

Public Procurement in Ireland
A Critical Review



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Executive Summary

The value of services, supplies and works that will be procured in Ireland over the next five years will be at least €85 billion. The market is highly competitive. As a consequence the Government should easily meet the cost saving target of €500m that has been set. However, procurement and tendering transaction costs are far too high and this suggests something should be done to reduce the potential cost of €1.6 billion falling on public sector buyers and suppliers over the next five years. This is a particular problem for low value contracts where a significant amount of tendering takes place. Another significant issue is the high level of procurement contracts that are awarded to companies based outside the State and the consequent loss in Exchequer taxation and reduced job creation opportunities. The regulatory dilemma is to how to balance the positive features of procurement, while responding to the need for better efficiency and flexibility and, in particular, providing indigenous small business with greater opportunities to win contracts below the EU value thresholds.

Based on these conclusions and with the caveat that the current arrangements for procurement in Ireland have been assessed at EU level as being in line with best practice, the following proposals for improvement are submitted.

Office of Government Procurement (OGP): The OGP should be set up as a statutory agency, as in the absence of such legislation the OGP has a persuasive influence only. It should submit an annual report to the Oireachtas and have legally enforceable powers as a regulator to set procurement policy and operational guidelines for all contracting authorities, including commercial semi-State companies. The OGP should accelerate its current reform programme to drive process and operational efficiencies. Comprehensive guidelines for buyers and suppliers should be published. All contracting authorities with a projected (non-pay) procurement spend over €10m on an annual basis should be required to prepare rolling three-year Procurement Plans.

Small Business Access: The threshold for publishing tenders should be raised from €25,000 to the prevailing EU thresholds and all contracts below these thresholds should be reserved for Irish small businesses registered on eTenders i.e. companies employing less than 50 persons or with a turnover less than €10m, or for bid consortiums involving small businesses. All multi-party framework agreements should be divided into lots and the value of the lots should be as small as is practical. Routine contracts under €50,000 should not be procured by the use of framework agreements. As a quid pro quo, buyers should not be required to provide de-briefings on low value tenders.

Process Improvements: All contracting authorities should be required to use the European Single Procurement Document; a re-usable self-declaration form saved in electronic format on the eTenders website. The open procedure should become the default procurement process used. The Dynamic Purchasing System (DPS) - a low cost procurement process - should be used on a more systematic basis for all routine tenders for supplies and services as this will cut the cost of bidding to suppliers quite dramatically. The coverage of procurements managed by SupplyGov should be expanded and then extended across the public sector; again with the aim of reducing procurement and tendering transaction costs. Tenders priced abnormally low (as defined by OGP guidelines) should be investigated as part of the evaluation process and deemed non-complaint as appropriate.

As the Tender Advisory Service is of limited use to suppliers given its mandate, the OGP should provide a HelpDesk service - with a broader remit - to small businesses during business hours. OGP should also set up an independent Mediation Service to allow unsuccessful tenderers appeal contract award decisions without having to go to the High Court in the first instance.

Procurement Leakage: The OGP should develop and implement a procurement sourcing strategy across Government that would reduce the current (high) level of procurement leakage (i.e. contracts awarded to companies outside the jurisdiction) to the EU average i.e. from 11% to 3%.

Construction: In consultation with construction professionals and the construction industry, the current suite of guidance should be simplified; put online; and made more 'fit for purpose', especially for contracts below the EU value thresholds for works (€5,225,000).

Training and Research: Companies that win tenders and who wish to leverage their success in export markets should be supported and funded in relation to their training needs by Enterprise Ireland or the Local Enterprise Offices as appropriate. Given the many problems that suppliers have with the quality of tender documentation, the OGP should spend 0.3 percent of the annual value of procurement (€500,000) on certified procurement and tendering training and education for both suppliers and buyers. OGP should also use some of the savings it will generate to co-fund academic research on procurement.

There are significant issues with the availability of data in relation to procurement activity.

Procurement is a critical part of the public sector reform programme yet one could be forgiven for thinking - based on its poor overall profile - it is not a priority issue.

While the OGP has made great strides in recent years, it is timely for a series of policy and process improvements to be made to reduce procurement transaction costs; to prevent contracts going outside the State; and, to secure a much greater share of the procurement market for indigenous small businesses.

Finally, a comprehensive efficiency (VfM) review of procurement in Ireland with reference to benchmarks in other comparable jurisdictions should be undertaken by the Department of Public Expenditure and Reform.

1. Introduction

Procurement is the purchase of supplies (goods), services and works by public bodies (buyers) and by private enterprises.

With limited exceptions (defence and security) all bodies receiving Exchequer funding, including private operators, charities and community groups where more than 50% of their costs are supported by public monies, are required to tender for all contracts regardless of value. The higher the value of the contract the more complicated the procurement rules are and over certain thresholds - for example €135,000 for supplies and services procured by government departments (excluding VAT) - the EU Procurement Directives apply.¹

The context of this paper is that the procurement market in Ireland is projected to be valued at some €85 billion over the next five years.

Does the current procurement delivery model need to be adapted to take account of the scale of this opportunity? Is the transaction cost of procurement too high? Are too many contracts going outside the jurisdiction? Is the taxpayer getting value for money? Is the system transparent? Is there adequate Oireachtas oversight?

The future of procurement is very much 'work in progress'. The function is now more strategic; more collaborative; more technology-driven; and, these transformational trends are ongoing.

It is timely therefore to assess whether procurement policy in Ireland is delivering value for money and is cost effective.

This paper covers the following issues:

1. A literature review
2. The procurement market
3. Trends and developments
4. Costs and the effectiveness of procurement policy
5. Brexit
6. Using public procurement to achieve public policy objectives
7. Proposals for improvement

2. Literature Review - Overview

Public procurement is a relatively poorly researched area in Ireland in spite of its centrality to public service delivery and public sector reform. It has been argued that public procurement resides on the periphery of management science.²

¹ Brennan, Peter and Gillen, Joanne (2016) [Public Procurement: Rules of the Road](#). This textbook provides a comprehensive account of the procurement rules and best tendering techniques.

² Flynn, Anthony and Davis, Paul (2014) Theory in Public Procurement Research. [Journal of Public Procurement](#), 14 (21). pp. 139-180.

One common finding is that it is hard to isolate the macro-economic impacts of EU procurement legislation due primarily to severe data collection issues. While procurement may generate a 1:4 cost benefit ratio according to some estimates, data limitations mean it is almost impossible to give a reliable assessment of the scale or significance of the positive and negative macro-economic impacts of procurement activity.³

A number of studies have examined the economic impacts of EU procurement policy. Efficiency in procurement from competing suppliers is seen as a way to obtain the desired supplies, services and works at the lowest price, aka 'value for money'.

While the 1988 Cecchini study was a starting point,⁴ many more recent reports have determined how procurement should be managed in a cost efficient manner.⁵

The procurement design literature recognises a number of tools and strategies for its effective implementation.⁶ However, relatively little is known about the impacts of procurement on businesses.⁷

Based on survey results, a detailed mapping of public procurement was carried out in 2011.⁸ In 2012, further data was gleaned by the National Procurement Service.⁹

Given the dearth of academic research on procurement and tendering in Ireland, the Office of Government Procurement (OGP) might be mindful to facilitate and encourage such essential research.

³ Commission Staff Working Paper, Evaluation Report, [Impact and Effectiveness of EU Public Procurement Legislation](#), SEC (2011) 853, June 2011.

⁴ The report estimated the cost of non-Europe in relation to procurement was between €8 billion and €19 billion based on the six Member States surveyed. Updating this figure in 2012 prices for the EU-27 indicates the equivalent gap to be as high as €102 billion. However, the EU procurement legislation has only addressed 35% of these costs.

⁵ For example, Deloitte Access Dynamics, [Economic Benefits of Better Procurement Practices](#) for Consult Australia, 2015 and [Capacity and Capability Review of the Central Procurement Function](#), a report by Accenture for the Department of Public Expenditure and Reform, August 2012. This report highlighted the significant problems that arise in collecting data about procurement in Ireland.

⁶ For example, [Handbook of Procurement](#), Cambridge University Press (2006); Asker, J., and Cantillon, E. (2010) 'Procurement when price and quality matter', [RAND Journal of Economics](#), Vol 41, No 1 p1-34; Bower, A and Dertouzos, J., [Essays in the Economics of Procurement](#), RAND, 1994; [Economic Issues in Procurement](#), a report No 47 for the OECD by Sigma, 2011. Dimitri, Nicola (2013) 'Best Value for Money in Procurement.' [Journal of Public Procurement](#), 13 (2): 149-175. These studies are summarised in [The Cost of Non-Europe in the Single Market](#), European Parliamentary Research Services, September 2014.

⁷ Gallery, Clive and Brock, Duncan (2015) [How Procurement can Demonstrate Business Impacts](#).

⁸ Flynn, Anthony, Davis Paul, McKeivitt, David and McEvoy, Emma (2011) Dublin City University Business Faculty, [Mapping Public Procurement in Ireland](#).

⁹ National Procurement Service (2012) [Opportunities in Public Sector Procurement](#), a report written by the Procurement Research Group, Faculty of Business, Dublin City University.

3. The Procurement Market

Introduction

The market size of public procurement in Europe is quite significant, with some €1.9 trillion in works, goods and services (excluding utilities and defence) tendered annually; or some 18.3% of the EU GDP.¹⁰ Ireland's share of the total EU procurement market is just 0.9%.

Based on notices published on Tenders Electronic Daily (TED), the EU procurement portal, the average distribution of contracts awarded across the EU by value is 25% for goods; 35% services; and 40% works.¹¹ The corresponding figures for Ireland are quite different, as follows: 30%; 61% and 9%.¹²

Yet the EU's Procurement Directives apply to just over 20% of the total market because contracts below the minimum EU thresholds (i.e.g. €135,000 for supplies and goods) represent a significant proportion of advertised tenders and there are many exceptions to the EU's procurement rules.

There is a dearth of data about procurement activity in Ireland. For example, there are no up-to-date statistics about: i) the number of suppliers registered on eTenders by jurisdiction; ii) the total value of supplies, services and works procured by all contracting authorities in Ireland; iii) the volume and value of below EU threshold contracts and the size categories of companies that have won these low value contracts; iv) similar statistics for above EU threshold contracts; v) the volume and value of all contracts won by companies outside the jurisdiction and the size category of the bidders; vi) the numbers of tenders published by category and contracting authority, including tenders for contracts below €25,000; vii) the number of bids submitted for all tender competitions based on the procurement procedures used; and viii) the number of mini-competition held and the value of the contracts awarded.

As a consequence, this research is, of necessity, incomplete.

Ireland

According to the Commission, in 2014 (the latest year for which statistics are available), total public procurement expenditure in Ireland was €15.5 billion, or 9% of GDP; reflecting the small size of the public sector in Ireland. Having regard to the Book of Estimates and the (revised) Public Capital Programme 2017-2021 that allocates higher expenditure to capital works (€7.6 billion in 2017), the value of supplies and services procured by commercial semi-State companies (some €3 billion), and voted works to be procured annually the total value of expenditure to be procured will rise to at least €17 billion per annum; or €85 billion over five years.¹³

¹⁰ European Commission, [Public Procurement Indicators \(2014\)](#), DG GROW, February 2016. The corresponding value in 2009 was €2.4 trillion.

¹¹ European Commission Staff Working Document, [Annual Public Procurement Implementation Report 2013](#), SWD (2014) 262 final, August 2014.

¹² European Commission, [Public Procurement, Study on Administrative Capacity in the EU, Ireland Profile](#), April 2016.

¹³ Department of Public Expenditure and Reform, [Part III, Estimates for Public Services 2017](#), October 2016.

Including utilities and defence contracts, with 1,279 notices published on TED, only 23% of what is currently procured represents expenditure on contracts above the EU threshold. Therefore national rules and policy should be driving the procurement market as Ireland has a greater degree of discretion in the management of procurement below the EU thresholds provided the EU procurement principles are respected.

As many Irish suppliers bid successfully into Northern Ireland one should look at the island procurement market as a single market. The projected value of the NI market over the next five years is €13.5 billion or €15 billion.¹⁴

Therefore Irish suppliers have an opportunity to secure their fair share of a €100 billion procurement market on the island of Ireland.

Metrics

Hereunder are some key metrics comparing Ireland with the EU average using the latest available indicators (2014 unless stated otherwise).

Table 1 – Procurement Metrics

Metric	EU	Ireland
Size of Market (EU-28)	€1.93 trillion	€17.7 billion
Procurement market as % of GDP	18.3%	9.3%
% of contracts over EU thresholds	22%	23%
Number of notices published on TED	169,687	1,279
Average value of contract	€330,000	€864,000
Number of bids per competition (2012)	6.5	6.7
% of framework contracts awarded (2012)		
- by volume	15%	na
- by value	23%	36%
% of contracts won outside jurisdiction (2012)		
- by value	3.1%	14.3%
- by number	1.3%	12.2%
Micro enterprise win rate – over EU threshold (2012) and by value of contract	18%	27%
	4%	6%
Small enterprise win rate – over EU threshold (2012) and by value of contract	21%	20%
	9%	7%
Medium enterprise win rate – over EU (2012) and by value of contract	17%	19%
	15%	12%
Large company win rate – over EU threshold (2012) And by value of contract	45%	33%
	71%	75%

Source: European Commission, *Study on the Administrative Capacity in the EU and Public Procurement Indicators 2014*

Private Sector Procurement

At EU level, competition and price pressures in the private sector are considered weaker than in public sector procurement. However, private procurement is considered to be faster, less costly and

¹⁴ op cit Brennan and Gillen (2016); page 59.

more efficient. This is because the majority of larger companies have established and formalised internal purchasing procedures usually tailored for routine and non-routine buying. There is no comparable and contemporary data for Ireland.

Research about procurement within the private sector is more positive with high-performing companies more likely to view procurement as strategically important and a function delivered through collaborative effort. One measure of procurement's growing stature is that senior management are putting more resources into the function. The highest priority for companies is working one-to-one with suppliers in a strategic way. Achieving cost savings is the primary driver in private sector procurement.¹⁵

4. Trends and Developments

There are a number of important trends relevant to tendering in Ireland.¹⁶

Supplier Survey

Bid Management Services carried out a survey of its clients in June 2016; there were 133 responses, with 83% of respondents classified as small businesses.¹⁷ A summary of the key findings that are relevant to this paper are as follows:

1. **Suppliers bid on a regular basis to both public and private buyers. Only 27% of suppliers are predominantly public sector focused.**
2. **The public sector tendering success rate is less than 25% for almost 87% of suppliers.**
3. **Less than 30% of suppliers have bid in a collaborative manner.**
4. **There is a very high interest in professional training.**
5. **73% of suppliers do not understand the role of the OGP.**
6. **74% do not believe the OGP has improved the tendering system for their sector.**
7. **Only 37% believe the OGP's communications are clear and transparent.**
8. **62% feel the OGP's guidance is not clear.**
9. **The biggest obstacle to tendering is the resistance by buyers to providing a de-briefing (74%) followed by badly defined technical specifications (73%).**
10. **87% never heard about the guidance on green public procurement.**
11. **79% were not aware the new EU Procurement Directives came into effect in April 2016.**

While we address the implications of some of these findings below, it is clear there is a major communications deficit between buyers and suppliers.

¹⁵ [The Future of Procurement](#), Oxford Economics, 2015.

¹⁶ See for example, [SMEs' Access to Public Procurement Markets and Aggregation of Demand in the EU](#), a study for the European Commission, pwc, ICF GHK and Ecorys, February 2014

¹⁷ [Bid Management Services](#) is the largest procurement and tendering ISO certified advisory company on the island of Ireland.

Frameworks

Aggregation techniques i.e. centralised procurement using framework agreements, are used to improve cost savings (leveraging market power and economies of scale and efficiency of procurement by way of process improvements). At EU level nearly one in four tender competitions by value are awarded by way of a framework agreement and this reflects the fact that centralised procuring dominates the market in most Member States. In countries such as Denmark and Sweden which have well-established centralised purchasing bodies the share of framework agreements is above 80%. In Ireland, frameworks are rarely used in works contracts (4% of all contracts) but are more frequently used for services (9%) and supplies (47%). In addition, nearly 50% of EU framework tender competitions were for contracts below the EU threshold. Across the EU, competition is much fiercer when frameworks are procured with a third of buyers confirming that competition among shortlisted suppliers is higher. Unsurprisingly perhaps, there is a growing trend to use frameworks in most Member States. In Ireland (2016) some 24% of all tenders were procured using framework agreements.¹⁸ In Ireland, an average of 17.6 bids are received for framework tenders; the EU average is 11.4. Across the EU, 25% of companies (of all sizes) are less likely to bid for framework agreements.

Collaborative Bidding

In overall terms at EU level, some 79% of tenderers bid on their own; 4% get involved in a bid consortium; and 17% win work through sub-contracting. Micro businesses are more likely to bid collaboratively (12% against 4% on average).

Public Service Spend and Tendering Analysis Report 2014

This report, published by the OGP, analysed €3.9 billion of procurement spend.¹⁹ As such it captures a mere 25% of total procurement expenditure and its findings are as a result not a true and complete view of procurement trends across the economy. For example, it is claimed that Irish firms win 95% of the contracts tendered. Commission statistics provided by the Irish Government show the leakage rate at more than twice that figure. SMEs secured 55% of the expenditure that was analysed; a very low figure given the definition of SMEs, which encompasses 99.7% of all Irish businesses.²⁰ Medical, surgical and pharmaceutical supplies was the largest single category of expenditure. The report does not cover the costs of procurement falling on buyers and suppliers nor the efficiency or effectiveness of procurement activity. Given the sample size of contracts reviewed this report does not provide real insights into the dynamics of the procurement market in Ireland.

¹⁸ op cit European Commission, April 2016.

¹⁹ Office of Government Procurement, [Public Service Spend and Tendering Analysis Report for 2014](#), 2016. The data was collected from just 77 of 3,319 contracting authorities.

²⁰ Data on micro and small businesses and SMEs is collected by the [Central Statistics Office](#).

5. Costs and Effectiveness

Introduction

Procurement outcomes can be measured on the basis of the level of competitiveness achieved (number of bids and participation from cross-border bidders); the costs incurred by buyers and suppliers (in terms of human resource inputs); and, the perception of transparency.²¹

Number of Bids

The number of bids submitted for each tender competition is a proxy of competition within the market place.

The number of tenders published across the EU has more than doubled in the past eight years, while the average size of contract has fallen to some €330,000. Commission data suggests there are far more bids per tender competition in Ireland than in all but two other Member States. In addition, some 25% of EU tenders were awarded without competition, or with one bidder only.

In countries such as Ireland with a higher GDP per capita and in larger countries the typical procurement process receives more bids. The centralisation of procurement has a strong negative impact on the number of bid submissions per competition.

At EU level each public tender receives an average of 5.4 bid submissions with the use of the open procedure attracting more offers. The average number of bids for works contracts is 7.4; 5.3 for services; and 4.5 for supplies. Among buyers at EU level, local authority tenders attract the highest number of bids.

In Ireland, according to the European Commission, the average number of bids per competition is 6.7; the fourth highest in the EU. This is a clear indicator of the degree of competition within the Irish market place.

The Cost of Bidding

As well as the actual running of the tender competition, completing and assessing the bid documents, the cost of tendering includes essential research carried out by both suppliers and buyers before tender is published as well as the cost of ensuring compliance of the preferred bidders at contract award.

The cost of running a restricted procedure is some 30% more expensive than the open procedure. Running framework agreements is the most cost effective option for both buyers and suppliers by a factor of about 20%. Works contracts are the most costly to procure as on average 58 person-days are involved per tender competition, of which 29 days are supplier days. In contrast, the labour intensity for services contracts is 38 days (16 by suppliers) and only 34 for supplies (14 by suppliers).

²¹ The cost and effectiveness of public procurement in Europe was assessed in a [report](#) for the European Commission prepared by pwc, London Economics and Ecorys, March 2011. Some 7,300 buyers and suppliers were surveyed. This section draws on the report's empirical findings while using more up-to-date data.

It takes Irish buyers an average of 22 person-days to run a tender competition using the open procedure. The figure rises to 32 person-days for setting up framework agreement.²²

At EU level, the cost of procurement is estimated at about 1.4% of purchasing volume with tenderers' cost representing 75% of that amount. However, according to the Commission, the cost of running procurement competitions in Ireland is 31% higher than the EU average. This implies a transaction cost of 1.8% of the total value of all procurements. On the basis that Irish tenders to a value of €85 billion will be published over the next five years this implies that some €1.53 billion will be spent by buyers and suppliers; the procurement costs attributable to the public sector will be some €382m and tenderers will spend around €1.15m in bidding.

However, this methodology may, in fact, under-estimate the procurement transaction costs in Ireland given the greater number of bids submitted per tender competition.

In 2014, some 5,440 tenders were published in Ireland. Using Commission data, the average cost to the public sector to run a tender competition is €5,500. As Irish costs are 31% higher than the EU average this translates to a figure of €7,205.²³ This implies an annual cost of procurement to the Exchequer of €39.2m or €196m over five years. As this figure excludes low value contracts (i.e. those below €25,000) that are not published, and the cost of the OGP (€20m in 2017), the public sector's transaction cost of procurement is potentially much higher.

It has been estimated that 83% of suppliers spend between €5,000 to €10,000 on tender submissions. Assuming an average of €7,500 per tender competition and with some 5,440 tenders published annually attracting an average of 6.7 bids per tender, this translates to an annual cost of €273m or €1.37 billion over five years.

Another issue is the cost to suppliers of submitting tenders that are subsequently cancelled, which has been estimated at €25m per annum.²⁴

While no official data is available for Ireland, at EU level the cost of running tenders for below EU threshold tenders is as much as 29% of contract value.

These figures raise serious question about the cost efficiency of current procurement practices.

Win Rates

At EU level, micro-businesses win 20% of contracts procured using the open procedure; the corresponding figure for SMEs is 34%. The win rates are 19% and 29% respectively when the restricted procedure is used. This suggests that buyers who use procedures other than the open and restricted procedures are unlikely to award the contract to a small business. SMEs (i.e. companies employing less than 250 people) won 29% of contracts above the EU threshold by value and 59% of below EU threshold contracts. The value of a public contract has the greatest influence on the extent to which SMEs win above-threshold contracts. Therefore the higher the contract value the less likely it is for a SME's chances of winning. Similarly, once the value of a contract exceeds

²² op cit, pwc report, chapter 2.2.

²³ op cit, pwc report, page 87.

²⁴ Tender Scout (2015), [The State of Irish Public Sector Procurement](#).

€100,000 the less likely it is for a small business to win. Hence the breaking down of contracts into lots improves the prospects of SMEs getting greater access. However, a closer inspection of the data reveals that large companies still dominate contract awards in certain categories.

Table 2 – Share of SMEs in Total Value of Contracts Awarded (%)

	Micro	Small	Medium	Large
Commodities	3	5	9	84
Machinery	3	9	13	75
Medical Products	4	8	39	50
Other Manufacturing	8	23	26	43
Construction	4	8	15	74
Business Services	5	9	12	74
Other Services	6	12	14	68

Source: pwc (2015)

Irish SMEs win 25% of all contracts above the EU threshold and 53% of those below the threshold; close to the EU average success rate.

Modelling indicates the chances of SMEs winning tenders starts to decrease, relatively rapidly, above a value of €60,000 and that contracts over €300,000 are beyond the capacity of most SMEs. SMEs tend to be more successful in construction, business services and manufactured goods.²⁵

The European Commission has found that Ireland’s increasing use of framework agreements is not SME friendly, given the contract values being procured.²⁶

Contracts Awarded to Companies in Other Member States

Cross-border procurement takes place when a public contract in a Member States is partly or fully performed by a supplier from abroad. The ‘leakage’ of procurement spend is a controversial area. The Commission’s analysis in 2011 (based on an assessment of published contract award notices – that admittedly do not capture all decisions) concluded that the average direct leakage rate by volume at EU level in terms of contract awards was 3.4%. The corresponding figure in Ireland was 22.8%. Larger countries tend to have fewer cross-border wins and the centralisation of procurement also contributes positively to the incidence of cross border wins. In addition, works contracts and business services contracts attract the most cross-border interest. Another interesting fact is that utilities are more likely to award contracts to bidders from other jurisdictions by a factor of nearly 50%.

Another study (that looked above EU threshold contracts only) assessed the average EU level of leakage at 3.5% by value; Ireland’s rate was 8.8%. This research found that lack of experience with doing business abroad; language barriers and strong competition from local suppliers were the main obstacles to cross-border bidding.²⁷

²⁵ op cit European Commission (2011), page 108.

²⁶ op cit European Commission, April 2016, page 113.

²⁷ [Cross-border Procurement Above EU Thresholds](#), a report for the European Commission, Ramboll Management Consulting and HTW Chur, March 2011.

At EU level, foreign company participation in public procurement is more prevalent in smaller Member States with open economies that typically have a smaller industrial base and fewer specialised service providers. In Ireland's case, there is a higher than EU average of import penetration and this, in part, is reflected in the procurement leakage statistics.

The latest (April 2016) estimate of procurement leakage in Ireland is 11% of total contract value.²⁸ Over the next five years, one might therefore expect contracts to a value of €9.35 billion to go to companies registered outside the jurisdiction. Given we are an open economy it is unrealistic to expect there will be no leakage. If Ireland put policies and processes in place to deliver a procurement leakage target at the EU average (3.1% by value) then this would increase the value of contracts won by indigenous Irish companies by some €6.8 billion. Assuming 30% of this expenditure returns to the Exchequer, taxation would rise by €2 billion over five years and some 4,000 long term sustainable jobs might be created.²⁹

There is evidence that suitably trained Irish companies win significant contracts in other jurisdictions. For example, the Go-2-Tender Programme that supports cross-border tendering generates a 124 to 1 rate of return in terms of the cost of running the programme.³⁰ Given the high procurement transactions costs imposed on suppliers, the OGP (through Enterprise Ireland and the Local Enterprise Offices) should support company tender training targeted at export markets.

Time Efficiency

The time taken to run a procurement competition is determined by the EU Procurement Directives. However, the time taken for a buyer to reach a decision varies considerably. For example, the average time it takes at EU level to complete a tender competition is 108 days, but the difference between the bottom and top performers is 180 days. On average, it takes 242 days to conclude a works contract; 107 for services contracts; and 83 for supplies. Ireland's performance is poor as the time taken to conclude a typical tender is 148 days from start to finish; or 41 days longer than the EU average.³¹

Savings

In order to quantify savings which can be attributable to procurement, one must first separate the effects of the procurement rules from the effects of other national or international regulatory measures and other changes that would have affected the procurement market in any event. The construction of a creditable counterfactual is also challenging. One key finding is that greater savings are achieved the higher the number of bids submitted. However, the public buyer that benefits may capture the savings internally. Use of the open procedure has the capacity to generate the highest

²⁸ op cit European Commission, April 2016.

²⁹ There is a lot of literature about the impacts of Government spending on the economy: see for example, NERI (2012) [An Examination of the Effects of an Investment Stimulus](#), working paper No 4. Depending on what economic multipliers are used these figures would change; both upwards and downwards.

³⁰ (unpublished) Go-2-Tender Programme Evaluation (2011-2012), November 2014. During this period the programme was delivered by Bid Management Services.

³¹ op cit European Commission, April 2016.

level of savings as such competitions typically attract 35% more bids.³² In Ireland (2016), 68% of all tenders were procured using the open procedure.³³

A primary driver of procurement public policy in Ireland is reducing Exchequer expenditure by the use of smart procurement techniques. It has been suggested (without supporting evidence) that upwards of €637m could be saved annually with the categories of professional services and facilities being the top two target areas for cost savings. The Government set a cost saving target of €500m over three years.³⁴ However, only €160m had been saved by the end of 2015.³⁵

While the notion of reducing Exchequer expenditure through smarter procurement is laudable, it appears that in seeking to achieve this policy objective there has been a sharp rise in the cost of bidding by suppliers, in particular for framework agreements.

Transparency

Dialogue with Suppliers

In 2013, the OGP, in conjunction with the Department of Jobs, Enterprise and Innovation, set up a High Level Group on SME Access to Public Procurement. This is the forum that allows SME representative bodies to meet with the senior procurement decision-makers with a view to keeping the efficiency and effectiveness of the procurement rules under review.³⁶ There is clear evidence that the lines of communication between the OGP and SME representative organisations are active and open.

Oireachtas Oversight

There have been many recent presentations to the Oireachtas on procurement issues. For example, in a presentation to the Joint Committee on Jobs, Enterprise and Innovation, Dr Paul Davis made the case for the adoption of the UK's LM3 methodology and the Welsh 'Community Benefits' measurement tool to determine the local economy impacts when tenders are awarded to local suppliers.³⁷ The SFA made a submission to the Public Accounts Committee (PAC) on public procurement that argued the policy of saving money at all costs was wrong and that SMEs should get better access to procurement contracts.³⁸ The Irish School Art Supply Federation has engaged

³² Europe Economics, [Estimating the Benefits from the Procurement Directives](#), a report for the European Commission, May 2011.

³³ op cit European Commission, April 2016.

³⁴ Department of Public Expenditure and Reform, [Public Services Reform Plan 2014-2016](#).

³⁵ Department of Public Expenditure and Reform, [Annual Progress Report on the Public Service Reform Plan 2014-2016](#), 2016.

³⁶ Office of Government Procurement (2015), High Level Group on SME Access to Public Procurement, [Progress Report](#). No individual suppliers or procurement experts are members of the Group. The SME representative organisations take a keen interest in procurement and have made several submissions to Government on the subject; Chambers Ireland's submission [A Strategic Public Procurement for Ireland](#) is a case to point.

³⁷ Submission to the Joint Oireachtas Committee on Jobs, Enterprise and Innovation, Dr. Paul Davis, 16 October 2014. [LM3](#) is dynamic measurement tool that readily identifies the multiplier effect of local economy spending by suppliers who win public tenders. New York City and the State of British Columbia have also demonstrated that awarding tenders to local companies has a significant economic multiplier within the community/region.

³⁸ Submission to the Public Accounts Committee on issues regarding public procurement, SFA, 5 March 2015.

with the PAC.³⁹ The OGP has also presented.⁴⁰ These and other instances demonstrate that the Oireachtas takes an interest in public procurement. However, there is no evidence that the Oireachtas has ever carried out a critical review of the effectiveness or efficiency of public procurement in Ireland. As the OGP is not required by legislation to submit an annual report to the Oireachtas it is arguable that there is inadequate political oversight into its performance.

Case History – Transparency

As transparency is an indicator of procurement efficiency, it is useful to review the case of the Health Service Executive (HSE) that appeared before the PAC in April 2015 on foot of a report prepared by the Controller and Auditor General (C&AG) about procurement in the HSE. The C&AG report into procurement by the HSE drew attention to a significant number of issues and made a series of recommendations.⁴¹ The HSE accepted the conclusions and in the intervening period before it appeared before the PAC, the HSE implemented actions and procedures to address the issues raised by the C&AG. The PAC found that the HSE is not in a position to determine if it is getting value for money for a significant amount of its spend because it had procured these supplies and services in a non-competitive manner. The PAC also noted that the HSE was under-reporting the extent to which it complied with public procurement policy. Subsequently, in July 2016, the PAC noted that non-compliance with procurement requirements in the HSE is *systemic*.⁴²

Corruption

According to the OECD, public procurement is one of the Government activities most vulnerable to corruption.⁴³ At EU level, on the basis of a study of five sectors in eight Member States, it was found that the direct costs of corruption amounted to upwards of 4.4% of the overall value of procurements.⁴⁴ There are no statistics for corruption involving procurement in Ireland. While anecdotal evidence suggests there may be some instances of bias, bribery and favouritism, very few cases have been proven. As has been reported to the C&AG on several occasions, the direct award of contracts to suppliers without tendering is in breach of the procurement rules. While not corruption *per se*, this is an unwelcome phenomenon that still persists. The EU Procurement Directives require buyers to ensure that evaluators do not have a conflict of interest and this should give Accountable Officers a measure of assurance. In addition, any suspected wrongdoings can be reported under the Protected Disclosure Act 2014.

³⁹ Submission to the Public Accounts Committee on problems facing the industry due to public procurement, the Irish School Art Supply Federation, April 2014.

⁴⁰ Statement by Paul Quinn, Government Chief Procurement Officer, to the Joint Committee on Finance, Public Expenditure and Reform, 21 January 2015.

⁴¹ Controller and Auditor General Report 2013, Vote 39, Health Service Executive, Chapter 14, Procurement.

⁴² Briefing note for the Public Accounts Committee, [Procurement in the HSE](#), July 2016. The HSE cited 205 contracts to a value of €33.1m where the procurement rules were not applied in 2015. The PAC published a report in November 2010 on procurement in the Prison Service and procurement matters generally.

⁴³ OECD (2016) [Preventing Corruption in Public Procurement](#). The OECD's (2014) Foreign Bribery Report quantifies the potential scale of this problem.

⁴⁴ Pwc and ECORYS (2013) [Identifying and Reducing Corruption in Public Procurement in the EU](#).

Communications

Given that the procurement market in Ireland could be valued at some €85 billion over the next five years there is a relatively low level of pro-active communication between buyers and suppliers. For example, the OGP has yet to publish comprehensive and consolidated guidelines about the application of the EU Procurement Directives six months after they entered into force. Neither does the OGP publish a regular ezine to the suppliers registered on eTenders. The OGP has not yet published contact details of its category managers and its senior management team. Contract Award Notices are not brought pro-actively to the attention of suppliers. The above-mentioned supplier survey and other independent research (Tender Scout)⁴⁵ point to shortcomings in the OGP's approach to communications and the consistent quality of tender documentation. On the other hand, suppliers who have attended Meet the Buyer events over the past years have rated very highly the openness and willingness of buyers to engage.⁴⁶

Regulatory Impacts

It is a Cabinet requirement that a Regulatory Impact Assessment (RIA) should be prepared, in consultation with stakeholders, on all proposals for EU Directives before they are discussed within the EU Institutions.⁴⁷ A public consultation on the implementation of the 2014 EU Procurement Directives was launched but an assessment of the submissions has not been published nor it appears has a RIA been prepared on the 2014 EU Procurement Directives, which entered into force in Ireland on 18 April 2016.⁴⁸ In contrast, the costs and benefits and regulatory impacts of the new EU Procurement Directives have been identified in the UK and Scotland.⁴⁹ The Irish RIA should have taken into account the Commission's impact assessment of the draft Directives.⁵⁰ Thus the 2014 EU Procurement Directives have been implemented in Ireland without any quantification of the costs and benefits, nor the economy-wide impacts of the legislation.

Brexit

There will be no changes in the current procurement arrangements until the UK negotiates an exit Treaty with the EU i.e. the current EU procurement rules will apply for at least two to three years. If the UK opts for an agreement modelled on what Norway, Iceland and Liechtenstein have with the EU, or if a *sui generis* solution emerges, then the current EU Directives will in all likelihood continue to apply in relation to all contracts over the EU thresholds. Therefore it is probable that all high value contracts in the UK and Northern Ireland will continue to be advertised EU-wide in a Brexit scenario. The NI Administration will have flexibility to manage tender competitions for sub-threshold contracts. As the current arrangements work well there is arguably a case for continuity. If the UK

⁴⁵ op cit Tender Scout (2015).

⁴⁶ [Meet the Buyer](#) events are organised by InterTradeIreland in collaboration with the OGP and the Central Procurement Directorate in Northern Ireland.

⁴⁷ Brennan, Peter, EPS Consulting (2014), *Smart Regulation: A Driver of Irish Economic Recovery*.

⁴⁸ Department of Public Expenditure and Reform, [Transposition of the new EU Public Procurement Directives](#), Consultation Document, October 2014. The EU Concessions Directive has yet to be implemented.

⁴⁹ [Regulatory Impact Assessment for Public Contracts \(Scotland\) Regulations](#), 2016.

⁵⁰ Commission Staff Working Paper (2011), [Impact and Effectiveness of the EU Public Procurement Legislation](#).

secures a deal based on Single Market principles, Brexit is not going to change the procurement environment in the UK and NI. It is one of the few areas where a status quo can be anticipated.⁵¹

6. Using Public Procurement to Achieve Public Policy Objectives

There has been a growing interest across the EU in using public procurement to help Governments meet wider policy objectives. The literature suggests public procurement has the potential to influence the market in terms of production and consumption trends in favour of environmentally friendly, socially responsible and innovative products and services.^{52 53} The research at EU level finds a reluctance among buyers to address this agenda as it involves additional workloads, the taking of some measure of risk and up-skilling. Ireland's experience is not dissimilar.

This section examines briefly what is happening in relation to green public procurement (GPP), innovation and promoting social policy aims.

GPP

GPP is a process whereby public authorities meet their need for goods, services and works by choosing solutions that have a reduced impact on the environment throughout their life-cycle as compared to alternative products or solutions.⁵⁴ Based on what is considered to be best practice at EU level the Environmental Protection Agency (EPA) has published guidance to assist buyers to implement and maintain procedures for GPP.⁵⁵ However, to date there is limited evidence from a review of recent tenders that Irish buyers are embracing these GPP principles, in particular in relation to small works contracts. As GPP is not a legal requirement and given the absence of corresponding OGP guidance and no investment in training, this is currently a lost opportunity.

Innovation

Public procurement is increasingly seen as an attractive and feasible policy instrument for the implementation of innovation policy.⁵⁶ Irish Government guidelines have been published that set out a range of actions that should be considered by buyers with the aim of stimulating innovation in the economy. However, there is little evidence that the public sector has paid any attention to this plea to adopt innovation-friendly procurement options.⁵⁷ An initiative called 'Small Business Innovation Research' (SBIR) has been launched with the aim of using the power of public procurement to find innovative solutions to specific public sector challenges and needs. SBIR supports projects through

⁵¹ House of Commons Library, Briefing Paper, Number 07213, [Brexit: Impact Across Policy Areas](#), August 2016. Chapter 3.5 deals with procurement. Around 1.3% of the value of large UK procurement contracts is awarded to companies in other jurisdictions.

⁵² European Commission, [Strategic Use of Procurement in Europe](#), report written by Adelphi, (2010).

⁵³ European Commission, *Strategic Use of Public procurement in Promoting Green, Social and Innovation Policies*, Final Report, December 2015.

⁵⁴ op cit Brennan and Gillen (2016), page 107.

⁵⁵ Environmental Protection Agency, [Green Procurement Guidance for the Public Sector](#), 2014.

⁵⁶ Uyarra, E and Flanagan, K (2009), [Understanding the Innovative Impacts of Public Procurement](#), Manchester Business School Working Paper No 574.

⁵⁷ Department of Enterprise, Trade and Employment, [Buying Innovation: The Ten Step Guide](#), (2009).

the stages of feasibility and prototyping.⁵⁸ It is too early to assess the success or otherwise of the SBIR initiative. The EU Procurement Directives allow buyers to procure using the Innovation Partnership.⁵⁹ To date, no OGP guidance has been published about how buyers and suppliers can take advantage of this flexible procurement model. In contrast, in the UK the House of Lords has published a report into the use of public procurement to stimulate innovation.⁶⁰

Social Policy

There was a recent attempt to legislate in a private member's Bill for the inclusion of social and local employment clauses in tender documents. The OGP led a Social Clauses Project Group to explore options having regard to the approach adopted by the Grangegorman Development Agency and the Devolved Schools Building Programme that included social clauses in public works contracts. However, the Government, in noting that the EU Procurement Directives do not require binding provisions, has opted for a voluntary 'best endeavours' approach.⁶¹

7. Reprise

The Single Market Scorecard concluded that Ireland is one of the high-performing Member States in terms of procurement.⁶² The only indicator where Ireland has an 'unsatisfactory' score relates to the quality of the information provided by buyers. A more recent (April 2016) report concluded that Ireland has a highly developed and centralised e-procurement system; it has a streamlined and centralised administrative set up; and, uses procurement extensively to achieve other public policy goals.⁶³

While one might dispute the veracity of some of these conclusions, arguably the focus should be on areas where the European Commission has identified weaknesses in the delivery of procurement in Ireland such as training; lack of skills outside the OGP and other major buyers; the provision of a supplier help desk; use of more standard documentation; publication of guidance materials; the perception of corruption; and the undermining of SME participation through the use of framework agreements.

The market for public procurement in Ireland is highly competitive as it is in comparable open economy Member States with high GDP per capita. As a consequence the Government should easily meet the cost saving targets that have been set.

⁵⁸ Enterprise Ireland is the lead agency and has a mandate to set up, manage and deliver SBIR at national level. In collaboration with SEAI and ESB eCars, EI rolled out the first SBIR competition in July 2014. SEAI issued a second SBIR in October 2015 in the area of smart technology solutions for home owners. EI and Dublin City Council are collaborating to seek low cost, smart and innovative solutions to increase the number of people cycling in Dublin (March 2016). EI has a fund of €1m to co- or part-fund successful SBIR projects.

⁵⁹ op cit Brennan and Gillen (2016), page 87.

⁶⁰ House of Lords, Science and Technology Committee, First Report, [Public Procurement as a Tool to Stimulate Innovation](#), May 2101.

⁶¹ Houses of the Oireachtas, Social Clauses in Public Procurement Bill 2013, [Second Stage speech](#), Minister Simon Harris TD, 17 October 2014.

⁶² European Commission, [Single Market Scorecard](#) (Public Procurement), (2015).

⁶³ op cit European Commission, April 2016, page 113.

However, procurement transaction costs are far too high and this raises the question as to what should be done to reduce the potential cost of €1.6 billion falling on buyers and suppliers over the next five years. This is a particular problem for low value contracts where a significant amount of tendering takes place.

Another significant issue is the high level of leakage of procurement contracts outside the economy and the consequent loss in Exchequer taxation and job creation opportunities.

The regulatory dilemma is to how to balance the positive features of procurement, while responding to the need for better efficiency and flexibility and, in particular, providing indigenous small business with greater opportunities to win contracts below the EU thresholds.

8. Proposals for Improvement

Based on these conclusions and with the caveat that the current arrangements for procurement in Ireland have been assessed at EU level as being in line with best practice, the following proposals for improvement are submitted.⁶⁴

OGP: The OGP should be set up as a statutory agency, as in the absence of such legislation the OGP has a persuasive influence only. It should submit an annual report to the Oireachtas and have legally enforceable powers as a regulator to set procurement policy and operational guidelines for all contracting authorities, including commercial semi-State companies. The OGP should accelerate its current reform programme to drive process and operational efficiencies. Comprehensive guidelines for buyers and suppliers should be published. All contracting authorities with a projected (non-pay) procurement spend over €10m on an annual basis should be required to prepare rolling three-year Procurement Plans.

Small Business Access: The threshold for publishing tenders on eTenders should be raised from €25,000 to the prevailing EU thresholds and all contracts below these thresholds should be reserved for small businesses registered in Ireland i.e. companies employing less than 50 persons or with a turnover less than €10m, or for bid consortiums involving small businesses. All multi-party framework agreements should be divided into lots with the value of the lots to be as small as is practical. Routine contracts under €50,000 should not be procured by the use of framework agreements. As a quid pro quo, buyers should not be required to provide de-briefings on low value tenders.

Process Improvements: All contracting authorities should be required to use the European Single Procurement Document; a re-usable self-declaration form saved in electronic format on the eTenders website. The open procedure should become the default procurement process used. The Dynamic Purchasing System (DPS) - a low cost procurement process - should be used on a more systematic basis for all routine tenders for supplies and services as this will cut the cost of bidding to suppliers quite dramatically. The coverage of procurements managed by SupplyGov should be expanded and then extended across the public sector; again with the aim of reducing procurement transaction costs. Tenders priced abnormally low (as defined by OGP guidelines) should be

⁶⁴ See also the submission from Bid Management Services to the public consultation on the implementation of the 2014 EU Procurement Directives, November 2014. DPER has yet to publish an assessment of the submissions received.

investigated as part of the evaluation process and deemed non-complaint as appropriate. As the Tender Advisory Service is of limited use to suppliers given its mandate, the OGP should provide a HelpDesk service - with a broader remit - to small businesses during business hours. OGP should also set up an independent Mediation Service to allow unsuccessful tenderers appeal contract award decisions without having to go to the High Court in the first instance.

Procurement Leakage: The OGP should develop and implement a procurement sourcing strategy across Government that would reduce the current (high) level of procurement leakage to the EU average i.e. from 11% to 3%.

Construction: In consultation with construction professionals and the construction industry the current suite of guidance should be simplified; put online; and made more 'fit for purpose', especially for contracts below the EU value thresholds for works (€5,225,000).

Training and Research: Companies that win tenders and who wish to leverage their success in export markets should be supported and funded in relation to their training needs by Enterprise Ireland or the Local Enterprise Offices as appropriate. Given the many problems that suppliers have with the quality of tender documentation, the OGP should spend 0.3 percent of the annual value of procurement (€500,000) on certified procurement and tendering training and education for both suppliers and buyers. OGP should also use some of the savings it will generate to co-fund academic research on procurement.

9. Conclusions

There are significant issues with the availability of data in relation to procurement activity across Government.

Procurement is a critical part of the public sector reform programme yet one could be forgiven for thinking - based on its poor overall profile - it is not a priority issue.

While the OGP has made great strides in recent years, it is timely for a series of improvements to be made in terms of policy and process to reduce procurement transaction costs; to prevent contracts going outside the State; and, to secure a much greater share of the procurement market for indigenous small businesses.

Finally, a comprehensive efficiency (VfM) review of procurement in Ireland with reference to benchmarks in other comparable jurisdictions should be undertaken by the Department of Public Expenditure and Reform.

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