

13 Procurement without a Competitive Process

- 13.1** EU directives set out advertising requirements and tendering procedures for contracts above certain value thresholds that must be applied by all public bodies involved in procurement.¹ For contracts or purchases below these threshold values, the following national procedures apply
- supplies or services costing less than €5,000 in value may be purchased on the basis of verbal quotes from one or more competing suppliers
 - contracts for supplies or services between €5,000 and €25,000 in value should be awarded on the basis of responses to specifications sent by fax or email to at least three suppliers or service providers
 - goods and general services with an expected value of €25,000 or more should be advertised on the eTenders website.²
- 13.2** Exceptions to these rules are allowed under national and EU procurement rules in limited circumstances. Department of Public Expenditure and Reform Circular 40/2002 outlines the course to be followed where Government departments and offices propose to award contracts that exceed €25,000 in value (exclusive of VAT) without a competitive process. An annual statement (40/2002 return) must be prepared in respect of those contracts, giving the details of the supplier, the nature of the contract, its value and the reasons for not having followed a competitive process. A copy of that statement must be submitted to the Office of the Comptroller and Auditor General and to the Department of Public Expenditure and Reform by 31 March of the following year.
- 13.3** This chapter focuses on the extent of non-competitive procurement undertaken by Government departments and offices in 2011. The chapter is based on an analysis of the 40/2002 returns submitted by Government departments and offices.

Extent of Non-Competitive Procurement

- 13.4** The annual 40/2002 returns for 2011 indicate that 555 contracts were awarded without a competitive procurement process with a total value of €266 million. Figure 13.1 shows the number of contracts and the related value reported in the departmental returns.
- 13.5** There were 5 nil returns in 2011 (8 in 2010). Late returns were received from the Department of Health (5 July 2012) and the HSE (31 July 2012).
- 13.6** An Garda Síochána had the highest reported number of contracts – a total of 116 contracts with a value of €15 million. The increase in the reported number and value of contracts relative to 2010 is due to the inclusion on the return for the first time of procurement expenditure from imprest accounts in 123 Garda districts.

1 Thresholds are revised every two years. Up to date thresholds are available on the EU procurement website <http://www.simap.europa.eu>

2 Department of Public Expenditure and Reform, Circular 10/2010 *Facilitating SME Participation in Public Procurement*, August 2010.

Figure 13.1 Reported Contracts Awarded without Competition 2010 and 2011

Department or office	Number of cases		Total contract expenditure	
	2010	2011	2010	2011
			€m	€m
Social Protection	4	9	— ^a	184
Defence ^b	62	77	15	19
Garda Síochána	33	116	5	15
Agriculture, Food and the Marine	22	24	1	9
Irish Prison Service	124	77	14	8
HSE	50	62	4	8
Justice and Equality	45	29	10	4
Courts Service	30	24	4	3
Property Registration Authority	7	7	3	3
Education and Skills ^c	7	8	9	2
Office of Public Works	18	13	7	2
Foreign Affairs and Trade	3	13	2	2
Jobs, Enterprise and Innovation	13	17	1	1
Others	54	79	4	6
Total^d	472	555	79	266

Source: Circular 40/2002 returns for 2010 and 2011.

- Notes:
- a The total value of the contracts reported was less than €240,000
 - b Certain defence equipment contracts (weapons and armaments) are exempted from the terms of Circular 40/2002.
 - c The Department of Education and Skills 2010 figures have been amended to reflect a supplementary return.
 - d The 2011 audit of the appropriation accounts identified five further contracts awarded without a competitive process with a total value of €0.4 million that were not included on the returns – Department of Communications, Energy and Natural Resources (4 contracts value €282,000) and the Chief State Solicitor's Office (1 contract value €115,000).

- 13.7** The number of reported instances of non-competitive procurement increased by 83 in 2011 relative to 2010. However, the value of those contracts increased by €187 million. The inclusion on the Department of Social Protection's return of a contract with An Post for the encashment of welfare payments, valued at €183 million over 3 years (2011 to 2013) is the main reason for the increase in value. Procurement of that service from An Post had not previously been included on the Department's return.
- 13.8** When the An Post contract is excluded, the value of non-competitive contracts reported in 2011 is €83 million – an increase of 5% relative to 2010.

Reasons for Non-Competitive Procurement

- 13.9** Figure 13.2 sets out the main reasons given in the returns as to why competitive processes were not used. The most significant increase in value in 2011 was in the category of 'extension/rollover of existing contract', reflecting the impact of the An Post agency service to the Department of Social Protection. An outline of the major contracts under each category is set out in the following sections.

Figure 13.2 Reasons for Non-Use of Competitive Process, 2010 and 2011

Reason	Number of cases		Value of contracts	
	2010	2011	2010	2011
			€m	€m
Urgency	15	40	8	4
Purchase of proprietary goods	91	77	14	11
Extension/rollover of existing contract	114	179	19	206
Expert service/recent experience with supplier	45	41	4	3
Single suitable supplier	92	121	25	28
Security considerations	7	1	2	—
Other reasons	108	96	7	14
Total	472	555	79	266

Source: Analysis of Circular 40/2002 returns by Office of the Comptroller and Auditor General

Urgency

- 13.10** Due to the short notice of State visits in May 2011, the levels of security and confidentiality involved, and the importance of public safety, a number of bodies considered it was not possible to tender for certain services.
- an Garda Síochána awarded 22 contracts with a total value of €2.3 million for accommodation, catering, equipment and traffic management related to the visits
 - the Office of Public Works entered into four contracts with a total value of €900,000 for the provision of electrical, mechanical and building works in the press centre in Dublin Castle prior to the visits
 - the Department of the Taoiseach engaged a company at a cost of €559,000 to provide event direction and services.

Proprietary Goods

- 13.11** Of the 77 instances of purchasing of proprietary goods, 31 were in respect of purchases by An Garda Síochána with a value of €4.8 million and 14 were in respect of purchases by the Irish Prison Service with a value of €3.3 million. The proprietary goods purchased, in general, related to information and communications technology or technical systems.

Extension/Rollover Contracts

13.12 179 cases reported involved the extension or rollover of existing contracts, some of which had been in place for several years.

13.13 The reasons a competitive process was not used, as stated in the returns, included

- the contractor had relevant experience gained from prior involvement with the department
- the contractor was best placed to provide the required goods/services without undue extra cost to the Exchequer.

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

- The contract between the Department of Social Protection and An Post for the encashment of welfare payments with an estimated cost of €183 million (discussed above). The Department has indicated that it intends to tender for the service from 2014 on.
- The Department of Agriculture, Food and the Marine paid €3.7 million in 2011 to four approved rendering plants that have provided this service for the last number of years. In 2011, these contracts were rolled over until 2013. Prior to extending the contracts, all eight EU approved rendering plants on the island of Ireland were afforded the opportunity to partake in the present scheme. One additional plant expressed an interest and was awarded a contract. Payments totalling some €174,000 were made to this plant in 2011, and this contract is included in the 'urgency category'.
- The Department of Agriculture, Food and the Marine also extended two contracts for storage and handling of intervention dairy products. The total value of these was €1.1 million.
- The Department of Justice and Equality made payments of €1.4 million in respect of some segments of the Department's and related agencies' fixed line and local and wide area networks after the expiry of the contracts.
- The Irish Prison Service extended its contract with Dublin Dental Hospital for the provision of dental services for prisoners valued at €564,000.
- The Courts Service extended six contracts valued at €1.2 million for interpreting services.

Expert or Recent Experience

13.15 In 41 of the cases reported, contracts were awarded because the services of individuals or firms had been used in the recent past or they had been identified, without recourse to a competitive process, as having the required expertise. Examples include

- The Department of Health entered into two contracts with an aggregate value of €730,000 with a health expert. One contract (valued at €250,000) was to set up and operationalise the Special Delivery Unit (SDU) on a non-statutory basis and included preparing a detailed baseline analysis of the emergency and elective treatment access system. The second contract (valued at €480,000) is for a three year term to provide advice to the Department and in particular to the SDU.
- The Office of the Attorney General engaged experts at a cost of €352,000 to assist with the delivery of urgent legislation relating to the EU/IMF Programme.
- The provision of legal services to the Chief State Solicitors Office (€87,000), the Department of Jobs, Enterprise and Innovation (€85,000) and the National Gallery of Ireland (€108,000).
- The provision to the Irish Prison Service of archaeological services at the Thornton Hall site (€93,000) and of drug detection services (€49,000).

Single Suitable Supplier

- 13.16** There were a total of 121 contracts with a value of €28 million where it was considered that there was only one suitable supplier. Examples include
- a Department of Defence contract with a value of €8.2 million (over 5 years) for aircraft parts and maintenance, and one worth €1.3 million for the provision of spare parts for a remote weapons system
 - the Property Registration Authority entered into a contract with a value of €2.6 million with the Ordnance Survey of Ireland for national mapping data
 - a Department of Agriculture, Food and the Marine contract valued at €2 million for badger collection and culling duties under the TB eradication programmes.

Other Reasons

- 13.17** There were 96 reported instances of contracts being awarded for a variety of other reasons. Of these, 50 contracts were awarded by the Irish Prison Service with a value of €3.4 million. These include contracts with
- five separate dental practitioners valued at a total of €335,000
 - one company for the provision of locum nurse services valued at €508,000
 - one doctor valued at €152,000
 - one doctor valued at €49,000 for psychiatrist services.
- 13.18** An Garda Síochána awarded 16 contracts for medical services with a total value of €3 million – contract values ranged from €26,000 to €1.4 million.
- 13.19** The HSE entered into a contract for €3.7 million for the completion of the development of Letterkenny General Hospital emergency department with a contractor nominated by the bondsman after the initial contractor had gone into receivership.

Conclusions and Recommendation

- 13.20** There continues to be substantial levels of procurement by Government departments and offices without the use of competitive processes. A review carried out on behalf of the Department of Public Expenditure and Reform identified the need for further analysis to accurately categorise all State procurement by type, location and supplier. The availability of such information would allow the extent of non-competitive procurement to be placed in context and assist in identifying areas where particular attention may be required.
- 13.21** Explanations provided by departments and offices for not using competitive procurement processes are not precise and do not fall into mutually exclusive categories.

13.22 The extent of non-competitive procurement may also be understated due to inadequate systems for capturing details of all contracts entered into. This is evident from some returns being supplemented after submission, returns submitted late and examples found during audit of uncompetitive procurement not included in returns. Recording such contracts on an exception basis is not effective.

Recommendation 13.1: Every department and office should create a central register of all contracts which records key data, including whether or not a competitive process was used.

Department of Public Expenditure and Reform Accounting Officer's Response: Agreed. The Department supports this proposal and its National Public Procurement Policy Unit will review how this recommendation can best be implemented in conjunction with other procurement reporting measures.