.17	2
Small Works Training Unit, Arbour Hill, IPS HQ Longford	0.07	3
Total Costs Estimate	96.99	73

⁴⁷ Details are set out in Circular 40/02 – Public Procurement Guidelines. Accounting Officers submit annual returns to the Comptroller and Auditor General and the National Public Procurement Policy Unit of the Department of Finance.

⁴⁸ The list in Figure 54 contains a number of smaller works which are combined together. In total, the number of projects was 96.

General Background to the Procurements

16.4 In addition to the construction cost, payments totalling €3.69 million have been made to consultants to enable the IPS to administer the agreements. A total of €3.04 million was paid to KMCS, who acted as project managers and cost managers for 22 of the projects and a further €0.65 million was paid to DBFL Consulting Engineers, who provided project management and civil and structural engineering design services for the project to construct close supervision and safety observation cells at a number of prisons. The remainder of the projects were managed in-house by the Building Services Division within the IPS.

16.5 The Accounting Officer stated that, at the time, the largely outdated prison estate was under pressure from increasing numbers. During 2006 and 2007 it became apparent that IPS was seeing the beginnings of an upwards curve in the numbers in the prison system due to various factors including increased number of Gardaí and increased number of court sittings. Accordingly, given that the construction of Thornton Hall, which would be the long-term solution to the issue of overcrowding in the system, was at least 4-5 years away at that stage, it became obvious that some interim measures would be required to alleviate the problem. It also became clear that certain financial resources would be available to the IPS at this point in time, and if used to fund capital projects in the prison system, they would hopefully put the system in good shape to cover the interim period until the completion of the new prisons planned for Thornton Hall and Kilworth.

Previous Framework Agreement with Glenbeigh

16.6 In the course of the audit it was noted that a previous framework agreement with Glenbeigh had been put in place with KMCS acting as project managers for some of the projects. That framework agreement, established in 2002, began with a contract for a new education and gymnasium facility in Cloverhill Prison and made provision for a drawdown facility for similar requirements over an 18-month period. In total, eleven projects were completed under that framework and project costs totalled €15 million. KMCS managed ten of the projects and received €0.8 million in fees. In March 2002, the Minister for Finance conveyed sanction to award the initial contract for Cloverhill education facility and for a drawdown on the tender from Glenbeigh Construction Ltd to proceed with the replacement or upgrading of army accommodation at Portlaoise.

16.7 The Accounting Officer stated that the Department of Finance sanction for the 2002 drawdown gave the IPS comfort that this method of procurement was in order and that under the Capital Investment Framework 2004-2008 it was not necessary from 2004 onward to seek sanction for individual capital projects.

Audit Focus

The audit sought to establish

- whether the initial 2004 agreement was sufficient to ground the issue of subsequent contracts without seeking tenders
- how the tender process and contracting were handled
- how subsequent projects were costed
- how the diverse elements within subsequent projects were costed and managed
- how advisors were selected and how much was paid to them.

Nature of Agreement

16.8 Prior to the adoption of revised EU procurement directives covering utilities and public works⁴⁹ there was some uncertainty as to how framework arrangements complied with legal provisions governing public sector procurement.

16.9 The agreement entered into by the IPS predated the coming into force of the public works directive⁵⁰. However, the following general criteria have been used in the course of this audit review to assess the arrangement

In order to provide for openness and transparency

- tenderers should know the value of the estimated purchases and the scale of the intended procurement
- the nature of the work should be clearly and comprehensively stated.

16.10 The arrangement did not satisfy those criteria in the following respects

- The EU notice did not set out any estimate of purchases expected to be made over the course of the contract.
- The OJEU advertisement was for an initial contract for additional accommodation at Loughan House⁵¹. However, the advertisement went on to state that it was a framework agreement and that *“the Irish Prison Service reserves the right to enter negotiations with the successful contractor to extend the scope of the agreed contract to a number of other prison projects, within a duration of three years from award of the initial contract”*. It did not, however, specify the location or extent of the works.
- The disparate nature of the projects ultimately undertaken and, in the case of one project - the Remand Wing in Castlerea - the scale and cost (€18.81 million excluding VAT) of the project, was out of proportion to the original works advertised. Some projects were of a scale or involved specialisation that should have caused them to be treated as separate procurements.
- Certain projects fell outside the profile of works envisaged, including special service wide projects for high security electronic locking and gates, close supervision and safety observation cells and the rollout of the national CCTV scheme.

16.11 Subsequently, Directive 2004/18/EC has removed much uncertainty surrounding framework agreements. The Directive provides that in establishing a framework agreement

- the value (in the Contract Notice) should be the maximum estimated value net of VAT of all contracts envisaged for the entire duration of the agreement
- the notice should also, insofar as possible, indicate the value and frequency of the contracts to be awarded and the planned duration of the agreement
- the term of a framework agreement may not exceed four years except in exceptional cases (duly justified)

⁴⁹ 2004/17/EC covering utilities sector (water, energy, transport and postal services) and 2004/18/EC covering public works contracts, public supply contracts and public service contracts.

⁵⁰ The Directive was brought into force by S.I. No. 329 of 2006, European Communities (Award of Public Authorities Contracts) Regulations 2006 on 22 June 2006.

⁵¹ The works tendered for at Loughan House were not carried out.

- when awarding contracts under a framework agreement, substantial amendments cannot be made to the terms laid down in the agreement
- contracting authorities cannot use framework agreements improperly or in such a way as to prevent, restrict or distort competition
- where a framework agreement is agreed with a single operator, contracts awarded under that agreement should be within the terms laid down in the agreement.

16.12 The general concept of framework agreements is outlined in Annex B.

Views of the Accounting Officer

16.13 The Accounting Officer said that at the time it was not possible to predict how much work was envisaged or the nature of the work. For example, under the previous framework agreement, established in 2002, €15 million of construction projects were procured over a two year timeframe. He cited the factors which affected decisions over the lifetime of the framework agreement due to the increases in prison population. He also noted that there was no requirement in legislation at the time to specify the location or extent of all future potential projects.

16.14 The Accounting Officer stated that since the 2006 legislation had been enacted, the IPS had complied with the new requirements for framework agreements. In this regard, he stated that a new framework agreement for Small Capital Works was advertised on eTenders and had been signed and brought into effect in 2009. The agreement runs to the end of 2010 and, to date, three mini-competitions had been initiated under this new framework agreement. The first of these mini-competitions is currently being assessed. He further stated that a Construction Consultancy Services Multi-Operator Framework tender was advertised on eTenders with a closing date in August 2009. This framework agreement would cover services over a number of disciplines, such as architectural design, draughtsmanship, civil and structural engineering, mechanical and electrical engineering, landscape design, quantity surveying and project management and design services.

Tender Process

16.15 The Notice in the OJEU indicated that the evaluation of preferred bidder for the framework would not be on lowest price, but would be on the basis of criteria as set out in the contract documents. It stated that, following a shortlisting process, a request for tender documents would be issued to between five and eight approved tenderers. The criteria listed in the tender documentation which would be used for evaluation of proposals included

- accordance with Development Brief and Specification documents
- suitability of design and construction proposals
- acceptability of the financial proposal (based on current and future developments)
- timescale.

16.16 Nine candidates applied for shortlisting at the pre-qualification stage and four of these were invited to tender. One tenderer declined to bid. The Notice in the OJEU had indicated the selection of a minimum of five candidates. In view of the very significant gap between the scores for the top four contractors and the rest, a decision was taken to include only the top four on the shortlist.

16.17 The outcome of the subsequent financial evaluation was as set out in Figure 55.

Figure 55 Financial Evaluation

Contractor	Tender Amount excl. VAT	Inflation over 24 Months	Tender Cost Inflation Applied
	€m		€m
Glenbeigh Construction Ltd.	2.12	12%	2.37
Tender 2	2.30	10%	2.53
Tender 3	2.64	10%	2.90
Tender 4	—	Declined to tender	—

16.18 The tender report concluded that Glenbeigh was the preferred bidder and that the differential in the base price quoted for future works more than compensated for the differential in the inflation rate. However, as the likely total cost and mix of elements of the framework was not estimated at any stage, no conclusions can be readily drawn on

- the impact of the bids when applied to different mixes of contract elements
- the likely effect of the lower inflation built into the next best offer.

16.19 The IPS technical advisors, KMCS, produced a tender report on the preferred bidder process in October 2004. That report only deals with the financial evaluation and health and safety, fire and building certification, development and insurance issues. In relation to the suitability of design and construction proposals, the report states “*we are currently reviewing the architectural and services designs submitted by Glenbeigh Construction Ltd. However, it is the responsibility of Glenbeigh Construction Ltd to conform to the requirements of the Irish Prison Service and comply with the Building Regulations. KMCS shall revert once the review of the submitted designs is complete*”.

16.20 The Glenbeigh tender was subsequently reviewed over a series of meetings and its satisfaction with the outcome was verbally passed on by KMCS to the IPS. The tender documentation clearly indicated that evaluation would include ‘*suitability of design and construction proposals*’. There was no evidence provided to indicate that this additional evaluation was done and no marking scheme existed to compare bids over all relevant criteria including design and construction proposals.

Views of the Accounting Officer

16.21 The Accounting Officer stated that the differential in the base price quoted for future works by the preferred bidder Glenbeigh, was 8.5% below Tender 2 and 25% below Tender 3, and more than compensated for the differential in the inflation rate.

16.22 He stated that the work envisaged in the framework agreement as evaluated at that time, was considered to be representative of the Prison Service's anticipated capital works needs over its duration and was therefore considered an appropriate basis for evaluating tenders.

16.23 He informed me that Glenbeigh was the only tenderer to submit a comprehensive design package including detailed architectural, structural and mechanical and electrical drawings. Other tenderers only submitted outline schemes. He indicated that the design proposals were reviewed as part of the evaluation process.

Contract Arrangements

16.24 A project on the scale of that tendered was not completed at Loughan House. However, in 2006 a different project was activated there, when the IPS awarded Glenbeigh a contract for the construction of a 60-cell accommodation block with enhanced systems and facilities at a revised contract price of €4.7 million including VAT. The Accounting Officer explained that the 2006 contract was designed in light of requirements at the time in order to meet a rapidly expanding prison population. The 2004 rates, adjusted for inflation and quantities, were applied.

16.25 No contract was signed in relation to the original framework tender in 2004. The IPS stated that, in fact, it was not intended to proceed with the advertised project at the time. However, this was not indicated in the OJEU notice. The first drawdowns awarded to Glenbeigh were in late 2004 in respect of buildings in the Portlaoise/Midlands prison complex at a cost of €1.7 million (including VAT) and for refurbishment of existing offices in Castlerea at a cost of €120,000 (including VAT).

16.26 The drawdown for the initial project to extend the Maintenance Building at the Portlaoise/Midlands Prison was awarded in November 2004. Glenbeigh commenced work on site on 10 January 2005, but did not provide budgets for the work until 4 February 2005, following up with firm costings on 15 February 2005. Errors were found in the costings and the final agreed contract price was settled on 18 February 2005 at €1.39 million excluding VAT.⁵² In the meantime, a contract had actually been signed for the project on 13 January 2005 for the contract sum of €1.4 million "*or such other sum as shall become payable by virtue of additions to or deductions from the said contract sum*".

Views of the Accounting Officer

16.27 The Accounting Officer stated that on completion of the evaluation process, there was a binding framework agreement in place through a verbal acceptance of the rates and prices, and subsequent projects undertaken under the drawdown framework arrangement were all subject to this contract. He explained that the tender was undertaken on a design and build basis and this required considerable preparatory work, which was undertaken in advance of the tender notice and tender documentation issuing. He further stated that, following receipt of tenders, a full evaluation process (taking account of financial and technical considerations) was completed in a professional

⁵² The final construction cost was €1.41 million and the project also involved design and planning work costs of €70,000.

manner and that the evaluation process was comprehensive. The first drawdown was not awarded until after the completion of the tender evaluation process.

16.28 He also stated that the Maintenance Building project was undertaken on a design and build basis and therefore the design had to evolve to a point where quantities could be ascertained to facilitate evaluation and sign-off on costs. The initial contract was awarded in November 2004 and a period of time was required to design the prefabricated units and facilitate the design works to a point where a bill of quantities could be prepared for examination to ensure accuracy of costs based upon the call-off rates. As this was very much a construction project, there was a clear and significant link to the works tendered for in the framework and it was not necessary, in his view, to await full design and costs before proceeding.

16.29 The Accounting Officer has further stated that KMCS identified the financial commitment of the IPS on all projects prior to their commencement, by giving budgetary information pending the availability of the final construction cost.

Cost and Measurement of Work

16.30 Each subsequent project was reviewed by the IPS and/or its advisors to confirm accordance with unit costs and inflation factors established in the 2004 tender.

16.31 However, some projects, because of size and complexity, including specialist security elements, called for elements of work that were not covered by the generic specifications in the initial tender. As an example, the Castlerea Remand Building included cost estimates of €4 million for enabling works and €16 million for the 64 cell remand building. The tender report indicated that the Bill of Quantities was broken down into call-off tender work (benchmarked against the 2004 tender) and non call-off tender work (work not in line with 2004 tender). In this instance, in the case of the Castlerea Remand Building, Glenbeigh was required to tender those non call-off works to sub contractors and provide quotations to KMCS for review prior to expenditure of any money.

16.32 The tenderers for the original Loughan House contract in 2004 were asked to provide a price and breakdown of constituent elements for the current project and also to provide a detailed priced breakdown for future work, including inflation. Glenbeigh tendered for a maximum of 12% inflation to the prices specified for the elements in the 2004 project, over a 24 months period. The inflation applied at an ascending 3% for each 6-month period of the framework, rising to 12% for the period 19-24 months. Inflation was capped at 12% and any projects commencing after the 24 month period had a 12% uplift applied to the call-off prices.

Views of the Accounting Officer

16.33 The Accounting Officer stated that all non call-off tender rates were compared with prevailing market rates which were available to KMCS. This enabled them to take a view as to the best market rate at the time. On a case-by-case basis, the Accounting Officer stated that KMCS reviewed non call-off rates against prevailing market rates and agreed them with the IPS. Specialist items were procured by way of separate tenders.

16.34 In regard to whether the levels of non call-off expenditure involved were in excess of EU limits and whether in those cases regulations with regard to competitive advertising and tendering were complied with, the Accounting Officer stated that the IPS was satisfied that it had not breached procurement law in its dealings with Glenbeigh. He noted that KMCS had advised that it would not deem the percentage of non call-off rates to be excessive on any of the projects they managed. He supported that view by supplying the information set out in Figure 56 which

compares the value of work carried out at call-off rates and non call-off rates for a sample of projects.

Figure 56 Ratio between Value of Framework Agreement Rates and Non Call-Off Rates

Project	Value of Call-Off Rates		Value of Non Call-Off Rates		Total Value
	€m	%	€m	%	
Shelton Abbey	3.56	71	1.49	29	5.05
Loughan House	3.25	77	0.97	23	4.22
Midlands Trade	1.27	91	0.13	9	1.40
Castlereagh Remand Wing	13.84	75	4.56	25	18.40

16.35 The Accounting Officer stated that the applicable inflation arrangement for the framework agreement covered a period where tender prices rose substantially. The Society of Chartered Surveyors noted a rise of 14.2% during the period in question, and 18.7% in the period October 2004 to October 2008. In addition, the Central Statistics Office indices showed a rise of 17% and 22% for the same periods. He further stated that the inflation factor was a maximum figure and, in many cases, IPS negotiated that no inflation would apply. He added that the total value of discounts negotiated by KMCS on behalf of the IPS was approximately €1.79 million.

Project Pricing

16.36 A sample of contracts procured under the framework agreements was examined in the course of audit. The projects reviewed were as follows

- The new remand wing and segregation unit at Castlereagh which cost €9 million excluding VAT. This was the largest project in the framework procurement.
- The 60-bed accommodation unit at Loughan House which cost €4.2 million excluding VAT. This was a large project and the original generic model was based on a smaller version of it.
- The 44-bed prisoner accommodation building at Shelton Abbey which cost €5.3 million excluding VAT. This was a large project, which should have been similar to the Loughan House 2004 generic model.
- The maintenance building at the Midlands Prison which cost €1.48 million excluding VAT. This was the initial project under the framework agreement.
- The electronic locking installation project across prisons which cost €3.9 million excluding VAT. The IPS has stated that €3.2 million was paid to Glenbeigh under the project and the remaining €0.7 million comprised payments to other companies in respect of such items as high security keys and locks.

16.37 The Accounting Officer informed me that, as Shelton Abbey was a protected structure, different site and planning circumstances which could not have been anticipated presented themselves on commencement of the project. The IPS was required to replicate the original courtyard design and to include features such as lime render external wall finishes, natural slate roof and cast iron rain water goods.

Contract Management

16.38 The review sought to establish

- whether a contract existed for each project and how it was managed
- whether project elements envisaged in the original tender were priced in accordance with the framework pricing structure where they were subsequently procured
- how items which did not fall within the call-off structure were priced.

Contractual Arrangements

16.39 Formal contracts were in place with Glenbeigh for projects managed by KMCS (22 projects) and DBFL (one project). No formal contracts existed for the 73 projects managed in-house. IPS estimates that the value of projects which were subject to formal contracts represented around 67% of total payments to Glenbeigh. It stated that where no formal agreement was signed, there would be other agreed project documentation (cost report, bill of quantities, schedule of rates).

16.40 For the cases selected, the review looked at consistency of pricing at the various stages of the process. Figure 57 summarises the exercise.

Figure 57 Review of Costs

Project	Bill of Quantities €	Contract Amount €	Final Account before Variations €	Final Account after Variations €
Loughan House	4,217,630	4,217,630	4,217,630	4,238,834
Shelton Abbey	5,050,770	5,050,770	5,050,770	5,270,000
Midlands Maintenance Building ^a	1,449,772	—	1,397,625	1,412,252
Castlerea Remand Wing	18,652,847	18,400,801	18,962,928 ^b	19,208,257 ^b
Electronic Locking	4,006,357	No formal contract ^c		3,913,564

Notes:

- a The IPS stated that the original contract had been mislaid.
- b At the time of this report, the final account for Castlerea Remand Wing had yet to be completed.
- c The IPS stated that there were reductions in scale from the estimated contract cost of €4,932,094 in respect of Mountjoy (€0.7 million) and Cork Prison (€0.4 million).

16.41 The Castlerea contract was signed on 30 March 2007, but according to the documentation supplied, the contract commenced on 29 June 2006. The IPS informed me that the initial discussions regarding design commenced in May 2006, and Glenbeigh was asked to review outline schemes to ensure the proposed building could be accommodated on site. During the initial studies, site visits and cell mock-ups were prepared by Glenbeigh. Following completion of the design and consultation phase, Glenbeigh produced a bill of quantities which was reviewed by KMCS in conjunction with the signed off design drawings in March 2007.

Pricing of Contract Elements

16.42 The review found that for elements of subsequent projects priced in the original framework, the call-off rates and inflation were correctly applied. The only exception noted was that in all cases, preliminaries were charged at €27.12 per square foot, whereas the generic model indicates

that the rate should be slightly higher at €27.17 per square foot. The difference is insignificant and in favour of the IPS.

16.43 The assessment of element pricing in the tendered bill of quantities for an indicative framework construction contract requires a layer of review additional to that generally applicable to a one-off construction contract. This is necessary because differences in element pricing in the indicative tenders can give rise to a different result when applied to projects other than the original. This would arise where later projects required a different mix or relative volume of elements than that which applied in the indicative contract, and where that change in weighting is sufficient to reverse the original overall price advantage on which the framework contract was awarded.

Non Call-Off Items

16.44 In regard to the generic nature of the agreement and its capacity to govern the charge rates for the subsequent projects, the audit review noted the ratio between the agreement based rates and non call-off rates as shown in Figure 58.

Figure 58 Ratio between Agreement Based Rates and Non Call-Off Rates

Project	Number of Agreement Determined Rates Used	Number of Non Call-Off Rates Used	Percentage of Non Call-Off Rates
Shelton Abbey – 44 Bed Prisoner Accommodation Unit	260	440	59%
Loughan House – 60 Bed Accommodation Unit	168	16	9%

16.45 The electronic locking system which cost €3.9 million introduced across a number of prisons had features that made it unsuitable for completion under the framework. Nevertheless it was included in the work awarded. Much of the equipment including doors, gates and locks were sourced from specialist companies without tender. The project management in this case was handled in-house but KMCS were used to evaluate a pricing methodology. In addition to the specialist security equipment which fell outside the call-off generic model, some builders' work could not be broken down under the generic model to suit this project. Accordingly, pricing was based on a tender won by Glenbeigh in 2002 without uplift for inflation. Also the electrical work could not be managed under the call-off generic model and KMCS recommended that original vouchers be submitted with each valuation claim and these invoices checked against the work completed.

Overall Price Impacts

16.46 An alternative way of viewing the suitability of the model for determining the costs of projects is to examine the cost experienced compared with that in the framework agreement on a square footage basis. The generic model envisaged that 10,000 square foot would be constructed costing €2.1 million or €210.39 per square foot. The final cost reports and bills of quantity for the three prisoner accommodation projects reviewed were compared with the prices quoted in the initial framework agreement. Figure 59 analyses the relative costs of these projects against the estimated costs in the framework agreement.

Figure 59 Cost Comparison for Three Projects

Project	Generic Cost per Sq. Ft	Project Cost per Sq. Ft	Variation
	€	€	%
Loughan House 60 bed accommodation unit	210.39	280.27	33
Shelton Abbey 44 bed prisoner accommodation unit	210.39	371.72	77
Castlerea Remand Wing and Segregation Unit	210.39	322.33	53
Total	631.17	974.32	54

16.47 Overall the three projects showed an upward variation ranging from 33% to 77% which, after taking account of the impact of inflation on call-off items (to a maximum of 12%), is likely to be accounted for by the extent of non call-off items used in subsequent pricing or the effect of a different mix of elements resulting in higher costs for the call-off elements.

Views of the Accounting Officer

16.48 The Accounting Officer stated that the call-off tender (and pricing document) was designed in such a manner as to facilitate the pricing of options for use in a variety of building designs. Such future options were clearly identified in the tender documentation and the tendered costs for these options were factored into the call-off evaluation. The design options included were considered appropriate at the time of the tender for anticipated IPS needs over the term of the framework agreement.

16.49 He stated that where specialist items arose in contracts, Glenbeigh would have arranged tenders and these would have been reviewed by KMCS, as instructed by the IPS. KMCS negotiated a 5% mark up on non call-off tender items, which the IPS considered good value for money when benchmarked against an industry norm of around 15%. In other instances, a measured rate per metre was used depending on the type of specialist item and the urgency in completing works.

16.50 The Accounting Officer said that in many cases on the electronic locking project, there was only one approved supplier who was capable of meeting the timescale and security requirements. While some building work could not be broken down on this project, KMCS provided confirmation on the basis of their extensive procurement experience and professional knowledge that it was appropriate to use pricing rates from a non-State 2002 Glenbeigh tender.

16.51 In comparing final cost outturns with estimated costs, the Accounting Officer stated that only a 2% uplift occurred when the inflation adjusted generic rates were set against the actual cost of the call-off element. He further noted that, in all cases, certain cost increasing factors affected the actual construction cost but would not have been accounted for in the original Loughan House generic model. These included the need to provide enhanced security systems and the need to comply with IPS building sustainability and fire safety policies. In the case of Loughan House, increased costs were associated with the provision of additional prisoner recreation facilities and the discovery of asbestos pipes during the site works. In the case of Shelton Abbey, increased costs were associated with the building's status as a protected structure and the requirement at the planning stage for conservation design features. In the case of Castlerea Remand Wing, enabling works of over €3 million were required due to site specific conditions which were not envisaged in the pricing of the original Loughan House generic model.

16.52 The Accounting Officer stated that while aspects of the close supervision and safety observation cells project were specialised, it was considered that the nature of the construction work itself was sufficiently comparable to the construction rates provided under the framework agreement to warrant its use.

Reviews commissioned by IPS

16.53 In February and March 2009, the IPS employed consultants – chartered quantity surveyors and consulting engineers as required – to carry out comparisons of the cost for three of the framework projects against similar projects that had been individually tendered for, and also with general unit costs for the type of work at the particular time. The projects chosen for evaluation were

- The Medical Facilities Building Mountjoy Prison
- The Remand and Segregation Unit Castlereagh Prison
- Safety Observation and Close Supervision Cells at various institutions.

16.54 The consultants reported as outlined in Figure 60.

Figure 60 Results of Review by IPS

Framework Project	Comparison Made	Result of IPS Comparison	Review Comments
Medical Facilities Building	Superstructure compared to 2002 Special School Building in St Patrick's Institution (allowing for inflation). Demolition, sub-structures, siteworks and enabling works were excluded to facilitate the analysis.	The Medical Facilities Building compares favourably at €165.28 per sq foot compared to €170.46 per sq foot ^a .	Bill of quantities rates competitive and consistent with average industry rates in 2006. A fixed price premium of 9% added to the overall tendered costs was unreasonable, but a negotiated 9.64% discount had reduced its effect.
Castlerea Remand and Segregation Unit	Compared with an Accommodation Block in Wheatfield Prison. Enabling works at Castlerea totalling €4.4 million were excluded to facilitate the cost comparison.	Cost per sq foot for Castlerea was €255.94 compared to €290.75 for work at Wheatfield.	Compared to an updated Mountjoy rebuild cost of €350.94 per sq foot, both Castlerea and Wheatfield were economical, with Castlerea the more economical of the two.
Safety Observation and Close Supervision Cells	The review was carried out in this instance by the company who project managed the work. Comparison was with the bill of quantities for safety upgrading works at Wheatfield.	The project involved extensive use of specialist materials and fixtures installed by specialist suppliers. Comparison was limited to a relatively small number of items, which were repeated in each institution. Comparison was drawn with rates used by another company in a project for fire safety upgrading works at Wheatfield Prison.	The Glenbeigh rate for infill blockwork was 50% higher than Wheatfield cost. There was mitigation in that it applied to very small areas over 13 different locations requiring extensive management of many specialist sub-contractors. Overall, the costs applied by Glenbeigh compared favourably.

Note:

- a The superstructure comprised just 66% of the bill of quantities for the Medical Facilities Building and the cost per square foot for the entire bill of quantities was €250.65.

Project Advisors

16.55 KMCS were engaged to advise the IPS in relation to the 2004 construction tender process. Subsequently, KMCS were appointed as project managers and quantity surveyors for 22 of the 96 work projects undertaken under the framework agreement. KMCS did not tender for each of the individual projects assigned to them and payments to the firm were disclosed in the IPS return of non-competitive procurement in both 2007 and 2008. The returns disclosed €1.4 million in 2007 and €1.1 million in 2008 for services rendered without competitive process.

16.56 An amount of €91,000 was included in the non-competitive procurement annual return in relation to 2007 services procured from DBFL Consulting Engineers in respect to the construction of safety observation and close supervision cells.

16.57 Given the specialist nature of this project, and the fact that notwithstanding KMCS's knowledge of the drawdown contract it was found necessary to employ specialist project

managers. It would seem that it was inappropriate to include the project in the drawdown framework.

Views of the Accounting Officer

16.58 The decision to engage KMCS on certain projects was made on the basis of

- their detailed knowledge of the construction drawdown contract
- their experience of modular build projects and
- their understanding of the operational and security considerations of working in a prison environment.

16.59 The fees paid to KMCS (then known as Keogh McConnell) for the initial project under the 2002 framework constituted 5.75% of total construction cost. This reduced to 5% for subsequent work under the initial framework and for many works in the following 2004 framework agreement. In September 2006, the IPS negotiated a reduction of fees to 3.95% for projects of value less than €7 million and 3.5% for projects of value greater than €7 million.

16.60 The IPS Building Services Division provided in-house project management for most of the projects under the drawdown contract. In the case, however, of the project to construct close supervision and safety observation cells at a number of prisons, at a cost of €6 million excluding VAT, DBFL Consulting Engineers were engaged without competitive process to provide project management and civil and structural engineering design services, receiving fees of €0.7 million. The fee was based on 6% of the overall contract price for project management and a further 3% of contract price for professional services in relation to the civil, structural and mechanical and electrical elements. The reasons for the selection of DBFL Consulting Engineers were

- they had previous direct experience of relevant prison contracts
- the complexity of the work involved and their previous expertise in relation to the construction and refurbishment of cells and
- the urgency of the project.

16.61 The Accounting Officer explained that payments to DBFL were not included in the relevant 2006 return as the IPS had prepared the return on the basis of reporting new contracts entered into during 2006 only. The DBFL contract had commenced in 2005 and so was not included.

Conclusions

Use of Framework Arrangements

The original Notice in the OJEU indicated the intent to give rise to a framework agreement. While this may have been sufficient to meet the formal requirements it was not in itself adequate to underpin openness, transparency and competition in that the value of the estimated purchases was not indicated nor was the scale of the intended procurement.

The process was inadequate to signal the nature of the work and, given that the initial tender was framed on the basis of a relatively routine accommodation unit in a low-security prison, the inclusion ultimately of mainstream prisons and service-wide high security projects in the framework was a diversification entailing challenges for a generic pricing model.

Tender Process

Tender documentation provided that bids should be evaluated based on both technical and financial considerations. The documentary evidence suggests that the preferred bidder was identified taking account of financial considerations only. While the tender report prepared by KMCS did not refer to the other elements, the Accounting Officer has stated that design proposals were also reviewed. In addition, the impact when different mixes of elements were priced was not discussed, nor was the impact of lower inflators bid by underbidders considered.

Contract Arrangements

While fundamental terms were set out in the framework agreement, it would have been desirable, in order to determine the IPS's financial commitment, that the scope of each project be covered by a contract completed in advance of work commencement.

In the case of the initial drawdown under the project, work was commenced, and the final agreed costing only occurred five weeks after commencement of work. 76% of the projects managed under the framework agreement did not have a formal contract governing the work carried out. This exposed the IPS to considerable risk in the event of contract disputes.

Measurement and Project Pricing

In instances where the project elements were priced in the framework agreement the audit testing found that rates were properly applied with correct adjustments for inflation for a sample examined.

However in one project - the Shelton Abbey 44 bed accommodation unit - a very large part of the project comprised elements not priced in the framework agreement thus reducing the IPS control over its financial commitments and project costs.

While a methodology existed to check that the cost of subsequent work on elements of the type envisaged in the original tender was in accord with the prices originally tendered, the process of procuring other elements passed outside the public procurement process.

Works such as the service-wide Electronic Locking Project which cost €3.2 million were unsuitable for completion within the framework mechanism. Certain electrical and building enabling works were also provided outside the call-off model.

Overall, there was an upward cost drift of around 54% on three construction projects reviewed.

Retrospective Cost Comparison

It is not possible to definitively conclude on the extent of value achieved based on the retrospective comparisons done by the IPS.

- Only one element of the Medical Facilities Building was reviewed. Overall, that building cost €250.65 per square foot which compared with the framework cost of €110.39 per square foot.
- The Castlerea Remand and Segregation Unit cost €255.94 per square foot, excluding enabling works, which compared favourably with the cost of work at Wheatfield and Mountjoy but again showed an upward drift from framework levels. When the totality of works at Castlerea is taken, the cost per square foot is €222.33, which is considerably higher than the framework levels.
- The review of the safety observation and close supervision cells was limited to a relatively small number of items as the project involved extensive use of specialist material and fixtures.

Project Advisors

Most projects in the framework were managed in-house by the IPS, but a number, not all, of the bigger projects were project managed by KMCS, who also project managed the initial framework agreement. On a case-by-case basis, the Accounting Officer states that KMCS reviewed non call-off rates against prevailing market rates at the time and agreed them with the IPS. Specialist items were procured by way of separate tenders.

It is acknowledged that over time the IPS negotiated lower rates with its main project advisor. However, given the volume of work it may have been more beneficial to have tendered for the services from the beginning.

Opportunities to Achieve Better Value

Framework agreements potentially offer the opportunity to streamline procurement so that commercial relationships are better coordinated, while at the same time achieving value for money. However, in order to lever the full benefits in their application, public bodies should

- take account of the desirability of ensuring that competition is not undermined through limiting access of potential contractors to public works for too long a period
- only use them when work procured is of like kind and quality to that envisaged in the initial tender round and that any non call-off items are limited to a reasonably low proportion of the total project
- ensure that comprehensive value reviews are built into the contract management process
- provide for interim market testing to ensure that the agreement continues to represent value for money especially where the contract term exceeds three years
- consider moving to multiple operator agreements so that a form of internal benchmarking can be used and distinctive competencies of firms exploited.

General Views of the Accounting Officer

16.62 In his overall summary response to the report, the Accounting Officer reiterated that the IPS was satisfied that it had obtained value for money and had not breached procurement law in its dealings with Glenbeigh Construction Limited.

16.63 He further stated that

- The IPS was satisfied that it had complied with the legislation in respect of framework agreements in place during 2004 when it tendered and awarded the framework contract. In that regard, the IPS had acted in an open and transparent manner.
- The Loughan House building used for framework tender evaluation purposes was a generic building which enabled a schedule of rates to be bid, which the IPS could then use for a three year period, subject to the tendered inflation increase, and across the IPS prison estate.
- The evaluation process had not been limited to an assessment of the financial criteria but was a comprehensive process which also included a full appraisal of the technical criteria.
- Where non call-off rates were used for elements of works not covered by the framework agreement, the IPS's cost consultants and project manager ensured that those rates reflected the current market rates and represented value for money.

Annex A List of Major projects within Glenbeigh Framework Agreement

Facility	Total Value €m	Number of Contracts	Major Contracts Included
Castlerea Prison	42.07	13	New remand wing and segregation unit - €19m New control room and security systems - €5m New major site-wide service duct - €5m New prisoner recreation building - €4.5m Realignment of exercise yard and provision of all-weather football pitch - €3m
Special Service-Wide Projects	20.90	5	High security electronic locking and gates - €3.2m Close supervision and safety observation cells - €6m Rollout of national CCTV scheme - €4m Programme to refurbish kitchens and workshops - €2.1m Security search buildings - €5.5m
Loughan House	12.58	7	New work training/education unit - €5.5m 60-bed accommodation unit - €4.2m New security fence - €1m
Shelton Abbey	5.71	2	New 44-place residential block - €5.3m
Mountjoy Prison	4.43	12	New medical facility - €1.4m CCTV perimeter wall - €0.9m "B" basement refurbishment and development - €0.7m Enhancement of CCTV systems - €0.4m Security works "C" yard - €0.3m
Portlaoise Prison	3.78	6	New security room and gatelock - €1.9m New secure visits facility - €1.2m
Cloverhill Prison	1.61	5	Accommodation for Prison Service Escorts - €1m Secure segregation/isolation unit - €0.5m
Midlands Prison	1.48	1	Maintenance building
St. Patrick's Institution	1.31	5	Secure visits facility - €0.8m Refurbishment of prison training shops - €0.3m
Wheatfield Prison	0.85	3	New security perimeter lighting - €0.7m
Cork Prison	0.77	3	Accommodation for Prison Service Escorts - €0.5m
Beladd House, Prison Service Training	0.74	2	New kitchen and dining hall area - €0.7m
Limerick Prison	0.52	4	Refurbishment of trades/maintenance building - €0.2m Refurbishment of security windows - €0.2m
Building Services Division	0.17	2	
Small Works Training Unit, IPS HQ	0.07	3	
Total Cost Est	96.99		

Annex B Framework Agreements

The concept of a framework agreement was clarified by an EU Directive in 2004. The Directive defined a framework agreement as an agreement with suppliers, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and quality. They set out terms and conditions under which specific purchases (call-offs) can be made throughout the term of the agreement.

The framework agreement may, itself, be a contract to which the EU procurement rules apply if it creates an obligation to purchase. However, the term is normally used to cover agreements which are not, themselves, covered by the definition of a contract to which the EU rules apply (though they may create certain contractually binding obligations).

Such agreements set out the terms and conditions for subsequent call-offs but place no obligations in themselves, on the procurers to buy anything. With this approach, contracts are formed, in EU Directive terms, only when goods, works and services are called off under the agreement. A benefit of this type of agreement is that, because authorities are not tied to them, they are free to use the frameworks when they provide value for money, but to go elsewhere if they do not.

However, in order to avoid conflict with EU rules it is more practical to treat framework agreements as if they are contracts in their own right for the purposes of the application of the EU rules. Therefore, the practice has been to advertise the framework itself in the Official Journal of the EU (OJEU).

This provides transparency for the whole requirement across the EU and it removes the need to advertise and apply the award procedures for each call-off under the agreement, on the basis that the framework establishes the fundamental terms on which subsequent contracts are awarded.

Framework agreements can be with one or more participants.

In a one party agreement, terms for the provision of works, supplies or services will be settled with one supplier based on a competitive tendering process. Requirements will be drawn down on the agreed terms as they arise over the period of the agreement. Most of the terms will be established, price, delivery times, etc., but some, for example total quantities, may not.

A multi-party framework can be established by inviting and selecting suitable parties to participate. The criteria for the award of subsequent contracts will have been set out. Precise specifications or prices may not be established. As requirements arise, an authority will contact the participants in the framework and invite them to submit competitive bids in “mini-competitions”. The bids received are evaluated and contracts awarded on the basis of the criteria specified in the rules of the framework.