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<b>Lead topic: Public Procurement</b>	<b>Sub-topic: Office of Government Procurement: Expenditure, Staffing, Activity and Savings</b>	<b>Contact:</b>
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## **FAST FACTS**

### **Cost of the OGP: Key Breakdown**

<b>Subhead Description (€'000)</b>	<b>2014 Spend</b>	<b>2015 Estimate</b>	<b>2016 Estimate</b>
Pay	4,550	11,400	12,970
Non-Pay Admin	958	2,644	1,622
Programme Expenditure	869	5,430	5,430
<b>Gross Total</b>	<b>6,377</b>	<b>19,474</b>	<b>20,022</b>
Appropriations-In-Aid	225	500	500
<b>Net Total</b>	<b>6,152</b>	<b>18,974</b>	<b>19,522</b>

### **Cost of the OGP: Detailed Breakdown**

<b>Subhead Description (€'000)</b>	<b>2014 Spend</b>	<b>2015 Estimate</b>	<b>2016 Estimate</b>
Salaries, Wages and Allowances	4,550	11,400	12,970
Travel and Subsistence	87	250	250
Training, Development and Incidental Expenses	150	500	708
Postal and Telecommunications Services	34	400	120
Office Equipment and external IT services	578	550	414
Office Premises Expenses	109	944	130
Programme Expenditure	869	5,430	5,430
<b>Gross Total</b>	<b>6,377</b>	<b>19,474</b>	<b>20,022</b>
Appropriations-In-Aid	225	500	500
<b>Net Total</b>	<b>6,152</b>	<b>18,974</b>	<b>19,522</b>

## Consultancy costs for establishing the OGP

Since the inception of the procurement reform programme in 2013, the OGP has spent a total of €255,492 (ex VAT) on advisers in relation to the establishment of the OGP, the majority of this was incurred in 2013 during the design phase. This is shown below. All of the engagements were tendered in accordance with the appropriate rules.

Professional Fees paid by the OGP: Establishment of the OGP (EX VAT)						
Company Name	Details	2013 - OPW Vote	2013 - PER Vote	2013 Total	2014 - OGP Vote	Overall Total
Peter Smyth Management Consultancy	Provision of Expert Assistance in the establishment of the Office of Government Procurement	€59,700.00	€94,950.00	€154,650.00	€56,100.00	€210,750.00
Equita Consulting	IR Advice	€24,000.00	€0.00	€24,000.00	€0.00	€24,000.00
Deloitte & Touche	Consultancy Services – Business Process Workshop (including materials)	€0.00	€0.00	€0.00	€20,742.00	€20,742.00
<b>Total</b>		<b>€83,700.00</b>	<b>€94,950.00</b>	<b>€178,650.00</b>	<b>€76,842.00</b>	<b>€255,492.00</b>

## Total OGP Consultancy Expenditure

Expenditure in this area arises from Procurement Capacity Support, Category Specific Advisory Services (e.g. energy advisors who have detailed expert knowledge of this market), IT systems support, IT systems advisors, strategic consultants and procurement capacity support.

Subhead A.3 Procurement Consultancy and other costs		
Area	2014 Outturn	2015 Estimate
Procurement Capacity Support	€163k	€2m
IT Systems incl. Business Intelligence	€100k	€1.7m
Category specific advisory services	€258k	€1.2m
Technical support for eTenders and OGP website	€209k	€530k
Other	€139k	-
<b>Total</b>	<b>€869k</b>	<b>€5.43m</b>

- Category Specific Advisory Services
  - The OGP requires advisory services to support sourcing activities. These include energy advisory services, legal advice, advice on technical specifications in fleet, professional services etc.

- To progress sourcing strategies and ensure specialist market knowledge is incorporated, category specific external advisory services is required.
- This advice includes but is not limited to, provision of market, price and cost intelligence insights and benchmarks, specification challenge, savings opportunity identification assessments and scoping, stakeholder and supplier engagement strategies, and strategy challenge.
- Procurement Capacity Support
  - In migrating sourcing work from the sectors to the OGP care must be taken to ensure customers receive required service during the transition period.
  - During this transition the ability to draw upon externally provided procurement support gives OGP the required capacity and capability to progress individual projects where it does not have the internal capability to deliver them.
  - This external support consists of temporary professional staff from qualified organisations supporting OGP Category Managers to deliver and manage specified tender processes at all stages.
- IT systems
  - OGP is investing in IT systems for business intelligence, customer and workflow management.
  - Continued investment in software systems to support the OGP's activities is a key enabler of procurement reform.
- Technical support for eTenders and the OGP websites
  - Continued support of the OGP Website and the Irish Government's electronic tendering platform, [www.eTender.gov.ie](http://www.eTender.gov.ie), is required.
  - Investment in the eTenders platform is necessary to ensure compliance with EU Procurement Directives.

### **Savings to date**

- Procurement has saved the tax-payer approx. €100m over the two years 2013 and 2014 (€50m in 2013 & €47m 2014). Of these savings, OGP enabled €25.43m savings in 2014 (of which €16.4m was cost avoidance) - the 2013 savings outturn did not specifically include an OGP outturn figure.

### **What savings are targeted for 2015?**

- There is a 2015 savings target of €150m for the procurement reform programme.
- €80m of this target to be generated from OGP sourcing activity over the eight central categories.
- The remaining €70m to be generated from Health, Education, Local Government and Defence sectoral procurement.

### Total numbers and values of Frameworks / projects delivered

	2014	2015 (as at 31 October)
<b>Number of Frameworks / Contracts</b>	9 (5 FW, 4 Contracts)	93 (11 FW, 82 Contracts)
<b>Estimated Framework/Contract Value €</b>	86,217,023	1,371,600,835
<b>Estimated Annual Value €</b>	30,805,674	456,045,890

### Number of sourcing / non-sourcing staff by year

Year ending	Total number of staff	% of total planned 231 (ECF)	Number of staff in Sourcing	% of total sourcing ECF (146)	Number of staff in other areas (general and other specialist support, including data intelligence)	% of total non-sourcing ECF (85)
2013	41	17.7%	27	18.5%	14	16.5%
2014	140	60.6%	94	64.4%	46	54.1%
2015 YTD	181	78.4%	132	90.4%	49	57.6%

### What have been the main achievements of the OGP to date?

- Delivery of Substantial Savings to the taxpayer (€25 million in 2014) and savings forecast for 2015 of approx. €30 million with a further substantial increase in 2016 due to arrangements close to conclusion in late 2015
- Increasing professionalization through dedicated procurement teams focussed on specific categories of spend
- Improved engagement from business community – 12,000 additional eTenders registrations in 2014
- Improved transparency of public spending through first ever detailed analysis of procurement spend and tendering
- Clarity of our programme of work – first time that supply market gets a comprehensive and routinely updated published schedule of work 9 months in advance
- Circular 10/14 to accelerate implementation of SME-friendly measures
- Delivery of almost 100 framework agreements and contracts from the start of 2014 to date, encompassing over €1.45 billion of spend
- Creation of a work programme to deliver 70% of the known requirements of the larger client Departments and Agencies

- The launch of Tender Advisory Services to support bidders who have tender process concerns pre-award
- The creation of a dedicated Customer Helpdesk to support questions and clarifications arising from clients and suppliers
- Increased visibility and support for business participation in public procurement through events such as 'Meet the Buyer', Taking Care of Business, LEO events, Go 2 Tender, etc.
- Enactment of the Construction Contracts Act
- Review of the Public Works Contracts suite and ongoing implementation of the recommendations thereof
- OGP established with offices in Dublin, Trim, Cork, Sligo and Limerick and the recruitment of capacity and capability to commence delivery of our mandate
- Governance model established to bring together Health, Education, Defence, Local Government and OGP and to coordinate and collaborate on delivery, supported with Category Councils to align requirements and harmonise, where possible, specifications

<b>Lead topic: Public Procurement</b>	<b>Sub-topic: SME Access to Public Procurement</b>	<b>Contact: Karl Ryan Ext: 8156</b>
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## **FAST FACTS**

### **SME and Access to Public Procurement**

- In its report "Public Service Spend and Tendering Analysis for 2013", the Office of Government Procurement (OGP) in an analysis of €2.742 billion expenditure found that over 66% of the value was spent with suppliers whose business was classified as SMEs.
- The OGP works with industry representative bodies in relation to supporting "Meet the Buyer" events. In 2015, two events were held, one in Belfast and one in Dublin, which were attended by over 1,300 suppliers and buyers from across the public sector, North and South. These focused on the opportunities for SMEs with major public sector buyers across the island.
- Circular 10/14, issued by the OGP in April 2014 is aimed at opening up opportunities for small businesses, including micro business, that want to tender for public contracts by, for example, encouraging more on-line open tendering, reducing bidders' turnover requirements, promoting the use of proportional and reasonable insurance requirements, and breaking larger contracts into lots.
- Less than 10% of the overall annual public procurement spend is estimated to be won by foreign companies.
- It is also important to remember that open tendering is a two way street and that it provides Irish companies with opportunities to compete abroad. The public procurement market in the EU is estimated to be valued in excess of €2.4 trillion per annum. The open market regime offers opportunities for Irish companies to win business abroad and reliable EU studies indicate that many Irish businesses are successful in this regard.
- The OGP engages industry representative bodies ISME, IBEC, SFA, CIF and Chambers Ireland through the SME Working Group to exchange views and identify solutions to obstacles. The meetings are routinely attended by the Minister of State, Mr Harris TD. Other government bodies which attend this are the Competition and Consumer Protection Agency, Enterprise Ireland, Intertrade Ireland and the Department of Jobs, Enterprise and Innovation.

## **Q&A'S**

### **Q. Why the need to reform of Public Procurement?**

- The reform of the procurement system across the public service is a key element of the reform programme for the public service.
- Public Procurement savings enable public service organisations deliver much needed services within the budgets that they much now operate.
- The contribution which procurement savings make to deficit reduction
- Taxpayers demand that Government secures value for money in all of its spend. The fragmented procurement arrangements across the public service have enabled suppliers to charge different public service bodies different prices for the same goods and services. This is

not sustainable, as the State cannot afford to continue to purchase works, goods and services in a manner that undermines the level of services it can deliver. Reforms in these areas are being carried out in a manner that recognises the importance of SMEs in the economic recovery of the country.

- The Office of Government Procurement is key to bringing a more professional and whole of government approach to procurement.
- It will drive fair, transparent and open competition in the marketplace but also continue to work with business to ensure that government procurement policies are business friendly.

**Q. Are there any examples of unit price savings achieved by the OGP?**

Category	Framework / Contract	Supplier	Previous Annual Cost	New Contract Annual Cost	Annual Saving €	Annual Saving %
Utilities	Natural gas competition for ETBI's	Bord Gais Energy	€3.2m	€2.8m	€400k	12.50%
	Electricity competition for Central Government Depts / 3rd Level Educational Institutions / State Agencies / HSE funded agencies	Electric Ireland	€54.4m	€50.9m	€3.5m	6.50%
Marketing / Print / Stationery	ICT Consumables Framework	Supplier	Non-contract Cost	Contract Cost	Saving per Item €	Item Saving %
	Xerox Cyan Toner (R01388)	Datapac	€ 101.50	€ 72.70	€ 28.80	28%
	HP Toner C4096A	Datapac	€ 82.10	€ 63.15	€ 18.95	30%
	CD-recordable discs (CD-R 80min / 700mb)	Datapac	€3.60 (pk / 10)	€1.80 (pk/10)	€1.80 (pk/10)	50%
Fleet	Garda Contract for High Powered Vehicles	Supplier	PPR (inc VAT & VRT)	Contract Price (inc VAT & VRT)	Savings per Vehicle €	Savings per Vehicle %
	BMW F11 530d AC Saloon	BMW Automotiv e (Ireland)	€ 61,760	€ 36,260	€ 25,500	41%
	Audi Q7 3.0Tdi 272 Quattro	Volkswage n Group Ireland	€ 78,975	€ 55,063	€ 23,912	30%

**Q. Is there too much emphasis on price in public tendering?**

- The stated aim of the OGP is "to deliver sustainable procurement savings for the tax payer by optimising value for money across the public service".



- Award on the basis of the Most Economically Advantageous Tender (MEAT) is government policy since April 2014 and will be re-enforced by the transposition of the Directives – MEAT balances quality and total cost.
- Some markets are more commoditised and therefore total cost will be a greater proportion of the award criteria e.g. fuel, electricity, photocopier paper, janitorial suppliers, etc. whereas in some services quality will be the dominant factor e.g. legal services, architects, auditors, etc.
- The focus of OGP's operations will be on buying quality goods and services at the right price. The OGP will also look at how goods and services are being procured, why and to what specification.
- In order to ensure that savings are sustainable in the medium to long term, an analysis of markets by procurement staff is undertaken to ensure that markets are not distorted by the actions of the State and that the markets will remain competitive.
- Examples **OGP MEAT Competitions** in 2015
  - All Professional Services contracts (22): average award criteria 30:70 (Price:Non-price factors) – services included training, legal, audit, stenography, insurance and consultancy
  - All clothing competitions (9): 50:50 (Price:Non-price factors)
  - Waste Management Services National Framework: 16:84 (Price:Non-price factors) – subsequent mini-competitions 40% max for price.
  - ICT Research and Advisory Services National Framework: 40:60 (Price:Non-price factors) – subsequent mini-competition 20:80
  - Enterprise Application Support Services Framework and of Microsoft Licencing Solution Partner Services Framework: 30:70 (Price:Non-price factors) – subsequent mini-competitions 70% max for price.
- Examples of **OGP Price-only Competitions** in 2015
  - All Utilities frameworks and contracts. Arrangements cover electricity and natural gas
  - All stationery (4) and paper (1) contracts
  - Foreign Travel Insurance
  - 5 of 9 Fleet and Plant contracts. Arrangements cover police specification vans, other vans, SUVs, Garda motorcycles, supply & fit-out of large executive vehicles (Garda)

**Q. Is aggregation not unfair to SMEs seeking public procurement opportunities?**

- Public Sector procurement can be daunting for SMEs. Improving our public procurement practices by removing obstacles and encouraging the involvement of SMEs is a key priority. We recognise that for some suppliers the concept of trading with the public service is alien and one masked in complexity and bureaucratic barriers. This perception alone can stop suppliers, particularly SMEs, from competing for potentially lucrative contracts at home and abroad. The OGP is committed to ensuring that SMEs are fully engaged with public sector procurement and the opportunities presenting.
- Much of the sector's feedback to us has been to the effect that many bidders need information on how public sector procurement works and how to answer the questions asked. Public procurement is predictable and asks standardised questions. Through bodies like InterTrade Ireland and Enterprise Ireland, the OGP provides direct support to businesses in terms of education and training. The OGP works with industry representative bodies in relation to supporting “Meet the Buyer” events. In 2015 two events were held, one in Belfast and one in

Dublin, attended by over 1,300 suppliers and buyers from across the public sector, north and south.

- The aim of OGP is drive fair, transparent and open competition in the marketplace but also continue to work with business to ensure that government procurement policies are business friendly.
- The sub-division of contracts into lots facilitates access by SMEs, both quantitatively (the size of the lots may better correspond to the productive capacity of the SME) and qualitatively (the content of the lots may correspond more closely to the specialised sector of the SME). Lots may be also decided on a geographic basis, a work package basis, an internal organisation structure basis, etc.
- The OGP has accelerated some of the key measures of the new EU directives on procurement in Guidance it issued to public sector buyers (Circular 10/14) including the requirement to break larger contracts down into lots, where reasonable and without compromising efficiency and value for money.
- Examples of lotting (scheduled activity):
  - The current procurement competition for **legal services for the public sector** is divided into eleven lots, with each lot representing a specific legal practice area. The lotting strategy has been designed to allow firms with specific expertise in practice areas to compete on a lot by lot basis. In advance of publishing this tender, the OGP undertook extensive market engagement with the industry. This pre-tender engagement helped to shape the structure and inform the scope of the competition. Law firms of all sizes were encouraged to share their experiences of previous public sector procurement competitions, and their views on barriers to competition and participation.
  - **Electrical equipment:** 8 lots based on geographical region.
  - **Cleaning services:** 16 clinical lots, 28 non-clinical lots
- Examples of lotting (existing arrangements):
  - Supply of **dairy and other chilled products** to HSE: 16 lots based on 4 geographical regions x 4 product types.
  - **Water coolers and mains-fed coolers:** 10 lots based on 5 geographical regions x 2 requirements (bottle water coolers and mains-fed coolers). Lotting strategy is designed to allow the current supplier base to tender.

**Q. Is public procurement reform in danger of favouring foreign companies over indigenous SMEs?**

- 7% of the overall annual public procurement spend is estimated to be won by foreign companies.
- It is also important to remember that open tendering is a two way street and that it provides Irish companies with opportunities to compete abroad. The public procurement market in the EU is estimated to be valued in excess of €2.4 trillion per annum. The open market regime offers opportunities for Irish companies to win business abroad and reliable EU studies indicate that many Irish businesses are successful in this regard.
- It should also be pointed out that unlike private sector businesses, procurement and purchasing procedures of public sector bodies are governed by the EU Treaty, EU Directives, Regulations and national guidelines. These set down rules whereby contracting authorities must award contracts under procedures designed to achieve value for public money in an open, transparent

and non-discriminatory competitive process. Contracting authorities are precluded from awarding contracts covered by the Directives to a company on the basis of its size.

- The EU Commission Report from 2014 on SME Access and Aggregation contrasts not only contracts awarded by the Irish State to businesses outside the State but it also brings into play contracts awarded to Irish companies by other jurisdictions. In summary, between 2009 and 2011, for above-threshold procurements or large procurements that must go into the EU Journal, 14.3% of Irish public contracts by value went outside the Irish State. However, the value of cross-border procurement won by Irish firms was 17.2% - the highest in the EU-27. Being open is not a one-way street and Irish businesses are winning more in Europe than is flowing the other way.

**Q. What is the approach being taken in relation to SMEs by the new EU Directives?**

- At EU level there is a growing recognition of the need to promote and facilitate SME participation in public procurement. The New EU Directives on Procurement are currently being transposed by the Office of Government Procurement. They are intended to make it easier for businesses and SMEs to tender for public sector procurement contracts. They are designed to simplify the rules and provide more flexibility for public purchasers. The directives contain measures specifically designed to improve access for SMEs and start-ups.
- The OGP has accelerated some of the key measures contained within these new Directives in Circular 10/14 including the requirements to tender in an open and transparent process on-line, reductions in bidder's turnover requirements, proportional and reasonable insurance requirements, and breaking larger contracts down into lots.

**Q. Are you monitoring compliance with Circular 10/14?**

- The Office of Government Procurement, through its new governance model, including its procurement executive, is monitoring any issues that arise from the implementation of Circular 10/14.
- Also the high level group which deals with issues around SME access to Public Procurement seeks feedback on any issues around the implementation of Circular 10/14. The group also has regard to the Government's Action Plan for Jobs and specifically those actions aimed at maximising procurement opportunities for SME in the public sector.
- Design changes to the eTenders national portal will capture data relating to procurement, and, in particular, data relating to contracts awarded over €25,000. These changes will facilitate better monitoring and reporting on public procurement trends on a broad range of fronts going forward.
- The eTenders design changes will be undergoing user acceptance testing in mid-November with release to the live etenders system in early Q1 2016. This new functionality will report on;
  - Contracting Authority details
  - Contract Description
  - Contract signing date
  - Total final value of contract
  - Contract Duration
  - Successful Bidder
  - Location of services/supplies

- The main driver for the eTenders system development is Circular 10/14. Contracting Authorities are required to publish contract awards for all competitions above €25k. This came into effect from 1st August 2014. When it goes live Contract Authorities can backdate awards details. For example, meaningful data for OGP mini-competitions will be available by end of Q1 2016. An education and promotion campaign will coincide with the new functionality so that all contracting authorities are aware of the system changes. However, OGP are dependent on the behaviour of CAs.

**Q Could these policies give rise to jobs losses? Why don't you take potential job losses into account in competitions?**

- The State has immense purchasing power, spending in the region of €12 billion per annum on goods, services and works. This level of expenditure affords significant business opportunities for firms that can supply the products and services that are required by public bodies. The Office of Government Procurement estimates that approximately 93% of this annual procurement spend goes to Irish suppliers. It is clear therefore that public procurement activity is already a significant driver of employment opportunities and economic growth within the State.
- Reforms are being carried out in a manner that recognises the clear importance of small and medium-sized enterprises in this country's economic recovery. We have to be transparent and equitable in our treatment of all suppliers. We bring our proposals to the marketplace to try to deliver the best value for money and to ensure that is sustainable. There will and can be winners and losers in the activity. It drives competition, which can make businesses healthier and more competitive.
- We do not anticipate significant job losses from the policies as the level of goods and services being consumed remains largely the same, and the labour input likewise. However competition will create displacement or movement of jobs. More efficient businesses create competitiveness but may require proportionately less labour.
- We appreciate that as we centralise more, there is always the risk that people feel crowded out. We are working with bodies like Enterprise Ireland and InterTrade Ireland to help educate suppliers around building consortia in order that smaller businesses can come together and win the larger offerings that the State is putting out to the marketplace. We are working with the Competition Authority as well to ensure that appropriate guidance is available to buyers and suppliers alike.
- Taxpayers demand that Government secures value for money in all of its spend. The fragmented procurement arrangements across the public service have enabled suppliers to charge different public service bodies different prices for the same goods and services. This is not sustainable, as the State cannot afford to continue to purchase works, goods and services in a manner that undermines the level of services it can deliver.

**Q. Are you satisfied that the reform of Public Procurement is heading in the right direction?**

- The recent 2014 Single Market Scorecard on Public Procurement from the EU Commission indicates where Ireland is in relation for Public Procurement. While indicating that there are further improvements required in the area of aggregation and process, Ireland receives a

positive rating relative to many other EU countries against the key criteria of value for money and adherence to the principles of transparency, equal treatment, non-discrimination, etc.

- In addition the EU Commission Report from 2014 on SME Access and Aggregation indicates the main drivers of centralisation are achieving value for money, professionalising procurement, etc. Procurement Reform in Ireland is very much in line with developments in other jurisdictions such as the increased scope of Central Procurement Directorate in NI, the establishment of the National Procurement Service in Wales, the ongoing work of the Crown Commercial Service in the UK and of the Scottish Procurement Directorate. We have close working relationships with all of these bodies.
- Strengthening procurement capability in the public sector will improve the value for money that we get from our considerable procurement spend and will make a significant contribution to our deficit reduction targets and enable the State to deliver much needed services more efficiently.
- Given the budgetary pressures facing the public service, public procurement savings can support the dual objectives of meeting our fiscal targets and of maintaining/improving services for the public.
- The OGP will operate to common policies, processes and procedures taking on board advice and standardisation provided by the internal legal expertise of the Chief State Solicitors Office.
- This strengthening of procurement professionalisation will in turn provide customer Departments and agencies with increased certainty and reduced risk by providing them with compliant sourcing solutions.

<b>Lead topic: Public Procurement</b>	<b>Sub-topic: Use of Social Clauses in Public Procurement</b>	<b>Contact: Ronan O'Reilly Ext: 8150</b>
<b>FAST FACTS -</b>		
<ul style="list-style-type: none"><li>• In relation the question of procuring solely from local suppliers the position is that it would be a breach of procurement rules for a public body to favour or discriminate against particular candidates and there are legal remedies which may be used against any public body infringing these rules.</li><li>• However, social considerations may be included as contract performance conditions, provided they are not discriminatory.</li><li>• In July 2014 the Office of Government Procurement (OGP) Procurement established the Social Clauses Project Group which will put forward projects, under their remit, where social clauses would be inserted into a contract to address: employment and training.</li><li>• In terms of current progress, a pilot social clause has been included in the three devolved schools bundles which are being administered by the NDFA on behalf of the Department of Education and Skills. In summary the pilot clause requires that:<ul style="list-style-type: none"><li>○ At least 10% of those working on the sites being drawn from the live register and having been unemployed for more than 12 months; and</li><li>○ At least 2.5% of workers on the sites will be engaged in an approved registered apprenticeship, training or educational work placement scheme.</li></ul></li><li>• The aggregate capital value of the contracts is c. €70m. Once initial evaluations on the performance of the clause have been undertaken any necessary amendments will be tabled at Government Construction Contracts Committee before they are incorporated into the €1.5bn, PPP element of the €2.25bn Stimulus Programme.</li><li>• It should be noted that the Social Clauses Project Group identified other projects in sectors outside the Schools Bundle – However progress in these areas has been limited. In this regard, the group considers that:<ul style="list-style-type: none"><li>○ Sectors proposing projects should spend more time assessing projects before they are proposed as the suitability of a project is key to a successful outcome;</li><li>○ With few exceptions (sheltered workshops – social disadvantage or disability) the goods and services area is very challenging for the inclusion of such clauses; and,</li><li>○ There needs to be clear guidance or a toolkit to assist contracting authorities who wish to use procurement to further external social policy goals.</li></ul></li></ul>		

- The OGP is developing guidance material on social inclusion clauses which will issue shortly.

## **Q&A'S**

### **Q. Surely it's possible to target public procurement at local SMEs?**

- Public procurement is governed by EU rules, National legislation and WTO agreements. These rules promote an open, competitive and non-discriminatory public procurement regime. In order to be compatible with EU law, social clauses must be made known to all interested parties and must not restrict participation by contractors from other Member States. It would be a breach of these rules for a public body to favour or discriminate against particular candidates and there are legal remedies which may be used against any public body infringing these rules.
- However, the current EU procurement directives do envisage that social considerations may be included as contract performance conditions, provided they are not discriminatory and are included in the contract notice or in the contract documents and relate to the performance of the contract.

### **Q. The new Directives offer greater flexibility in this area surely they could be enacted now?**

- It is correct to say that the revised EU Directives, when transposed, will provide greater scope and importantly legal clarity in relation to the use of social benefit clauses in the context of an open, competitive and non-discriminatory public procurement regime which delivers value for money. The Directives will be transposed by mid-April 2016. As part of this process the OGP will engage in extensive training across the public service and this should increase the effective use of such clauses.

### **Q. What is currently being done to increase the use of Social Clauses?**

- Social clauses are most effective when they are implemented in a targeted manner. In this context the OGP are endeavouring to identify:
  - the variety of social clauses that can be targeted to meet specific social and other requirements;
  - the scope for the wider use of such clauses across the public service; and,
  - their effectiveness and economic impact.
- It is appreciated that in order for any policy intervention in this area to be successful, the contracting authority will need support and guidance from the relevant public agencies. In order to achieve this the OGP Procurement set up the Social Clauses Project Group (July 2014) to assess projects where social clauses could be inserted into the contract to address: employment and training.

### **Q. What departments or organisations are on the Social Clauses Project Group?**

Officials from the following departments and organisations are on the Group:

- the Department of the Environment and Local Government

- a represent of the Local government sector
- the Department of Jobs, Enterprise and Innovation
- the Department of Social Protection (Intreo)
- the Department of Education (Solas)
- the Health Service Executive
- the National Roads Authority
- the National Development Finance Agency
- Pobal
- Office of Public Works
- CSSO (providing legal assistance)

**Q. How does the Social Clauses Project Group function?**

- The Departments of Jobs, Enterprise and Innovation / Social Protection / Education will identify important social considerations. These Departments/Agencies have agreed to actively assist the procuring bodies and successful tenderers through the provision of training, accreditation.
- The procuring bodies will marry these considerations with suitable procurements.
- The OGP (with assistance from the CSSO) will assist the relevant departments/agencies in the design of the social clause most suited to the contract.
- The Department/agency with policy responsibility for the social consideration will work with the procuring body to monitor the impact of the social clause(s).
- The OGP collates this information and report on it implementation.

**Q. What is the current progress in this area?**

In terms of current progress, a pilot social clause has been included in the three devolved schools bundles administered by the NDFA on behalf of the Department of Education and Skills.

In summary the pilot clause requires that:

- At least 10% of those working on the sites being drawn from the live register and having been unemployed for more than 12 months; and
- At least 2.5% of workers on the sites will be engaged in an approved registered apprenticeship, training or educational work placement scheme.

The aggregate capital value of the contracts is c. €70m.

I understand that overall compliance in relation to the pilot clause has been good. The Department of Social Protection and its local Intreo offices are working closely with the appointed contractors to support the pilot initiative and there has been strong positive engagement from the contractors involved in each of the projects.

The most recent monthly progress report provided by each of the main contractors involved indicate that they are on target to achieve the cumulative percentages set out in the pilot clause. At present, across the three contracts the contractors' reports indicate that there are 50 employees who had been unemployed for more than 12 months and 17 further employees who are either apprentices or trainees.



**Q. What are the future plans of the OGP in terms of Social Clauses?**

- The OGP has taken this opportunity to develop expertise in this area. It is important that we gain practical experience as well as experience from other jurisdictions (particularly in the area of implementation). The work of the Social Clauses Project Group has provided the necessary basis to issue effective guidance. The OGP is in currently developing practical guidance material on social inclusion clauses which will issue shortly. Similar initiatives in other jurisdictions have lacked such practical advice which is critical to a successful policy outcome in this area.

File Ref and link to page number at index

<b>Lead topic: Public Procurement</b>	<b>Sub-topic: Transposition of the New Procurement Directives</b>	<b>Contact: G. Mc Guckin Ext: 604 5492</b>
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## **FAST FACTS**

- Transposition of the suite of Procurement Directives into Irish Law

## **Q&A'S**

### **Q. What Directives are being transposed into Irish law?**

Three Directives (Public Procurement, Utilities and Concessions) will repeal existing Directives in the public procurement and utilities sectors and a separate Directive is being transposed to cover Concession contracts. The three Directives to be transposed are:

- Directive 2014/24/EU on public procurement,
- Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors,
- Directive 2014/23/EU on the award of Concession Contracts, which does not directly replace any previous separate Directive.

### **Q. What is the deadline for transposition?**

Ireland along with other Member States have until **18 April 2016** to implement all three Directives into national legislation. In Ireland, implementation is by means of secondary legislation: Statutory Instrument.

### **Q. Will Ireland complete the transposition process within the deadline?**

The intention is to have all three Directives transposed within the deadline.

### **Q. What are the new features of the Directives?**

The new Directive contains a mixture of updated features which build upon aspects provided for in 2004 Directives and provisions newly introduced reflecting the 2014 procurement environment.

### **eProcurement:**

- The Directives set out a programme for applying electronic means of communications to all communication and information exchange. There are a number of provisions in the Directive which are intended to encourage or require the use of electronic communications and electronic procurement procedures and techniques.
- Member States may postpone the application of electronic communications [Article 22(1)] for central purchasing bodies until 18 April 2017. Ireland is availing of this derogation in order to allow sufficient time for enhancement of the eTenders system in relation to electronic communications. In particular, to put in

place a solution whereby contracting authorities will have full electronic recourse to the framework agreement concluded by a central purchasing body. Currently, it is only possible for a Contracting Authority to run a mini-competition by full electronic means where they published the original framework competition notice.

**Timescales:** In general minimum time limits for tender competitions have been reduced by around 30%.

**New Light Touch Regime:** In respect of certain social, health and educational services, a specific regime has been provided for in the Directives - the Light Touch Regime. The value threshold for contracts for these services is €750,000

**Turnover:** In order to remove obstacles to the involvement of SMEs in public procurement, a cap on turnover values has been introduced to facilitate SME participation. Contracting authorities will not be able to set company turnover requirements at more than twice the contract value, except where there is a specific justification.

**Procedures:** The new Directive makes specific provision<sup>1</sup> for preliminary market consultations between contracting authorities and suppliers, in order to encourage better specifications, better outcomes and shorter procurement times.

- The Directive makes negotiated procedures more accessible and amenable to purchaser requirements;
- An Innovation Partnership procedure aimed at more strategic public procurement and particularly the R&D sector. The new procedure is aimed at providing mechanisms to generate new ideas and translate them into innovative products and services.
- The mechanisms for aggregated procurement are recalibrated with the new rules for Dynamic Purchasing Systems providing a flexible alternative to the traditional Framework Agreements.
- There is also a new provision for Electronic Catalogues.

#### **Central Purchasing**

- Central Purchasing Bodies (CPBs) acting in their own right or on behalf of Contracting Authorities and cross-border procurement through CPBs in other Member States are set out in a new and broader scope.
- Contracting authorities will continue to be able to purchase through CPBs. A CPB may act in a wholesale capacity by supplying contracting authorities on the basis of their own contracts or provide contracting authorities with access to framework deals or dynamic purchasing systems established by a CPB.

**Life-Cycle Costing:** There is a new provision to include full life-cycle costing when awarding contracts, to promote the development and use of European approaches to life-

cycle costing as a further underpinning for the use of public procurement in support of sustainable growth.

**Lots:** While the existing Directive provide for division of contracts into lots, the new provisions encourage contracting authorities to divide larger contracts into lots, allowing the size of the individual contracts to fit the capacity of SMEs, or to adapt the content of the individual contracts more closely to specialized sectors of SMEs.

**Exclusions:** There is an extensive schedule of grounds for mandatory exclusion set in the new Directive to which has been added terrorist financing, terrorist activity, child labour or human trafficking as grounds for mandatory exclusion. Time limits for the exclusion of suppliers is 3 years for discretionary exclusions or 5 years for mandatory exclusion.

**Sub Contracts:** In order to ensure some transparency in the subcontracting chain, there are provisions to allow for contracting authorities to seek information down the supply chain.

**Award Criteria:** The 2014 Directive provides that the award of the contract must be based solely on the most economically advantageous tender, which can include price, cost (including life cycle costs) and the best price/quality ratio

**Abnormally Low Tenders:** The new Directive expands the existing provisions to require Contracting Authorities to seek explanations from suppliers that submit a tender which ‘appears’ to be abnormally low. The contracting authority may reject the tender where the evidence supplied is not satisfactory.

**Compliance: environmental, social and labour law**

Under 18(2) the new Directive requires MS to take “appropriate measures” to ensure that suppliers delivering public contracts comply with national, EU and various international conventions on social, environmental and labour law matters. Contracting authorities will have to ensure that these obligations are reflected in the relevant public contracts.

**Reserve contracts**

**Sheltered workshops article:** Member States may reserve the right to participate in public procurement to sheltered workshops: any contract may be reserved to organisations that provide sheltered workshops or to suppliers whose main aim is the social and professional integration of disabled or disadvantaged persons.

- In the new Directive the term “disadvantage” is a new provision and is not defined so the scope to use this provision for social policy purposes is wide.
- The percentage of the workforce that must be represented by disadvantaged persons is reduced from 50% of the workforce to 30%.

<b>Lead topic: Public Procurement</b>	<b>Sub-topic: Remedies Regulations</b>	<b>Contact: David O'Brien Ext: 8147</b>
<b>FAST FACTS</b> <ul style="list-style-type: none"><li>• Delays to the award of public contracts due to procurement challenges</li></ul>		
<b>Q&amp;A'S</b>		
<b>Q. What are the Remedies Directives?</b> <ul style="list-style-type: none"><li>• The Remedies Directives were introduced to prevent contracts being awarded in a manner that does not comply with the procurement directives. Up until their introduction and subsequent amendment there were few effective remedies to suppliers who lost out on the opportunity presented by a public (or utilities) contract because a contracting authority failed to comply with procurement rules. The Remedies Regulations transpose the Directives into Irish law.</li></ul>		
<b>Q. What are the key features of the Remedies Regulations?</b> <ul style="list-style-type: none"><li>• There are different remedies available depending on the stage of the contract award - all are subject to time constraints as to when the challenge must be made.</li><li>• Contracting authorities must pause between the notification of the outcome of a tender to all concerned tenderers and the award of the contract.</li><li>• Prior to award there is provision for suspension of the procedure and review of any decision taken.</li><li>• After the award there is provision to suspend the performance of the contract pending review or establish compensation as an adequate remedy pending review.</li><li>• The review may decide to set aside the award of the contract or permit its performance with compensation paid to the injured party.</li></ul>		
<b>Q. What changes did the recent amendments to the Regulations bring about?</b> <ul style="list-style-type: none"><li>• On 31 July 2014 the Supreme Court held that the Remedies Regulations did not give the Courts jurisdiction to lift the suspension that arises when an unsuccessful tenderer challenges a decision to award a contract.</li><li>• This meant that a contract award (and ultimately its performance) would have to wait until the court had reviewed the decision. Depending on the issues concerned, this could take a considerable period of time.</li><li>• On 30 April 2015 the wording of the regulations was amended to permit such an application to be made.</li><li>• A court may decide to retain the suspension if the circumstances so warrant, but it gives the court the right to consider an application to lift the suspension (pending review) and permit the performance of the contract.</li></ul>		

<b>Lead topic: Public Procurement</b>	<b>Sub-topic: Public Works Contracts - Publication of the amended forms of public works contract</b>	<b>Contact: David O'Brien Ext: 8147</b>
<b>FAST FACTS</b> <ul style="list-style-type: none"><li>• Publication of the amended forms of public works contract</li></ul>		
<b>Q&amp;A'S</b>		
<b>Q. Why are the public works contracts being amended?</b> <ul style="list-style-type: none"><li>• The report on the performance of the public works contracts published in December 2014 recommended a number of interim amendments and the development of a medium-term strategy for construction procurement.</li><li>• The amendments are focussed on<ol style="list-style-type: none"><li>a) rebalancing the risk currently transferred to building contractors in recognition of the different economic environment and trading conditions that the construction industry faces; and</li><li>b) reducing the proportion of the contract value that the main contractor is tendering upon; and</li><li>c) reducing the recourse to the costly and time-consuming dispute resolution procedures provided in the contracts.</li></ol></li></ul>		
<b>Q. What amendments are being undertaken?</b> <ul style="list-style-type: none"><li>• It is proposed to change the status of the bill of quantities so that it becomes the arbiter of what is included in a builder's contract sum.</li><li>• It is proposed to promote far greater direct tendering of specialist works by public bodies to reduce the proportion of the contract over which the main contractor has price control prior to contract award.</li><li>• The introduction of an informal dispute resolution process between the parties which should be undertaken prior to either party deciding whether it should be referred to a formal procedure.</li><li>• The introduction of a standing conciliator on projects in excess of €10m</li></ul>		
<b>Q. When are the amended forms of contract to be published?</b> <ul style="list-style-type: none"><li>• Considerable consultation has been undertaken with industry stakeholders followed by nationwide information sessions for both public and private sector practitioners.</li><li>• The interim amendments affecting the contracts are to be published shortly following a last engagement with industry stakeholders.</li></ul>		

<b>Lead topic: Public Procurement</b>	<b>Sub-topic: Disputes under public works contracts</b>	<b>Contact: David O'Brien Ext: 8147</b>
<b>FAST FACTS</b> <ul style="list-style-type: none"><li>Dispute resolution procedures under the Public Works Contracts</li></ul>		
<b>Q&amp;A'S</b>		
<b>Q. What is the approach to resolving disputes under the PWCs?</b> <ul style="list-style-type: none"><li>A dispute has crystallised under the PWC where the Contractor submits a valid claim under sub-clause 10.3, it is determined in accordance with sub-clause 10.5 and is rejected by either party within 28 days of receiving the notice.</li><li>Where it is rejected by either party it must be referred to conciliation under sub-clause 13.1.1.</li><li>Failing agreement within 42 days under conciliation (or a longer period recommended by the conciliator and agreed by the parties) the conciliator must issue a recommendation which is binding on the parties unless a notice of dissatisfaction is served within 42 days.</li><li>If a notice of dissatisfaction is served either party may refer the dispute to arbitration.</li><li>Since the Arbitration Act 2010, an arbitrator's decision may not be appealed to the courts, only points of law and so there is no means of appeal beyond arbitration.</li></ul>		
<b>Q. What is the cost of engaging in such procedures?</b> <ul style="list-style-type: none"><li>The conciliator's fee is shared between the parties and any fees for additional expert advice engaged by the conciliator is shared. Parties bear their own costs in terms of legal or technical advice sought. Whilst the costs do not come close to those incurred in arbitration recent experience has shown that there is more recourse to legal advice which can be a significant cost. The key drain is on resources which have to be diverted from the project delivery side to dispute resolution.</li><li>In July 2011 the form of tender was amended to introduce a pre-agreement to share costs in arbitration as permitted under the Arbitration Act 2010. Traditionally arbitration has followed the courts i.e. costs follow the award. This means significant costs could be built up as the stakes are raised during the course of sometimes lengthy arbitration cases. The amendment in 2011 was introduced to curb these costs to the taxpayer and encourage more prudent management. Nonetheless the resource drain remains the significant issue with arbitration.</li></ul>		

## **FAST FACTS**

- Dispute resolution procedures under the Public Works Contracts (continued)

## **Q&A'S**

### **Q. How will the amendments to the PWCs impact on costs?**

#### **Dispute Management Procedure**

- It is proposed to introduce a requirement for a Dispute Management Procedure on the main forms of contract i.e. for works in excess of €5m.
- This is made up of senior management from the contracting authority and the Contractor who will meet regularly to seek to resolve disputes.
- It will not entirely prevent disputes being referred to conciliation but it will encourage parties to engage without incurring costs – both resource and financial.

#### **Standing Conciliator**

- It is also proposed to introduce a Standing Conciliator on projects in excess of €10m whose role will be to advise parties on disputes as they arise. If they cannot achieve a resolution they will also chair the formal conciliation process set out in the contract.
- Whilst it will be an additional up-front cost, it is anticipated that this will save time and ensure better engagement between the parties to resolve disputes in a proactive fashion.



*File Ref and link to page number at index*

<p><b>Lead topic: Public Procurement</b></p>	<p><b>Sub-topic: Public Works Contracts - Compliance with employment law under the public works contracts</b></p>	<p><b>Contact: David O'Brien Ext: 8147</b></p>
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**FAST FACTS**

- Compliance with employment law under the public works contracts

**Q&A'S**

**Q. How is compliance with employment law dealt with in the procurement of works contractors?**

- As part of the pre-qualification process candidates/tenderers must provide a declaration on oath confirming that they have fulfilled certain obligations, the payment of taxes and social security contributions are amongst those singled out for specific mention.
- Excluding a candidate/tenderer for a breach of employment law must be evidenced in the form of a court judgement against a particular employer.

**Q. How is compliance with employment law dealt with under contract?**

- Sub-clause 5.3 of the public works contracts contains provisions governing Pay and Conditions of Employment which applies to all those engaged on the works, regardless of whether they are employed by the contractor or their subcontractors.
- There are requirements for the posting of notices, retention of payment records in respect of all workers engaged on the site and respect for any workers right to membership of a trade union.
- Payments due under the contract may be withheld if a Certificate of Compliance with clause 5.3 is not submitted with each payment application.
- Deductions from payments to the main contractor due under the contract may be made where evidence of non-compliance is discovered.
- Compliance with employment law is primarily a matter for the National Employment Rights Authority, the functions of which are now absorbed into the Workplace Relations Commission. Where matters of concern arise under a public works contract the contracting authority will report such matters to WRC who will take the appropriate action.
- There is a distinction between the contractual and statutory implications of non-compliance. Contractual implications include deductions from sums due and outright withholding of payment and may be enforced by a contracting authority. Court prosecutions for non-compliance are a matter for WRC.

<b>Lead topic: Public Procurement</b>	<b>Sub-topic: Public Works Contracts - Employment dispute at Kishogue Community School</b>	<b>Contact: David O'Brien Ext: 8147</b>
<b>FAST FACTS</b> <ul style="list-style-type: none"><li>• Employment dispute at Kishogue Community School.</li></ul>		
<b>Q&amp;A'S</b>		
<b>Q. Why was Kishogue Community School in the news?</b> <ul style="list-style-type: none"><li>• A trade union placed a picket at KCS claiming that workers employed on the site were not being paid in accordance with National Minimum Wage rates not to mention the Registered Employment Agreement governing the construction sector.</li><li>• The contractor claimed that the workers were sub-contractors and that their disagreement was with their employer.</li><li>• KCS is now complete and the pickets were removed prior to its completion after a Labour Court Recommendation was made to both parties to the dispute. The recommendation is private to the parties.</li></ul>		
<b>Q. What is at issue?</b> <ul style="list-style-type: none"><li>• The key issue here is not uncommon in the construction sector generally. Workers may, voluntarily or because they are forced, classify themselves as sub-contractors to avoid payment of certain social welfare contributions and taxes.</li><li>• As such this is a matter for the Department of Social Protection and the Revenue Commissioners</li></ul>		
<b>Q. What can be done through public procurement to prevent such matters arising?</b> <ul style="list-style-type: none"><li>• Public works contracts are awarded to main contractors and typically such issues arise down the supply chain.</li><li>• Sub-clause 5.3 of the public works contracts contains provisions governing Pay and Conditions of Employment which applies to <u>all those engaged on the works</u>, regardless of whether they are employed by the contractor or their subcontractors.</li><li>• Sub-clause 5.3 permits deductions to be made to payments due under the contract where the Contractor fails to comply with the requirements of the clause. The administration of a public works contract is a matter for the contracting authority. It is therefore a matter for the Dublin and Dun Laoghaire Education and Training Board as to whether the Contractor was in compliance with clause 5.3. The Department of Education and Skills, as the sanctioning authority, will have details of the case in question.</li></ul>		

*File Ref and link to page number at index*

<b>Lead topic: Public Procurement</b>	<b>Sub-topic: Service Level Agreements between OGP and PSB clients</b>	<b>Contact: John Flanagan Ext: 8130</b>
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## **Q&A'S**

### **How many SLAs are in place?**

- There are no SLAs currently in place
- MOUs are being worked on with the sourcing partners.
- The MOU with Health has been signed and in place since February 2015 and discussions have been ongoing regarding an SLA
- SLAs will be drawn up once the MOUs are in place
- MOUs are taking time due to the changes in scope for the sourcing partners i.e. taking on procurement for all of government in specific categories and no longer sourcing at all in other categories

### **How many SLAs will there be?**

- It is expected that there will be an SLA with each of the sourcing partners (OGP, Health, Education, Defence & LG) and with major customer departments and agencies.

### **How many public bodies does OGP deal with?**

- The OGP deals with all public service bodies and non-commercial semi-state bodies

### **What is the difference between an MOU and an SLA**

- A MOU outlines the terms and details of an agreement between parties, towards a common goal, including each party's requirements and responsibilities. MOUs are less formal than contracts but more formal than gentleman's agreements.
- A SLA is a contractual agreement between a service provider and a customer which defines the level of service expected from the service provider. SLAs are output-based - their purpose is specifically to define what the customer will receive.
- A SLA will typically include a description of: the service being provided, how the service will be measured and managed, and how issues with the service will be reported and resolved.

**Who will monitor performance against the SLA?**

- The OGP, the sourcing partners and the customer departments and agencies will monitor the performance of the service against the SLA.
- Any issues in connection with the operation of this SLA will be reported, in the first instance, to the Key Account Manager by the nominated official in the customer organisation. Every effort will be made to resolve problems at this level. In the event that the matter cannot be satisfactorily resolved, the matter will be referred to the Head of Customer Services who may escalate the matter further as required. The relevant person will 'own' the problem until resolution and together will agree a course of action to analyse, identify, isolate and resolve the problem.
- In the event of disagreement on any issues in relation to the implementation of the model or boundary issues which cannot be resolved at the Procurement Executive, the appropriate arbitration process has been outlined in the MOU.

*File Ref and link to page number at index*

<b>Lead topic: Public Procurement</b>	<b>Sub-topic: Procurement Legal Challenge to establishment of a Multi Supplier Framework for the provision of Printers, Photocopiers and Multi-Function Devices</b>	<b>Contact: Mary Fennelly Ext: 8052</b>
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#### **FAST FACTS**

- Legal Challenge to establishment of a Multi Supplier Framework for the provision of Printers, Photocopiers and Multi-Function Devices.

#### **Q&A'S**

- **Who is involved?**  
Copymoore Ltd & Others -v- The Commissioners of Public Works in Ireland.
- **What is the current status with this case?**  
  
The Case heard in High Court during December 2014 and January 2015. Mr. Justice McDermott has reserved Judgement.
- **What is the impact on Public Service bodies (PSBs) seeking to procure the devices affected by the legal challenge?**
- PSBs conducting procurement processes on an individual and as required basis.

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<b>Lead topic: Public Procurement</b>	<b>Sub-topic: Integrated Finance Management System for Health</b>	<b>Contact: Mary Fennelly Ext: 8052</b>
<b>FAST FACTS</b>		
<p>This is a project under the Health Finance Reform Programme aimed at delivering an Integrated Finance Management System.</p>		
<b>Q&amp;A'S</b>		
<ul style="list-style-type: none"><li>• <b>What is OGP's involvement in this project?</b></li></ul> <p>OGP Sourcing staff are leading on this Procurement working in close collaboration with the Health Finance Project team.</p>		
<ul style="list-style-type: none"><li>• <b>What will the project deliver?</b></li></ul> <p>The project will deliver a new Integrated Finance Management System (IFMS) underpinned by a single technology platform to provide:</p> <ul style="list-style-type: none"><li>• a robust and scalable system to support finance and procurement operations and standardised processes</li><li>• provide consistent and meaningful data across the whole system with the ability to interrogate data to provide reports and analysis</li></ul>		
<ul style="list-style-type: none"><li>• <b>What is the current status with this project?</b></li></ul> <p>As part of the process of moving to the new IFMS, rationalisation and stabilisation of the existing legacy systems in HSE West and South has commenced using existing framework agreements and is expected to be completed in 2018. At the same time the OGP are currently working with the Health Reform Project team with regard to the tendering process for the ERP software which will underpin the new system. This will take up to 12 months to complete.</p>		

*File Ref and link to page number at index*

<b>Lead topic: Public Procurement</b>	<b>Sub-topic: Office Supplies</b>	<b>Contact: Turlough Kieran Ext: 8064</b>
<b>FAST FACTS</b>		
<ul style="list-style-type: none"><li>• Office supplies framework agreement put in place in May 2014</li><li>• Six supplies admitted to the framework (Banner Business Service, Codex Office Products, Lyerco (Ireland) Ltd, Office Depot (Ireland) Ltd, Office 26, Supplies Team</li><li>• One consortium, Office 26, successful in getting on the framework</li><li>• Expenditure across all PSB's was estimated at €8m pa</li><li>• Framework members had to propose a ceiling price for all core products above which they could not bid in the mini-competitions</li><li>• The framework did not cover non-core products</li><li>• Four mini-competitions were run under the framework<ul style="list-style-type: none"><li>○ Group 1 – Health Sector – Office Depot successful supplier</li><li>○ Group 2 – Universities – Codex successful supplier</li><li>○ Group 3 – EPS – Office Depot successful supplier</li><li>○ Group 4 – Central Government, Local Authorities, ETBI's, Garda – Office Depot successful supplier</li></ul></li><li>• June 2015 Office Depot gave 90 days notice of termination of the Group 4 contract</li><li>• Reasons quoted by Office Depot for this decision was<ul style="list-style-type: none"><li>○ Anticipated volume did not materialise</li><li>○ Lack of buy-in from the schools sector (details in Q&amp;A section)</li><li>○ Very low average order values – 50% of PO's received under €20</li><li>○ Inability to sell non-contract items</li></ul></li><li>• Mini-competition was run in July 2015 to replace Office Depot in the Group 4 contract</li><li>• No proposals received in response to the mini-competition</li><li>• Research into the reasons why no proposals were received indicated that it was due to the solely price based approach of the framework</li></ul>		

- Decision taken to plan and put in place new framework agreement to replace existing agreement
- New framework to be in place in early Q1 2016
- Planned that new framework will address some concerns and perceived inadequacies of the existing framework
  - New lotting strategy to maximise SME participation and encourage buy-in from certain sectors
  - Award criteria to be expanded to include criteria beyond price
  - Address non-core products within the framework

## **Q&A'S**

### **Number of schools who activated the contract with Office Depot?**

77 primary schools (2% of 3,277 total), 59 secondary schools (non-vocational) and all 16 ETBs. In total, just under 10% of all schools combined.

### **What volume and value of orders placed by primary schools with Office Depot?**

In the 12 months to end June 2015, **primary schools** had placed orders to the value of €31k (as the remaining 3 months of the contract was over the school summer holiday period that figure would not have changed significantly) – the total volume of PO's placed in that time period was 1,250 with an average order value of €24.

### **The new framework is to be in place in early Q1 2016. What interim arrangements have been made?**

When notice of termination of the Group 4 contract was communicated a new mini-competition was run to replace Office Depot. No proposals were received from any of the framework members. In conjunction with the CSSO, the options open to the OGP were considered and discussed. The options were;

1. Re-run the mini-competition
2. Put in place a single supplier framework agreement for this group – would have taken the same length of time as putting in place a new framework and would not have addressed the issues with the current framework for the remaining groups
3. Put in place a new framework to address the issues / weaknesses with the current framework on a long-term basis

It was decided that option 3 would be the best one to pursue.

The group 4 clients were informed of the plan and were advised that they should put in place short-term arrangements until such time as the new framework was in place i.e. request competitive quotations for office supplies requirements under €25k or short-term contract if expected requirements were in excess of €25k.



**Why did the OGP not put in place these arrangements themselves?**

The OGP would not have been able to put in place individual client arrangements due to the volume involved which would have meant that the team (of 2) would not be able to progress the new framework

**How was the EPS able to put a new arrangement with Office Depot, when they had failed to bid for the mini-competition? – what was different about the EPS arrangement?**

The EPS contract was initiated on behalf of the ETBI's who had concerns about each ETB sourcing its own office supplies in the interim. The contract is only for ETBI's and ETB schools and was competitively tendered. Office Depot were successful in the evaluation process. The main differences that encouraged suppliers to bid for that contract was that unlike the current framework there was no price ceiling and also the expected client base (ETB's) had been purchasing from the group 4 contract so therefore there was confidence on client buy-in.

**Is the OGP aware of any customer feedback in relation to the products / services of Office Depot under the remaining Group arrangements?**

Yes, the OGP is aware of various issues with Office Depot. The main issues being raised by clients are around late delivery, part deliveries, product unavailability and the quality of some of the products. The OGP are working with both Office Depot and clients to address these issues.

<b>Lead topic: Office of Government Procurement</b>	<b>Sub-topic: Tender Advisory Service</b>	<b>Contact: Jackie Byrne Ext: 8122</b>
<b>FAST FACTS</b> <p>The Tender Advisory Service (TAS) was launched on 1<sup>st</sup> February 2015 to provide an informal outlet for potential suppliers to raise concerns in relation to a particular live tender process.</p> <p>The service is aimed at improving communications with suppliers and increasing professionalism and consistency in the way procurement processes are carried out across the public service.</p> <p>To date, 23 suppliers have engaged with the service.</p> <p>Of these queries, 19 were not appropriate to the service for various reasons including:</p> <ul style="list-style-type: none"><li>• the issue raised was of a general nature</li><li>• the supplier had not yet engaged with or exhausted the existing query/clarification process which is part of the tendering process,</li><li>• the supplier had engaged with the service too late i.e., following the tender closing date.</li></ul> <p>In these instances the queries were redirected for answer either to the OGP Customer Service Team or the Contracting Authority dealing with a specific tender.</p> <p>The four eligible queries were received in relation to the following categories of goods and services:</p> <ol style="list-style-type: none"><li>1. Furniture</li><li>2. Laboratory Equipment</li><li>3. Graphic Design/Print Service</li><li>4. Digitisation Service</li></ol> <b>Q&amp;A'S</b> <p><b>1. Outcomes from the four eligible queries – did any result in an intervention whereby the competition changes?</b></p> <ul style="list-style-type: none"><li>• In two cases interventions resulted in changes to competitions:</li><li>• One case was in respect of a tender for furniture, as a potential supplier had an issue with the specification. TAS contacted the contracting authority and the set out the concerns. The contracting authority having considered the concerns,</li></ul>		

broaden the specification, extended the closing date and informed all potential tenderers of the change.

- The other case was raised by a potential supplier who believed that the lotting structure of a mini competition for Laboratory equipment was limiting the numbers of companies who could tender for the lots. TAS raised this concern with the contracting authority, who reviewed the composition of the lots. Following this review, the contracting authority decided to split out the lot, thereby increasing it from one lot to four new lots.
- In relation to the other two cases, TAS liaised with the relevant contracting authorities regarding the issues raised, but in both cases no changes were deemed necessary.

## **2. Why so few queries?**

TAS is based on the Scottish Procurement and Commercial Directorates, Single Point of Enquiry service which dealt with 27 cases, in its first year. The current level of cases received is broadly in line with this. The objective is to provide a fast informal service to tenderers who have exhausted the normal clarification process up to 6 days before the closing date for receipt of tenders.

## **3. How has TAS been communicated?**

- The SME Working Group (Incl. IBEC, SFA, CIF, SFA and Chambers Ireland), were given a preview of the proposed service, in advance of its launch, at a meeting on the 3rd December 2014. (Minister Harris was present at the meeting).
- In addition a letter issued to all Secretary Generals and Heads of Departments on 27<sup>th</sup> January 2014, announcing the launch of the service.
- Finally a press release announcing the launching of the pilot service issued on 30<sup>th</sup> January 2015. In subsequent press releases both IBEC and ISME welcomed the new pilot service.
- Details of the service are on the front page of both ‘procurement’ ([www.procurement.ie](http://www.procurement.ie)) and e-Tender websites.
- The OGP Helpdesk also advises potential tenders of the availability of the service, where this is relevant.

## **4. Are industry bodies aware and what do they think?**

Industry bodies have been aware of the services, from its development to its pilot operation. TAS is regularly discussed at meetings of the SME Working Group, including the most recent meeting of the Group was held on 3<sup>rd</sup> November where Minister Harris was present. An update on the operation of the pilot was shared with the Group and their feedback was sought. While the industry bodies feel that the pilot is working well, they feel that in order to increase awareness, information on the Service should be cross referenced in the template RFT documents. This option will be considered as part of the review of service, which is due to be completed in early 2016.

**5. Does this not point to the need for an Ombudsman?**

No. The Tender Advisory Service compliments the query and clarification process which is available to all potential tenderers as they engage with the public procurement process. As well, the EU Remedies Regulations which tenderers can avail of post tender closing date. Based on case numbers to date and the experience in Scotland, it is expected that any issues raised can be resolved, without the establishment of an Ombudsman Office.

**6. Why was this process selected – was it benchmarked?**

TAS is based on and is benchmarked against the Scottish Procurement and Commercial Directorate, Single Point of Enquiry (SPoE) service. The Single Point of Enquiry, was introduced in 2007, and in its first year dealt with 26 cases. Over the last seven years, SPoE has dealt with a total of 277 cases, an average of 39 cases a year.

<b>Lead topic: Office of Government Procurement</b>	<b>Sub-topic: Department of Education Circular clarifying PER Circular 16/13</b>	<b>Contact: Theresa Ryan Ext: 8155</b>
<b>FAST FACTS</b>		
<u>DPER Circular 16/13</u>		
<ul style="list-style-type: none"><li>• Department of Public Expenditure and Reform Circular 16/2013 was issued on 28 September 2013.</li><li>• The purpose of the Circular is to inform all public bodies of the importance of maximising the value for money achievable when procuring any commonly acquired goods or services.</li><li>• Circular 16/13 also reminds public bodies that, where possible, they should make use of central procurement arrangements and that where public bodies do not utilise central frameworks they should be in a position to provide a value for money justification.</li></ul>		
<u>Commitment given at PAC meeting of 5 March 2015</u>		
At a meeting of the Public Accounts Committee on 5 March 2015, the Secretary General and Chief Procurement Officer gave an undertaking to work with the Department of Education and Skills to arrange for a notice to issue to schools reminding them of the provisions of Circular 16/2013.		
<u>DES Circular 56/15</u>		
Department of Education and Skills Circular 56/2015 was issued on 15 October 2015.		
The main provisions of the Circular are as follows:		
<ul style="list-style-type: none"><li>• School management have the choice to undertake procurement individually. It is not mandatory for schools to use central procurement arrangements.</li><li>• Schools are, however, reminded of the importance of achieving value for money and that central procurement arrangements are targeted at securing best value for money.</li><li>• Where a school chooses not to use a central procurement arrangement, it should ensure that there is an appropriate focus on good practice in purchasing and that procedures are in place to ensure compliance with all relevant procurement guidelines, policy and legal obligations in order to achieve and be able to demonstrate better value for money (VFM) in such activity. In determining VFM, the full cost of undertaking a procurement, as well as the cost of the goods and services, involved should be included.</li></ul>		

## Q&A'S

### Why did it take until October to issue Circular 56/15?

Issues that affected progress:

- Agreed between DES and OGP that new Circular would issue in new school year, to maximise the impact.
- The need to agree text of the Circular between OGP and colleagues in the Department of Education and Skills that would balance the commitment given at PAC with the need to promote the use of centralised arrangements by schools.
  - Only 77 of the 3,277 primary schools (2%) activated the contract with Office Depot, which points to schools already being aware that centralised arrangements are not mandatory. There was concern that simply reminding schools of this fact would lead to a reduced take-up of all such arrangements, not just stationery.
- The Department of Education and Skills considered it important that progress was made for schools in respect of a replacement office supplies and stationery contract before the Circular issued.
  - In June 2015 Office Depot gave 90 days' notice of termination of the Group 4 contract (which covered schools). The contract terminated in September 2015.
  - One of the reasons quoted by Office Depot for this decision was lack of buy-in from the schools sector.
  - Mini-competition was run in July 2015 to replace Office Depot in the Group 4 contract. No proposals received in response to the mini-competition.
  - Decision taken to plan and put in place new framework agreement to replace existing agreement
  - New framework to be in place in early Q1 2016  
(Further details provided in briefing on Office Supplies)

<b>Lead topic: Office of Government Procurement</b>	<b>Sub-topic: Rural Transport Services</b>	<b>Contact: Donal D’Arcy Ext: 8103</b>
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**FAST FACTS**

- The OGP has supported the NTA in publishing the tender for Rural Transport Services. Competition was launched on 6 November 2015.
- The OGP provided observations on the proposed procurement process from a practical and commercial perspective and provided technical advice in terms of the functionality of the eTenders system.
- The NTA is running this procurement process and had already significantly progressed its procurement strategy and documents with its own legal advisors, prior to OGP involvement in the project. The NTA therefore has sole responsibility for ensuring compliance of this procurement project.
- The spend is in the region of €10 million annually and comprises of approximately 1,000-1,200 mini-bus routes across the 26 counties.
- Rural Transport started as a small, locally managed initiative in 2002 and is evolving to become part of the mainstream national public transport network. It has never been procured on a national basis before so this procurement process is a significant change to the previous locally managed processes.
- The tender documentation was provided by NTA and the OGP supported the development of an on-line tender response form using eTenders which is intended to simplify the preparation of tender submissions by tenderers as well as streamlining the evaluation process for NTA.

**Q&A’S**

**What measures are being taken to encourage SME participation in this competition?**

Having regard to Circular 10/14, OGP has taken a number of measures in an attempt to be as inclusive as possible to the market, which is almost exclusively made up of SME’s.

- All operators of Large Public Services vehicles in the state are obliged to have a valid Road Passenger Transport Operators Licence (RPTOL) from the Department of Transport. A number of weeks ago, the NTA contacted all bus

operators on this list, in writing, advising that they should register on eTenders due to the imminent publication of this tender.

- The tender process is split into two stages and during the pre-qualification stage, Tenderers do not have to provide any supporting documentation such as TCC, RPTOL, Tax, Insurance etc. Such documentation will be required at mini-competition stage.
- The pre-qualification stage requires Tenderers to complete an on-line form only. The OGP has worked to ensure that this form is as user friendly as possible.
- Mini-competitions will be managed by a network of Transport Coordination Units (TCU's) which are contracted by the NTA to manage Rural Transport on their behalf and which know the local rural transport services intimately.

**Will state-funded 'non-for-profit' transport companies be able to bid under this competition?**

Recipients of Government funding cannot be automatically excluded from participating in a public procurement tender competition. All firms that satisfy the pre-qualification criteria will be invited to tender stage.



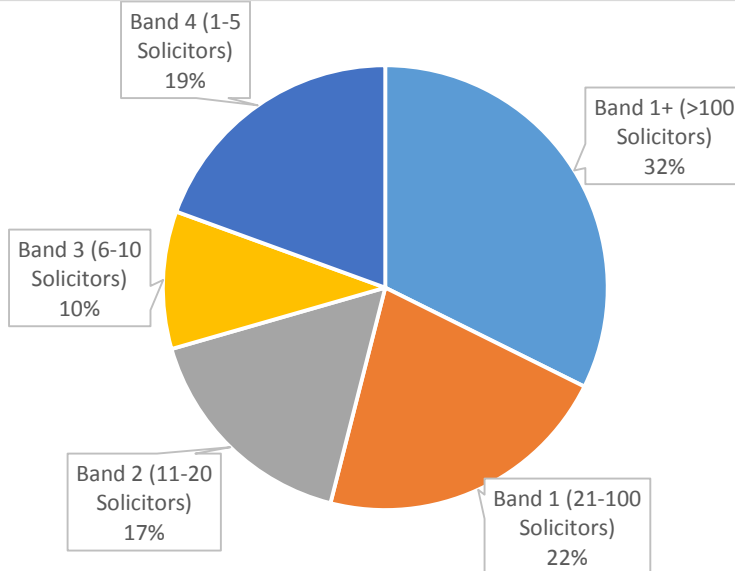
<b>Lead topic:</b> Drugs Procurement	<b>Sub-topic:</b> Involvement of PER / OGP	<b>Contact:</b> Paul Quinn <b>Ext:</b> 5400
<b>FAST FACTS</b> <p>In early 2015, the Minister for Public Expenditure and Reform offered the assistance of his Department to the Department of Health in the renegotiation of the agreement with IPHA which expired in October. The Minister of Health accepted this offer. A project team and a Strategy Group have been formed which includes PER and OGP members to provide assistance and input into Health in their renegotiations. Work is currently underway to prepare for those negotiations.</p>		
<b>Q&amp;A</b>		
<b>1. Can you provide details of the preparations?</b> <p>As you will be aware, the negotiations will be commercially very sensitive and very complex, so inappropriate to discuss these matters in public.</p>		
<b>2. Have you engaged consultants to support the negotiations and at what cost?</b> <p>Yes, a procurement exercise was undertaken to secure certain specific advice from an advisory firm with international insights into the pharma industry. This is being used to complement the expertise from within the project and to assist it. €200,000 has been spent to date.</p>		
<b>3. The existing IPHA agreement expired in October of this year, have prices now gone up?</b> <p>It was recognised by both sides that discussions may be lengthy and complex, and so agreement was reached between the parties that the terms of the existing agreement will continue to apply until a new agreement is reached and while discussions are ongoing.</p> <p>Who was responsible for evaluating the tenders and did they have relevant experience with aviation matters?</p>		
<b>4. Have discussions commenced?</b> <p>No.</p>		
<b>5. Why has it taken so long to commence the discussions?</b>		

This is a matter for Health, however it is important that the negotiation team is appropriately prepared for these discussions, and the complexity of the market has increased considerably with new high-technology products and 'bio-similars' which are an increasing proportion of spend. A plan has been set out for preparing for the discussions.

**6. When will a new agreement be in place?**

Negotiations are due to commence in the first quarter of 2016 with a view to having an agreement in place by mid-year.

<b>Lead topic: OGP</b>	<b>Sub-topic: Legal Services</b>	<b>Contact: Sean Bresnan</b> <b>Ext: 076 100 80 50</b> <b>086 023 72 84</b>
<b>FAST FACTS</b>		
<b>General</b>		
<ul style="list-style-type: none"><li>• 3 specific categories within Legal Services<ul style="list-style-type: none"><li>○ Solicitors</li><li>○ Barristers</li><li>○ Third Party (Guardian ad Litem, Legal Cost Accountancy etc)</li></ul></li><li>• OGP focus to date is on Solicitors legal services (estimated to be circa €80m pa)</li><li>• Cannot discuss commercial pricing issues due to current and imminent procurements</li></ul>		
<b>High Level Spend Analysis for 2011-2013 (Solicitors)</b>		
<ul style="list-style-type: none"><li>• Estimated at €86m pa (excludes Legal Aid Schemes)</li><li>• 295 firms have delivered services with a value &gt;€10K</li><li>• 46 firms account for 80% of spend</li><li>• Top 10 account for 50% of spend</li></ul>		



### Procurement Strategy

- One size does not fit all
- 7 separate Frameworks to meet needs of public sector

Framework	Estimated Annual Spend	Features	Status
Legal Services to Public Sector Bodies (excluding Central Govt Departments)	No less than €50m	<ul style="list-style-type: none"> <li>• 11 Lots, each Lot representing a specific practice area</li> <li>• Will accommodate needs of &gt;250 PSB's</li> </ul>	In market
Legal Services to Local Authorities	€10m	<ul style="list-style-type: none"> <li>• 8 geographical Lots</li> </ul>	Under evaluation
Legal Services to Educational Training Boards	€250,000	Geographical lotting to allow firms compete by reference to location	To be in market pre Xmas
Legal Services to HIQA	€250,000	Geographical lotting to allow firms compete by reference to location	To be in market pre Xmas

Legal Services to HSE	€10m	Geographical and practice area lotting	To be in market pre Xmas
Legal Services to Tusla	€15m	TBC	Q2 2016
Legal Services to Central Government Departments	TBC	TBC	TBC

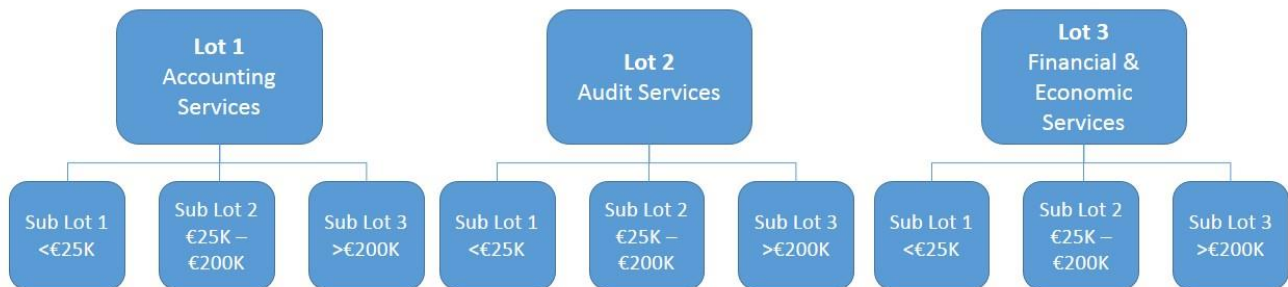
- First time that legal services has been addressed in an all of government context
- Significant pre-tender market engagement and consultation through Law Society
- Steps to be taken to encourage SME / consortia involvement
- Overall approach to Legal Services split into no less than 7 separate FWA's. FWA's known to market which allows firms to select which FWA best suits their skill set
- Each FWA is lotted by either practice area or geographical area - allows firms with expertise in specific practice or geographical areas to compete
- No T/O test
- Tenderer briefing at outset of procurement
- Min Professional Indemnity level of €1.5m set for entry to FWA
- Standard tender response document - requirement to produce voluminous amounts of pre-qualification documentation eliminated
- No organisational resource test

<b>Lead topic:</b> <b>OGP</b>	<b>Sub-topic:</b> <b>Accounting, Audit and Financial &amp; Economic Services</b>	<b>Contact: Sean Bresnan</b> <b>Ext: 076 100 80 50</b> <b>086 023 72 84</b>
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**FAST FACTS**

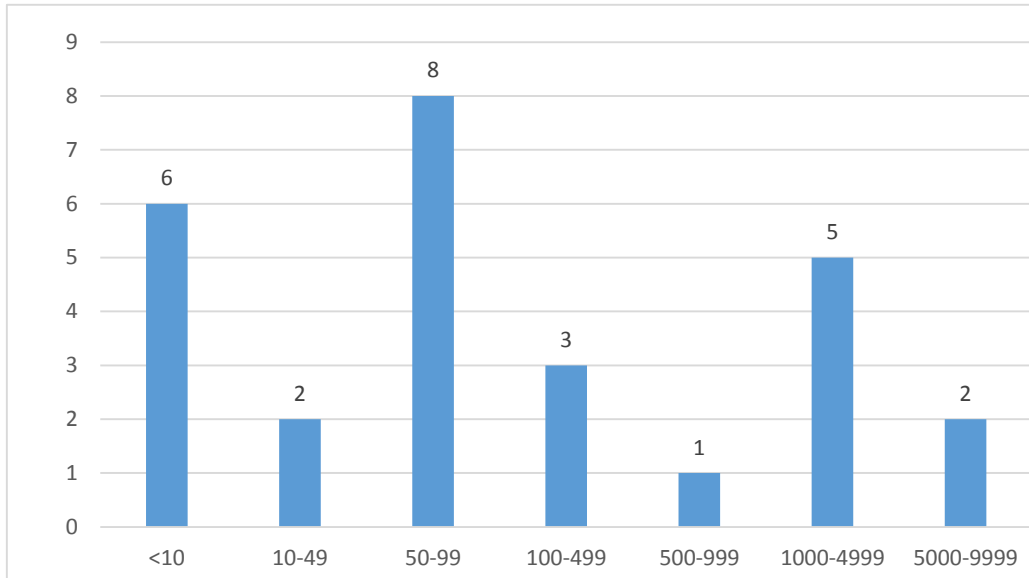
**General**

- National FWA for Accounting, Audit and Financial & Economic Services concluded
- Covers all PSB's, Central Govt, Local Authorities, Health Sector and Education Sector (including Universities and IoT's)
- Estimated FWA value = €9m
- Lotted by reference to practice area
- Sub Lotted by reference to contract value
- Allowed firms to compete by reference to their core area of expertise and by reference to the likely value of the contract (i.e. smaller firms prefer (and may be more suited) to lower value contracts)



### Outcome

- 32 firms competed
- 27 firms admitted to FWA across 3 x Lots
- Broad range of firms available to deliver service
- 16 firms on FWA have less than 100 employees



### Geographical Profile

- 22 firms based in Dublin
- 1 in Galway
- 4 in NI

<b>Lead topic:</b> OGP	<b>Sub-topic:</b> <b>Consulting &amp; Advisory Services</b>	<b>Contact: Sean Bresnan</b> <b>Ext: 076 100 80 50</b> <b>086 023 72 84</b>
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**FAST FACTS**

**Approach & Features**

- 2 x separate FWA's
  - Health Sector Consultancy FWA
  - All of Government Consultancy Services FWA (**above €25K**)

	Health Sector FWA	AoG FWA
<b>Status</b>	At Standstill	Under Evaluation
<b>Est FWA Value</b>	€5m - €10m	€50m
<b>Duration</b>	4 Years	4 Years
<b>Parties</b>	HSE. DoH, Funded Agencies	Covers all PSB's, Central Govt, Local Authorities, and Education Sector (including Universities and IoT's) Health Sector may use where sectoral FWA does not meet their needs
<b>Structure</b>	Lot 1: Business Strategy & Operations	Lot 1: Business Strategy & Operations
	Lot 2: Organisational Change Management & Leadership	Lot 2: Organisational Change Management & Leadership
	Lot 3: Human Resources Initiatives	Lot 3: Human Resources Initiatives
	Lot 4: Research Services & Surveys	Lot 4: Research Services & Surveys
	Lot 5: Multi-Disciplinary Major Project Delivery	Lot 5: Procurement & Logistics Lot 6: Multi-Disciplinary Major Project Delivery

**General Commentary**

- Lotting by practice area - allows firms with expertise in specific practice area to compete
- Significant pre-tender market engagement and consultation through IMCA
- Accommodating SME's
  - No T/O test
  - No organisational resource test
  - Min Professional Indemnity level set for entry to FWA
  - Standard tender response document - requirement to produce voluminous amounts of pre-qualification documentation eliminated



- Tender process easier for Tenderers - development of competition specific Tender Response Documents
- Tenderer briefing at outset of procurement
- Strategic Management of FWA - visibility of who buys what from whom and for what purpose
- Sub €25K needs will be addressed through dynamic purchasing system in 2016

<b>Lead topic: DEPR - OGP</b>	<b>Sub-topic: FWA for the Provision of Pest Control Services</b>	<b>Contact: Dermot Callaghan 021-230-4161</b>
<b>FAST FACTS</b>		
<ul style="list-style-type: none"><li>• General background to the FW<ul style="list-style-type: none"><li>○ This is a multi-lot multi-vendor framework for the provision of pest control services. It has multiple regional lots to which a panel of service providers will be appointed. It has a Lot to meet the requirements of Contracting Authorities with locations in more than one Lot.</li><li>○ All pests covered with the exception of Bird Control.</li><li>○ Available to all public sector bodies.</li><li>○ Estimated that value is approx. €3.2m per annum (based upon extrapolated MI available at market research stage).</li><li>○ Standstill lapsed Midnight, 12 November, 2015 with no challenge.</li></ul></li></ul>		
<b>Q&amp;A'S</b>		
<b>What was done to encourage SME access?</b>		
<ul style="list-style-type: none"><li>• Engagement with large market providers (Mitie 05/03/15; Cannon 24/03/15; Ecolab 23/03/15; Rentokil 06/03/15) and Irish Pest Control Association - representing the SME market (02/04/15 &amp; 14/07/15).</li><li>• Established as a multi-vendor, multi-lot framework where business is awarded by way of mini-competition based on known requirements at a particular point in time, thus ensuring that firms have multiple opportunities to win business.</li></ul>		

- Lotting based upon presence of SMEs (per IPCA website listing of members).
- Turnover kept to minimum levels.

(See following table)

<b>Lot</b>	<b>County</b>	<b>Minimum Turnover Requirement (ex VAT) per annum</b>
<b>Lot 1</b>	Donegal, Sligo, Leitrim	€168,900
<b>Lot 2</b>	Mayo, Roscommon, Galway	€291,200
<b>Lot 3</b>	Cavan, Monaghan, Louth, Meath, Kildare, Wicklow	€515,000
<b>Lot 4</b>	Longford, Westmeath, Offaly, Laois	€184,700
<b>Lot 5</b>	Waterford, Kilkenny, Carlow, Wexford	€267,500
<b>Lot 6</b>	Clare, Limerick, Tipperary	€305,800
<b>Lot 7</b>	Cork, Kerry	€434,500
<b>Lot 8</b>	Dublin	€832,400
<b>Lot 9</b>	Pest Control Requirements in Contracting Authorities with sites located in more than one Framework Agreement Lot	€250,000