

## **Chapter 9**

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### **Public Procurement**

**Central Government**



## Public Procurement

9.1 Estimates prepared by the Department of Public Expenditure and Reform (the Department) indicate that public expenditure on procurement of goods and services in 2010 totalled around €9 billion, with a further €6 billion being spent on capital works (see Figure 36).

**Figure 36 Estimated Annual Public Procurement Expenditure by Sector**

Expenditure area	2009 €bn	2010 €bn
Health sector <sup>a</sup>	4.70	4.60
Central government sector <sup>b</sup>	2.00	1.95
Local government sector	1.70	1.60
Education sector	0.90	0.90
<b>All goods and services procurement</b>	<b>9.30</b>	<b>9.05</b>
Capital works	7.00	6.00
<b>Total public procurement</b>	<b>16.30</b>	<b>15.05</b>

Source: Estimates by Department of Public Expenditure and Reform

Notes: a Includes expenditure relating to drugs and medicines and GP and pharmacist fees.

b Government departments and agencies, including Defence Forces and An Garda Síochána.

9.2 Procurement of goods and services by public bodies must be conducted in accordance with EU and national regulatory requirements. In addition, under guidance issued by the Department there is an obligation on Government agencies to follow a competitive process, carried out in an open, objective and transparent manner.

9.3 At a strategic level, the Department is responsible for setting a broad strategic direction for procurement implementation. This is done through the Department's National Public Procurement Policy Unit (NPPPU), which has responsibility for national public procurement policy, legislation and construction procurement reform.

9.4 A National Procurement Service (NPS)<sup>76</sup> was established in March 2009 within the Office of Public Works (OPW). Its objectives are

- to establish national framework agreements to allow all central government departments and offices, agencies and non-commercial public bodies to procure commonly-used goods and services more effectively, efficiently and with better value for money
- to provide professional procurement advice to central government and non-commercial public sector bodies
- to develop targeted and accredited procurement training and education measures and
- to further develop web-based e-procurement.

<sup>76</sup> The NPS was originally titled the National Public Procurement Operations Unit.

## Chapter Focus

This chapter focuses on

- the progress that has been made by the National Procurement Service in implementing initiatives to provide better value in the procurement of goods and services
- the results of a procurement expenditure reduction drive commenced in 2009
- the extent of non-competitive procurement undertaken by government departments in 2010
- the results of an audit review of the implementation of key procedures in relation to procurement rules and regulations
- a review of general findings on non-competitive procurement in the wider public sector.

For purpose of referencing, the department titles used in this chapter are those that applied in 2010. However, the functions of the Department of Finance in this area moved to the Department of Public Expenditure and Reform.

## National Procurement Service Initiatives

9.5 The NPS has a wide remit covering central government agencies, non-commercial State bodies, health sector bodies (including the HSE), third level education institutions and local government. The unit has responsibility for managing the purchase of goods and services common to all areas of the public service e.g. office equipment, furniture and fittings, fuel, electricity, natural gas, printing, stationery and office supplies, ICT consumables, uniforms, travel and transport fleets. Procurement of sector-specific items (such as drugs, medical supplies and military equipment) is managed by the relevant departments and agencies.

9.6 The NPS has been staffing up and as of mid July 2011, the unit employed 34 WTE staff. In the past year, it has recruited six new buyers by way of open competition conducted by the Public Appointments Service. The NPS anticipate that it will be close to full complement in early 2012.

9.7 Links have been established between the NPS and the Commercial Contracts Section of the Chief State Solicitors Office (CSSO), which services the needs of central government departments for procurement-related legal advice. The NPS, in partnership with the CSSO and the Office of the Attorney General, developed a suite of standard tender competition and contract documents which was made available to all departments, government offices and agencies in June 2011. Two solicitors have been recruited by the CSSO and seconded to work in the NPS on a full-time basis.

9.8 The NPS budget for non-staff expenditure for 2010 was €769,000, and the outturn was €496,000. The main reason given for the shortfall in expenditure was the fact that the competition for the replacement of the eTenders website was not completed during 2010.<sup>77</sup>

<sup>77</sup> www.eTenders.gov.ie has been developed as part of the Irish Government's strategy for the implementation of e-Procurement in the Irish public sector. The site is designed to be a central facility for all public sector contracting authorities to advertise procurement opportunities and award notices.

## Strategic Goals for the NPS

9.9 The NPS Strategy Statement 2010-2012 sets out the approach it will adopt in its first years of operation. It has set three goals. Figure 37 sets out those goals and the achievements in 2010.

**Figure 37 NPS Goals and Reported Achievements for 2010**

Strategic Goals	2010 Achievements
To optimise the efficiency of, and the value for money obtainable from, all sourcing activities thus enabling public service clients to gain access to quality goods and services to support their business processes.	An analysis of procurement categories was carried out to assess their suitability for NPS intervention. 35 contracts and framework agreements were put in place across various procurement and market categories.
To facilitate the provision of learning, development and guidance opportunities that will assist both procurers and potential suppliers to develop appropriate skills to enable them to operate at optimum capacity in all procurement related business.	A number of training initiatives were delivered for buyers and suppliers. Standard procurement documents and guidance material were developed and distributed with the aim of making procurement by other public bodies in categories not covered by the NPS more effective and efficient.
To ensure the availability of a world-class, e-Procurement platform affording maximum visibility for procurement campaigns.	A competition to replace the eTenders website is being commenced.

Source: National Procurement Service

9.10 The Strategy Statement sets out a number of performance indicators which the NPS has put in place. Annex A provides the detail of the performance measures.<sup>78</sup>

## Top Expenditure Areas

9.11 The NPS undertook a survey of public bodies, asking them to report their 'top 30' suppliers of goods and services in 2009. Bodies were also asked to indicate the category of goods and services procured. The survey targeted 310 public bodies in respect of 2009<sup>79</sup> and by the end of June 2011, a total of 257 bodies (83%) had responded. Certain categories of goods and services were excluded from the scope of the survey i.e. professional fees, construction related activities, costs related to the purchase and rent of property and all payroll costs.

9.12 The NPS aggregated the results of the survey by expenditure type. Figure 38 shows the resulting categories of expenditure where the combined reported spend was €50 million or over in 2009. The areas of highest spending were medical supplies, computing, fuel and water.

<sup>78</sup> The NPS, as a unit of the OPW, will report on progress against all performance indicators in the normal course through the OPW's Annual Report.

<sup>79</sup> The 2009 survey is the most up-to-date survey available.

**Figure 38 Top Spending Areas (over €50 million) as reported by Public Bodies within the remit of the NPS for 2009**

Procurement Category	€m
Medical supplies	352
ICT and IT consumables	235
Fuel	173
Water	101
Insurance	85
Plant and equipment	56
Telephony	53
General maintenance <sup>a</sup>	53

Source: National Procurement Service analysis

Note: a This includes refurbishment, landscaping and signage.

9.13 The NPS could achieve a more useful analysis of spending by focusing its annual survey on categories of spending on goods and service rather than on major suppliers. Collecting data about all spending by category would allow for development of optimum strategies for procurement from suppliers in sectors where there is more competition or more diversified distribution — such as cleaning, security and professional fees — as well as strategies for procurement in sectors where a limited number of suppliers meet most of the demand.

### ***Development of Framework Agreements***

9.14 Another approach of the NPS is to develop national framework agreements in key areas as a means of achieving an impact on public procurement. The general concept of framework agreements is outlined in Annex B. Framework agreements are open for use by public bodies and agencies. However, it is up to the individual organisation to decide whether or not to use the agreements.

9.15 The following categories of spend have been identified as areas suitable for agreements

- stationery (including paper and ICT consumables)
- electricity
- natural gas
- Liquefied petroleum gas (LPG)
- managed print services and
- certain categories of motor vehicle.

9.16 By the end of 2010, the NPS had put a total of 41 framework agreements and contracts in place since its establishment. 35 of those arrangements were put in place in 2010, including electricity and natural gas frameworks with an estimated combined annual value of €400 million. Other framework agreements covered purchase of automotive fuel using charge cards, supply of liquid fuel/LPG and a State advertising framework agreement. The remaining contracts put in place by the NPS covered a wide variety of goods and services ranging from a drawdown contract arrangement for cars for An Garda Síochána and other public bodies (annual value estimated at €1.6 million), to small contracts for printing (e.g. printing of Revenue P35 forms worth an estimated €85,000), a range of contracts for the provision of uniforms and footwear and a contract for the development of a new website for the NPS.

9.17 All NPS framework agreements and contracts contain a 'contract monitoring' clause whereby the supplier is obliged to report at regular intervals with regard to elements such as usage, prices and contract expiry, and as required.

### **General Measures Taken by the NPS**

9.18 The Accounting Officer informed me that in the course of 2010 the NPS had undertaken a range of measures designed to improve overall procurement by government bodies

- The NPS has established networks of public service procurement officials to leverage synergies in relevant market areas with a view to encouraging a more collaborative approach to public service procurement.
- An Advisory Board consisting of procurement experts from the public, private and academic sectors was established by the NPS to ensure access to current research and knowledge in all aspects of procurement.
- To further assist in the education and development of public service procurement officials the NPS has, since 2009, hosted three major seminars. These events have become significant occasions for officials who wish to learn more about procurement processes and to benchmark their procurement practices against those of other organisations.
- Cognisant of the need to ensure that suppliers in the market are aware of public service procurement procedures the NPS has hosted, or participated in, 28 supplier and buyer education events, interacting with approximately 500 SMEs.
- To further strengthen communications with both public service buyers and suppliers the NPS signed a contract for the establishment of a new NPS corporate website<sup>80</sup>. This site will serve as a single point of information on public service procurement issues.
- During 2010 the NPS engaged with its counterparts in Europe on various issues relating to EU procurement rules and directives.

### **Conclusion – National Procurement Service**

The NPS has been slow in becoming established. However, by the end of 2010 it had set out its strategic goals, set challenging targets and begun to identify those areas of spend that need to be targeted. In the next stage of its development, it needs to ensure that appropriate approaches to procurement are taken in the areas of major spend and that it monitors the utilisation of framework agreements.

The analysis by the NPS of the major categories of spend could be improved if all spending in a category was aggregated. Currently its review focuses on the major suppliers.

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<sup>80</sup> The website is [www.procurement.ie](http://www.procurement.ie)

## Expenditure Reduction Initiative

9.19 In 2009, the Government sought expenditure reductions of up to 8% on contracts for all goods and services purchased by government departments, agencies, offices, third level institutions and local authorities. The procurement savings were to be achieved by reductions in price and/or in the quantity purchased.

9.20 In May 2009, the NPS requested bodies to make a monthly report, listing all contracts for the supply of goods and services with a value over €100,000, beginning in June 2009 and indicating agreed savings on each contract. The initiative excluded expenditure on professional fees<sup>81</sup> and on construction related activities.

9.21 The initial target set for the savings to be achieved through this initiative was €25 million in 2009. Savings of €9.3 million on existing contracts were reported in 2009. In 2010, further savings of €8.8 million were reported under the initiative. This was achieved by continuing to request public bodies to negotiate a reduction of up to 8% on all contracts for goods and services above €100,000 where legally feasible.

9.22 The NPS considers that in addition to the reported savings on existing contracts, public bodies also achieved significant savings by re-tendering for goods and services, and by entering into new contractual arrangements at lower prices. The financial impact of those measures has not been quantified.

9.23 Procurement budgets have been significantly reduced across the public service in 2009 and 2010. In 2010, procurement budgets were reduced by €39 million.

9.24 The Expenditure Reduction Initiative is now considered closed.

### Conclusion – Expenditure Reduction Initiative

A drive to reduce expenditure in the area of procurement which began in 2009 resulted in reported savings of €8 million through price reductions. The overall budget for procurement has been reduced by €39 million in 2010.

The NPS believes that further savings were achieved due to re-tendering and new contracts at more competitive prices but those savings have not been quantified.

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<sup>81</sup> A separate Department initiative sought a reduction of 8% in professional fee levels, including fees paid to health sector professionals.

## Procurement without a Competitive Process

9.25 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. For contracts or purchases below the threshold values the following 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.<sup>82</sup>

9.26 Exceptional arrangements are allowed under national and EU procurement rules in limited circumstances. Department 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 my Office and to the Department by 31 March of the following year.

### ***Health Service Executive Return***

9.27 The 40/2002 return from the Health Service Executive and my comments in relation to it are included in Chapter 42, Procurement in the HSE.

### ***Extent of Non-Competitive Procurement***

9.28 The annual 40/2002 returns for 2010 indicate that payments were made under 469 contracts which were concluded without a competitive procurement competition. The total value of the contracts reported for 2010 was €75.4 million. The number of reported non-competitive procurement payments reported decreased marginally in 2010 relative to 2009. However, the value of those contracts increased by €6.3 million .

9.29 Figure 39 shows the number of contracts and the total contract expenditure disclosed in the departmental returns.

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<sup>82</sup> Department Circular 10/10, Facilitating SME Participation in Public Procurement, August 2010.

**Figure 39 Reported Contracts Awarded without Competition, 2009 and 2010**

Department or office <sup>a</sup>	Number of cases		Total contract expenditure	
	2009	2010	2009 €m	2010 €m
Defence <sup>b</sup>	40	62	4.2	15.1
Irish Prison Service	154	124	22.0	14.0
Justice and Law Reform	44	45	5.7	9.6
Office of Public Works	11	18	0.9	6.8
Education and Skills	3	4	1.2	5.4
Garda Síochána <sup>c</sup>	62	33	8.1	5.3
Courts Service	20	30	1.9	3.6
HSE <sup>d</sup>	26	50	4.2	3.5
Property Registration Authority	2	7	0.2	3.2
Foreign Affairs	3	3	0.2	1.7
Agriculture, Fisheries and Food	10	22	5.5	1.4
Tourism, Culture and Sport	9	5	1.2	1.0
Enterprise, Trade and Innovation	11	13	1.0	1.0
Others	78	53	12.8	3.8
<b>Total</b>	<b>473</b>	<b>469</b>	<b>69.1</b>	<b>75.4</b>

Source: Circular 40/2002 returns for 2010 received by my Office including subsequent returns received after 31 March 2011 in respect of the Department of Defence and the Valuation Office

- Notes:
- a There were eight nil returns by departments and offices in 2010 and 14 nil returns by departments and offices in 2009.
  - b Certain defensive equipment contracts are exempted from the terms of Circular 40/2002.
  - c The return from An Garda Síochána was adjusted to exclude a contract that had been competitively tendered for and therefore should not have been included on the 40/2002 return.
  - d 2010 data based on the HSE return received by my Office in June 2011. The return was adjusted to exclude incorrectly reported contracts – nine grant payments and a duplicate contract. Contracts incorrectly omitted are dealt with in Chapter 42.

9.30 The Irish Prison Service (IPS) had the highest reported level of contracts awarded without a competitive process, with expenditure of €14 million on 124 contracts in 2010. This is a reduction on the 2008 and 2009 levels. The IPS has indicated that a further 71 supply arrangements are in the process of having tenders completed which should reduce the levels further in 2011. The IPS has stated that it is working closely with the NPS on a number of collaborative tenders that should provide better value for money in future procurement.

9.31 The Department of Defence reported 62 cases with expenditure of €15.1 million in 2010 that had been awarded without a competitive process. The most valuable contract, worth €6.4 million, was placed with a company, deemed to be the sole supplier in Chad that possessed the necessary capability to assist in the repatriation from that country to Ireland of military personnel and equipment when the mandate for the mission expired on 15 March 2010. The Department of Defence submitted a claim in June 2011 to the United Nations for reimbursement in the amount of €6.4 million in respect of the repatriation expenditure.

### Reasons for Non-Competitive Procurement

9.32 Figure 40 sets out the main reasons given in the returns by departments and offices explaining why competitive processes were not used. The most significant increase in value in 2010 was in the category of 'single suitable supplier'. An outline of the position for major exceptions is set out at Annex C.

**Figure 40 Reasons for Non-Use of Competitive Process, 2009 and 2010**

Reason	Number of cases		Value of contracts	
	2009	2010	2009	2010
			€m	€m
Urgency	16	12	2.5	3.6
Purchase of proprietary goods	94	91	17.3	14.2
Extension/rollover of existing contract	109	114	16.7	19.4
Expert service/recent experience with supplier	56	45	10.1	4.4
Single suitable supplier	85	92	9.8	25.3
Security considerations	13	7	2.6	1.5
Other reasons	100	108	10.1	7.0
<b>Total</b>	<b>473</b>	<b>469</b>	<b>69.1</b>	<b>75.4</b>

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

### Completeness of Returns

9.33 The 2010 audit of the appropriation accounts identified 20 non-competitive contracts with a total value of €4.3 million that were not included on the 40/2002 returns for 2010. The extent of cases noted is set out in Figure 41. It represents 6% (by value) of the reported cases and is not itself complete due to the impracticality of reviewing all cases in the course of audit.

9.34 In addition to the non-inclusion of certain contracts for goods and services, the 40/2002 returns do not include any contracts related to banking services or to agency payment services. For example, the Department of Social Protection's 40/2002 return for 2010 did not include its contract with An Post for the encashment of welfare payments which had a value of €8 million in 2010 and for which there has not been a competitive tender.

9.35 The Department has stated that the award of contracts and their related expenditure are the responsibility of the contracting authority and the relevant Accounting Officer. The NPPPU examines the Circular 40/2002 returns from departments and agencies with a view to identifying and addressing any systematic deficiencies. The Department has a general oversight role and, where information about potential problems comes to light, it raises the issue with the department or agency, bringing the requirements of procurement law and best practice to their attention. This can also involve re-examining guidelines and revising them where appropriate. The Accounting Officer stated that any issues arising in reports of the Comptroller and Auditor General or in the course of Committee of Public Accounts examinations, and related recommendations are also addressed.

**Figure 41 Non-Competitive Procurement not included on the 40/2002 Returns**

<b>Vote</b>	<b>Number of contracts</b>	<b>Total value €000</b>
Social Protection	1	2,400
Attorney General's Office	5	732
Office of the Director of Public Prosecutions <sup>a</sup>	2	570
Garda Síochána	1	159
Tourism, Culture and Sport	3	139
Taoiseach	3	135
Enterprise, Trade and Innovation	2	91
Foreign Affairs	1	46
Chief State Solicitor's Office	1	37
Charitable Donations and Bequests	1	33
<b>Total</b>	<b>20</b>	<b>4,342</b>

Source: Office of the Comptroller and Auditor General

Note: a These instances related to contracts originally awarded after tender that were extended to maintain services pending a move to new premises.

### **Compliance with Administrative Rules**

9.36 Circular 40/2002 requires each department or office to

- have a procedure in place under which proposed non-competitive contracts are reviewed prior to award by the relevant department's or office's Internal Audit unit or by an appropriate senior officer who is not part of the procurement process<sup>83</sup>
- appoint a designated Procurement Officer to collate the information on those contracts
- maintain an up-to-date central register of all non-competitive contracts.

9.37 In the course of audit, my Office reviewed the arrangements in place in the 34 government departments or offices in order to ascertain their compliance with the Circular's administrative requirements. The audit found that

- seven departments or offices did not have a procedure in place to review non-competitive contracts prior to their award
- six departments or offices did not maintain a central register of non-competitive contracts. In a further three cases, while a central register of non-competitive contracts was kept, it was not maintained up-to-date
- two departments or offices did not have a designated Procurement Officer in place.

9.38 Figure 42 sets out the audit findings in regard to compliance by the individual departments or offices with the Circular requirements.

<sup>83</sup> The Department issued a supplement to Circular 40/2002 in July 2003, providing guidance for officers reviewing the case for such proposed contract awards.

**Figure 42 Procurement Systems in Departments<sup>a</sup>**

Vote Name	Procurement Officer appointed	Central register maintained <sup>b</sup>	Central register up to date	Independent review procedure in place <sup>c</sup>
Taoiseach	○	○	○	○
Attorney General's Office	○	○	○	○
Central Statistics Office	○	○	○	○
Finance	○	○	○	○
Revenue Commissioners	○	○	○	○
Office of Public Works	○	○	○	○
State Laboratory	○	○	○	●
Chief State Solicitor's Office	○	○	○	○
Director of Public Prosecutions	○	○	○	○
Valuation Office	○	●	●	●
Public Appointments Service	○	○	○	○
Commission for Public Service Appointments	○	○	○	○
Ombudsman's Office	○	○	○	○
Justice and Law Reform	○	○	○	○
Garda Síochána	○	●	●	○
Prisons	○	○	○	○
Courts Service	○	○	○	○
Property Registration Authority	○	○	○	○
Charitable Donations and Bequests	●	●	●	●
Environment, Heritage and Local Government	○	○	○	○
Education and Skills	●	○	○	○
Community, Equality and Gaeltacht Affairs	○	●	●	○
Foreign Affairs	○	○	●	○
International Cooperation	○	○	○	●
Communications, Energy and Natural Resources	○	○	○	○
Agriculture, Fisheries and Food	○	○	●	●
Transport	○	○	○	○
National Gallery of Ireland	○	●	●	○
Enterprise, Trade and Innovation	○	○	○	○
Tourism, Culture and Sport	○	●	●	●
Defence	○	○	○	○
Army Pensions	○	○	○	○
Social Protection	○	○	●	○
Health and Children	○	○	○	●

Key: ○ Yes ● No

Notes: a The systems referred to are those related to the provisions of Circular 40/2002.

b This is a register of non-competitive procurement only.

c The circular requires this review to be conducted by Internal Audit or a senior officer who is not part of the procurement process.

9.39 The audit found that in six departments or offices, a central register was not maintained by the Procurement Officer as required by Circular 40/2002, but instead the information was collated by another officer.

9.40 In the course of audit, it was found that

- even where a review procedure had been put in place, there was a lack of evidence in some cases that the proposal for non-competitive procurement had been independently reviewed in advance of being awarded
- no clear justification could be provided in some cases as to why a competitive tendering process had not been applied.

### **Conclusion – Non-Competitive Procurement**

Departments reported that they placed contracts in 2010 to the value of €75 million without pursuing competitive tendering processes. A further €4.3 million of non-competitive procurement was identified in the course of audits.

Some departments have not fully implemented the Department of Public Expenditure and Reform rules on administration of non-competitive procurement.

- Seven departments or offices did not have a procedure in place to carry out an independent review of contracts prior to their award. Even in cases where a procedure was in place, cases were found that indicated the procedure had not been followed.
- Six departments did not maintain a central register of non-competitive contracts. In a further three cases, while a central register of non-competitive contracts was kept, it was not maintained up-to-date.
- Two departments did not have a designated Procurement Officer in place.

While there is no requirement for departments and offices to maintain a central register of all contracts, consideration should be given to the maintenance of such a central register. The maintenance by all departments or offices of a central register of all contracts would facilitate the identification of all non-competitive contracts, improve the completeness of the 40/2002 returns and improve compliance with procurement rules and procedures. With suitable coding, it would also facilitate analysis of procurement patterns.

### **Public Procurement Compliance in Wider Public Sector**

9.41 In the course of their monitoring of the governance of State bodies, departments should satisfy themselves that public procurement norms apply.

9.42 Public procurement guidelines as set out by the Department are applicable to all public contracting authorities. The Code of Practice for the Governance of State Bodies (the Code) also identifies procurement as one of a number of activities requiring special attention in promoting good corporate governance.

9.43 The Code requires competitive tendering to be standard procedure in the procurement process of State bodies. It is the specific responsibility of the Boards of those bodies to satisfy themselves that requirements for public procurement are adhered to.

9.44 Chairpersons of State bodies must attest annually in a statement on internal financial control that their respective organisations have effective internal control systems (which include controls over procurement). The Code also requires the Chairperson to annually affirm compliance with procurement procedures to the relevant Minister. For good corporate governance, it is essential that each Board of a State body has appropriate processes in place that will provide assurance to its Chairperson that the annual confirmation on compliance with procurement rules and procedures can be made.

9.45 As in the case of departments, it may be appropriate for State agencies to depart from normal procurement rules in exceptional circumstances. However, their procurement procedures should state the general circumstances in which departures would be appropriate (e.g. urgent need). In addition, the reasons for the departure should be documented in advance and the departure should be approved at a more senior level than the person requesting that departure. Although government departments and offices are required to make an annual return<sup>84</sup> about non-competitive procurements, there is no such onus on State agencies.

9.46 In procuring goods and services, public bodies should follow a competitive process that is carried out in an open, objective and transparent manner. They should also seek to apply good contract management principles to achieve best value for money. However, the existence of formal procurement policies and guidelines within an organisation does not guarantee that they will be observed or that national public procurement policy will not be breached.

9.47 In previous reports, I have drawn attention to weaknesses in procurement procedures in public bodies, including

- Beaumont Hospital (Special Report 10, May 2008)
- FÁS (Special Report 73, December 2009)
- HSE Skill Programme (Report of the Comptroller and Auditor General, 2009).

9.48 Instances continue to be noted on audits of State bodies where procurement does not appear to have operated in an open way. Reports under Section 7 of the Comptroller and Auditor General (Amendment) Act 1993 also deal with such issues. These types of reports have issued or are in the course of preparation in the case of three Vocational Education Committees. A further instance of where procurement does not appear to have operated in an open way in the case of a State body is outlined below.

### ***The National Library of Ireland – Procurement of Services***

9.49 The National Library of Ireland was established as an autonomous cultural institution under the National Cultural Institutions Act 1997. The Library's total annual expenditure was in the order of €12 million in 2009. Procurement of services to support its administration and cultural programmes accounted for €2.6 million in 2009 and €2.9 million in 2010.

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<sup>84</sup> The return, under Circular 40/2002, is made to both the Department and to the Comptroller and Auditor General.

9.50 The Library commenced a tender competition to procure research services on 15 April 2008 by publishing a notice on the e-tenders website for 'Placement of a Panel to provide Supplementary Research Services'. The Request for Tender (RFT) specified a range of skills required including a '*proven track record working on exhibitions and publications*' and '*an ability to write in a clear and concise fashion and produce texts suitable for different contexts.*' It was pointed out that successful tenderers would be placed on a panel of researchers, but that contracts for work would be awarded at the discretion of the National Library.

9.51 A key project in respect of which research input was required by the Library was one which aimed to produce an exhibition and an associated book about the Library's 'treasures'. Following receipt of a tender on 28 April 2008, a researcher was engaged on 1 May 2008 on a one-year contract to work on the project.

9.52 The total cost of the book including publication costs was €98,000. Ancillary costs of €33,000 were also incurred.

9.53 The planned book, entitled 'The National Library of Ireland', was published in April 2009. However, shortly after publication, the Library was obliged to withdraw the book from public sale due to errors and other defects.

### *Review Findings*

9.54 A review by the Library, carried out after the book had been withdrawn from sale, found a number of deficiencies in the manner in which the Library had carried out the tender competition and the award of the contract to the selected researcher.

- The tender submitted by the researcher on 28 April 2008 was evaluated by one member of staff of the Library and there was no documentary evidence of the evaluation and scoring.
- A day after receipt of the first tender, a contract was offered to the tenderer providing for her '*to carry out research, produce texts and engage in other tasks as required in order to produce an exhibition and publications on the general theme of (National Library of Ireland) treasures scheduled to open in Spring 2009.*'
- The contract did not specify a limit on expenditure but rather fees to be charged per hour, per half day or per full day. The contract was dated 1 May 2008 and specified a term of 12 months, ending April 2009.
- There was no documentary evidence that the three other tender submissions received later in response to the Library's RFT were formally evaluated and no other applicant was assigned to the panel of researchers, or awarded a contract.

9.55 In relation to the management of the contract with the researcher, the review concluded that

- the contract lacked clarity as to detail about the work to be performed, the time frame for completion and a limit on the expenditure involved
- there had been a lack of clarity in the contract agreed with the researcher about how the work would be supervised and monitored
- there were deficiencies in the management of the project in that no project plan had been developed and that the responsibilities for proof reading had been unclear.

9.56 The then Chairman of the Board of the Library<sup>85</sup> sent his report for 2008 to the Minister for Arts, Sport and Tourism on 13 November 2009. In the report, he gave a positive affirmation regarding compliance with procurement procedures. However, his report for the year 2009 (dated 30 April 2010) brings the Minister's attention to the failure of proper procurement procedures that occurred in 2008 but which was uncovered in 2009.

9.57 The Chairman submitted the internal enquiry report into the procurement difficulties that had arisen along with his report for 2009 to the Minister. He stated that he was satisfied that the failure that had occurred, in the department of the Library involved, had been specific to the management of and control over that department and did not indicate a more general problem in the Library. He concluded by reporting that appropriate procedures for procurement were being implemented by the Library.

### *Views of the National Library*

9.58 The current Director of the National Library<sup>86</sup> acknowledged that procurement procedures had not been followed in this case. The Director emphasised that the Library took this matter extremely seriously and outlined the actions taken to address the issues that arose. She set out the following actions that have been taken.

- Disciplinary action was taken against two members of staff involved in the project.
- The Library had taken a number of steps to strengthen its procedures and controls in order to address any weaknesses. These included procurement training for all managers and the appointment of a staff member as Procurement Officer who had undertaken further detailed training in public procurement.
- The Library now requires managers to prepare a business case for all projects over €25,000 in value, which are reviewed, in the first instance, by the Library's Management Advisory Committee. If the estimated cost exceeds €50,000, it is subject to Board approval. The business case outlines the key elements to be considered in the procurement process including business need, anticipated benefits and outcomes, procurement plan, costs, timescales and risks.
- The Library has drafted a detailed procurement policy and related procedures with guidelines, templates and checklists to aid in the tendering process.
- The Library requested its newly appointed internal auditors to prioritise a review of procurement in the 2011 Internal Audit plan and this audit had been completed.

9.59 The Director stated that the Library is satisfied that it has invested significant effort into improving procurement and contract management practices in an effort to provide best value for public expenditure.

9.60 In response to my enquiries regarding management assurances given to the Board, the Director stated that the Library provides the appropriate management assurances to enable the Board to fulfil its obligations by

- preparation of annual budgets which are approved by the Board
- provision of regular financial updates on actual expenditure compared to budget and analysis of any material variances
- the presentation of business cases with an estimated cost in excess of €50,000 to the Board for approval<sup>87</sup>

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<sup>85</sup> The current Chairman was appointed on 30 April 2010.

<sup>86</sup> The current Director was appointed on 8 March 2010.

<sup>87</sup> The Library has reduced the expenditure levels requiring Board approval from €100,000 to €50,000.

- an annual programme of internal audits agreed by the Board Audit Committee and reports by the internal auditors on their findings to the Audit Committee.

## **Conclusion – Wider Public Sector Procurement**

Deficiencies in procurement practices relating to State bodies have been reported in a number of special reports under Section 11 of the Comptroller and Auditor General (Amendment) Act 1993 and three reports under Section 7 of the Act have issued or are in the course of preparation that related to procurement matters in Vocational Education Committees.

Due to the level of errors and other defects, the National Library of Ireland was obliged to withdraw a book from publication, which had cost almost €8,000 to produce. There was a failure to carry out the related procurement of research services in an open and competitive way.

At present, Circular 40/2002 applies only to government departments and offices. In the light of failures to observe procurement practices in a number of instances, there would be merit in considering widening its application to State bodies under the aegis of departments. By extending the scope of the Circular, or through some analogous procedure, departments could strengthen overall procurement compliance. However, this would need to be done in the context of the evolving public procurement framework which needs to ensure that

- there is accurate information on the classification of purchases
- there is a response to that information through choosing the most appropriate procurement approach
- non-competitive procurement is minimised.

The nature of monitoring and reporting may need to adjust to these system changes so as to give equal weight to rule conformance and value achievement.

## Conclusion

The National Procurement Service is continuing to develop as a strategic procurement service. As it moves forward, it needs to ensure that

- the procurement field is segmented by volume and value
- appropriate approaches to procurement are taken in the areas of major spend
- the utilisation of framework agreements is monitored.

A once-off expenditure reduction initiative achieved savings of the order of €38 million on goods and services and procurement budgets have been reset at a lower level for future years.

While €75 million in non-competitive spending was reported by departments, it was apparent on audit that not all procurement of this type is identified. Excluding the HSE which is dealt with in Chapter 42, a further €4.3 million was identified in the course of audit sampling and enquiries.

In administering the arrangements set out in Circular 40/2002

- Seven departments or offices did not have a procedure in place to carry out an independent review of contracts prior to their award. Instances were also found where the review procedure set was not followed.
- Six departments did not maintain a central register of non-competitive contracts. In a further three cases, while a central register of non-competitive contracts was kept, it was not maintained up-to-date.
- Two departments did not have a designated Procurement Officer in place.

The implementation of reporting of non-competitive procurement could be improved both by better administrative measures to identify and review it and by clarifying the central guidance.

The current focus on maintaining a register of non-competitive procurement raises issues about how this subset of procurement can be systematically identified. While there is no requirement for departments and offices to maintain a central register of all contracts, consideration should be given to the maintenance of such a central register. The maintenance of a central register of all contracts by all departments or offices would

- facilitate the identification of all non-competitive contracts
- improve the completeness of the 40/2002 returns and
- improve compliance with procurement rules and procedures.

The procurement conducted by government departments and offices represents only a fraction of total public procurement. It would be worth considering how monitoring of non-competitive procurement, the use of central framework agreements and the classification of purchases can be improved. Boards of State bodies could take a useful lead by demanding specific assurance on these issues prior to the adoption by them of their annual statements on internal financial control and the Chairman's report to the Minister on governance and related matters.



## Annex A Performance Measurement by the NPS

Performance Indicator	Method of Measurement	Frequency of Measurement
€50 million in cost savings through all interventions in 2011	Analysis of cost savings and estimate of administrative savings	Monitored throughout year and measured at year end
50% of all targeted public sector clients joined as parties to all contracts completed in 2011	Contract monitoring	Monitored throughout year and measured at year end
70% of all targeted public sector clients joined as parties to all contracts completed in 2012	Contract monitoring	Monitored throughout year and measured at year end
40% of Public Service's 'Top 30' spend categories to be under new contracts by end 2011	Analysis of contracts against 'Top 30' spend data	Monitored throughout year and measured at year end
50% of Public Service's 'Top 30' spend categories to be under new contracts by end 2012	Analysis of contracts against 'Top 30' spend data	Monitored throughout year and measured at year end
80% usage of Standard Documents by Central Government Departments by the end of the third quarter, 2011	Adoption by Central Government Departments of the standard suite of documents for standard goods and services	Monitored throughout the year and measured at year end
Complete 10 supplier seminars/ interventions annually	Diary of events	Annual
Complete 3 Procurement Officer seminars annually	Diary of events	Annual
Complete 5 Procurement Officer workshops annually	Diary of events	Annual
80% roll-out of eTenders modules by the end of 2011 and full implementation thereafter	Modules available to Buyers and Suppliers	Monitored throughout year and measured at year end
Publish information on the NPS website in relation to 100% of the contracts that are available for use by public sector bodies	Website content compared with live contracts	Quarterly review
Contribute to the development of an eInvoicing strategy. Strategy in place by end 2011	Date of completion of strategy documentation.	End of year review of progress on eInvoicing
Support uptake and implementation of eInvoicing across the public sector	Extent of progress in eInvoicing implementations in place or in progress.	End of year review of progress on eInvoicing

## 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 the framework agreements as if they are contracts in their own right for the purposes of 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 including price and delivery times 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.

## Annex C Reasons Provided for Non-Competitive Procurement

Figure 40 sets out the reasons provided by departments and offices for not having followed a competitive procurement process for 2009 and 2010. This Annex provides details on the highest value contracts awarded in 2010 in respect of each category of reason cited.

### *Urgency Exception – €3.6 million*

The most significant recourse to non-competitive procurement under this exception in 2010 was by the Department of Foreign Affairs. This involved the purchase of passport production equipment to replace equipment damaged by water from premises over the Passport Office at a cost of €1.4 million. The Department deemed it necessary to award this contract to ensure the continuity of supply of passports and the need for technical compatibility with existing infrastructure.

### *Proprietary Goods Exception – €14.2 million*

Of the 91 instances of purchasing of proprietary goods contained in the 2010 departmental returns, 28 were in respect of purchases by the Garda Síochána with a value of €5 million; and 14 were in respect of purchases by the IPS with a value of €5.1 million. The proprietary goods purchased, in general, related to information and communications technology or to technical systems.

### *Extension/Rollover Contracts Exception – €19.4 million*

114 cases reported involved the extension or rolling-over of existing contracts for goods and services. Some of the contracts extended or rolled over had been in place for several years.

Justifications reported by departments and agencies for continuing with existing contractual arrangements 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
- it was not possible to go to the market due to staffing difficulties.

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

- The extension of two contracts with a combined value of €4.2 million by the Department of Education and Skills for the licensing, support and maintenance of management information software for schools.
- Payments totalling €2.1 million by the Department of Justice and Law Reform in respect of some segments of the Department's and agencies' Local and Wide Area Networks.
- The extension by the Department of Education and Skills, at a maximum cost of €1 million, of a contract for the operation of Irish language examinations for primary school teachers who obtained their teaching qualifications outside the State.
- The extension by the Department of Justice and Law Reform of a contract at a cost of €0.9 million for air transport for deportation flights.

### *Expert or Recent Experience Exception – €4.4 million*

45 cases were reported where departments and offices took the view that their interest was best served by entering contracts where they had used the services of individuals or firms in the recent past or had identified, without recourse to competitive processes, persons or firms whose expertise coincided with their requirements. This does not exclude the possibility that there might be other suitable suppliers. Examples include

- The hiring by the Department of Justice and Law Reform, at a cost of €1.1 million in 2010, of a group of four suppliers deemed uniquely qualified to provide gravesite surveying, excavation and archaeological forensic services to assist in the location of victims remains.
- The hiring of festival organisers to manage and organise the St. Patrick's Day festival on behalf of the Department of Tourism, Culture and Sport and Fáilte Ireland at a cost of €0.5 million.
- The purchase of parachutes and parachute systems by the Department of Defence at a cost of €0.3 million.

### *Single Suitable Supplier Exception – €25.3 million*

This category relates to procurements where departments and offices consider there is only one suitable supplier of the required service. In 2010, expenditure was incurred under 92 single supplier contracts.

The largest contract in this category totalled €6.4 million and related to the repatriation of Department of Defence personnel and material from Chad back to Ireland.

Other high value contracts were awarded by the following departments or offices

- The Office of Public Works, in order to ensure the credibility of the Flood Hazard Mapping website entered into a contract, at a cost of €4.1 million with the State mapping agency Ordnance Survey Ireland (OSI), to produce digital maps for the whole country and keep that data up-to-date.
- The Property Registration Authority entered into a contract at a cost of €2.9 million with OSI for national mapping data.
- The Department of Defence entered two contracts for equipment/spare parts costing €2.7 million in aggregate.
- The Courts Services entered into a contract at a cost of €1.2 million for postal services.

### *Security Considerations – €1.5 million*

Competition was limited in the interests of security in seven instances reported in the returns.

### *Other Reasons – €7 million*

There were 108 reported instances of contracts being awarded for a variety of other reasons. Of these, 89 contracts were awarded by the IPS, at a total cost of €6.2 million. A large number of these were in respect of the local purchase of various goods and services such as cleaning, catering and transport services as well as the purchase of televisions and electrical equipment.