

Chapter 1

General Matters

1.1 Financial Outturn

The publication *Audited Appropriation Accounts 2006* (Prn.A7/1594) includes a summary which shows the amount to be surrendered as €878.15m. This is arrived at as shown in Table 1.

Table 1 Outturn for the year 2006

	€000	€000	€000
<i>Estimated Gross Expenditure</i>			
Original Estimates	43,732,023		
Supplementary Estimates	480,571		
Deferred Surrender 2005	<u>289,268</u>	44,501,862	
<i>Deduct: -</i>			
<i>Estimated Appropriations-in-Aid</i>			
Original Estimates	3,998,524		
Supplementary Estimates	<u>24,915</u>	<u>4,023,439</u>	
Estimated Net Expenditure			40,478,423
Actual Gross Expenditure		43,479,793	
<i>Deduct: -</i>			
Actual Appropriations-in-Aid		<u>4,038,661</u>	
Net Expenditure			<u>39,441,132</u>
Surplus for the Year			<u>1,037,291</u>
Deferred Surrender 2006			159,135
Amount to be Surrendered			€878,156

The amount to be surrendered represents 2.17% of Estimated Net Expenditure as compared with 2.12% in 2005.

Extra Exchequer Receipts

Extra Receipts payable to the Exchequer as recorded in the Appropriation Accounts amounted to €393,249.

Surrender of Balances of 2005 Votes

The balances due to be surrendered out of Votes for Public Services for the year ended 31 December 2005 amounted to €775m. I hereby certify that these balances have been duly surrendered.

Stock and Store Accounts

The stock and store accounts of the Departments have been examined with generally satisfactory results.

1.2 Exceptions to General Procedures in Public Procurement

A significant proportion of day-to-day Government spending is accounted for by procurement of goods and services by Departments, Offices and Agencies. These activities are governed by EU and national legal and regulatory requirements. Practical guidance on the application of these norms is found in circulars and correspondence relating to ethical considerations, good governance and procurement best practice. In addition, an *eTenders* website is available to facilitate Departments and Offices in the application of these rules.

The most important source of guidance is *Public Procurement Guidelines – Competitive Process*, issued in 2004 by the Department of Finance which updated and replaced earlier 1994 guidelines.

The guidance emphasises the need for the public procurement function to be discharged honestly, fairly, and in a manner that secures best value for public money. Contracting authorities must be cost effective and efficient in the use of resources while upholding the highest standards of probity and integrity. Management in Government Departments and Offices is expected to ensure that there is an appropriate focus on good practice in purchasing and, where there is a significant procurement function, that procedures are in place to ensure compliance with all relevant rules.

In general, a competitive process carried out in an open, objective and transparent manner can achieve best value for money in public procurement and comply with the principles¹ set out in the EU Treaty and EU Directives on public procurement. EU Directives set thresholds and describe the circumstances in which different types of competitive processes should be used in Public Procurement.

The Guidance states, “It is a basic principle of public procurement that a competitive process should be used unless there are justifiably exceptional circumstances. The type of competitive process can vary depending on the size and characteristics of the contract to be awarded and the nature of the contracting authority.”

For contracts or purchases below EU threshold values and not part of a “draw down” or framework contract, less formal procedures may be appropriate as follows

- Supplies or services less than €5,000 in value might be purchased on the basis of verbal quotes from one or more competitive suppliers
- Supplies or services contracts between €5,000 and to €50,000 in value might be awarded on the basis of responses to specifications sent by fax or email to at least three suppliers or service providers.

The values and procedures may be adapted as appropriate to suit the type of contracting authority and the nature and scale of the project². Reasons for procedures adopted, including procedures where a competitive process was not deemed appropriate, should be clearly recorded. All contract award procedures should include a verifiable audit trail.

¹ Non-discrimination, equal treatment, transparency, mutual recognition, proportionality, freedom to provide service and freedom of establishment.

² The Guidelines state “It may be appropriate for contracting authorities to adapt or supplement these guidelines with more detailed internal procurement procedures relevant to the activities of an individual contracting authority.”

Department of Finance Circular 40/02

Department of Finance Circular 40/02 provided for revised procedures to be applied, from January 2003, in the Central Government sector where it is proposed to award contracts which exceed €25,000 in value (exclusive of VAT) without a competitive process. Prior to 2003, exceptions to the general rule requiring a competitive process were examined by a committee comprising representatives of the Department of Finance and major purchasing Departments e.g. Office of Public Works. This committee is known as the Government Contracts Committee. Under the new arrangements proposed contracts exceeding the limit which were not subject to a competitive process were required to be reviewed within the Departments/Offices by the Internal Audit or by an appropriate senior officer who was not part of the procurement process. A supplement to the Circular, providing guidance for officers reviewing proposed contract awards, was issued by the Government Contracts Committee in July 2003.

The Circular also provides that

- Accounting Officers should complete and submit an Annual Return in respect of such contracts to the Comptroller and Auditor General by 31 March of the following year. The returns should give details of the subject or purpose of the contract, its value and the reasons for not having a competitive process. A copy of the return is to be sent to the National Public Procurement Policy Unit of the Department of Finance at the same time.
- Each Department/Office should maintain an up-to-date central register of such exceptional purchases and contracts.
- Each Department/Office should designate a Procurement Officer to collate the information on these contracts and to be a contact point with the Government Contracts Committee. The earlier 1994 Guidelines provided that the Procurement Officer would “ensure that all matters related to procurement of works, supplies and services and the disposal of property and equipment are in accordance with legal and administrative requirements”.

Interestingly, the Health Service Executive, which is funded by a separate Vote, is not required to submit an annual return to me of contracts exceeding €25,000 that were not subject to a competitive process even though that body is one of the major State purchasers of supplies and services. However, the Department of Finance has recently informed me of its intention to apply this requirement to the HSE for the future.

Audit Findings

As required by the Circular, all 35 Departments and Offices submitted returns to me in respect of 2006. In 11 cases, the Departments or Offices indicated that they had not entered into any contract greater than €25,000 without having a competitive process. The returns from the remaining 24 Departments and Offices showed that they had concluded 195 such contracts to a total value of more than €44m without recourse to competitive tendering.

Over 40% of this value is accounted for by 5 contracts concluded by the Department of Defence in respect of purchases associated with its fleet of aircraft – €18.9m. Operational confidence, reliability and safety as well as the proprietary nature of the goods and services involved are at the core of the inability of the Department to use a competitive process for these purchases.

In another case, the Department of Education and Science indicated it had entered into a contract with a benefactor who had offered to transfer to the parish involved a 5.2 acre site and to design and build a new 16-classroom school at a fixed cost of €4.02m. As part of the proposal, ownership of the existing school site would transfer to the benefactor. The estimated cost of building the school was €10m. The

Department correctly sought alternative proposals for the provision of the school through the Government's eTenders Website prior to accepting the offer.

Table 2 shows by Department the value of the remaining contracts disclosed in the departmental returns.

Table 2 Value of Contracts awarded by Departments/Offices Reported under Circular 40/02

Department/Office	Cases	€m
Garda Síochána	52	5.761
Revenue	23	2.933
Office of Public Works	22	2.753
Transport	6	1.646
Justice Equality and Law Reform	8	1.513
Enterprise, Trade and Employment	16	1.219
Communications, Marine and Natural Resources	17	1.435
Agriculture and Food	4	0.768
Social and Family Affairs	8	0.761
Environment, Heritage and Local Government	7	0.519
Defence	5	0.278
Other (including the Department of Education and Science)	24	2.157
Total	192	€21.743m

Table 3 sets out the main reasons given in the returns why competitive processes were not used in placing these contracts. While the reasons given were sometimes complex and uninformative, I have attempted to place them in categories which best give an understanding of the underlying circumstances in which the contracts were concluded.

Table 3 Reasons Cited for Departure from Use of Competitive Process

Reason	Number of Cases	Value of Contracts €m
Proprietary Goods	73	9.604
Only Suitable Supplier	32	3.308
Expert /Recent Experience	31	3.739
Extension/Rollover of Contract	15	1.209
Security Considerations	15	2.342
Urgency	15	0.855
Other	11	0.686
Total	192	€21.743m

Issues Arising

The opt out of the competitive process, provided for in Circular 40/02, is designed to be a refuge of last resort, where compliance with the guidance set out in the *Public Procurement Guidelines – Competitive Process*, would be disadvantageous for Departments or Offices in carrying out their functions in the most effective and efficient manner. It is clear that circumstances arise where it is necessary to resort to procurement by

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non-competitive processes for reasons of urgency, security or genuine lack of suitable providers of goods or services. However, it is incumbent on the Departments and Offices to ensure that they have in place processes to identify in a timely manner their procurement needs so as to avoid resorting to urgent purchases. Equally, it is important that they avoid identifying their needs by reference to brand products. Specifications should, where possible be described in generic terms so as to encourage real competition which should lead to better prices, quality and innovative offerings from the market. While the results of many procurements may be the purchase of brand products or services, the procurement process should be characterised by efforts to ensure that “brand capture” does not result in future streams of payments over which Departments and Offices have little or no control.

While it is important that Departments and Offices have sufficient flexibility to carry out their functions, the risk posed by inappropriate use of the discretion exceptionally allowed in the guidance can best be countered by ensuring that there is a properly functioning and independent *a priori* evaluation of proposed procurements which do not meet the competition norms.

My review indicated that, in general, Departments and Offices comply with the requirement to review proposals to enter into contracts without a competitive process and to maintain central registers of such contracts. There were a number of instances where this compliance was of an informal or random nature.

Proprietary Goods

Generally speaking, purchases in this category comprise named products or exclusive services. In some instances these procurements include maintenance of previously acquired goods or services, upgrades, additional purchases, etc. This accords with EU Directive 2004/18/EC which allows contracting authorities to award public contracts by a negotiated procedure when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract may be awarded only to a particular economic operator. Procurement of so-called proprietary goods arises when specific branded goods are selected to meet a need. It can also arise when there is a desire to restrict the number of different products in use for simplicity of maintenance, carriage of spares etc. It is clear that the advantages of a competitive process cannot be achieved where Departments and Offices specify proprietary goods as this may result in a risk to achieving value for money. Of the 73 instances contained in the departmental returns, 44 were in respect of purchases by the Garda Síochána to a value of €5.292m. These consisted overwhelmingly of additions to or support for Garda computer and communications systems. The proprietary goods purchased by other Departments were also predominantly IT related.

These results confirm the importance of considering whole life costs and in particular the cost of future additions when planning all IT procurements.

Only Suitable Supplier and Expert or Recent Experience

These categories include both procurements where there is only one suitable supplier and procurements where Departments and Offices have previously used the services of individuals or firms in the recent past or have identified, without recourse to competitive processes, persons or firms whose expertise coincides with their requirements. The latter cases do not imply that there is not a suitable alternative to the supplier selected.

This group includes procurements where, on the face of it, there is a self-evident case for the choice made. For example, the Department of Social and Family Affairs entered into a contract estimated to cost between €200,000 and €340,000 with the Northern Ireland provider of Smartcards as part of the All Ireland Free Travel Scheme to enable pensioners to avail of free travel in the North. Another example was the purchase by the Revenue Commissioners of three Drug Detection Dogs and the training of their handlers at a total cost of €50,674.

However, notwithstanding these examples, failure to go to the market on a regular basis may limit the market with the inherent risk of reducing the possibility of achieving value for money in these purchases.

Extension/Rollover Contracts

A number of the arrangements which were extended or rolled over during 2006 had been in place for several years. Justifications put forward for continuing the arrangements included

- Experience gained from prior involvement
- Contractor best placed to provide for requirements without undue extra cost to the Exchequer
- Not possible to go to the market due to staffing difficulties
- Service provided suited needs in the past.

One third of the value of this category is accounted for by a contract rolled over by the Department of Agriculture and Food. The Department was required to take over the storage of sugar following the restructuring of the sugar market in 2006 and took the view that it was the intention of the regulations that the existing Irish Sugar Ltd. storage contract with the firm in question be continued by the Department and that this was the prudent and most cost effective way of dealing with the issue. The cost in 2006 was €381,000.

Almost all of the contracts in this category are for the provision of services.

The key risk that arises in this category is that failure to test the market on a regular basis may lead to poor value for money being achieved.

Urgency

Significant examples of urgency were the temporary recruitment by the Departments of Agriculture and Food and Community, Rural and Gaeltacht Affairs of a project manager and a business administrator, respectively, arising from the unexpected resignation of their predecessors. The costs were €132,000 and €109,000.

While there can be ample justification for using urgency as a reason for not using a competitive process in some engagements, there is an absolute necessity for independent reviewers to ascertain the underlying circumstances giving rise to the urgent need for procurement and to confirm whether alternative planning arrangements would have obviated the need to resort to non-competitive processes in similar situations.

Exceptional Circumstances

Two returns illustrated unusual circumstances where specific technical or operational skills/knowledge were required and tenders were not sought.

- Following a decision by Enterprise Ireland (EI) to disengage from the provision of certain services to the Irish Offshore Sector, the Department of Communications, Marine and Natural Resources concluded a contract without a competitive process with a company, the principal of which had been engaged in the particular line of work with EI as an employee prior to its disengagement. He took a career break from EI to set up and head the company. The estimated value of the contract, spanning five years from 2004 is €500,000.
- The Director of Public Prosecutions had an urgent need to review the manner in which internal management control procedures in the Office had operated arising from a decision in a particular case having taken longer than acceptable to issue. The Director engaged the Chairman of the Office's Audit Committee without competitive tender to undertake this review as his skill set was considered

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to uniquely qualify him to undertake this review expeditiously. In addition to his wide experience of organisational processes, he also was considered to have a detailed knowledge of the Office and its management control procedures from his role as Chairman of the Audit Committee. The contract cost €28,000.

Although exceptional circumstances came into play in both cases, the way in which the difficulties were addressed was less than ideal.

1.3 Agency Services

The Office of Public Works (OPW) acts as agent for other Departments and Offices in the purchase of sites and buildings, the procurement and management of construction type contracts, and the maintenance of public buildings. *Public Financial Procedures* (PFP) provide that OPW requests advances from any Department or Office (as principal) prior to entering into contracts or meeting any costs. The costs are charged to a Department's Appropriation Account when the amounts involved have been certified by OPW as having been duly disbursed by it. Where it may be some time after the end of the financial year before OPW can determine the precise amounts disbursed, a Department may, in order to close its Appropriation Accounts on 31 December, charge an agreed estimated amount in respect of agency services.

If expenditure is not significant OPW as agent may make payments in respect of the service from its own voted moneys on a suspense basis. OPW should secure recoupment from the Department concerned within the year in which the payments have been made.

These rules derive from the cash based accounting system statutorily used by Government Departments and Offices under which Dáil Éireann annually votes the sums to be made available for each service. Under this system, amounts not spent in any year are required to be surrendered to the Exchequer³. Each year, I confirm that the amounts for surrender recorded in the Appropriation Accounts for the previous year have been duly surrendered.

Audit Examination

The Appropriation Account for Vote 10 – Office of Public Works shows in its Statement of Assets and Liabilities, net credit balances in suspense accounts amounting to more than €48m at 31 December 2006. This amount consists primarily of unspent balances (mostly advances) from clients totalling €62m, partly offset by amounts due from them totalling €14m for agency services provided without prepayment. The Appropriation Accounts of Departments and Offices that made advances to OPW should reflect, in their Statements of Assets and Liabilities, corresponding debit balances.

As part of my audit of the 2006 Appropriation Accounts, I selected for examination a sample of the significant credit balances recorded by OPW. Examination of the underlying transactions in this sample indicated that the amounts shown in the suspense accounts of Departments/Offices providing the advances did not agree with the corresponding amounts shown in the OPW suspense accounts.

Table 4 Comparison of OPW and Departmental Suspense Account Balances 31 December 2006

Department/Office	OPW Credit Balances €m	Departmental Debit Balances €m
Department of Education and Science	31.969	nil
Department of Finance	3.193	nil
Department of the Environment, Heritage and Local Government	2.325	1.340
Office of the Revenue Commissioners	1.207	0.783
Department of Agriculture and Food	1.619	nil

³ Except where the Minister for Finance has authorised a deferral of such surrender under Section 91 of the Finance Act 2004.

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In the light of the variations between these balances, I sought the views of the Accounting Officers concerned.

I also asked them to outline the procedures in place to ensure that the appropriate expenditure was charged to their respective Appropriation Accounts at the proper time.

Department of Education and Science

The Accounting Officer, Department of Education and Science said OPW acted as agent for the Department in the sourcing and purchasing of sites for schools, management of the asbestos remediation programme in schools and the provision, maintenance and furnishing of its office premises network. For many years, the Department charged amounts advanced to OPW for these services directly to the Appropriation Account. The Department was unaware that it was in breach of prescribed procedures. Its payments to OPW in respect of the site acquisition and asbestos remediation programmes were made in respect of multi-annual rolling programmes of work. The Department complied with requests from OPW for payment prior to work commencing and charged these payments to the Vote subheads rather than to suspense as required. It also believed that building and remedial work were fixed sum contracts and as such did not anticipate there would be credit balances remaining in OPW suspense accounts.

She informed me that while the Department received and examined annual statements for site acquisition and asbestos remedial work it did not in other cases obtain annual certificates of expenditure from OPW. The Department and OPW liaise regularly on the management of the Department's site acquisition programme and OPW supplies the Department with monthly progress reports. In regard to the office premises the Department liaises with both the OPW architect and the contractor to ensure work is completed to the required specification.

While pointing out that the problem highlighted by my audit was one of accounting treatments and conventions rather than improper use of funds, the Department accepted that it needed to review its procedures in consultation with OPW. It would be necessary for the Department to obtain the assistance and agreement of OPW to the preparation, on a timely basis, of quarterly statements on the transactions on each account in order that the appropriate charges might be made to the Vote for agency services in the future.

She added that arrangements had been initiated, internally and with OPW, to ensure compliance with the correct procedures.

The Appropriation Account for Vote 26 – Education and Science – has been amended to reflect the correct charges for OPW agency services, in respect of site acquisition and asbestos work, involving some €30.3m in 2006. This increases the surrender to the Exchequer from €36m to €66m.

Department of Finance

The Accounting Officer, Department of Finance informed me that in the case of his Department the advances made to OPW were charged directly to the relevant subhead of the Vote for Finance and not to suspense as required. A certificate had not been obtained from OPW to support the charge to the Vote.

He indicated that two items making up the OPW balance for his Department did not relate to projects chargeable to Vote 6 – Finance.

He agreed that the correct procedures had not been adhered to in respect of these transactions. The 2006 Appropriation Account for the Vote had been amended to reflect the appropriate charge. As a result the amount to be surrendered to the Exchequer in this case has increased by €2.3m to €16.5m.

He was satisfied however, that on-going and continual liaison with OPW architects for all projects ensured appropriate signoff on completion of jobs and that no loss of public funds occurred as a result of the accounting treatment of these transactions.

He went on to state that when these matters were drawn to his attention he availed of the opportunity to remind staff of the Department of the importance of complying with *Public Financial Procedures*. As the matter had relevance beyond his Department he indicated that he had written to all Accounting Officers reminding them of the correct procedures to be followed in this matter.

Department of the Environment, Heritage and Local Government

The Accounting Officer, Department of the Environment, Heritage and Local Government in her response agreed that the OPW balance did not accord with the corresponding balance recorded by her Department. The Department had been in touch with OPW and confirmed that some balances go back a number of years. It was the Department's belief that one credit balance for €511,000 described as relating to the Custom House was incorrectly held as an advance for works that had been completed for some time. A definitive reconciliation of payments made to OPW would be carried out to address disparities between the Department's suspense account balances and those of OPW. She has instructed that guidelines be issued to all staff involved on the financial and accounting procedures to be observed in making inter-agency payments, and to ensure that a full reconciliation is effected at year-end.

In general, payments made to OPW were correctly charged to suspense accounts but it had come to light that two payments amounting to €200,000 which should have been charged to suspense accounts had been charged directly to Vote expenditure. In addition, there were further payments to OPW charged to Vote expenditure where it was not possible in the time available to verify beyond doubt that the full amounts were correctly chargeable in 2006. As the combined amounts were not material to the Department's overall expenditure, there was no requirement to amend the Vote.

Department of Agriculture and Food

The Accounting Officer, Department of Agriculture and Food, informed me that the nature of the services for which advances had been paid is such that final statements had not issued in the year in which the advances were made. In these circumstances, the practice has been to charge these amounts to the relevant subhead in the Department's Vote.

Bearing in mind that amounts charged to the Vote in this way are immaterial in the context of the total Vote expenditure in the year and that the difference between OPW records and those of the Department has been reconciled to my satisfaction, I have not insisted on a change to the Appropriation Account as presented.

However, in future, the Department should change its practice and charge the advances to a suspense account in the first instance. The charge to the Vote can only be made when OPW confirms its inability to give, on a timely basis, a definitive amount for expenditure incurred within the year and has agreed with the Department an estimate of the sums spent on the service.

Office of the Revenue Commissioners

The Accounting Officer of the Office of the Revenue Commissioners informed me that advances made to OPW were charged in the first instance to suspense accounts and that these suspense accounts were correctly discharged on the basis of disbursement certification by OPW. The difference between the amounts recorded by OPW and the Revenue Commissioners has been reconciled to my satisfaction.

Office of Public Works

The Accounting Officer of the Office of Public Works, in response to my enquiries, informed me that his Office managed a wide range of services on behalf of client Departments and Offices involving several hundred accounts and expenditure in excess of €75m a year.

As a general principle, OPW opens a separate account for each project and does not normally offset a credit balance in one account against a debit balance in another belonging to the same Department until projects have been completed.

As agency work typically involves contracts between OPW and external contractors, OPW required that clients maintain their accounts in credit so as to ensure that there were always sufficient client funds available and accessible to meet payment demands. These funds are held in an interest bearing account with the Central Bank. The Appropriation Account for Vote 10 – Office of Public Works – for 2006 showed a credit balance in its account with the Central Bank of €122m (€89m when outstanding cheques were taken into account).

The Accounting Officer stated that OPW Business Units regularly briefed client Departments on the status and progress of projects, including the financial position. He cited as an example, the service OPW provided for the Department of Finance for the procurement of crèches at various Government offices. He pointed out that a monitoring committee representing the Department and OPW met regularly to plan, discuss and monitor all aspects of the management and delivery of the programme, including the financial dimensions.

In the case of the Department of Education and Science, OPW provided a hugely important and complex service to the Department – the acquisition of school sites. OPW had a longstanding prudent policy of seeking and accepting funding from the Department only when the finalisation of the legal stages of acquisition was imminent. He said that there was no doubt that in the event of funding not being available immediately on close of sale some deals would fall through. The balance on this account, €23m at 31 December 2006, was reduced to €12.4m by end January 2007 and to €8.6m at end June 2007. OPW provided annual financial statements to the Department of Education and Science.

He added that OPW took a conservative and careful approach to reducing balances to zero and closing suspense accounts. They preferred to keep accounts open until it was clear that there would be no further costs payable.

The Accounting Officer also informed me that, notwithstanding the arrangements already in place for the supply of information to clients, he had decided to introduce a formal procedure of regular notification of project financial statements to client Departments.