

## Chapter 6

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### Prisons Service

## 6.1 Procurement in the Irish Prison Service

Procedures set out by the Department of Finance<sup>29</sup> acknowledge that, in exceptional circumstances, Departments and Offices need flexibility to enter into contracts without complying with the normal requirement to seek tenders. They must, however

- ensure that that all proposed exceptions are reviewed by Internal Audit or an appropriate senior officer beforehand
- maintain a central register of such procurements and
- designate a Procurement Officer to liaise with the Government Contract Committee.

The 2006 Report of the Comptroller and Auditor General included a general chapter on compliance by Departments and Offices with these procurement requirements.

A return certified by the Accounting Officer, Department of Justice, Equality and Law Reform (the Department) for the Irish Prison Service (IPS) for 2006 reported only three contracts exceeding the €25,000 limit where no competitive process was used. The value of these contracts was €260,000.

Information provided by the IPS also indicated that

- Although the remit of the Internal Audit Unit of the Department included the IPS, it did not undertake a review of relevant procurements for compliance with Circular 40/02.
- Where there was no competitive process, a business case outlining the reasons was prepared and submitted to Director of Finance for approval.
- Governors and Directors were circularised annually to ensure compliance with Circular 40/02.
- The IPS had a designated Procurement Officer.

### Return for the Irish Prison Service for 2007

A return for the IPS for 2007 was submitted to this Office on the 15 May 2008. It reported sixty known instances where procurements with a value in excess of €25,000 were in place and had been entered into without recourse to a competitive process. The total value of these contracts was €18.6m. Various reasons were put forward for not using a competitive process as summarised in the following Table 33.

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<sup>29</sup> Department of Finance Circular 40/2002

**Table 33 Reasons for Departure from Use of a Competitive Process**

<b>Reason</b>	<b>Number of Contracts</b>	<b>Value €m</b>
Existing Supplier Retained/Contract Rolled Over or Extended	21	7.6
Proprietary Product	19	3.0
Specialised Knowledge/Equipment	8	3.7
Local Tenders- Partly complied with	4	1.0
Emergency Requirement	4	1.2
Security	4	2.1
<b>Total</b>	<b>60</b>	<b>18.6</b>

In the course of audit, I noted that expenditure, exceeding the €25,000 threshold, incurred on medical and related professional services and procured without recourse to competitive processes, was omitted from the return. This included payments to doctors, pharmacy wholesalers, dentists and nurses. The total value of these payments was €685,714.

### **Audit Concerns**

The revised Department of Finance procedures introduced in 2002 substituted a set of internal safeguards for those previously operated through the Government Contract Committee. The overall objective was to ensure that non-competitive processes are only used in justifiable circumstances.

The extent to which the IPS resorted to non-competitive procurement in 2007, its failure to disclose medical and related contracts and the marked variation between the 2006 and 2007 returns, suggest a lack of proper control of IPS procurements.

It also raised the concern that the 2006 return significantly understated the extent to which the IPS had resorted to non-competitive procurement in that and previous years.

The level of recourse to non-competitive procurements also raised concerns as to the effectiveness of the internal review process.

### **Response of the Accounting Officer**

The Accounting Officer accepted that there were weaknesses and deficiencies in the procurement procedures and practices currently in place in the IPS but contended that it is actively working to address these. He accepted that it was likely that certain extended contracts, proprietary or specialist knowledge and equipment purchases put in place in prior years should have been included on the 2006 return. Completion of the 2006 return was disrupted due to decentralisation from Dublin to Longford with a loss of essential corporate knowledge.

He stated that the procurement of goods and services in the IPS differs greatly from a normal purchasing environment because

- The high security nature of its work dictates that, in many cases, only specialist companies can provide the required goods and services.
- The technology used is sometimes limited to a sole supplier and to change supplier would entail the abandonment of core systems which would require the retraining of staff at a high cost.

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- The prison environment can be very volatile and the IPS is often required to take emergency action to protect the lives of inmates and staff. In such circumstances, emergency purchases of goods/services are made to protect life and ensure the overall well being of the prisoners and staff.

A Central Procurement Unit was established in March 2007 with an extended remit to procure services and goods and to develop and promote best practice in the IPS. The establishment of the unit facilitated a policy decision to remove procurement from local level and centralise it in Headquarters. The unit is actively prioritising contracts for tendering and is committed to the introduction of a centralised database to identify contracts nearing termination date. It will, however, take some time to complete the process.

An internal procurement circular, issued in July 2003, was updated in March 2007 and re-issued to all staff. It outlined the steps to be taken where contracts were to be awarded without a competitive process. The procedures, which confirm that approval should be obtained in advance, are included in a draft Procurement Policy for the IPS which was scheduled for issue in August 2008.

With regard to the significant number of extended or rolling contracts, the Accounting Officer stated that

- The largest of these was awarded to a supplier following a competitive tendering process in 2001. The contract subsequently came up for tender during an industrial relations dispute and so was not tendered at that time.
- A number of contracts were rolled over or extended to facilitate going to tender in 2008.
- Some contracts related to the provision of services which had to be outsourced due to the introduction of Proposal for Organisation Change in the Irish Prison Service (SORT) and the resulting changes in work practices. These call-out services were rolled over on an annual basis but will be covered by the new framework agreements currently being put in place, in accordance with EU regulations, including electrical and mechanical services.
- Payments to drug suppliers are now covered by a new pharmacy agreement.

Regarding the omission in the returns of medical and professional services contracts, the Accounting Officer confirmed that these should have been included in the return.

### Conclusions

The best means of securing value for money in purchasing is through open and competitive processes. The scale of procurement transacted without competition that emerged in the 2007 return suggests that the Irish Prisons Service's internal monitoring and control in this area was deficient.

It is acknowledged that the Accounting Officer has begun to take steps to rectify these deficiencies.

With the introduction of central procurement there should be scope for better planning of purchasing and seeking ways of generating competitive processes in its procurement to ensure the delivery of services at least cost to the Exchequer.

The Accounting Officer should assure himself annually before completion of the Statement of Internal Financial Control that these key procedures are in place and operated. The best means of achieving this is through internal audit signoff.

## 6.2 Travel Expenses

It is a well-established principle of public service travel and subsistence arrangements that employees are responsible for whatever expenses they may incur in presenting themselves at their place of work. The disclosure at Note 12 to the Appropriation Account refers to the payment of expenses of €24,117 to a senior officer during 2007 in respect of travel to and from his workplace. Payments of a similar nature were made to the officer over a number of years - €42,000 during a period of temporary posting from 2000 to 2002, and in excess of €62,000 during 2005 to 2008 following a sanctioned extension of service after the normal retirement age. These payments were made without the sanction of the Department of Finance and may also give rise to tax obligations. Chapter 3.13 of my Report deals with tax liabilities arising from travel to and from work in another Department.

The Accounting Officer stated that the payments over the first period were necessary due to the temporary and exceptional nature of that appointment. He considered that Department of Finance Circular 5/58 granting discretion to the Accounting Officer to allow payment in the case of special circumstances, and where payment would not involve a major departure from regulation, covered these payments. Therefore the formal sanction of the Department of Finance was not required. The arrangements were terminated in 2002 when it was accepted that the assignment was effectively permanent.

In relation to the 2005 to 2008 period, he informed me that, had the officer retired in the normal course, it would have been necessary in the circumstances to bring him back on a consultancy basis and he would have been able to charge travel and subsistence as an applicable expense. Therefore, it was agreed to meet the officer's request for restoration of the earlier arrangements, particularly as it was regarded as a temporary assignment. Payments ceased following the officer's transfer to a new post in March 2008. The Accounting Officer stated that he now accepted that, while that view had been well intentioned, it was not consistent with the general principles that apply to travel and subsistence. The Department would advise the Department of Finance and the Revenue Commissioners of the situation.

