

Brief for Public Accounts Committee at 14.30 on July 6th 2017

Secretary General,

You are appearing before the Public Accounts Committee on Thursday July 6th at 14.30.

Attached is a briefing summary and a topical issues briefing (detailed briefing on a range of procurement issues).

You will be aware of the topical issues i.e. SME access, Social Clauses and the Private Member's Bill on procurement (Public Services and Procurement (Social Value) Bill 2017).

The following are some key points in relation to the OGP:

- The budget for 2017 is approx. €20m. 2016 underspend is due to lower than anticipated spend on salaries and provision for two projects that have been delayed (the development of a Workflow Management System and the eInvoicing project);
- From 2013 – 2016, in excess of €300 million in savings were enabled to the tax payer by the OGP and the sector sourcing organisations in Health, Local Government, Education and Defence (2016 savings outturn has yet to be formally signed off);
- In 2016, savings of approximately €600m over four years were enabled from the medicines agreement;
- Building increased transparency of public procurement spend and tendering through the publication of *The Public Service Spend and Tendering Analysis Report* (2013 and 2014 reports published to date). The 2014 report indicates that 95% of expenditure analysed is with firms with an Irish base and that the majority of spend is with the SME Sector;
- Delivered Target Schedule of Contracts and Frameworks which gives Public Service Bodies (PSBs) and the supply markets a comprehensive and routinely updated published schedule of work 9 months in advance;
- During the course of 2016, OGP established a total of 54 additional Frameworks, 52 bespoke contracts and 366 mini competitions;
- The OGP currently has in excess of 100 active framework agreements and since 2014 has put in place 853 contracts/mini-competitions representing an estimated framework/contract value of €12 billion and an estimated annual spend of €3 billion.
- Three European Procurement Directives have been transposed into Irish Law. The 'Goods/Services/Works' and the 'Utilities' Directives were transposed into Irish Law in May 2016. The 'Concessions' Directive was transposed into Irish Law in May 2017. Information sessions were delivered to professionals across the public sector alongside training for key staff.

OGP

June 2017

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

Benefits

- Governance model established and implemented 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
- The OGP and the sector sourcing organisations in Health, Local Government, Education and Defence have enabled **savings** to the tax-payer
 - In excess of €300m in 2013 – 2016
 - An annual target of €80m - €100m has been set for years 2016 – 2018 for the procurement reform programme
 - OGP Savings Enabled 2014 - 2017
 - 2014 €25.4 million; 2015 €34.4 million; 2016 €100 million - Total €160 million
 - 2017 Target €118 million
- In 2016, savings of approximately €600m over four years were enabled from the medicines agreement, of which €209 million is incremental to the prior agreement
- Increasing **professionalization** through dedicated procurement teams focussed on specific categories of spend
 - Leveraging procurement skills and capabilities to support key initiatives such as **2016 Pharmaceutical Renegotiations, Garda Safety Camera Network, Single Financial Systems for Core Government and the HSE, Rapid Build Housing Framework and a Value for Money Review of the Irish Public Bodies mutual insurance model.**
- Building increased **transparency** of public spending
 - Publication of the detailed analyses of **procurement spend and tendering** on an ongoing basis. 2013 and 2014 reports published to date, 2015 in progress.
 - Publishing a **Target Schedule of Contracts and Frameworks** which gives Public Service Bodies (PSBs) and the supply markets a comprehensive and routinely updated published schedule of work 9 months in advance
 - Publishing **competition notices** on eTenders in areas which have not been tendered previously and small opportunities (€25k+ under Circular 10/14)

Policy Programme

- Transposed the European Procurement **Directives** into Irish Law.
- **Circular 10/14** to accelerate implementation of SME-friendly measures
- The introduction and management of a **Tender Advisory Service (TAS)** to support bidders who have tender process concerns pre-award
- Enactment of the **Construction Contracts Act**
- Review of the **Capital Works Management Framework**
- Supporting the Action Plan for Jobs through focused procurement policy initiatives

Suite of Frameworks & Operations

- During the course of 2016, OGP established a total of **54 additional Frameworks, 52 bespoke contracts and 366 mini competitions**, enabling value for money and compliance

- The OGP currently has in excess of 100 active framework agreements and since 2014 has put in place 853 contracts/mini-competitions representing an estimated framework/contract value of €12 billion and an estimated annual spend of €3 billion.
- OGP established with offices in Dublin, Trim, Cork, Sligo and Limerick and the recruitment of capacity and capability to deliver on our mandate

Communications

- The creation and operation 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.
- Continuing to build awareness and educate SMEs regarding public procurement working on a joint communication programme with industry bodies such as ISME, IBEC, CIF, Chambers Ireland and SFA and internal stakeholders such as Enterprise Ireland, InterTradeIreland, D/JEI and CCPC
- The previous Minister of State, now Minister, Eoghan Murphy TD, undertook a series of regional public procurement events on Dublin, Cork , Galway, Cavan and Louth
- The new Minister of State, Mr Patrick O’Donovan TD, is considering continuing this initiative and is planning to hold a similar event on 11th July

Systems

- Developed the eTenders platform to ensure compliance with EU Directives and encourage supplier company registrations – single platform for Government Buying opportunities – 75% of the competition volume under threshold!

What is the OGP budget?

Subhead Description (€’000)	2015	2016	2017
	Outturn	Provisional Outturn	Estimate
Pay	9,660	10,035	12,470
Non-Pay Admin	1,543	1,273	1,575
Programme Expenditure	2,993	3,064	6,390
Gross Total	14,196	14,372	20,435
Appropriations-In-Aid	498	430	475
Net Total	13,698	13,942	19,960

Why did the OGP not spend its budget in 2016?

The key driver of the variance relates to salaries and programme spend. OGP is still not at full planned headcount and there has been a significant saving in this area. It is expected that OGP will recruit its full planned complement of staff in 2017. The underspend during 2016 within the programme subhead is mainly due to delays on two projects i.e. the development of a Workflow Management System and the eInvoicing project.

What savings have been enabled?

The OGP and the sector sourcing organisations in Health, Local Government, Education and Defence have enabled savings to the tax-payer in excess of €50m in 2013, €47m in 2014, €65m in 2015, €147m in 2016 (cost reduction €131m plus cost avoidance €16m). An annual target for the procurement reform programme of €80m - €100m has been set for 2016 - 2018.

What is OGP doing to support SMEs?

The Government recognises the importance of the SME Sector and continues to enhance the already substantial measures to support SMEs in accessing the public procurement market. Significant work has been undertaken by the OGP to ensure that public procurement is accessible by all businesses, including SMEs. Minister of State Murphy has hosted **briefings** for opposition spokespersons on procurement, for **Oireachtas Members** in Leinster House and regional briefings for local Oireachtas representatives and businesses in Cork, Galway, Cavan and Louth. He also chairs the **SME Advisory Group**.

Specific measures to support SME participation include:

- **Undertaking market analysis** prior to tendering to understand the competitive landscape;
- **Setting proportionate eligibility requirements**, e.g. turnover and insurance;
- **Breaking tendering competitions into lots**, e.g. by sector, region, value;
- **Proactive engagement** in a range of events such as “Meet the Buyer” to foster awareness and encourage engagement;
- encouraging businesses to **register on eTenders**, the Government’s national tendering platform; and
- **Specific supports** are also provided by InterTrade Ireland (ITI) and Enterprise Ireland (EI) to assist SMEs in preparing for public tenders.

SME Statistics

There is a perception that the move towards aggregation will mean that competitions will be won by larger foreign companies to the detriment of the SME Sector. This is not borne out by the facts to date. The OGP has stimulated the market by ensuring that competitive processes are put in place. In any competitive process, there will obviously be more losers than winners. Only one team can win the world cup or All-Ireland. However, by having open and transparent processes, all can compete on a level playing field.

The Public Service Spend and Tendering Analysis for 2014 report published by the OGP in September 2016 indicates that 95% of expenditure analysed is with firms with an Irish base and that the majority of spend is with the SME Sector. Further OGP analysis shows that 68% of OGP Framework Members are SMEs and 63% of these Frameworks have multiple lots.

Political engagement

Then Minister of State Murphy briefed opposition spokespersons on the Procurement Reform Programme last November. He has also hosted briefings for Members of the Oireachtas in Leinster House last December.

Furthermore, he hosted regional briefings in UCC, Cork on 3 February, Galway on 24 February and on 26 May in Cootehill and Dundalk. The objective of these regional briefings is to explain the rationale behind the procurement reform programme, the measures in place to support SME access and to hear at first hand at a local level of the concerns being raised to help inform and refine the procurement reform model.

Compliance with Public Procurement Policy

The position is that Government Ministers and Accounting Officers are accountable for expenditure under their remit.

The Corporate Governance Standard for the Civil Service and the Code of Practice for the Governance of State Bodies also identify procurement as one of a number of activities requiring special attention in promoting good corporate governance. It is the responsibility of the Government Departments and State Bodies to satisfy themselves that they adhere to the requirements for public procurement and to make the necessary arrangements to ensure that tender processes are carried out in an appropriate manner.

While the OGP is implementing the Government's Reform programme in relation to procurement and professionalising the procurement function, it does not have a policing role in relation to compliance. However, the reform programme, by putting a spotlight on the procurement function should in time encourage and promote best procurement practice across Government Departments and State Bodies.

Private Members Bills on Procurement

Private Member's Bill (Public Services and Procurement (Social Value) Bill 2017)

Deputy O'Rourke, TD introduced the "Public Services and Procurement (Social Value) Bill 2017" in January. The Bill purports to enhance the ability of SMEs to compete by allowing public bodies to have regard for economic, social and environmental well-being in tenders. It should be noted that social clauses come at a premium and are likely to favour larger firms who can absorb the associated costs.

The OGP has concerns that the Bill could be discriminatory under EU law, imposes procurement requirements on social services providers, would negatively impact on SMEs and impose increased costs on SMEs and Public Service Bodies. Moreover, the SME Representative Bodies have concerns with the proposed blanket approach and potential impact on the SME Sector.

The Bill passed second stage in the Dáil in February and is now at Committee Stage. The **Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach** wrote to D/PER requesting its general assessment of the Bill, including the Department's views on the policy rationale/implications in the context of the Government's own legislative programme and the various legal, technical and drafting aspects of the Bill, so as to inform the Committee in its decision-making regarding scrutiny of the Bill. The Secretary General of D/PER responded to this request on 5 May based on material prepared by the OGP in effect setting out the concerns raised above.

Private Member's Bill (Public Services and Procurement (Workers' Rights) Bill 2017)

Ms. Brid Smith TD, Mr Gino Kenny TD and Mr Richard Boyd Barrett TD introduced the Public Services and Procurement (Workers' Rights) Bill 2017 as a Dáil Private Members Bill on the 22nd June 2017.

The proposed legislation seeks to remove wages and working conditions of employees from being used as elements of competitions among bidders for public contracts. It also imposes more stringent employment conditions to all public procurement contracts and in this regard goes beyond what is provided for in law. These conditions include but are not limited to: union recognition; pension provision, compulsory recognition of registered employment agreements, living wage, discrimination against zero hours contracts, favouring permanent employment contracts, determination in relation to employment status of workers, in particular, those claiming to be self-employed.

The OGP has significant concerns about this proposed legislation and will be advising the Minister and Government accordingly.

Social Clauses

The Government is keen to explore the scope for including social clauses in public contracts where they are linked to the overall contract objective, e.g. urban renewal, and there are appropriate monitoring processes in place. This is a complex area and social clauses come at a premium. Therefore, we need to ensure that value for money is not adversely affected; additional costs are not placed on domestic suppliers relative to other potential suppliers; contracts are of a minimum scale to absorb the increased administrative requirements; and the targeted benefit is capable of being measured and monitored during the execution of the contract. In this context also, care must be taken not to disproportionately impact on SMEs bidding for public contracts.

The OGP is assessing the scope for the use of such clauses and has developed practical guidance to assist Contracting Authorities. This practical guidance is currently being considered by the Office of the Attorney General. The OGP met with the OAG and CSSO on Monday 29 May to progress the development of this guidance.

Construction Procurement

All public capital projects are required to adhere to the Capital Works Management Framework (CWMF) which contains an integrated set of contractual provisions, guidance material, technical templates and procedures which cover all aspects of the delivery process of a public works project from inception to final project delivery and review. The OGP will be developing a Medium Term Strategy for the procurement of public works projects in light of the new directives and the considerable number of developments in the construction industry in recent years.

The Concessions Directive

The 'Concessions' Directive (2014/23/EU) was transposed into Irish Law in May 2017. It provides for a public procurement regime separate from the main regime for public contracts (Directive 2014/24/EU), and applies to concessive-type contracts with values above €5.225m where an operating risk is transferred to the tendering entity.

This Concessions regime stands apart from the standard Classic regime and provides a set of procurement rules more aligned with the distinct market realities of concessive-type contracts.

In Ireland, the most analogous contract forms are the public-private partnership (PPPs) type contracts which have featured over the past two decades in delivering some major infrastructural projects. Examples of these would include the toll road contracts nationally which have assisted in expanding the national inter-urban roads network.

Such contracts have been procured heretofore using the public contracts procurement regime. The new Concessions Directive provides an alternative procurement methodology for public bodies seeking to put in place such concessive-type contracts. The Directive allows for greater procurement flexibilities in terms of providing for a better match to the market and contractual dynamics of concessive contracts than reflected in the standard public procurement arrangements.

What is OGP's involvement in Rapid Housing?

The competition to establish the Framework Agreement for the Provision of Rapid Delivery Housing Projects was launched on 28th August 2016, with an extended closing date of 14th October 2016. The Framework Agreement established from this public procurement competition commenced on the 6th of January 2017 and will be for a term of two years, with the option to extend.

Next Steps

Ireland's procurement reform programme has been successful in establishing new structures and building momentum but, of course, more needs to be done. Frameworks must balance value for money with social considerations and SME access. The OGP will continue to engage with the business and SME sectors and strive to enhance the measures already in place to support SME access to public procurement opportunities.

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Lead topic: Public Procurement	Sub-topic: Procurement Reform Programme Savings Enabled	Contact: Anne O'Mahony Ext: 8285
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FAST FACTS

What savings has the procurement reform programme enabled to date?

- The OGP and the sector sourcing organisations in Health, Local Government, Education and Defence have enabled savings to the tax-payer in excess of €50m in 2013, €47m in 2014, €65m in 2015, €147m in 2016 (cost reduction €131m plus cost avoidance €16m).

What savings are targeted for 2017?

- There is a 2017 savings target of €80-€100m for the procurement reform programme.
- This target is to be generated from a combination of OGP sourcing activity over the eight central categories and the sectoral procurement activity of Health, Education, Local Government and Defence.

What additional savings are being enabled?

In July 2016, the Government concluded a four-year Framework Agreement with the Irish Pharmaceutical Healthcare Association (IPHA) on the supply of medicines to the health service. The negotiation team included the CPO and officials from the Department of Health, the HSE and the Department of Public Expenditure and Reform and supported by specialist advisors engaged by OGP. The pricing mechanism established for medicines will result in estimated savings for the State of approximately €600 million over the four year period. A breakdown of these savings showing incremental savings over and above existing arrangements is included below.

Incremental Savings from IPHA Agreement						
Breakdown of savings	2016	2017	2018	2019	2020	
Additional from 2016 Agreement	31	57	23	38	29	
Additional savings in Hospitals	6	11	3	6	5	
Cumulative Incremental savings – prior year	0	37	105	131	175	
Total Incremental Savings	37	105	131	175	209	

Total numbers of Frameworks / projects delivered by OGP

	2014	2015	2016
Number of Frameworks / Contracts	9 (5 FW, 4 Contracts)	134 (24 FW, 110 Contracts)	472 (54 FW, 418 Contracts)

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	17.70%	27	18.50%	14	16.50%
2014	140	60.60%	94	64.40%	46	54.10%
Total ECF revised in August 2015						
Total ECF revised in August 2015	Total number of staff	% of total planned 238 (ECF revised)	Number of staff in Sourcing	% of total sourcing ECF (159)	Number of staff in other areas (general and other specialist support, including data intelligence)	% of total non-sourcing ECF (79)
2015	185	77.73%	133	83.65%	52	65.82%
2016	193	81.09%	136	85.53%	57	72.15%
2017 YTD	195	81.93%	130	81.76%	65	82.28%

Lead topic: Public Procurement	Sub-topic: SMEs and Public Procurement	Contact: Karl Ryan Ext: 8156
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FAST FACTS

SMEs Access to Public Procurement

- The Programme for a Partnership Government recognises the importance of the SME Sector to the economy and has tasked the OGP to continue to develop measures to support SMEs in accessing the public procurement market.
- In this regard, the OGP engages industry representative bodies ISME, IBEC, SFA, CIF and Chambers Ireland through the SME Advisory Group to exchange views and identify solutions to obstacles. The meetings, in accordance with the Programme for Government, are chaired by the Minister of State with responsibility for Public Procurement. Other government bodies which attend this group are the Competition and Consumer Protection Agency, Enterprise Ireland, Intertrade Ireland and the Department of Jobs, Enterprise and Innovation.
- The Public Service Spend and Tendering Analysis for 2014 report published by the OGP in September 2016 indicates that 95% of expenditure analysed is with firms with an Irish base and that the majority of spend is with the SME Sector.

Q&A'S

Q. How does the OGP support business participation in public procurement?

- Through Circular 10/14: “Initiatives to assist SMEs in Public Procurement” (April 2014), the Government introduced business friendly obligations on public procurers. These include open tendering, breaking contracts into lots, lower financial qualification criteria, supporting consortia bids and requiring lower levels of insurance.
- The OGP transposed the Public Sector Procurement Directive in May 2016 which amongst other things 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, breaking larger contracts into lots. Many of these measures had been fast tracked by Circular 10/14, issued by the OGP in April 2014.
- The OGP encourages SMEs to register on the national eProcurement portal so that they can be notified of upcoming opportunities.

Q. How does the OGP raise awareness of public procurement?

- The OGP works with industry representative bodies in relation to supporting “Supplier Engagement” events. These industry targeted events attract significant interest from suppliers and buyers from across the public sector, North and South and focus on the opportunities for SMEs with major public sector buyers across the island.

- The previous Minister of State with responsibility for Public Procurement, Eoghan Murphy, T.D. hosted five briefings in Dublin, Cork, Galway, Cavan and Louth. The objective of these briefings was to explain the rationale behind the procurement reform programme and to hear at first hand at a local level of the concerns being raised to help inform and refine the procurement reform model.
- The OGP created a communications strategy group involving key Government Departments, Agencies and SME Representative Bodies with the aim of developing an aligned approach to supporting SMEs in achieving fair access to public procurement opportunities. The strategy that was agreed by the SME Advisory group includes
 - producing a series of informative web-based videos explaining specific public procurement topics,
 - the introduction of industry targeted and regional informative breakfast briefing events and;
 - more proactive engagement from industry in promoting and planning events.

Q. Why the need to reform Public Procurement?

- The reform of the procurement system across the public service is a key element of the reform programme.
- 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 will enable all public service organisations to deliver the services to citizens within the tighter budgets that they now operate within.
- 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.
- 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 a 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.
- Procurement reform is a key element of the Government's overall reform programme and is aimed at delivering increased value for money, more accurate and timely data and improvement in the capacity and capability of procurement across the public service. The fragmented procurement arrangements across the public service facilitated amongst other things suppliers charging different public service bodies different prices for the same goods and services. This was not

sustainable, as the State could not afford to continue to purchase works, goods and services in a manner that undermines the efficient delivery of services.

- The central procurement frameworks and contracts established by the Office of Government Procurement (OGP) have been designed to optimise benefits including savings to the State through the strategic aggregation of its buying power. Aggregation arrangements such as multi-supplier frameworks can, where appropriate, address local supplier issues.
- The reform of public procurement in Ireland is being carried out in a manner that recognises the importance of small and medium-sized enterprises in this country's economic recovery. The aim is to drive fair, transparent and open competition in the marketplace but also to work with business to ensure that government procurement policies are business friendly
- 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 strengthening of procurement professionalisation will in turn provide public bodies who use the contracts and frameworks with increased certainty and reduced risk by providing them with compliant sourcing solutions.
- The Government has committed in the Programme for Partnership Government to refining the new procurement structures in place and to make adjustments according to best international practice and in conjunction with Irish business.

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.

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 can be perceived as complex. 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 more information on how public sector procurement works. 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 on supplies and services. The OGP works with industry representative bodies in relation to supporting “Meet the Buyer” events.
- 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 had 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.

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

- 5% 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. 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 had 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.
- I understand that design changes to the eTenders national portal will capture data relating to procurement, and, in particular, data relating to contracts awarded over €25,000 for supplies and services. These changes will facilitate better monitoring and reporting on public procurement trends on a broad range of fronts going forward.

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 95% 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 be winners and losers in the activity. It drives competition, which can make businesses healthier and more competitive.
- Competition may create displacement or movement of jobs.
- 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.

Note: SME Definition used

The SME definition used to classify suppliers by size is European Union recommendation 2003/361 i.e. enterprises where the number of employees is less than 250 and, where data is available, they have either turnover of less than or equal to €50 million or a balance sheet with net assets of less than or equal to €43 million.

Employee numbers data and turnover data are more readily available than balance sheet totals for Irish businesses. Where available, both employee numbers data and turnover data have been used for classification. Otherwise, only employee numbers data has been used.

While some data from eTenders is used for supplier classification external third party data sources have been used to enable the OGP to classify supplier data contained in the payments transaction data provided by PSBs.

Q. Are awards without a competitive process justifiable?

The current rules on procurement provide for instances where direct procurement without use of a competitive process is provided for. **Article 32** of EU Directive 2014/24/EU lists specific cases and circumstances where it is justifiable to award public contracts by a **negotiated procedure without prior publication**. The cases listed in the Directive include the following:

- Where **no tenders or suitable tenders** have been submitted in response to an open procedure or a restricted procedure.
- Where **only a proprietary product will meet requirements**. Examples might include **parts for specialist equipment** such as airplanes / ships / security equipment / laboratory or diagnostic equipment or certain types of **software licencing** arrangements;
- Where an agent, licensee or franchise holder has **sole rights** to supply a service or product. In general, the OGP would recommend that the purchase of such products or services be avoided but it can be unavoidable.
- Where due to **extreme emergency arising from events that are unforeseeable** by the Contracting Authority a competitive process cannot be undertaken in the normal timeframe. Such circumstances should be relatively rare. An example in this area

would be where an immediate purchase must be made in order to avoid risk to persons, property or significant financial loss.

- Where a change of supplier would oblige the contracting authority to acquire supplies having different technical characteristics which would result in **incompatibility or disproportionate technical difficulties in operation and maintenance**;
- For **bargain purchases** or purchases under advantageous conditions, e.g. liquidation sale, creditors' agreement, winding-up
- For supplies quoted and purchased on **commodity exchanges**

The above list is not exhaustive. Such procurements while exceptional do not constitute breaches of the public procurement rules. The EU Directives recognises that there are situations and circumstances where direct procurement without a competitive process is both necessary and legitimate.

Q. What is the latest data on the level of non-competitive procurement processes?

Key indicators based on 2015 Circular 40/02 returns as copied to the OGP:

- **Less than 1% of the total value of contracts awarded** in 2015 were awarded following a non-competitive procurement process (Total spend estimated at €12bn) and in line with previous years returns.
- Total number of contracts awarded without a competitive process was **608**.
- Total value of all contracts awarded without a competitive process was **€94m**.
- The largest number of non-competitive contracts were awarded by HSE (205), Garda Síochána (73), Defence (71) followed by the Department of Agriculture, Food and Marine (35) and account for 63% of the total non-competitive contracts awarded (608).
- The highest spend on non-competitive procurement contracts was by the HSE (€33.1m), Defence (€13.8m), Garda Síochána (€11.5m), Department of Justice and Equality (€5m) followed by Office of the Revenue Commissioners (€4.6m) and is approximately 72% of all monies spent on non-competitive procurement.

Q. What is the role of the OGP in this area?

The Office of Government Procurement provides **guidance notes, documentation and a customer service function** to support public bodies undertaking procurement directly themselves.

- The role of the OGP is to ensure that public bodies are aware of their legal obligations from a national and EU perspective, so that they are in a position to understand the rules and procedures around public procurement. One of the main aims of the OGP is to promote standardisation of procedures and practices as a way of ensuring best practice in public procurement.
- Template tender and contract documents have been developed by the OGP in conjunction with the Chief State Solicitor's Office and the Office of the Attorney General to assist contracting authorities involved in carrying out routine, non-

bespoke and low to medium risk procurements. These are available on the national public procurement website www.etenders.gov.ie.

- The OGP, through its Key Account Managers, engages with the key Departments and Offices in relation to managing their public procurement to see if any of their procurement can be managed through the OGP procurement frameworks. This would include obviously seeing whether any non-competitive procurement can be managed going forward through the OGP procurement frameworks.

Q. Who has responsibility for Compliance with Public Procurement Policy?

Accounting Officers are accountable for expenditure under their remit.

The **Corporate Governance Standard for the Civil Service and the Code of Practice for the Governance of State Bodies** also identify procurement as one of a number of activities requiring special attention in promoting good corporate governance. It is the responsibility of the Government Departments and State Bodies to satisfy themselves that they adhere to the requirements for public procurement and to make the necessary arrangements to ensure that tender processes are carried out in an appropriate manner.

While the OGP is implementing the Government's Reform programme in relation to procurement and professionalising the procurement function, it does not have a policing role in relation to compliance. However, the reform programme, by putting a spotlight on the procurement function, should in time encourage and promote best procurement practice across Government Departments and State Bodies. **It enables compliance.**

Q. Is it possible to eliminate instances of non-competitive processes?

There will always be cases where public contracts are awarded without a competitive process. As indicated above there are legitimate reasons why contracting authorities may procure without a competitive process. However, the OGP would want to see contracting authorities making every effort to ensure that such instances are kept to a minimum.

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

- The 2015 **Single Market Scorecard on Public Procurement** from the EU Commission indicates where Ireland is in relation to Public Procurement. While indicating that there are further improvements required in the area of single bidding and award notices, 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.
- This strengthening of procurement **professionalization** will in turn provide customer Departments and agencies with **increased certainty and reduced risk** by providing them with **compliant sourcing solutions**.

Q. What is the position in relation to Brexit its implications on Public Procurement?

- In relation to implications post-Brexit for those companies that have contracts under EU law, at this point it is **not possible to anticipate the potential effects of the UK withdrawal** from the EU. Article 50 was triggered in May with the process for withdrawal taking place over at least two years and possibly longer. For the moment, the UK remains a full member of the EU with all the rights and obligations of a Member State, and businesses can continue to trade as normal. The Government will be working with our EU partners and with the UK with the aim of ensuring a strong EU-UK relationship and a well-managed withdrawal. The Government is mindful of the effects Brexit will have and is encouraging Contracting Authorities to examine their supplier base to understand their exposure to UK market and to consider mitigation steps.

Lead topic: Public Procurement	Sub-topic: Use of Social Clauses in Public Procurement	Contact: Ronan O'Reilly Ext: 8150
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The Office of Government Procurement (OGP) is exploring the scope for including social clauses in public contracts where they are suited to the objective of the contract and therefore would have the greatest impact. In particular, the OGP is examining social clauses with a view to assessing how they can be deployed to contribute to employment or training opportunities for long term unemployed. The purpose of this work is the provision of effective user friendly guidance

Private Member's Bill Public Services and Procurement (Social Value) Bill 2017

- Frank O'Rourke, TD introduced the PMB entitled "Public Services and Procurement (Social Value) Bill 2017" on 24 January 2017. The Bill purports to enhance the ability of SMEs to compete by allowing public bodies to have regard for economic, social and environmental well-being in tenders.
- In relation to the Bill the OGP has the following concerns:
 - **Social clauses come at a premium** (i.e. companies do not do anything for free) and are therefore likely to **favour larger firms** who can absorb the associated costs.
 - the Bill seeking to favour suppliers on the basis of their location which could be **discriminatory** under EU treaties and law;
 - embedding **a specific clause** in legislation **removes the flexibility** Contracting Authorities have in assessing current economic, social or environmental considerations:
 - requiring **SMEs** to employ additional staff could be a barrier to entry for SMEs; and
 - finally, the **SME Representative Bodies** have expressed concerns with the proposed blanket approach and potential impact on the SME Sector.
- I understand that the Government did not oppose the Bill but will introduce amendments at Committee stage to address the concerns raised.

Q. When will Guidance on Social Clauses be forthcoming?

This guidance is being drafted in conjunction with the Chief States Solicitors Office and the Office of the Attorney General. I understand that will be finalised in the coming months. However, as this legislation imposes a legal obligation on contracting authorities this will mean that the State will have to provide cross agency support and dedicated staff in order to comply with this obligation and for it to be effective. The Bill will give rise to direct costs in the form of administration of the Bill and indirect costs on suppliers and the State in the application of the Bill. In this regard, I note that **the legislation is regarded as a Money Bill by the Bills Office.**

Q. Can social clauses assist with labour activation?

- It is important to adopt a targeted approach to the use of social clauses in contracts in sectors where employers are more likely to be hiring additional workers or trainees to deliver the contract. This is likely to mitigate the risk of displacing workers already in employment while offering the opportunity of assisting with labour activation measures for the long-term unemployed.
- Two examples of this approach currently in progress are the **Grangegorman Development and Devolved Schools Build Programme**. In relation to the latter, a clause has been included in the Public Works contracts which require that:
 - 10% of the aggregate time worked on site to have been undertaken by individuals who have been registered on a national unemployment register within the EU for a continuous period of at least 12 months immediately prior to their employment on the project.
 - 2.5% of the aggregate time worked on site to have been undertaken by individuals who are employed under a registered scheme of apprenticeship or other similar national, accredited training or educational work placement arrangement.
- These examples have been positive. It is important to learn from such practical experience of where community benefit clauses are utilised. This is a complex area. It is important to develop a robust structure that will assist the contracting authority to develop the correct clause and to provide the support from the appropriate agency to aid the company in implementing the clause.
- It is worth noting that this contract has been in place for some time it is likely that **it would be difficult to deliver on similar clauses in the current labour market** particularly in the construction sector.

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 these rules, social clauses must be made known to all interested parties and must not restrict participation by contractors on the basis of their location. 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, non-discriminatory 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.

Private Member's Bill (Public Services and Procurement (Workers' Rights) Bill 2017)

- Ms. Brid Smith TD, Mr Gino Kenny TD and Mr Richard Boyd Barrett TD introduced the Public Services and Procurement (Workers' Rights) Bill 2017 as a Dáil Private Members Bill on the 22nd June 2017.
- The proposed legislation seeks to **remove wages** and working conditions of employees from being used **as elements of competitions among bidders** for public contracts. It also imposes **more stringent employment conditions** to all public procurement contracts and in this regard goes beyond what is provided for in law. These conditions include but are not limited to: **union recognition; pension provision**, compulsory recognition of registered employment agreements, **living wage**, discrimination against **zero hours contracts**, favouring permanent employment contracts, determination in relation to employment status of workers, in particular, those claiming to be self-employed.
- I note that **this legislation will also be regarded as a Money Bill by the Bills Office**
- The OGP has significant concerns about this proposed legislation and will be advising the Minister and Government accordingly.

Lead topic: Public Procurement	Sub-topic: Transposition of the New Procurement Directives	Contact: Martin O’Gorman
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FAST FACTS

- Transposition of the suite of Procurement Directives into Irish Law

Q&A’S

Q. What Directives have been transposed into Irish law?

Three Directives (Public Procurement, Utilities and Concessions) repeal existing Directives (from 2004) in the public procurement and utilities sectors and a separate Directive establishes a new regime to cover Concession contracts.

The three Directives are:

- Directive 2014/24/EU on public procurement. This Directive has been transposed by SI 284 of 2016 – Award of Public Authority Contracts Regulations.
- Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors. This Directive has been transposed by SI 286 of 2016 – Award of Contracts by Utility Undertakings Regulations
- Directive 2014/23/EU on the award of Concession Contracts.

Q. What are the new features of the principal ‘Classic’ Directive (2014/24/EU)?

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..

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 provision¹ 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 Article 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.

Reserved 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%.

Lead topic: Public Procurement	Sub-topic: Remedies Regulations	Contact: Martin O’Gorman
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FAST FACTS

- Need for legislative amendment to existing Remedies Regulations

Q&A’S

Q. Why are amendments required to the Remedies Regulations?

- As the suite of procurement Directives in 2014 required the repeal of the previous 2004 Directives it is necessary to update the Irish Remedies Regulations to accord with the provisions of the 2014 Directives and the corresponding Irish regulations.
- Three separate SIs will be required to accord with the suite of three public procurement Directives introduced in 2014.
- The 3 SIs are in final drafting stage.

Q. What are the Remedies Directives?

- 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. These Directives were transposed into Irish law in 2010 (SIs 130 and 131 of 2010).

Q. What are the key features of the Remedies Regulations?

- 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.
- Contracting authorities must pause between the notification of the outcome of a tender to all concerned tenderers and the award of the contract.
- Prior to award there is provision for suspension of the procedure and review of any decision taken.
- After the award there is provision to suspend the performance of the contract pending review or establish compensation as an adequate remedy pending review.
- The review may decide to set aside the award of the contract or permit its performance with compensation paid to the injured party.

Q. Was there a recent amendment to the Remedies Regulations?

- 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.
- 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.
- On 30 April 2015 (SIs 192 and 193 of 2015) the wording of the regulations was amended to permit such an application to lift a suspension to be made.

- By this amendment 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.

Lead topic: Public Procurement	Sub-topic: Public Works Contracts - Publication of the amended forms of public works contract	Contact David O'Brien Ext: 076 100 8147
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FAST FACTS

- 18 January 2016 - Publication of the amended forms of public works contract aimed at rebalancing risk transferred to tendering main contractors
- Mandatory for use since 8 January 2017 unless a derogation has been obtained from the GCCC
- Introduction of a means of directly tendering specialist works to be undertaken as a sub-contract
- Introduction of new alternative dispute resolution mechanisms to aid swift and efficient resolution of disputes

Questions and Answers

Q. Why were the public works contracts amended?

- The report on the performance of the public works contracts recommended a number of interim amendments and the development of a medium-term strategy for construction procurement.
- The amendments are focussed on
 - rebalancing the risk currently transferred to building contractors in recognition of the different economic environment and trading conditions that the construction industry faces; and
 - reducing the proportion of the contract value that the main contractor is tendering upon; and
 - reducing the recourse to the costly and time-consuming dispute resolution procedures provided in the contracts.

Q. What amendments were undertaken?

- The status of the bill of quantities was changed so that it becomes the arbiter of what is included in a builder's contract sum.
- Direct tendering of specialist works by public bodies.
- The introduction of an informal dispute resolution process between the parties on projects with a value in excess of €5m. This process is to be undertaken prior to either party deciding whether it should be referred to a formal procedure.
- The introduction of a standing conciliator on projects in excess of €10m

Q. When were the amended forms of contract published?

- 18 January 2016 - Circular 01/16: 'Construction procurement – revision of arrangements for the procurement of public works projects' was published.

Q. How many applications for derogations have been made?

- 10 derogations have been issued to various contracting authorities, primarily on the basis that their design team had been appointed prior to the introduction of the amended forms.

Lead topic: Public Procurement	Sub-topic: Public Works Contracts - Medium Term Strategy	Contact David O'Brien Ext: 076 100 8147
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FAST FACTS

- Major review of the procurement of public works projects was recommended in the Review of Performance of the Public Works Contracts
- Culminating in the development of a Medium Term Strategy for the procurement of public works projects

Questions and Answers

Q. Why is a Medium Term Strategy being developed?

- The report on the performance of the public works contracts published in December 2014 recommended the development of a medium-term strategy for construction procurement following the implementation of a number of interim amendments. This is to reflect the considerable changes that have impacted on the sector since the introduction of the PWCs in 2007.

Q. What will the Medium Term Strategy include?

- The Medium Term Strategy will focus on the following areas that will provide a framework within which to engage with industry.
 - risk management
 - encouraging co-operative behaviour;
 - Introduction of performance evaluation; and
 - Alternative forms of contract
- It is proposed to engage with stakeholders on the basis of the initiatives outlined above with the intention of concluding such engagement within 6 months of commencement.
- Recommendations will be set out in the form of a submission to Minister of Public Expenditure and Reform with a Memorandum to Government thereafter incorporating recommendations from the Minister.
The revised arrangements would be introduced on a phased basis after Government approval is obtained.

Lead topic: Public Procurement	Sub-topic: Disputes under public works contracts	Contact David O'Brien Ext: 076 100 8147
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FAST FACTS

- Dispute resolution procedures under the Public Works Contracts (PWC) were amended as part of the interim recommendations arising out of the review of the PWCs.
- The Construction Contracts Act (CCA) commenced in July 2016 and has introduced adjudication as a statutory right to resolve payment disputes.

Questions and Answers

Q. What is the approach to resolving disputes under the PWCs?

- There are a variety of approaches depending on the value of the project in question. Up until the recent amendments and prior to the commencement of the CCA there were two alternative dispute resolution mechanisms (ADR): conciliation followed by arbitration.
- The amended forms of contract dealing with **projects in excess of €5m** make provision for more active management of disputes between the parties through the **introduction of a project board**. Parties to projects with a value **in excess of €10m** must appoint a **Standing Conciliator (SC)** from the outset of the project.
- The **CCA provides for statutory adjudication for a payment dispute**.
- The ADR mechanisms in the PWC may only be triggered once a dispute can be shown to exist.
- 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.
- Where it is rejected by either party it must first be referred to the project board under clause 13.1 (where it is applicable) or conciliation.
- Where parties fail to reach agreement at the project board the dispute may be referred to conciliation.
- Where a Standing Conciliator has been appointed the SC is appointed as the conciliator.
- 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.

- If a notice of dissatisfaction is served either party may refer the dispute to arbitration.
- **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.**
- One issue is being dealt with under the CCA albeit the parties have agreed to a mutually agreed arbitrator rather than the arbitration service established under the Act

Q. What is the cost of engaging in such procedures?

- The **costs of the project board are borne by the parties.** Those appointed will be senior management in the parties' organisations and legal representation is not envisaged as the engagement is a 'without prejudice' process.
- 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.
- 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.

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

Dispute Management Procedure

- There is 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.
- The new procedure 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

- The introduction of 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.

Lead topic: Public Procurement	Sub-topic: Amendments to Public Works Contracts to facilitate the Construction Contracts Act	Contact David O'Brien Ext: 076 100 8147
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FAST FACTS

- Construction Contracts Act (CCA) imposes **minimum payment rights** down a construction supply chain.
- It also imposes a **statutory right to suspend work for non-payment** and to refer payment disputes to adjudication on all those engaged under construction contracts
- Applies equally to public and private sector construction contracts and sub-contracts

Questions and Answers

Q. How will the provisions of the Construction Contracts Act effect the Public Works Contracts?

- The provisions of the Act have effect on all construction contracts, as defined in the Act and will **apply to all construction contracts awarded after the 25th July 2016**. The main provisions of the Act are:
- **Payment:** The Act requires that all construction contracts, as defined under the Act, shall provide for the amount of interim payment and amount of final payment or an adequate mechanism for determining those amounts. The Act also requires that that all construction contracts, as defined under the Act, shall provide for a payment claim date or an adequate mechanism for establishing the date for each amount due, and the period between payment claim date and the date the payment is due.
- **Suspension:** The Act confers on the executing party under all construction contracts, as defined by the Act, the right of suspension for failure by the other party to pay an amount due in full by the date on which the amount is due. In addition the executing party is conferred with the right to suspend for failure of the other party to pay, in full, an amount due pursuant to the decision of an Adjudicator.
- **Adjudication:** A party to a construction Contract, as defined under the Act, has the right to refer for adjudication any dispute relating to payment arising under the construction contract.
- To reflect the provisions of the Act, amendments have been made to all the Public Works Contracts (versions 1 and 2), Schedules to the Contracts (versions 1 & 2), both Conditions of Engagement, Schedules to the Conditions of Engagement, and associated Guidance Notes.

Lead topic: Public Procurement	Sub-topic: Employment law and the public works contracts	Contact David O'Brien Ext: 076 100 8147
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FAST FACTS

- Compliance with employment law dealt with in prequalification stage and performance requirements included in the contract
- Contract requires certain records on those employed on the works to be maintained
- Declaration of compliance required with each payment application

Questions and Answers

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 judgment** 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 **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.**

Lead topic: Public Procurement	Sub-topic: overruns on works projects	Cost public	Contact David O'Brien Ext: 076 100 8147
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FAST FACTS

- DPER allocates capital funding between departments/sectors, on a multi-annual basis, based on the Government's capital plan.
- Responsibility for selecting the individual projects to be funded within the various departmental/sectoral allocations is then a matter for the relevant individual Minister to decide, based on their priorities for the sector (and subject to agreement by Government, where necessary).
- Public Spending Code sets out the principles which apply in relation to project appraisal, value for money etc., and which continue to apply throughout the implementation phase.
- Public works contracts awarded on the basis of a fixed-price, lump sum. The conditions include a set of tightly defined circumstances where the contract sum and the project's completion date may be adjusted.

Questions and Answers

Q. What cost control measures are in place to ensure projects are completed within budget?

- A project must **complete the review stages** set out in the Public Spending Code before sanction is given to go out to tender.
- At each review stage the project is evaluated to ensure it continues to meet its objectives, the budget is reviewed and adjustments undertaken as necessary.
- This process is undertaken **between the contracting authority** who has project responsibility **and the sanctioning authority** who has overall budgetary responsibility and is ultimately accountable.
- A **central pillar to the successful outcome** of a construction project is a **clearly defined set of contract conditions**. The standard public works contract which must be used without amendment (unless otherwise sanctioned) is a lump sum, fixed-price contract and includes, amongst other important elements, **a set of tightly defined circumstances** where the contract sum and the project's completion date may be adjusted.
- It is a general principle that public works projects are put out to tender on the basis of a **comprehensively defined set of project requirements** so that tenderers can provide a lump sum price for the completion of the project.
- Notwithstanding that, the conditions of construction contracts must **make provision for change after the contract is awarded** whether that is due to unforeseen circumstances or brought about by a change in the contracting authority's requirements. **Careful management pre-procurement** is required to ensure that neither scenario arises since **changes are disruptive and costly** in the construction phase.

- Once tenders are received the sanctioning authority must review the tender report and give permission for a contract to be awarded with an established construction budget.
- It is a matter for the contracting authority who has awarded the contract to manage its performance thereafter and report on budgetary matters to the capital sanctioning authority concerned.

Lead topic: Public Procurement	Sub-topic: Procurement Legal Challenge to establishment of a Multi Supplier Framework for the provision of Printers, Photocopiers and Multi-Function Devices	Contact: Mary Fennelly Ext: 8052
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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 was involved?**

Copymoore Ltd & Others -v- The Commissioners of Public Works in Ireland.

- **What is the current status with this case?**

The case was heard in the High Court during December 2014 and January 2015. Judgement was delivered by Justice McDermott on 11 November 2016. Relief sought by the applicant was refused by the Court and costs were awarded to the State in January 2017.

Copymoore Ltd & Others have since appealed the decision of the High Court. OGP are defending the appeal.

- **What is the impact on Public Service bodies (PSBs) seeking to procure the devices affected by the legal challenge?**
- PSBs have been conducting procurement processes on an individual and as required basis. Pending the outcome of the legal appeal, OGP will examine the options for a suitable centralised procurement arrangement to meet the needs of PSBs for this category of office equipment.

Lead topic: Public Procurement	Sub-topic: Integrated Finance Management System for Health	Contact: Mary Fennelly Ext: 8052
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FAST FACTS

This is a project under the Health Finance Reform Programme aimed at delivering an Integrated Finance Management System.

Q&A'S

- **What is OGP's involvement in this project?**

OGP sourcing staff have provided procurement expertise and advice to the HSE on the tender process to select an ERP software solution for the new Integrated Finance Management System.

- **What will the project deliver?**

The project will deliver a new Integrated Finance Management System (IFMS) underpinned by a single technology platform to provide:

- a robust and scalable system to support finance and procurement operations and standardised processes;
- consistent and meaningful data across the whole system with the ability to interrogate data to provide reports and analysis.

- **What is the current status with this project?**

The Request for Tender for selection of the new ERP software solution was published on 21 September 2016. The closing date for submission of tenders was 7 November 2016. The procurement process is now complete and a preferred tenderer has been identified. Award of contract is pending decision subject to approval by the HSE's internal and external governance framework. It is expected that the contract will be signed in Q3 2017.

Lead topic: Office of Government Procurement	Sub-topic: Procurement of Wheelchair Accessible Taxi Services	Contact: Donal D’Arcy Ext: 8103
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FAST FACTS

The OGP is periodically requested to clarify its approach in regard to the consideration of wheelchair accessibility in the procurement of taxi services on behalf of state bodies.

The OGP has undertaken the responsibility for the procurement of many state funded taxi services in recent years. The number of wheelchair accessible vehicles in the national fleet is on the increase, largely through the introduction of the Wheelchair Accessible Vehicle Grant Scheme by the National Transport Authority (NTA) which has been in operation over the last number of years. The **most recent figures** released by the NTA, for **2016**, show that **6% of the national taxi fleet is now wheelchair accessible**, up from 4.2% in 2013. Although this is an improvement, some counties have as few as 6 registered wheelchair accessible taxis as of Feb 2017.

The current programme for Government includes a commitment as follows;

“We will also introduce a provision whereby taxi companies who wish to bid for state procurement contracts must ensure that a minimum of 10% of their fleet is wheelchair accessible.”

This matter is largely one of market structure as there are no large unitary fleet operators who can easily be compelled to meet such a requirement. The **market operates on the basis of loose arrangements between Dispatch Operators and individual vehicle owners**. Dispatch Operators have previously made it clear to the OGP that they are not in a position to force individual drivers to purchase accessible vehicles. If the OGP, or any other contracting authority, were to impose a % qualification threshold as proposed, (a) it could be open to legal challenge on grounds that such a requirement might be disproportionate and not necessary for the performance of the contract, and (b) the State may not be able to secure any bidders for the contract.

While the OGP will ensure that appropriate accessibility criteria are included in tenders for taxi services, we believe that the fulfilment of the commitment contained in the Programme for Government is primarily a matter for those who oversee and regulate the taxi industry such as the Department of Transport, Tourism and Sport and the National Transport Authority. The **OGP engages with the National Transport Authority on an ongoing basis in this regard**.

We understand that the NTA (a) continue to fund a programme of grants to increase the level of wheelchair accessible, (b) new taxi-licenses are only available for wheel-chair

accessible vehicles and (c) the vehicle specification to qualify as a wheelchair-accessible taxi has been amended to reduce the level of investment required by individual taxi operators in order to comply.

Lead topic: Public Procurement	Sub-topic: Multi-Supplier Framework Agreement for the Provision of Interpretation Services (excluding Irish)	Contact: Roisin Killeen Ext: 8174
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The Office of Government Procurement issued a Request for Tenders on 12th October 2015 via the Irish government procurement portal www.etenders.gov.ie to establish a Multi-Supplier Framework Agreement (in 8 Lots) for the Provision of Interpretation Services (excluding Irish). This public procurement opportunity was also advertised on OJEU/TED.

Following a competition under the Open Procedure, the Framework was established in December 2015.

A Supplementary Request for Tender (SRFT) for the provision of services for the Immigration Services and Legal Aid Board was issued to Framework Members under Lot 3 on 27th April 2016. An evaluation process was conducted, and letters were issued to the successful and unsuccessful tenderers on 5th April 2016. A voluntary standstill period was entered into by OGP. This competition was subsequently cancelled on 20th September 2016 due to concerns regarding the evaluation process.

A new SRFT was issued on 7th December 2016. The evaluation process was completed and notification letters were issued to the successful and unsuccessful tenderers on 19th April 2017. Following correspondence with one of the unsuccessful tenderers, this tenderer subsequently initiated proceedings for judicial review under The European Communities (Public Authorities' Contracts) (Review Procedures) Regulations 2010 and Order 84A of the Rules of the Superior Court (As Amended).

The Office of Government Procurement will be defending the proceedings on the basis that they are without foundation.

Lead topic: Office of Government Procurement	Sub-topic: Rapid Delivery Housing	Contact: Róisín Killeen Ext: 8174
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FAST FACTS

OGP Frameworks on behalf of the Clients for:

- Multi Supplier Framework Agreement for the Provision of Rapid Delivery Housing.
- By way of Government Decision on 28th September 2015, the OGP was directed to prepare a National Framework, which would be available to be drawn on by any local authority to procure housing, on sites to be selected by the relevant local authorities and subject to the normal Part VIII planning process, for pressing accommodation needs, including for homeless families and for migrants granted refugee status.
- The Framework Agreement for the Provision of Rapid Delivery Housing is one solution available under the Action Plan on Housing and Homelessness for delivering on the need for houses to be provided under a Rapid-Delivery Housing Programme.
- The potential demand for this Framework is in the order of 1,700 rapid-delivery houses.
- The OGP received technical assistance from representatives across the four Dublin local authorities (Dublin City Council, Fingal County Council, South Dublin County Council and Dun Laoghaire Rathdown County Council), the Local Government Management Agency and the Department of Housing, Planning, Community and Local Government to deliver this national level Framework. Legal advice and support was received from the Chief State Solicitors Office and Attorney General's Office.
- A pre-market engagement (Request for market information) was initiated in April 2016.
- The competition to establish the Framework Agreement for the Provision of Rapid Delivery Housing Projects was launched on 28th August 2016, with an extended closing date of 14th October 2016.
- Representatives from the OGP and technical team prepared and attended two bidders briefing in Cork and Dublin to assist tenderers understanding of the documents and requirements.

- The overall value of the framework is estimated to be in the range of €250,000,000 euro to €400,000,000.
- The Framework Agreement was established on the 6th January 2017 with 12 Framework members identified. The Framework Agreement established from this public procurement competition commenced on the 6th of January 2017.
- The initial contract for the design and build of 20nr. social houses for Fingal County Council was signed on 24th February.
- A 2nd mini-competition for the development of 25nr. social housing units for Fingal County Council has been completed and a contract awarded.
- A 3rd mini-competition for the design and build of 12nr. social housing units for Dún Laoghaire Rathdown County Council is currently underway.
- 12 Framework Members identified for a place on the Framework Agreement are as follows;

Framework Member	Location	SME
Andrews Construction Limited	Co. Westmeath	Yes
ABM Construction	Co. Dublin	
Donaghmore Construction Limited	Co. Tyrone	Yes
Glenman Corporation Limited	Co. Galway	Yes
John Sisk & Son (Holdings) Limited	Co. Dublin	
JJ Rhatigan & Company	Co. Galway	
Manley Construction Limited	Co. Meath	Yes
MEIC Limited	Co. Galway	
Mythen Construction Limited	Co. Wexford	Yes
P.J. Carey (Contractors) Limited	UK & Dublin	
Sammon Contracting Ireland Limited	Co. Kildare	
Western Building Systems Limited	Co. Tyrone	Yes

Q&A (Rapid Delivery Housing)

How will public bodies access this Framework Agreement?

Individual Framework Clients (local authorities mainly) may conduct mini-competitions amongst Framework Members for specific housing projects throughout Ireland as and when specific need arises by issuing an Invitation to Tender (ITT) to each Framework Member.

Will “Approved Housing Bodies” have access to the Framework Agreement?

Those approved housing bodies which also constitute “bodies governed by public law” within the meaning of Regulation 2 of the European Union (Award of Public Authority Contracts Regulations 2016 (S. I. No. 284 of 2016), listed on the Register of Approved Housing Bodies maintained by the Department of Housing, Planning, Community and Local Government currently approved under section 6 of the Housing Act 1992 are eligible to draw-down from the Framework Agreement.

What will typically be delivered under this Framework?

Houses, fully delivered for occupation (i.e. designed, constructed and/or manufactured, delivered, erected and completed and certified for occupation in accordance with the Building Regulations and Building Control Regulations) within the time frame indicated by the Framework Client. Own Door traditional format housing, must be provided in turn-key condition with exception of white goods and furniture. The houses can be of varying sizes and site configurations having regard to the size and nature of sites and each Framework Client’s requirements.

What role does Construction Procurement Policy (CPP) have in Social Housing central frameworks?

The Construction Adviser liaises with and provides construction policy advice to the Dept. of Housing, Planning & Local Government on the delivery of social housing.

Lead topic: Office of Government Procurement	Sub-topic: Drugs Procurement / IPHA Agreement	Contact: Paul Quinn Ext: 5400
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FAST FACTS

In July 2016, the Government concluded a four-year Framework Agreement with the Irish Pharmaceutical Healthcare Association (IPHA) on the supply of medicines to the health service. The negotiation team included the CPO and officials from the Department of Health, the HSE and the Department of Public Expenditure and Reform and supported by specialist advisors engaged by OGP. The pricing mechanism established for medicines will result in estimated savings for the State of approximately €600 million over the four year period. A breakdown of these savings showing incremental savings over and above existing arrangements is outlined in the table below.

Table: Incremental Savings from IPHA Agreement

Breakdown of savings	2016	2017	2018	2019	2020
Additional from 2016 Agreement	31	57	23	38	29
Additional savings in Hospitals	6	11	3	6	5
Cumulative Incremental savings – prior year	0	37	105	131	175
Total Incremental Savings	37	105	131	175	209

Lead topic: Office of Government Procurement	Sub-topic: Legal Services	Contact: Anne Lannon Ext: 8109 086 0266851
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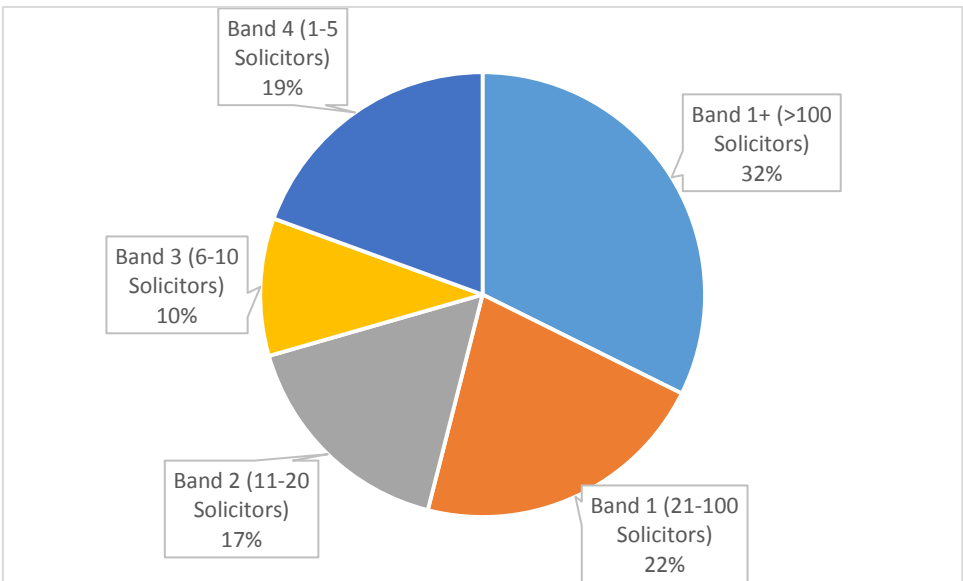
FAST FACTS

General

- 3 specific categories within Legal Services
 - Solicitors
 - Barristers
 - Third Party (Stenography)
- OGP focus to date is on Solicitors legal services due to projected value (estimated to be circa €86m pa)

High Level Spend Analysis for 2011-2013 (Solicitors)

- Estimated at €86m pa (excludes Legal Aid Schemes)
- 295 firms have delivered services with a value >€10K
- 46 firms account for 80% of spend
- Top 10 account for 50% of spend
- Significant SME participation



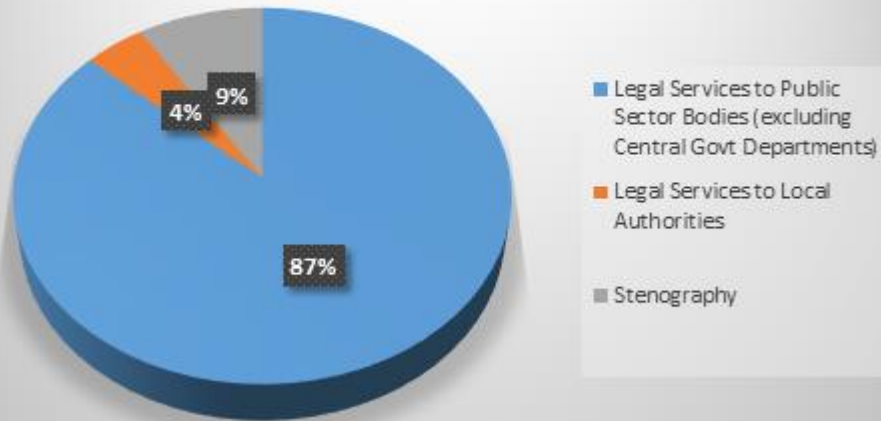
- One size does not fit all
- Multiple Frameworks to meet needs of public sector

Framework	Features	Status	Number of competitions	Value of Competitions (to date)
Legal Services to Public Sector Bodies (excluding Central Govt Departments)	<ul style="list-style-type: none"> • Accommodates needs of >2000 PSBs • 11 Lots, each Lot representing a specific practice area 	Framework Commenced operation 1st August 2016 / first mini-competition September 2016	23	€10.8 m
Legal Services to Local Authorities	<ul style="list-style-type: none"> • 8 geographical Lots 	Framework Commenced operation 26th September 2016 / first mini-competition February 2017	4	€540,000.00
Legal Services to Educational Training Boards	Geographical lotting to allow firms compete by reference to location	Framework Commenced operation 28th February 2017 / first mini-competition March 2017	3	Estimated Annual value of €250,000
Legal Services to HIQA	Geographical lotting to allow firms compete by reference to location	Framework Commenced operation 1st April 2016 / run directly by HSE	-	Estimated Annual value €250,000
Legal Services to HSE	Geographical practice area lotting and	Framework Commenced operation 1st September 2016 / run	-	Estimated Annual value €10m

		directly by HIQA		
Legal Services to Tusla	22 Lots based on geographical practice area and	20 Lots completed and awarded May 2017 2 Lots under evaluation	N/A	Estimated Annual value of €10m
Stenography to Public Sector Bodies	Covers stenography services required by the public service, including : <ul style="list-style-type: none"> • real-time transcription services • transcription services 	Framework Commenced operation 13th June 2016	8	€1.15 million

- First time that legal services has been addressed in an all of government context
- Tenderer briefing at outset of procurement: Significant pre-tender market engagement including supplier briefing seminars and consultation through Law Society
- SME / consortia involvement encouraged through accessible competition qualification requirements e.g.,
 - no Turnover test applied
 - Professional Indemnity level of €1.5m set for entry to FWA – being the requirement to practice as a solicitor in Ireland)
 - No organisational resource test
- Overall approach to Legal Services split into separate FWAs, with distinct requirements/skillsets. FWAs known to market which allows firms to select which FWA best suits their skillset
- Each FWA is lotted by either practice area or geographical area - allows firms with expertise in specific practice or geographical areas to compete
- Standard tender response document - requirement to produce voluminous amounts of pre-qualification documentation eliminated

Division of Legal Services



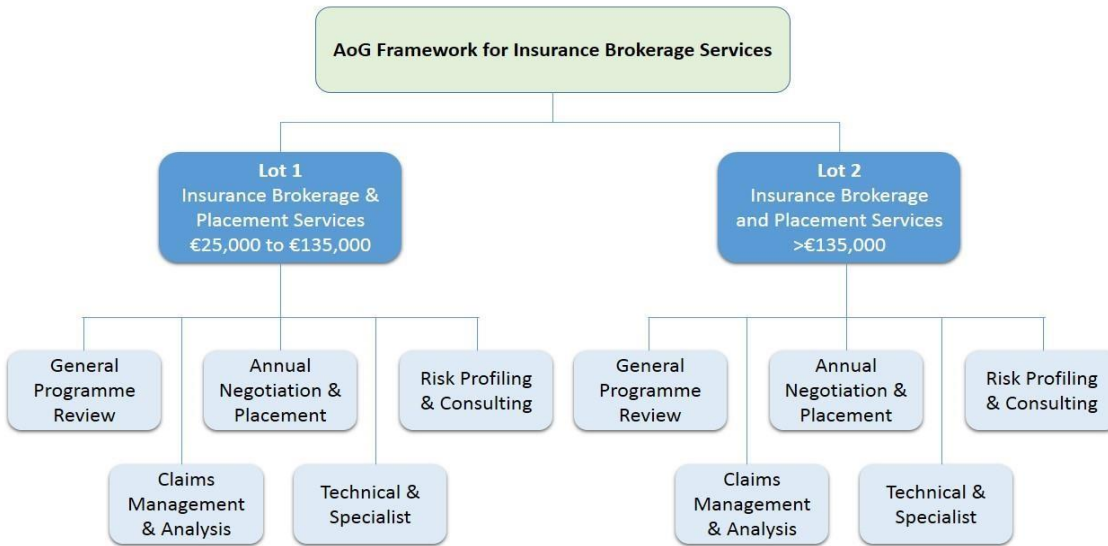
Lead topic: OGP Professional Services	Sub-topic: Insurance Brokerage and Placement Services	Contact: Anne Lannon Ext: 8109 086 0266851
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FAST FACTS

General

- National FWA for Provision of Insurance Brokerage and Placement Services to the Public Sector
- Underwriting requirements provided under Framework through Brokers.
- Minimum value €25,000
- Value figure to include through payments (premiums)
- Covers all PSBs, Central Government, Local Authorities, Health Sector and Education Sector (including Universities and IoTs)
- Lotted by reference to value
 - Lot 1 = €25,000 to €135,000
 - Lot 2 = € >135,000
- Matters covered include:
 - General Programme Review
 - Negotiation and Placement of insurances
 - Risk Profiling & Risk Consulting
 - Claims Management & Analysis
 - Technical & Specialist
 - Miscellaneous Services

Structure of the Framework



Outcome

- Minimum of 3 and maximum of 12 Framework Member places for Lot 1
- Minimum of 3 and maximum of 8 Framework Member places for Lot 2
- 6 firms competed
- All firms admitted to FWA across both Lots

Geographical Profile

- 5 firms based in Dublin
- 1 in Limerick

Framework Start Date

- 1st March 2017

Throughput to Date

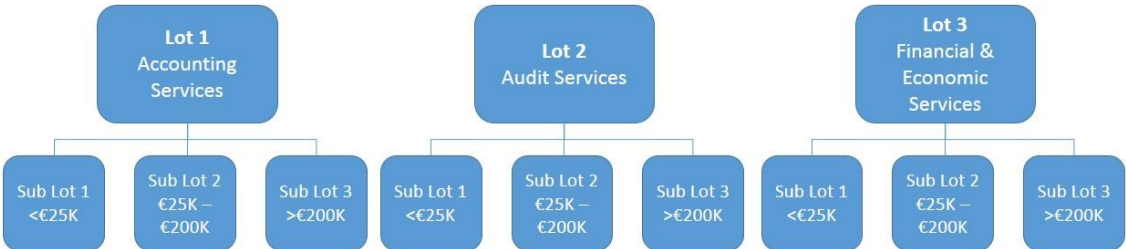
- 6 mini comps
- Total comp value € 600,000

Lead topic: Office of Government Procurement	Sub-topic: Accounting, Audit and Financial & Economic Services	Contact: Anne Lannon Ext: 8109 086 0266851
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FAST FACTS

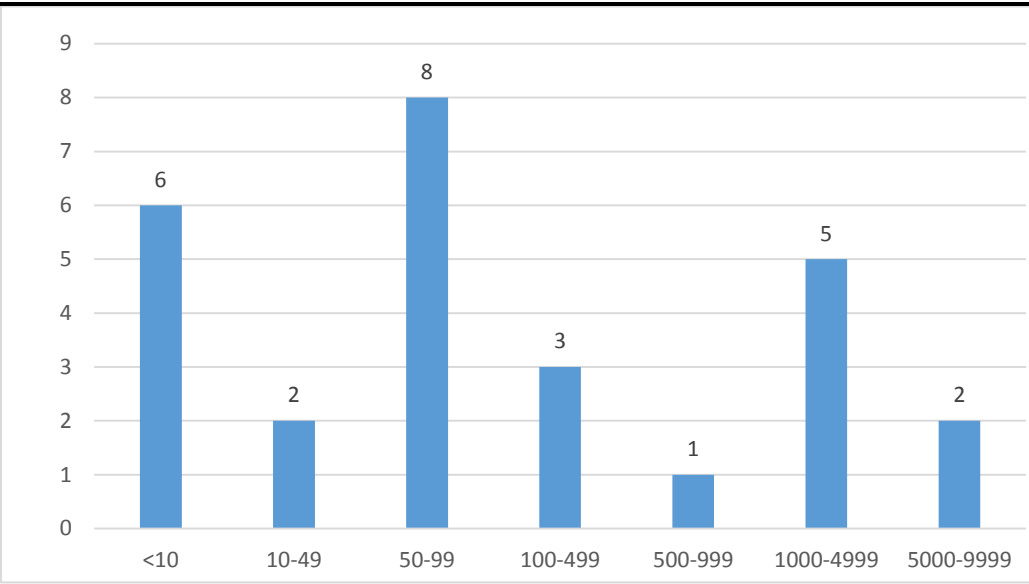
General

- National FWA for Accounting, Audit and Financial & Economic Services concluded
- Covers all PSBs, Central Government, Local Authorities, Health Sector and Education Sector (including Universities and IoTs)
- 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 completed
- 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

Throughput to Date

- >150 mini comps
- Total comp value €15m

Lead topic: Office of Government Procurement	Sub-topic: Consulting & Advisory Services	Contact: Anne Lannon Ext: 8109 086 0266851
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FAST FACTS

Approach & Features

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

	Health Sector FWA	AoG FWA
Status	Complete	Complete
Est FWA Value	€5m - €10m	€280m
Duration	4 Years	4 Years
Parties	HSE. DoH, Funded Agencies	Covers all PSBs, Central Government, Local Authorities, and Education Sector (including Universities and IoTs) Health Sector may use where sectoral FWA does not meet their needs
Structure	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 SMEs
 - 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 due course

Throughput to Date

For AoG:

- i) >90 mini-comps
- ii) Total value approximately €14.6m
- iii) Lowest value €25K, highest value €3 million

For Health

- i) 6 mini –comps
- ii) Total value approximately €600K

Lead topic: Office of Government Procurement	Sub-topic: Construction Services	Contact: Anne Lannon Ext: 8109 086 0266851
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FAST FACTS

General

- National FWA for Architect Led Design Team Services in support of the government’s Social Housing Strategy
- Covers all Local Authorities and Approved Housing Bodies (AHBs)
- Lotted by reference to geographic area to mirror local authority regional assemblies
- Sub Lotted by reference to contract value
- Firms were entitled to be on 2 sub lots in each region to maximise SME participation
- 221 Tenders were received at Stage 1
- 161 Tenders were invited to Stage 2
- 31 firms are on the Framework across each of the regions and sub lots.
- 19 firms are Dublin based, the rest around the country

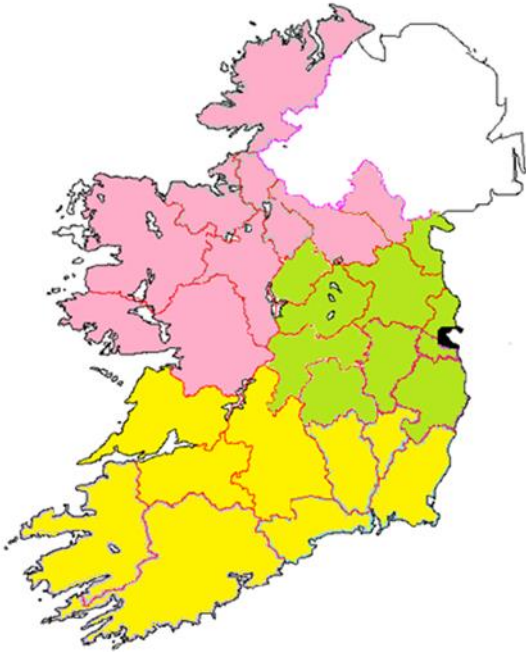
Throughput

- 31 Mini competitions have been completed
- 7 Mini competitions are at initiation stage
- Various Local Authorities and AHBs in discussion with OGP in regard to using the Framework
- Design Team fees tendered and contracts placed circa €5.5 million (based on Notional Project Values of €82 million from projects ranging in value from €250,000 to €10,800,000)

Region A

Cavan, Donegal, Leitrim, Galway City, Galway County, Mayo, Monaghan, Roscommon, Sligo

sub-Lot 1	sub-Lot 2	sub-Lot 3
<€1.5m	€1.5m - €3m	>€3m



Region C

Carlow, Clare, Cork City, Cork County, Kerry, Kilkenny, Limerick, Tipperary, Waterford, Wexford

sub-Lot 1	sub-Lot 2	sub-Lot 3	sub-Lot 4
<€1.5m	€1.5m - €3.0m	€3.0m - €5.0m	>€5.5m

Region B

Dublin City, Dun Laoghaire-Rathdown, Fingal, Kildare, Laois, Longford, Louth, Meath, Offaly, South Dublin, Westmeath, Wicklow

sub-Lot 1	sub-Lot 2	sub-Lot 3	sub-Lot 4
<€1.5m	€1.5 - €3.0m	€3.0m - €5.0m	>€5.0m

Lead topic: Public Procurement	Sub-topic: Brexit	Contact: Jim Deane Ext: 5726
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FAST FACTS - Brexit

OGP

- The OGP is liaising closely with the structures established by Government and monitoring developments at EU level. It has raised the question of Brexit through its governance structures and also at Stakeholder forums such as the SME Working Group and the Regional procurement briefings. It is advising **State Bodies to look at their supplier chain to assess the potential impact of Brexit and to consider mitigating steps.**

The Procurement Market

- The **percentage of procurement** spend on goods, services and works that originate from suppliers **outside Ireland is in the order of 5%** or approximately €600m; the bulk of this is accounted for by UK suppliers.
- There is also the question of goods which originate in the UK but are **resold** by Irish suppliers.
- Any **change limiting competition from UK suppliers is likely to drive up costs** either directly through tariffs and an increased administrative burden etc.; or indirectly, by reducing competition with Irish suppliers from the UK.

Procurement Rules

- The impact on public procurement will depend on the outcome of the negotiations between the EU and UK.
- In the short term (earliest - late Spring 2019), the existing procurement rules will continue to apply.
- If following the negotiations, the UK remain in the single market under a European Free Trade Agreement (EFTA - Switzerland, Liechtenstein, Norway and Iceland) type deal, this would entail continued application of EU procurement legislation. Effectively, no change to the rules and importantly few tariffs (either in monetary or administrative terms).
- If the UK leave the single market, then the primary consideration is whether the UK would remain a party to the World Trade Organisation (WTO) Agreement on Government Procurement (GPA) and what terms would apply. The GPA entails compliance with rules and obligations which are in many respects substantively the same as the rules that apply under the current EU procurement directives.

Lead topic: Public Procurement	Sub-topic: CCPC - Bid Rigging	Contact: Jim Deane Ext: 5726
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FAST FACTS – Bid rigging

- The Minister and Minister of State met with the Chairperson CCPC last September on this issue and a proposal from the CCPC for a screening programme for procurement processes which systematically searches for indications that bid rigging may have occurred.
- The Chairperson in her letter requesting the meeting stated that the potential impact, **if even 5% of procurement processes were subject to bid rigging**, would be extra costs for Irish taxpayers in region of **€100m per year**. **No evidence** has been provided to substantiate this figure.
- The Minister indicated that the question is whether the **proposed screening system is proportionate, operational and reasonable**. It will only be effective if it results in sufficient deterrents for cartels of which there is very little evidence or convictions to date. Given that the proposal is for new legislation and a screening system, the **CCPC was advised to prepare a robust business case** in line with the public spending code supported by the Minister JEI who has policy responsibility for the CCPC.
- In the interim, the Minister suggested that it would be useful for the OGP and CCPC to meet in the context of information sharing and to develop and promote awareness both within the OGP and throughout the Public Sector.
- This is in line with EU proposals in this regard which suggests that awareness raising and preventive action at the planning and preparation stage of public procurement procedures can play a key role in fighting collusion in EU public procurement markets

Bid rigging conviction

- Following a **four year investigation** by the Competition and Consumer Protection Commission (CCPC), the Central Criminal Court convicted and sentenced two Directors for engaging in bid-rigging in the procurement of flooring contracts for major international companies between 2012 and 2013.
- The CCPC found that there had been **collusion in respect of 16 contracts**. A **competitor blew the whistle** on the illegal activity by making an application under the CCPC’s Cartel Immunity Programme. The Programme provides immunity from fines where a member of a cartel comes forward and fully co-operates with the CCPC’s investigation, despite the fact that the whistle blower also benefited from the cartel.
- During its four year investigation, the CCPC carried out so-called ‘dawn raids’ where they seized emails, quotations and telephone records. The Central Criminal Court imposed fines of €10,000 and €7,500 and a 3-month suspended sentence.

Lead topic: Public Procurement	Sub-topic: Framework Contract for the supply of Public Library Books and AV Material	Contact: Anne O'Mahony Ext: 8285
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FAST FACTS

Background

The Local Government Management Agency (LGMA) had a requirement for supplier(s) that could supply books and AV material that reflect the Irish, UK and international publishing industry including bestsellers, new titles and back catalogue. The Educational Procurement Service, University of Limerick (EPS) was tasked in 2016 with managing the procurement process for this requirement. The successful supplier(s) would supply print books and AV material to all thirty public library services. Some local authority library services had contractual arrangements already in place which are due to expire on different dates over a period of eighteen-months prior to joining the national contract. The values provided in the RFT were indicative only and refer to one hundred per cent participation in the national contract.

Supplier Consultation

The strategy was informed by market and spend analysis, by Circular 10/2010: *Facilitating SME Participation in Public Procurement* and through consultation with sellers (Book Supply representatives) and buyers (LGMA and Local Authorities). Every effort has been made to research and consult key interests in this competition. There were **two Buyer/Customer/Supplier meetings before the finalisation of the tender strategy**. The meetings were held on 14 January 2016 and 19 September 2016. The **January meeting was held with representatives of the Booksellers Association of UK and Ireland on lotting and tender issues**. Subsequently, the Association conveyed their appreciation for the engagement i.e.

'... your feedback on many of the issues raised. Many thanks again for being so generous with your time and frankness of your responses ...'

The September 2016 meeting was held in the LGMA headquarters with EPS Category Manager in attendance with the Booksellers Association of UK and Ireland to discuss market conditions. The **agenda** forwarded by this association **focused on the issues of centralised buying and price-dominated criteria** for tenders which it believed would favour two large UK wholesalers and facilitate short-term predatory pricing. The overall **contract period** (i.e. initially 12 months), **sub-division into lots**, greater emphasis on **quality criteria (55%)** and **low entry requirements** were some of the consultation outputs which would facilitate SMEs to compete for this tender.

SME Consideration

Circular 10/14: *Initiatives to assist SMEs in Public Procurement* was incorporated into the RFT documents. The contract was subdivided into lots to facilitate access by SMEs and to take productive capacity into account. The lot structure, by category, corresponded to the existing supply structure without compromising efficiency and value for money. The **value per lot ranged from €500,000 to €1.7m** and is not considered too large, see Fig.1.0 for further breakdown. Capacity and turnover requirements were relevant and proportionate, which broadens the field of eligible tenderers. The **turnover requirement of €100,000** which is less than the estimated contract value rather than a multiple of the contract value was incorporated into the tender.

Framework agreements can be divided on the basis of geography, specialism and/or value. In this tender, the **division was based on the tradition specialism**. As the Dublin area accounts for approximately 45% of spend, a further subdivision of the lots would incur additional overhead without providing efficiency or value. Therefore a national tender basis ensured a competitive basis for all local authorities, whereas **a further geographic breakdown could result in a lack of competition** for some areas and selective tendering for the most valuable contracts. The LGMA who represent the contracting authorities were not disposed to further subdivision by region.

Tender Strategy

The Tender strategy balanced the need of the LGMA with the supplier market, with specific consideration of the impact on Small and Medium Enterprises (SMEs). For this competition, the overall requirement was split by category (6 lots), based on the way that the market organises itself and its own marketing and selling activities.

These lots and estimated annual values were (1) Adult Fiction– value €1m, (2) Adult Non Fiction – value €1.5m (3) Junior Fiction & Non Fiction – value €1.7m, (4) Irish Published Books– value €600,000, (5) Trade Paperbacks– value €500,000 and (6) DVDs, Music CDs and Console Computer games– value €700,000.

Further disaggregation of these lots by region was not sustainable in terms of lot value and the need to achieve value for money and efficiency in the Local Government sector.

Proposals would be evaluated for quality (55%) and cost (45%).

Tender

The Request for Tenders to establish a Framework Contract for the supply of Public Library Books and AV Material was posted on E-Tenders on the 21 October 2016. A single supplier framework would be established for each lot at the conclusion of the tender process.

Lots	Public Library Books and AV Material	Estimated annual LOT value
1	Adult Fiction:	€1,000,000
2	Adult Non Fiction:	€1,500,000
3	Junior Fiction & Non Fiction:	€1,700,000
4	Irish Published Books	€600,000
5	Trade Paperbacks	€500,000
6	DVDs, Music CDs and Console Computer games	€700,000

Fig.1.0 Lot Overview

The framework would be established for one year and allow for three extensions of one year each such that the overall term will not exceed 4 years. The deadline for questions relating to the RFT was 14 November 2016. During this timeframe all questions were directed through eTenders, over twenty supplier questions were answered promptly by the EPS during this period. The tender closed at 2pm on 21 November 2016.

Evaluation

The evaluation team consisted of the following members:-

Sourcing Lead:	Susan Jones Category Manager (supported by Gerry Kennedy Category Specialist) EPS
Evaluation Team:	Annette Kelly Head Library Development LGMA
	Eva McEneaney Executive Librarian LGMA
	Mairead Owens County Librarian Dun Laoghaire-Rathdown
	Mary Stewart County Librarian Offaly
	Liam Ronayne City Librarian Cork City
	Austin Vaughan County Librarian Mayo
	Mary McCaughan Senior Librarian Dun Laoghaire-Rathdown
	Marian Higgins County Librarian Kildare

There were **twenty-eight tender submissions** and the tender responses were evaluated based on the published award criteria comprising of quality and price. The EPS evaluated the cost element and the evaluation team evaluated the technical responses. The Framework Contract for each Lot would be awarded on the basis of the most economically advantageous tender(s) as identified in accordance with the following criteria:

Award Criteria	Weighting	Max Marks
EDI Capability	15%	150
Acquisitions API Currently available	15%	150
150 marks available if EDI Capability is currently available		
Planned development (provide delivery date)	10%	100
100 marks available if EDI Capability is Planned for development. Delivery date must be provided		
Not planned	Disqualified	
Note: If EDI Capability is not available or not Planned for development. Tenderers will be eliminated from the competition		
Speed of Supply	20%	200
New publications ordered pre- publication	5%	50
New publications ordered post publication	5%	50
Borrower Request/ Special urgent requests <ul style="list-style-type: none"> • New publications • Older Publications • Non mainstream /Non UK 	5%	50
Titles ordered from backlist	5%	50
Quality of Service:	20%	200
Alerting Service	5%	50
Backlist	5%	50
Innovation/ Value Added	5%	50
Stock Buys	2%	20
Reporting	3%	30
Ultimate cost	45%	450

(including discount rate and Service cost per item)		
Total	100%	1000

Award

The following suppliers were identified as having the most economically advantageous tender.

Lot 1 Adult Fiction

Number of Tender Submissions	<u>6</u>
Number of rejected Submissions	<u>0</u>
Name of Winning Tenderer	O'Mahonys Booksellers Ltd

Lot 2 Adult Non Fiction

Number of Tender Submissions	<u>5</u>
Number of rejected Submissions	<u>0</u>
Name of Winning Tenderer	Bertram Library Service

Lot 3 Junior Fiction and Non Fiction

Number of Tender Submissions	<u>4</u>
Number of rejected Submissions	<u>0</u>
Name of Winning Tenderer	Bertram Library Service

Lot 4 Irish Published Books

Number of Tender Submissions	<u>6</u>
Number of rejected Submissions	<u>0</u>
Name of Winning Tenderer	Irish Library Supplies

Lot 5 Trade Paperbacks

Number of Tender Submissions	<u>5</u>
Number of rejected Submissions	<u>0</u>
Name of Winning Tenderer	Irish Library Supplies

Lot 6 DVDs, Music CDs and Console Computer games

Number of Tender Submissions	<u>2</u>
Number of rejected Submissions	<u>0</u>
Name of Winning Tenderer	JK Multimedia Ltd.

Letters of notification were issued to all suppliers on 19 December 2016. The standstill period finished on 3 January 2017. During the standstill period, two suppliers (The Open Book Company Ltd and International Education Services) requested clarifications regarding the outcome of the competition. The EPS/LGMA responded to these queries through eTenders promptly. Contracts were signed with the successful tenderers on 13 and 16 January 2017.

Challenge

On 17 January, The Open Book Company Ltd through their solicitors Herbots issued formal challenge to the result of the tender. The main focus of the challenge related to one of the technical award criteria - EDI capability. The Open Book Company Ltd contended that they should have been awarded full marks stating they had full EDI capability. This was disputed by the EPS and the LGMA. 150 marks for EDI Capability were available to tenderers who responded that the tenderer had the Acquisitions API currently available. The Acquisitions API was defined in the Requirements and Specifications document under Ordering and Delivery Mechanism as follows:

“All library authorities will be using a single shared Library Management Systems in early 2017. The local authority library services require that successful tenderers will interface with Innovative Interfaces Library Management System Sierra through Electronic Data Interchange (EDI) using Innovative Interfaces Acquisitions API. For the tender, details and developer sign up for all of the Sierra REST API's are available at <https://developer.iii.com>. Access to sites, contents and API is "Commercial in Confidence".”

Quick Click ordering which was referenced in The Open Book Company Ltd’s tender response was not the Innovative Interfaces Acquisitions API as defined in the RFT and was scored appropriately.

Result

EPS were informed in June 2017 that The Open Book Company Ltd were withdrawing their challenge and no judgement was made regarding costs as of that date. The LGMA will provide the EPS with further information regarding the withdrawal as soon as their legal team provides it.

Lead topic: Public Procurement	Sub-topic: Mini-competition for the provision of external audit services for the Policing Authority	Contact: Anne Lannon Ext.: 8109 086 0266851
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FAST FACTS

The Policing Authority has requested a mini-competition for an independent systems audit of (a) the reporting of breath tests and Mandatory Alcohol Tests (MAT) checkpoints and (b) the issuing of Fixed Charge Notices (FCNs) and summonses in respect of FCN offences and this has been completed from a procurement perspective. Crowe Horwath was identified as the successful tenderer and notified of this outcome.

The Crowe Horwath response was based on Policing Authority's specific requirement for an immediate start date.

Lead topic: Public Procurement	Sub-topic: Disposal of the former Naval Service vessel LÉ Aisling	Contact: Anne O'Mahony Ext: 8285
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FAST FACTS

Naval Service Ship Replacement Programme

The White Paper on Defence (2000) confirmed the role of the Naval Service as the State's principal sea-going agency and provided that "new vessels would be brought on stream to replace older ones as these fall due for replacement". Naval Service vessels are replaced when they have come to the end of their useful life, which in the normal course is expected to be in the region of 20-25 years.

In this context and following an open tender process, a contract was signed in October 2010 with Babcock International UK for the provision of two new 90 metre Offshore Patrol Vessels (OPVs) for the Irish Naval Service with the option of a third OPV.

LÉ Samuel Beckett was delivered in in April 2014 and LÉ James Joyce was delivered in July 2015. In June 2014 the Department exercised the option under the original contract to place an order for a third OPV, the LÉ William Butler Yeats, which was delivered at end July 2016. The three new ships replaced the LÉ Emer, LÉ Aoife and LÉ Aisling (the three oldest in service ships in the fleet).

Having well exceeded her notional life expectancy, the LÉ Aisling was withdrawn from service in June 2016 after 36 years' service. In engineering terms, the equipment onboard was obsolete and the reliability and capability of the ship was impacted. In order for the Naval Service to carry out its roles as assigned by Government the fleet must be capable, reliable and safe to operate in the North Atlantic where sea conditions during prolonged winter storms not among the most hostile in the world. Therefore, the vessel was withdrawn from service in view of the impending entry into service of LÉ William Butler Yeats, the third ship in the current Naval Service vessel replacement programme.

As outlined above, **LÉ Aisling** is the third Naval Service vessel to be decommissioned in recent years as part of the Naval Service Ship replacement programme:

- 1) In 2013 **LÉ Emer** was also disposed of by way of sale by public auction. The sale was handled by Mr Dominic Daly, a Cork based agent engaged by the Department. The vessel was sold for €320,000 to a Nigerian registered company.
- 2) In 2015 **LÉ Aoife** was transferred to the Maltese Armed Forces on humanitarian grounds in view of the refugee crisis in the Mediterranean region. This transfer was an exception given the particular circumstances of the humanitarian requirements of the Maltese maritime patrol region.

Options for disposal of decommissioned Naval vessels

In order to ensure the most advantageous outcome for the State, a number of options for the disposal of **LÉ Aisling** were considered by the Minister with Responsibility for Defence, Mr. Paul Kehoe, T.D.:

(a) Donation abroad, or at home as Visitor Attraction/Museum: As described above, the former LÉ Aoife had, for example, been donated to Malta. As outlined below donation to Galway City Council was considered by the Minister.

(b) Scrappage by way of ship breaking: This is a type of ship disposal involving the breaking up of ships by engaging an experienced ship breakers company. However, this option would involve costs and therefore would necessarily be an inferior option in value for money terms.

(c) Sale by Public Auction: In line with the action taken on the disposal of LÉ Emer and LÉ Deirdre, LÉ Aisling could be sold "as seen" by public auction to the highest bidder in order to maximise the financial return for the decommissioned vessel.

Consideration of donation of the LÉ Aisling to Galway City Council for use as a Visitor Attraction/Museum

In July 2016 the possibility of donating the vessel to Galway City Council was raised as a Commencement Matter in the Seanad. LÉ Aisling was twinned with Galway while in service and had a long association with the City.

In response, the Minister with Responsibility for Defence outlined the issues that arise in connection with the conversion of vessels for other roles. He advised that he would be finalising his approach on the disposal of the former LÉ Aisling shortly thereafter, and his decision would be informed by the most cost effective approach taking into account all of the issues he had outlined.

Galway City Council was requested to conduct a fully costed feasibility study and submit it to the Department for consideration. Following formal and informal contact with Galway City Council, the Minister's Private Secretary wrote to Galway City Council in December 2016. The Council was advised that as no proposal had been submitted for the Minister's consideration and given the ongoing costs and deterioration of the vessel (outlined below), it was the Minister's intention to initiate a sales process in January 2017 and it would be open to Galway City Council to purchase the vessel as part of this process, should it wish to do so.

As regards the ongoing costs associated with the retention of the former LÉ Aisling in the Naval Basin at Haulbowline, the requirement to staff, maintain and move the vessel within the Basin's limited berthage to facilitate other ships' movements led to costs of €370,000 in pay and allowances and €10,000 in tug hire, together with ration, electricity and fuel costs associated with running the engines and moving the vessel to and from berthage. A skeleton crew of 13-16 personnel was assigned to the vessel and while this crew was posted to LÉ Aisling they could not be deployed to other operational units. Although the ship was being maintained while at berthage in the Naval Basin, the vessel would also have seen

deterioration in condition and consequent reduction in value as time went by.

Ministerial decision to offer the vessel by way of public auction

Having considered the options for disposal, the Minister made the decision to offer the vessel for sale "as seen" by way public auction to maximise the return to the Exchequer. Other than in exceptional circumstances, this is the standard approach to be employed for the disposal of such assets and aligns with the Comptroller and Auditor General's 2015 Report which stated that:

"A competitive sales process or auction should normally be used for the disposal of State assets with a significant market value. Such a process helps to ensure transparency and is more likely to achieve the fair market price."

The vessel was auctioned by Mr. Dominic Daly, a ship sales broker, auctioneer and valuer with almost 40 years' experience who had previously handled the sale by public auction of the LÉ Emer in 2013 and the LÉ Déirdre in 2001.

The public auction was widely advertised in maritime publications, including Trade Winds (a global shipping and maritime news publication) and Lloyds List (a leading news and information source for the maritime industry covering all sectors of the shipping world). It was advertised in the Irish Independent newspaper and in Afloat Magazine (a specialist Irish maritime publication). There was also significant press coverage on radio, online media and in national print in advance of the auction. Mr. Daly also made his contacts in the international maritime industry aware of the sale.

Mr. Daly was responsible for arranging viewings of the vessel by prospective buyers in conjunction with the Naval Service. Due to the berthage constraints at Haulbowline and the associated costs to the State of retaining the vessel, it was imperative that the vessel was sold at an early date. Therefore, a reserve price was not set because if the vessel remained unsold, further costs of retention and disposal would have been incurred.

The auction was held in the Carrigaline Court Hotel, Cork on 23 March 2017. Bidding opened at €100,000. The first bid was for €100,000. A second and final bid of €110,000 was accepted from Mr. Dick Van Der Kamp, a Dutch shipbroker. Following the completion of the necessary paperwork associated with the sale, the vessel was removed from the Naval Base at Haulbowline on 23 April 2017 by the new owners.

The Department is aware from reports in the media that the vessel was advertised for sale by the buyer at USD \$750,000 or €648,000. It is important to note that this is a hoped for resale price and it is mere speculation what the vessel will actually realise should it be sold. At the time of writing the vessel remains listed online. The Department of Defence has no information with regard to any level of work proposed or undertaken on the ship prior to its advertisement for sale.

The Department of Defence is of the view that the sale of the decommissioned LÉ Aisling was carried out in a highly publicised and transparent manner and that the auction was conducted by a suitably qualified expert with a proven record in selling vessels of this type.

The sale realised the most favourable price obtainable given the age and condition of the vessel at the time of sale and given the international market conditions for end of life ships. The disposal of the ship by way of public auction, which was widely advertised in advance, was fully transparent and was open to all interested parties to attend. Ultimately the prevailing market conditions determined the price achieved.

Lead topic: Public Procurement	Sub-topic: HSE Compliance	Contact: Anne O'Mahony Ext 8285
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FAST FACTS

- HSE Compliance with Procurement Rules

Q&A'S

Q. What is the HSE doing to improve compliance with public procurement rules?

- The HSE is engaged in a variety of initiatives to improve compliance with public procurement rules over the next number of years. These include:

1. Technology solutions:

- The ongoing rollout of the **Procurement Project Management System (PPMS)** and other technology solutions to improve procurement processes e.g. a **Compliance Improvement Tool** which will allow the HSE to identify uncontracted expenditure
- Ongoing **training** for relevant staff. In addition HSE staff are working with the Office of Government Procurement (OGP) to develop accredited 3rd level professional training specifically tailored for public procurement specialists

2. Sourcing improvements

- (HBS) has developed a three year **Sourcing Improvement Plan 2016 – 2019** with the specific aim of having in place contracts for the over €2.2bn of procurable goods and services required by the HSE.
- In 2017, there are now **149 national procurement framework agreements** in place which is up by 52 or over 50% compared to the 97 that were in place at the end of 2015. There are central contracts in place covering annual expenditure of €1.116 billion currently in place, as against €488 million at the end of 2015.

3. Compliance Initiatives

- The **National Financial Control Assurance Group** has focused on **procurement compliance** as one of its key objectives and has set up a **subgroup chaired by the HSE's Head of Procurement**. This group has increased awareness of the compliance improvement tool by engaging with a large numbers of HSE managers and staff and Section 38 Organisations. This group has finalised a three year **Compliance Improvement Plan 2017-2020**.

Lead topic: Public Procurement	Sub-topic: Management, Catering, Housekeeping, General Maintenance and Security Services for State Owned Asylum Seeker Accommodation Centres	Contact: Randal MacDonnell Ext: 8064
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FAST FACTS

- The State own seven (7) Accommodation Centres these are:
 - Knockalisheen, Co. Clare.
 - Kinsale Road, Cork City.
 - Atlas House, Killarney.
 - Atlas House, Tralee.
 - Johnston Marina, Tralee.
 - Park Lodge, Killarney.
 - Athlone.
- Reception and Integration Agency (RIA) are responsible for the management of the centres. RIA is a functional unit of the Irish Naturalisation and Immigration Service (INIS), a division of the Department of Justice and Equality. RIA is charged with providing accommodation and ancillary services to asylum seekers under the Direct Provision system which provides asylum seeker residents with full board accommodation free of utility or other cost. Under this system, RIA seeks to ensure that the material needs of residents, in the period during which their applications for international protection are being processed, are met.
- The current contract for the Management, Catering, Housekeeping, General Maintenance and Security Services expired in June 2016.
- The current contracts for the management of the centres are with two (2) firms. These contracts were signed in 2012.
- Expenditure across all seven (7) centres is estimated at €8m pa.
- The RFT was published in 2016.
- The Competition was split into 5 Lots based on geographic regions.
 - Lot 1* - Atlas House, McCowan Lane, Tralee, Co Kerry AND Johnson Marina Hotel, Dingle Rd., Tralee, Co Kerry
 - Lot 2** - Atlas House, Deerpark Rd., Killarney, Co Kerry AND Park Lodge, Park Rd., Killarney, Co Kerry
 - Lot 3 - Kinsale Road Accommodation Centre, Kinsale Road, Cork.
 - Lot 4 - Knockalisheen Accommodation Centre, Limerick Road, Meelick, Co Clare

- Lot 5 - Athlone Accommodation Centre, Lissywoolen, Ballymahon Rd., Athlone, Co Westmeath

* Atlas House & Johnson Marina, Tralee, Co Kerry could not be tendered for individually – they are treated as one unit. The contract for Lot 1 will be awarded to one Service Provider.

** Park Lodge and Atlas House, Killarney, Co Kerry could not be tendered for individually – they are treated as one unit. The contract for Lot 2 will be awarded to one Service Provider.

- Tenderers could submit proposals for one (1) or more lots however the maximum lots one (1) tenderer could win is three (3) lots.
- There were three (3) submissions.
 - One (1) multinational organisation company who expressed an interest and attended the site visits communicated to the OGP they could not tender for the service as currently they did not have the organisational structure in place in the Republic of Ireland to deliver the service required.

Q&A'S

- **What is OGP's involvement in this project?**

OGP Sourcing staff are leading on this Procurement working in close collaboration with the RIA team.

- **What is the current status with this project?**

UPDATE :

Lot 1: 2 Submissions received.

Successful Bidder was OFM.

Contract Signed: 10/11/2016

Contract Period: 3 years. With an option for one (1) extension of twelve (12) months.

Lot 2: 2 Submissions received

Successful Bidder was OFM.

Contract Signed: 10/11/2016

Contract Period: 3 years. With an option for one (1) extension of twelve (12) months.

Lot 3: 3 Submissions received:

Successful Bidder was Aramark.

Contract Signed: 25/11/2016

Contract Period: 3 years. With an option for one (1) extension of twelve (12) months.

Lot 4: 3 Submissions received:

Successful Bidder was Aramark.

Contract Signed: 25/11/2016

Contract Period: 3 years. With an option for one (1) extension of twelve (12) months.

Lot 5: 3 Submissions received:

Successful Bidder was Aramark.

Contract Signed: 25/11/2016

Contract Period: 3 years. With an option for one (1) extension of twelve (12) months.

- **What is OGP's involvement with Emergency Reception Orientation Centres (EROC)?**

The RIA have recently requested OGP support to assist in the procurement of Emergency Reception Orientation Centres to house people seeking international protection. This is a distinct accommodation requirement of The Irish Refugee Protection Programme on foot of Government Decision on 10th September 2015.

This procurement project has a particular urgency as there is an obligation (under a separate EU decision) to bring over 600 persons into Ireland by the end of September.

Lead topic: Public Procurement	Sub-topic: Procurement and other governance issues in the higher education sector	Contact: Anne O'Mahony Ext: 8285
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FAST FACTS

In November 2015, the then Chief Executive of the HEA wrote to all institutions emphasising that the HEA expects all institutions to fully comply with national procurement guidelines.

In response to the instances of non-compliance in the higher education sector and in the context of the Governance Framework for the Higher Education System, the HEA decided to introduce rolling governance reviews as part of a process to enhance the governance and accountability infrastructure of the higher education sector. It was decided that the first such review would focus on procurement practices in higher education institutions. Following a competitive tendering process, the HEA appointed Deloitte to undertake this review. The aim of the procurement review was to evaluate the procurement practices that are in operation and to identify areas for improvement to enhance the value being achieved.

Based on a desktop review of C&AG audited accounts and Annual Governance Statements for the three-year period commencing 2011/2012, the HEA and Deloitte agreed that the following institutions be chosen for onsite fieldwork: AIT, DIT, IT Sligo, IT Tallaght, Mary Immaculate College, UCD and Maynooth University.

Deloitte completed its onsite fieldwork with the selected institutions during July and August 2016 with regular updates provided to the HEA and submitted its report in December 2016. Review of the report is now nearing completion.

The review highlights the progress that has been made within the higher education sector in recent years with regard to addressing procurement non-compliance, but does nonetheless identify clear areas for improvement. These include: more robust and well-communicated procurement policies and procedures; comprehensive corporate procurement plans; and non-compliance arising from the devolvement of procurement responsibility and the need for more widespread procurement training for staff.

In response to this and in order to increase awareness of the need to comply with national procurement guidelines, the HEA together with Education Procurement Services (a higher education shared service provider) held a Higher Education Procurement Summit in May 2017. The summit discussed the findings of the rolling review on procurement,

highlighting the opportunities to avail of Office of Government Procurement (OGP) frameworks and to share good practice and improve procurement practice moving forward.

Lead topic: Public Procurement	Sub-topic: Engagement with Education	Contact: Mags O'Callaghan Ext: 8148
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Q&A'S

How is the OGP engaging with Education?

- **Education's Lead on Procurement matters sits on the Procurement Executive**
- The OGP has held **two specific roadshows** for the Education Sector (19th Sept 2015 & 4th Feb 2016) where all sourcing categories review FWs in place and planned with attendees in parallel sessions as well as plenary session with officials from Education as well as OGP presenting the model and engagement.
- The OGP held the **Central Government Roadshow** on the 21st of March 2017 (to which the **Dept of Education** was invited and representatives of the Department were in attendance)
- **OGP Meeting with DES, HEA & EPS on a quarterly basis** to discuss procurement compliance within Higher Education, review progress in relation to timelines provided to OGP on requirements and discuss additional initiatives to support buy-in, full engagement and uptake of arrangements.
- The HEA commissioned Deloitte to do a review on Procurement Practices within Higher Education Institutes.
- Following on from the Deloitte report a **Procurement Summit** was organised by **HEA for Higher Education Institutions**. OGP Head of Customer Service **presented** at the Summit held on the **9th May 2017** with Head of Policy on panel for Q&A.
- The **OGP has written to the HEA in relation to the findings** of this report and have offered further supports such as Procurement Policy workshops as well as engagement with CPO.
- **Universities Procurement Compliance Officers Group (UPCOG)** meet approx. every 2-3 months. **OGP KAM** has been asked to present at their next meeting.
- OGP KAM presents at the **ETB Procurement Officers Network** meeting – these meetings take place on a quarterly basis.
- OGP KAM attends and speaks at the **Schools Procurement Advisory Council** – these meetings take place every 6 weeks (approx.)
- **Institutes of Technology are in the process of establishing a Procurement officers Network** which will meet on a regular basis (likely to be quarterly). OGP KAM has been asked to present to the network once established.
- OGP KAM presented at the IoT Facilities Management group in May at the offices of Technological Higher Education Association (THEA – formerly IOTI).
- **OGP KAM is engaged at an individual institution level in Higher Education.**

ENDS