

Committee for Finance and Personnel

Report on the Inquiry into Public Procurement in Northern Ireland

Together with the Minutes of Proceedings of the Committee relating to the Report, Written Submissions, Memoranda and the Minutes of Evidence

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Membership and Powers

Powers

The Committee for Finance and Personnel is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, Section 29 of the Northern Ireland Act 1998 and under Assembly Standing Order 48. The Committee has a scrutiny, policy development and consultation role with respect to the Department of Finance and Personnel and has a role in the initiation of legislation.

The Committee has the power to;

- consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- approve relevant secondary legislation and take the Committee Stage of primary legislation;
- call for persons and papers;
- initiate inquiries and make reports; and
- consider and advise on matters brought to the Committee by the Minister of Finance and Personnel.

Membership

The Committee has eleven members, including a Chairperson and Deputy Chairperson, with a quorum of five members.

The membership of the Committee since its establishment on 9 May 2007 has been as follows:

Ms Jennifer McCann (Chairperson)
Mr Peter Weir (Deputy Chairperson)

Dr Stephen Farry	Mr Fra McCann
Mr Simon Hamilton	Mr David McNarry*
Mr Mitchel McLaughlin	Mr Declan O'Loan
Mr Adrian McQuillan	Ms Dawn Purvis
Mr Ian Paisley Jnr**	

*Mr David McNarry replaced Mr Roy Beggs on 29 September 2008

**Mr Ian Paisley Jnr replaced Mr Mervyn Storey on 30 June 2008

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List of Abbreviations and Acronyms used in the Report

BERR	Department for Business, Enterprise and Regulatory Reform
BiTC	Business in the Community
BSO	Regional Business Support Organisation (DHSSPS) (operational from April 2009)
CAJ	Committee on the Administration of Justice
CBI	Confederation of British Industry
CIFNI	Construction Industry Forum for Northern Ireland
CIGNI	Construction Industry Group for Northern Ireland
CIPS	Chartered Institute of Purchasing and Supply
CoPE	Centre of Procurement Expertise
CPD	Central Procurement Directorate
CSR	Comprehensive Spending Review
DEL	Department for Employment and Learning
DETI	Department of Enterprise, Trade and Investment
DFP	Department of Finance and Personnel
DHSSPS	Department of Health, Social Services and Public Safety
DoE	Department of the Environment
DTS	Delivery Tracking System
EC	European Commission
ECJ	European Court of Justice
ECNI	Equality Commission for Northern Ireland
EEN	European Enterprise Network
ELB	Education and Library Board
ESA	Education and Skills Authority
EU	European Union
FSB	Federation of Small Businesses
GB	Great Britain
GDP	Gross Domestic Product
GVA	Gross Value Added
HCSA	Health Care Supply Association
HSC	Health and Social Care
ICAGNI	Independent Consultant Adviser Group in Northern Ireland
ICT	Integrated Consultant Team/Information Communication Technology
ICTU-NI	Irish Congress of Trade Unions – Northern Ireland
IDBR	Inter-Departmental Business Register
IoD	Institute of Directors
IREP	Independent Review of Economic Policy

ISNI	Investment Strategy for Northern Ireland 2008 – 2018
IST	Integrated Supply Teams
ITI	InterTradeIreland
ITT	Invitation to Tender
KTPI	Knowledge Transfer Partnership Initiative
LGPG	Local Government Procurement Group
MEAT	Most Economically Advantageous Tender
MLA	Member of the Legislative Assembly
MOD	Ministry of Defence
MP	Member of Parliament
MSP	Member of the Scottish Parliament
NDPB	Non Departmental Public Bodies
NGO	Non-Government Organisation
NHS	National Health Service
NHSSC	National Health Service Supply Chain
NI	Northern Ireland
NIAO	Northern Ireland Audit Office
NICS	Northern Ireland Civil Service
NICVA	Northern Ireland Council on Voluntary Action
NIFHA	Northern Ireland Federation of Housing Associations
NIHE	Northern Ireland Housing Executive
NILGA	Northern Ireland Local Government Association
NIPS	Northern Ireland Prison Service
NIW	Northern Ireland Water
ODA	Olympic Delivery Authority
OFMDFM	Office of the First Minister and deputy First Minister
OGC	Office of Government Commerce
OJEU	Official Journal of the European Union
PAC	Public Accounts Committee
PfG	Programme for Government
PPG	Procurement Practitioners' Group
PPP	Public Private Partnership
PQQ	Pre-Qualification Questionnaire
PR	Public Relations
PSA	Public Service Agreement
PTG	Procurement Task Group
PwC	PricewaterhouseCoopers LLC
QPANI	Quarry Products Association Northern Ireland
RICS	Royal Institution of Chartered Surveyors
RoI	Republic of Ireland
RPA	Review of Public Administration
RSUA	Royal Society of Ulster Architects
SBS	Small Business Service
SCA	Special Contract Arrangements

SEE	Social Economy Enterprises
SEN	Social Economy Network
SI	Statutory Instrument
SIB	Strategic Investment Board
SLA	Service Level Agreement
SME	Small and Medium Sized Enterprises
SPAP	Sustainable Procurement Action Plan
SROI	Social Return on Investment
SRPP	Socially Responsible Public Procurement
UCIT	Ulster Community Investment Trust
UK	United Kingdom
VAT	Value Added Tax
VCO	Voluntary and Community Organisation
VCS	Voluntary and Community Sector
VfM	Value for Money
WIN	Western Innovation Network
USEL	Ulster Supported Employment Ltd.

Executive Summary

Public procurement is an important element of the economy in Northern Ireland, with central and local government spending upwards of £3 billion annually on the purchase of supplies, services and construction works. This level of expenditure offers real potential in terms of maximising the economic and social outcomes for the local community.

The strategic direction of public procurement policy in Northern Ireland is set by the Executive; with the Procurement Board, chaired by the Minister of Finance and Personnel, overseeing the development and implementation of this overarching policy, supported by the Central Procurement Directorate within the Department of Finance and Personnel.

The Executive's Programme for Government 2008-11, *Building a Better Future*, highlights the positive role that procurement has in furthering cross-cutting sustainable development and socio-economic objectives. The Executive has also placed an emphasis on "growing the private sector including small and medium enterprises" and on "developing the social economy". Whilst the predominance of smaller enterprises in the local economy is widely acknowledged, there is also now a growing awareness of the valuable role for social economy enterprises, in terms of operating a commercial business model for social, community or ethical purposes.

Moreover, it is internationally recognised that benefits can accrue for both the public sector and the economy as a whole, by increasing the involvement of small and medium enterprises in the government supply chain, including better value for money, business growth and innovation. Also, for social economy enterprises, access to a large and stable market provides a stronger basis from which they can deliver important social policy outcomes.

Mindful of these benefits and of the potential to use public procurement strategically, as a tool for supporting the longer-term economic and social well-being of Northern Ireland, the Committee for Finance and Personnel agreed, in November 2008, terms of reference for this Inquiry into Public Procurement Policy and Practice in Northern Ireland. Given the many facets of government purchasing, the Committee chose to focus on specific aspects of policy and practice,

including the experience of small and medium enterprises and social economy enterprises in tendering for and delivering public contracts; and the ways in which the social and economic benefits of procurement can be maximised.

Following a call for evidence, the Committee received written submissions from a wide range of stakeholders and a number of these organisations subsequently provided oral evidence. Given the breadth of issues raised and the variety of interests, the Committee also hosted a Stakeholder Conference, which represented a new approach to gathering inquiry evidence. This event was highly interactive and included breakout sessions, inputs from procurement commentators from other jurisdictions, plenary discussions and digi-voting on priorities and recommendations. The Committee also received academic opinion on the output from the Conference, which further informed the evidence base for the Inquiry.

Arising from the Inquiry, the Committee has made a number of key findings and recommendations, which it considers will help to achieve priorities within the Programme for Government and will benefit the public sector, business and the third sector respectively.

Key Conclusions and Recommendations

The Procurement Environment

1. The Committee recognises the business opportunities presented to indigenous enterprises by the substantial expenditure on public procurement in the Northern Ireland, all-island, Great Britain and wider European Union markets. However, the Committee is also mindful that the Northern Ireland business economy overwhelmingly comprises smaller enterprises, many of which consider that the public procurement process requires more time, effort and cost than business would allow. As such, the Committee considers that it is incumbent upon the Executive and the Assembly both to create a public procurement environment that facilitates our smaller enterprises in realising their full potential and which maximises the economic and social impact from expenditure on procurement. (Paragraph 41)

2. The Committee believes that the implementation of the recommendations arising from this Inquiry will help to achieve key objectives of the Executive's Programme for Government, not least the emphasis on "growing the private sector including small and medium enterprises" and "developing the social economy". As a prerequisite, however, the existing drivers for public procurement will need to be realigned in support of the Executive's economic, social and environmental priorities. In particular, this will require a more balanced application of the twelve guiding principles governing the administration of public procurement in Northern Ireland, which, in turn, will help achieve "best value for money". (Paragraph 57)

3. The Committee recommends that the Procurement Board, in conjunction with the Department of Enterprise, Trade and Investment, considers refining the definition of small and medium sized enterprises in the Northern Ireland context, paying particular attention to those currently identified as small, or micro-businesses, when exploring ways of boosting access to procurement opportunities by local businesses. (Paragraph 71)

4. The Committee believes that a "win-win situation" will arise from increasing the number of indigenous smaller enterprises competing in the public sector supply chain. For the public sector there is the potential for better value for money, better levels of service and more innovative business solutions. For the smaller enterprises there is the benefit of access to a large and stable market. The Committee also believes that increased participation by indigenous small enterprises in providing services, supplies and works to government in Northern Ireland could encourage their growth and participation in public procurement markets elsewhere, with the added benefits

of boosting employment and of raising the level of productivity/Gross Value Added within Northern Ireland. (Paragraph 79)

5. In light of the potential benefits, the Committee calls on the Executive to develop a strategic policy for using public procurement, as far as is permitted under the legislation, as a tool for supporting the development of our smaller enterprises and for stimulating economic growth in the longer term. The Committee considers that the implementation of such a policy will require further culture change on the part of government purchasers, which sees a stronger focus on "growing the economy" and creativity in developing procurement solutions which are sensitive to the needs of the economy, whilst also ensuring legal compliance. (Paragraph 81)

6. The Committee calls on the Procurement Board to ensure that the necessary data capture and management information systems are put in place across all the Centres of Procurement Expertise to enable the impact of procurement policy on the small business and social economy sectors to be monitored effectively. The Committee further recommends that the criteria used in the accreditation of Centres of Procurement Expertise should take account of the robustness of the data systems in this regard. (Paragraph 92)

Improving Policy and Processes

7. Whilst accepting that the Central Procurement Directorate and the other Centres of Procurement Expertise must comply with both European Union and United Kingdom legislation, the Committee is of the view that the Procurement Board should reconsider the distribution of risk within the procurement process and bring forward a policy on risk sharing, which takes account of the barriers to smaller enterprises accessing the supply chain. (Paragraph 115)

8. The Committee recommends that large-scale framework agreements should not be used in future unless the Procurement Board can first establish a robust evidence base for following such practice in the Northern Ireland context. (Paragraph 116)

9. The Committee recommends that the Procurement Board gives careful consideration to a procurement policy that advocates breaking contracts into lots as the first recourse of any procurement tender. The intention of such action should not be to avoid the application of the appropriate public procurement regulations, but rather to make a conscious effort to reduce barriers to access for small and medium sized enterprises and social economy enterprises. (Paragraph 123)

10. The Committee recommends that, when using framework agreements, the Central Procurement Directorate and the other Centres of Procurement Expertise develop frameworks reflecting various sizes of contracts and opportunities and, where appropriate, give consideration to regional contract variations to increase access to opportunities for smaller enterprises. (Paragraph 127)

11. The Committee recommends that the Procurement Board gives careful consideration to the full range of methods of procurement, including the use of alternatives to frameworks agreements and traditional contracts where appropriate. In particular members are keen to see a flexible approach taken to contract variance. (Paragraph 131)

12. The Committee recommends that the Procurement Board takes steps both to consolidate all Northern Ireland public sector procurement opportunities within the remit of thee-SourcingNI web portal, including local government tender notices, and to integrate tendering opportunities in Great Britain and the Republic of Ireland. (Paragraph 148)

13. The Committee recommends that the provision of timely and accurate information on the e-SourcingNI portal and the Investment Strategy Northern Ireland Delivery Tracking System should be written into both the business plans of each Centre of Procurement Expertise and the personal performance agreements of the responsible officials. Moreover, Centres of Procurement Expertise should also be required to publish their annual procurement plans on the e-SourcingNI portal to assist small and medium sized enterprises and social economy enterprises in forward planning. (Paragraph 151)

14. Notwithstanding the need for improved data collection by Centres of Procurement Expertise, the Committee believes that the Executive should keep under review the option of setting targets for increased participation by small and medium sized enterprises and social economy enterprises in the public sector supply chain, for possible future use in the event that the other identified policy interventions do not have sufficient impact. (Paragraph 155)

15. The Committee recommends that the Central Procurement Directorate encourages local small and medium sized enterprises and social economy enterprises to collaborate, where appropriate, by highlighting the benefits of such initiatives and by providing guidance on the legal and practical implications of joining consortia to facilitate joint tendering. In noting the ongoing work by the Construction Industry Forum for Northern Ireland on collaborative bids in relation to the construction sector, the Committee recommends that the Procurement Board considers the potential application of this model to also cover supplies and services and its extension to all Centres of Procurement Expertise. (Paragraph 160)

16. The Committee considers that purchasers should give more consideration to the overall supply chain when awarding contracts and calls on the Procurement Board to examine the scope for government to take greater control of sub-contract arrangements in public contracts, with a view to ensuring more open competition and added transparency. (Paragraph 167)

17. The Committee recommends that the Central Procurement Directorate and the other Centres of Procurement Expertise consider the scope both for greater use of up-front and interim payments, within the constraints of government accounting rules, and for the introduction of a requirement on main contractors to pay sub-contractors within 10 days of receipt of valid invoices, with a view to increasing the borrowing potential and/or easing the cash flow pressures on small and medium sized enterprises and social economy enterprises. (Paragraph 172)

18. The Committee recommends that the Minister of Finance and Personnel, in conjunction with the Minister of Enterprise, Trade and Investment, gives careful consideration to the establishment of a public procurement brokerage service as identified by the Ulster Community Investment Trust, which could also act as a "one-stop shop" for the social economy sector in terms of availing of public procurement opportunities. (Paragraph 176)

19. The Committee recommends that the Central Procurement Directorate reviews existing procurement guidance, in conjunction with local stakeholders, with a view to ensuring that it is fit for purpose and brought together as a central online resource for public sector procurement, which is linked to the eSourcingNI web portal. (Paragraph 184)

20. Whilst acknowledging that, whenever public funds are at stake, proper audit, monitoring and accounting arrangements are an unavoidable necessity, the Committee recommends that the Department of Finance and Personnel, in conjunction with the Department of Enterprise, Trade and Investment, takes steps to ensure that proportionate monitoring arrangements are applied, which are sympathetic to the ethos and needs of the social economy sector. (Paragraph 188)

21. The Committee is strongly of the view that pre-qualification processes and criteria should not be so burdensome as to deny both small and medium sized enterprises and social economy

enterprises the opportunity to develop their business and thereby benefit the local economy. As such, the Committee recommends both that the principle of proportionality (i.e. the resources required to bid should be proportional to the size of contract) should be embedded into all public procurement tendering exercises and that the next review of Centres of Procurement Expertise, due to take place in 2013, places a particular focus on progress in improving pre-qualification processes. (Paragraph 198)

22. The Committee welcomes the development of a standardised pre-qualification questionnaire for works contracts, which is currently being taken forward by the Construction Industry Forum for Northern Ireland. The Committee recommends that, once an agreed approach has been established, the Procurement Board considers its application to all procurement sectors and across all Centres of Procurement Expertise. (Paragraph 200)

23. In noting that the Construction Industry Forum for Northern Ireland is actively considering the weighting of relevant experience in the assessment process for works contracts, the Committee recommends that the Procurement Board considers the potential for applying any lessons arising from this work across the other Centres of Procurement Expertise and to supplies and service contracts. (Paragraph 204)

24. The Committee recommends that feedback mechanisms across all the Centres of Procurement Expertise are standardised and aligned with good practice, with greater monitoring to ensure effectiveness. (Paragraph 208)

25. The Committee recommends that the Central Procurement Directorate provides specific guidance and support to government purchasers in relation to the social economy, including on Special Contracts Arrangements. Also, as more social enterprises enter the procurement market, tailored advice should be available to those organisations that would be eligible for supported status (i.e. where more than 50% of employees are registered as severely disabled). (Paragraph 212)

Maximising Social Benefit

26. The Committee senses a reticence amongst local commissioners and purchasers to pursue social benefit through procurement, which may be linked to a need for greater clarity both on the Executive's policy intention in this area and on the definition and measurement of 'social value'. (Paragraph 244)

27. The Committee recommends that the Executive translates its Programme for Government/Public Service Agreement commitments in this area into a clear policy directive on procuring social benefit, which sets out the priorities that should be pursued by the Procurement Board, the Centres of Procurement Expertise and individual commissioners and purchasers. The Committee further recommends that this policy directive, which should be underpinned by the necessary legal guidance, is reflected, as appropriate, in departmental business objectives, in the forthcoming Northern Ireland Public Procurement Handbook and in the personal performance objectives of commissioners and procurement professionals. (Paragraph 245)

28. The Committee notes the growing body of guidance on procuring social benefit and, in particular, welcomes the practical toolkit which has been published recently on behalf of the Strategic Investment Board. However, the Committee is concerned that this resource will be underutilised without the necessary policy direction from the Executive. (Paragraph 246)

29. In the meantime, and given the positive evaluation of the Procurement Board's Pilot Project on Utilising the Unemployed in Public Contracts, the Committee recommends the use of clauses

setting quotas for employing apprentices and the long-term unemployed in all suitable public contracts. Also, in recognising the need for further empirical evidence on best practice use of social clauses, the Committee recommends that the Central Procurement Directorate makes a rigorous assessment of the social clauses applied in recent construction contracts, with a view to identifying lessons and opportunities for further initiatives in this regard. (Paragraph 247)

30. The Committee is strongly of the view that, in future, value-for-money assessments must strike a balance between short-term monetary considerations and longer-term economic, social and environmental costs and benefits. This is especially important in the context of the constrained public expenditure environment, when departments must not lose sight of the Executive's strategic priorities. As such, the Committee calls on the Department of Finance and Personnel to put in place a suitable model for systematically measuring, evaluating and incorporating wider social value considerations within economic appraisals and business cases, and which will inform public procurement processes. Moreover, the Committee recommends that socially responsible procurement should be included as a scored criterion in the next Centre of Procurement Expertise accreditation exercise. (Paragraph 253)

Building Capacity for Purchasers and Suppliers

31. The Committee is conscious that capacity building for both purchasers and suppliers will also be vital to maximising the outcomes from public procurement. The Committee is mindful that, whilst the Department of Finance and Personnel, through the Procurement Board, must take the lead in developing the capacity of purchasers, the Department of Enterprise, Trade and Investment has lead responsibility in terms of the small business and social economy sectors. (Paragraph 258)

32. The Committee urges the Procurement Board to consider the possibilities for introducing licentiate arrangements for procurement professionals across the public sector, with a view to ensuring greater uniformity in the professional competencies of purchasing staff. In addition, the Committee considers that it is essential that the continual professional development of procurement personnel should include awareness of the benefits of doing business with both the small business and the social economy sectors. (Paragraph 265)

33. The Committee calls on the Minister of Finance and Personnel to liaise with the Minister of Enterprise, Trade and Investment to ensure that sufficient funding is in place for measures to build the capacity of smaller enterprises to access the public sector supply chain. The Committee sees a vital role for the Central Procurement Directorate in contributing to procurement training and development for both small and medium sized enterprises and social economy enterprises and will wish to be apprised of plans for taking this forward. (Paragraph 274)

34. The Committee endorses the concept of a "Procurement Exchange Programme" and urges the Procurement Board to bring forward options on how this might be developed so as to facilitate cross-sectoral training and knowledge transfer across the public sector and the private sector. (Paragraph 277)

Local Government Procurement

35. In welcoming moves towards a more collaborative approach to local authority procurement, the Committee considers that, in the event of the proposed new local authority Centre of Procurement Expertise being established, then appropriate linkages should be developed with the central government procurement structures. Whilst recognising the independence and autonomy of local councils, the Committee urges greater synergy between central and local

government purchasing policy and practice, with a view to achieving consistency in the application of good practice procurement across the public sector. (Paragraph 287)

Collaborative Procurement and Efficiencies

36. The Committee concludes that there is scope for more strategic co-ordination of the public procurement landscape in Northern Ireland to realise efficiencies, not only between central and local government but also in terms of arms-length public bodies. Moreover, the Committee proposes that the Executive explores opportunities to achieve additional efficiencies through collaborative government procurement on a North-South and East-West basis. (Paragraph 295)

37. The Committee reiterates its call for a new target to be set for achieving further efficiencies from public procurement, to include a monetary value and baseline for such savings, with an associated implementation plan which links to individual departmental efficiency delivery plans. (Paragraph 296)

38. In calling for a further efficiency drive through collaborative procurement, the Committee emphasises the need for such collaboration to be co-ordinated at a strategic level by the Procurement Board to avoid counterproductive localised efficiencies being pursued which have an adverse effect on the efficiency of the wider public sector and/or are detrimental to the local economy. (Paragraph 297)

39. The Committee recommends that, in reviewing the data capture and management information systems within Centres of Procurement Expertise, the Procurement Board also considers the position more widely across departments to ensure that robust systems are in place to facilitate evidence-based decision making in terms of the identification and monitoring of procurement efficiencies. (Paragraph 298)

Litigation and Lessons Learned

40. Given the cost of litigation and the associated disruption to capital projects and other procurement exercises, the Committee believes that a conciliatory approach is needed in resolving procurement conflicts and considers that the absence of an independent mediator between purchaser and supplier is a key deficiency within the procurement process in Northern Ireland. As such, the Committee recommends that the Procurement Board urgently examines the possibility of providing for a "Supply Chain Ombudsman" function in Northern Ireland, which would, amongst other things, fulfil this important mediation role. The Committee also believes that the proposal for licentiate arrangements for procurement professionals could help to reduce the level of litigation arising from failure to meet legal obligations. (Paragraph 312)

Public Procurement Governance Arrangements

41. The Committee calls on the Procurement Board to bring forward options for strengthening and formalising the relationship between the Central Procurement Directorate and the other Centres of Procurement Expertise, with a view to ensuring consistency in applying good practice procurement in support of the Executive's key priorities. (Paragraph 319)

Introduction

Background

1. The Department of Finance and Personnel (DFP) has a lead role in public procurement, with the DFP Minister chairing the inter-departmental Procurement Board, and the Department's Central Procurement Directorate (CPD) supporting the Board in the development and implementation of new procurement policy. CPD also provides a centralised professional procurement service to the Northern Ireland (NI) public sector and monitors and mentors the work of seven other Centres of Procurement Expertise (CoPEs).

2. Expenditure on public procurement by CPD and the other CoPEs represents approximately £2.4 billion^[11] per annum, nearly 25% of the Executive's budget. The services, supplies and works which are subject to the procurement process are also wide ranging. Government contracts include catering, transport, banking, construction, printing, telecoms, ICT (hardware), travel, vehicle maintenance, advertising, stationery, furniture/office equipment supply, security, messenger services, economic/research consultancy, staff recruitment, PR and event management, clinical and laboratory products, environmental monitoring equipment, and even helicopter hire.

3. In addition to the Executive's annual expenditure of £2.4bn, the NI public procurement market also includes an estimated spend of £300m per annum on local government purchasing.^[21] In terms of the all-island context, the combined procurement market is worth around €19 billion (£15.2 billion).^[31] The potential is even greater in terms of the opportunities for NI enterprises to also engage the Great Britain (GB) public procurement market, estimated at over £175 billion,^[41] and the wider European Union (EU) market which is estimated at € 2000 billion (£1600 billion) in 2007.^[51]

4. The Committee recognises that, given the profile of the local business sector, it can be expected that Small and Medium Sized Enterprises (SMEs) will win the majority of public sector contracts in NI. However, as the Inquiry report will demonstrate, a sound rationale exists for encouraging new entrants into the procurement market from the small and micro enterprise sector and for enabling such firms to compete for higher value contracts. The Inquiry found that evidence exists internationally in support of this rationale. For example, the European Code of Best Practices Facilitating Access by SMEs to Public Procurement Contracts^[61] highlights the benefits of increasing SME involvement in public purchasing, commenting that it will "result in higher competition for public contracts, leading to better value for money for contracting authorities. In addition to this, more competitive and transparent public procurement practices will allow SMEs to unlock their growth and innovation potential with a positive impact on the European economy."^[71]

5. The Committee notes that a 2008 consultation on the Small Business Act for Europe^[81] suggested that the most important problem that European SMEs are facing, and which prevent their growth, is access to public procurement. Also, the Department of Enterprise, Trade and Investment (DETI) Matrix report has noted that across the EU, initiatives to encourage or facilitate the participation by small companies in government procurement in general have been very limited.^[91]

6. The Minister of Finance and Personnel, in a document entitled Northern Ireland Public Procurement Policy, highlighted that "public procurement expenditure can be used to best effect to maximise the outcomes for the people of Northern Ireland".^[101] The Committee for Finance and Personnel concurs with this view.

7. The public procurement process is complex and heavily regulated. Procurement law is driven by European directives, which are implemented in NI through regulations, including the Public Contracts Regulations 2006.^[111] The regulations apply to all public bodies which are largely owned, managed or financed through public funds. This includes government departments and their agencies, non-departmental public bodies (NDPBs), hospitals and health sector purchasers,

housing associations, education boards and institutions, various non-government organisations and district councils.

8. Other organisations in receipt of government sponsored funding for more than 50% of a project may also fall under the regulations for public procurement. For example, a community organisation seeking to build new premises must undergo a procurement process if government grant aid makes up more than half of the required funding package.^[12]

9. Following an initial consideration of public procurement policy and practice the Committee identified a range of concerns. These included issues regarding the robustness of the process; compliance with legal requirements; the extent to which government contracts make provision for social clauses; the scope for increasing the capacity of SMEs and Social Economy Enterprises (SEEs) to compete for public contracts; and the consequences of undue delays in progressing procurement contracts, especially in terms of the impact on the construction sector of delays in planned capital expenditure.

Scope and Terms of Reference

10. At its meeting on 19 November 2008, the Committee agreed its terms of reference for an Inquiry into Public Procurement Policy and Practice in NI. Given the range and scale of public procurement, members chose to focus on specific aspects of the policy and process. Therefore the Inquiry terms of reference emphasise the end-user experience of SMEs and the social economy sector.

11. The Committee sought to:

- a) examine the experience of SMEs and SEEs in tendering for and delivering public contracts;
- b) consider the nature, extent and application of social clauses within public contracts;
- c) identify issues to be addressed and which are within the remit of DFP;
- d) assess progress by DFP in achieving associated objectives and targets, including those contained in the Programme for Government (PfG) and related Public Service Agreements (PSAs); and,
- e) make recommendations to DFP for improvements to public procurement policies and processes, aimed at increasing access to opportunities for SMEs and SEEs and maximising the economic and social benefits for the local community, whilst taking account of the principles governing public procurement.

12. The Committee therefore expects that the recommendations arising from this Inquiry report will help to realise additional economic and social benefits for the local community from the public procurement process.

The Committee's Approach

13. As a starting point, to inform its deliberations, the Committee received an introductory briefing from CPD officials at its meeting on 1 October 2008. At the same meeting, members also heard from Capita and the Ashton Community Trust, on the use of social clauses within procurement contracts, and the positive impact these can have on local communities. These evidence sessions informed the Committee's terms of reference for the Inquiry.

14. The Committee issued a public call for written evidence in local newspapers and a total of 35 submissions were received by 27 February 2009. These reflected the broad spectrum of stakeholders involved in a variety of procurement processes throughout NI including SEEs, SMEs, construction companies, professional bodies and representative organisations. These submissions are included in the report at Appendix 3.

15. Following consideration of the submissions to the Inquiry, the Committee identified a number of organisations which were invited to provide oral evidence, and these evidence sessions took place between May and October 2009. The Official Reports of evidence sessions are included at Appendix 2, while other memoranda and papers from key stakeholders are included at Appendix 5.

16. At various stages throughout the Inquiry the Committee requested both written and oral evidence from officials in CPD. The Official Reports of these oral evidence sessions are also included at Appendix 2, while written papers and memoranda are available at Appendix 4. The Committee acknowledges the constructive engagement with CPD officials throughout the course of the Inquiry and understands that several of the issues raised are already being considered by them, in conjunction with industry groups. In addition to the written and oral evidence, the Inquiry was underpinned by a literature review of good practice procurement, including international examples where appropriate.

17. Given the wide range of stakeholders involved in the procurement process in NI and the breadth of issues raised in the oral and written evidence, the Committee agreed, at its meeting of 17 June 2009, to host a Stakeholder Conference. Following a procurement process, the Social Research Centre was appointed to facilitate the event.

18. The Conference, Maximising the Economic and Social Benefits from Public Procurement in Northern Ireland, was designed to supplement the Inquiry evidence base by:

- gathering further evidence to assist the Committee in prioritising the key issues to be addressed;
- generating further ideas for improving access for SMEs and SEEs to the public procurement market and in terms of achieving social aims; and,
- testing stakeholder opinion on the ideas put forward through an active consultation process.

19. Held on 21 October 2009, the Conference represented an additional and alternative approach to gathering inquiry evidence from the usual process of taking written submissions and holding oral hearings. The format included breakout sessions, short inputs from recognised procurement commentators and digi-voting^[13] on priorities and recommendations. The Committee would like to thank Eileen Beamish of the Social Research Centre for facilitating the design and delivery of the Stakeholder Conference, which added value to the evidence base of the Inquiry.

20. Around 100 participants attended the conference, representing government purchasing bodies, SMEs, SEEs and umbrella bodies. Several "procurement commentators" also contributed, including: Paul Davis, Dublin City University; Professor Andrew Erridge, University of Ulster; Jenni Inglis, Social Return on Investment Network; Frank McGlone, Procurement Adviser; Dr Gordon Murray, Improvement and Development Agency (IDeA); and Martin Sykes, Chief Executive of Value Wales. They highlighted best practice and learning from other jurisdictions, whilst also challenging the practices and perceptions of both suppliers and purchasers. The Committee acknowledges the contribution and insight which each of the commentators has brought to this process.

21. The Committee invited two leading academics, Professor Chris McCrudden, Professor in Human Rights Law, Lincoln College, University of Oxford; and Dr Aris Georgopoulos, Lecturer in Law, Faculty of Social Sciences, University of Nottingham, to comment on the output from the Stakeholder Conference. The Committee welcomes these contributions which have been included, along with the full Conference Report, at Appendix 7 and referenced in the body of the Inquiry Report as appropriate.

22. Assembly Research also assisted the Committee by providing a number of research papers on a range of pertinent issues raised, in addition to background briefing. All Assembly Research papers relating to the Inquiry are available at Appendix 6.

23. The breadth and range of issues brought to the attention of the Committee reflects the broad reach and impact of procurement policy and practice throughout NI. The Committee extends its gratitude to all those from across the spectrum of the procurement community for giving evidence, both oral and written, participating in the Stakeholder Conference, and assisting in the Inquiry process.

24. In welcoming the constructive way in which stakeholders have contributed to the Inquiry and the positive proposals that have been suggested, the Committee also acknowledges that there may have been organisations reluctant to provide evidence, to avoid a perception of companies "biting the hand that feeds them". The Committee anticipates that the views of such businesses, however, have been reflected in the submissions, both written and oral, from the various umbrella and industry organisations working in this area.

Themes from the Evidence

25. The 'Consideration of the Evidence' section of the report reflects the themes emerging from the Inquiry evidence and discussions at the Stakeholder Conference. Much of the evidence can be grouped under the following themes:

i. Improving Policy and Processes

This includes concerns about the use of frameworks; onerous application processes often involving duplication of information; sourcing opportunities to bid; pre-qualification criteria; exclusion from contracts; and, complex tendering procedures. Given the broad scope of issues raised, this theme can be further broken down into the following areas:

a) Framework Agreements and Contracts

b) Opportunities to Bid

c) Tendering and Delivering

"Improving Policy and Processes" is discussed at paragraphs 93 – 212.

ii. Maximising Social Benefit

A key Inquiry aim was to consider the nature, extent and application of social clauses within public contracts. This brought responses from all stakeholders and included issues around definition; monitoring and evaluation; and, policy direction. "Maximising Social Benefit" is discussed at paragraphs 213 – 253.

iii. Building Capacity for Purchasers and Suppliers

Although not directly highlighted in the Inquiry terms of reference, building capacity for both purchasers and suppliers was an important issue emerging from the evidence. This included the need for cultural change within purchasing bodies, but also a call for local SMEs and SEEs to develop the appropriate skills necessary to compete for government contracts. This area is considered further at paragraphs 254 – 277.

26. These three broad themes informed the structure and content of the Stakeholder Conference (see Programme and Report at Appendix 7). The format of the Conference allowed the Committee to learn about further issues of concern to the local procurement community and also to hear suggestions for improvements.

27. A survey commissioned by the FSB during the course of the Committee Inquiry indicated that the majority of SMEs who responded, bid for contracts below £50k, and this mostly originates from local government.^[14] While not directly within the remit of the Committee, a recurrent theme throughout the Inquiry has been the Review of Public Administration (RPA) and the potential impact on procurement policy and practice at local government level.

28. Given that the Inquiry terms of reference determined that the Committee would “make recommendations to DFP for improvements to public procurement policies and processes”, it is appropriate for the Committee to consider the potential role of local government purchasing amongst the other concerns that have arisen. The Inquiry findings relating to local government procurement will be communicated to the Department of the Environment (DoE), via the respective Assembly committee, and to the Northern Ireland Local Government Association (NILGA) for consideration. Discussion on procurement and local government can be found at paragraphs 278 – 287, with an Assembly Research paper included at Appendix 6. The case for collaborative procurement and the scope for further efficiencies is examined at paragraphs 288 – 298.

29. Of particular concern to the Committee during the course of the Inquiry was the number of procurement exercises that are the subject of legal proceedings. Members received updates from CPD officials on the nature and progress of these cases, including lessons learned. This area is dealt with in the report at paragraphs 299 – 312.

30. Finally, the wider role of CPD in relation to public sector procurement was an issue brought to the attention of the Committee throughout the Inquiry. While CPD primarily has an advisory role, it appears that there is scope for greater consistency across public sector procurement processes. Further consideration of governance issues is discussed at paragraphs 313 – 319.

31. Before discussing the main themes from the evidence, however, it will be helpful to consider the context of the Committee Inquiry, in terms of the wider public procurement environment.

Consideration of the Evidence

The Public Procurement Environment

European Legal Framework for Procurement^[15]

32. The rules governing EU public procurement directly affect how public bodies can purchase supplies, works and services. Such purchases by public bodies represent about 16% of the EU’s total gross domestic product (GDP) and in 2007 the value was estimated at €2,000 billion (£1,600 billion) (including procurements both above and below thresholds), while in 2006 nearly 32,000 contracting authorities published contracts worth €380 billion (£304 billion). Procurement is therefore regarded as a key single market issue.

33. Government purchasing bodies must consider three aspects of the EU legal framework when conducting procurement exercises, including primary and secondary legislation and case law. The primary law is essentially the EC Treaty within which the following three basic principles (sometimes referred to as the 'fundamental principles') are enshrined:

- i. Openness and transparency of award procedures;
- ii. Genuine competition in the award of contracts; and
- iii. No unlawful discrimination on the grounds of nationality.

34. One of the main consequences of these fundamental principles is that EU member states are not in a position to favour indigenous business over companies from elsewhere in the EU. Member states must be careful that social or ethical considerations do not operate as a disguised barrier to the free movement of goods and become a form of protectionism. This has recently been reiterated by the European Court of Justice (ECJ) in the Ruffert case^[16]. Contracting authorities must pay particular attention to this, or risk a legal challenge.

35. Secondary law relates to European directives which must be transposed by member states into national law. The most relevant of these is Directive 2004/18/EC of the European Parliament and Council of 31 March 2004, on the co-ordination of procedures for the award of public works contracts, public supply contracts and public services contracts. This was transposed in NI through the Public Contracts Regulations 2006 (Statutory Instrument 2006 No.5).^[17] The aim of the legislation is to reduce the administrative burden and associated costs, make procurement systems more transparent and easier for SMEs (in particular) to access, and encourage the use of IT systems to simplify the tendering process.

36. The regulations apply to all public sector bodies which are largely owned, managed or financed through public funds. This includes:

- All central government departments (including Executive Agencies)
- District Councils
- Various Non-Government Organisations (NGOs)
- Housing associations
- Hospitals and health sector purchasers
- Education bodies including: Boards, Secondary, Further and Higher institutions
- Grant-aided procurement (projects in receipt of public funds over 50%).

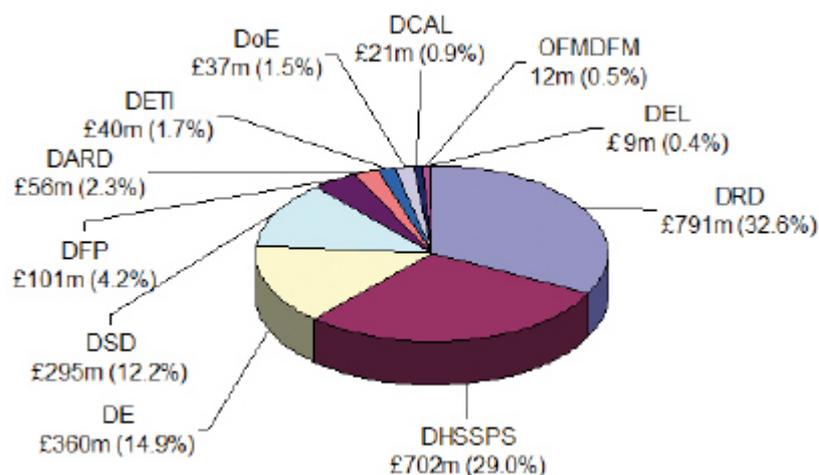
37. Thirdly, there is the case law of the European Courts. The introduction of the 'Alcatel' 10-day mandatory standstill period following a contract award is one of the more recent cases. Following this ECJ ruling a contracting authority must allow at least 10 days between the date of despatch of information to all bidders relating to the award decision, and the date on which it proposes to enter into the contract, or conclude the framework agreement. Unsuccessful bidders then have an opportunity to receive feedback and, if appropriate, query the decision of the contracting authority.^[18] This has now been superseded by the 'Remedies Directive'^[19] which came into force in December 2009 and places greater emphasis on the standstill period.

The Scope of Public Procurement Practice

38. As already indicated, in 2008-09 expenditure on public procurement in NI accounted for approximately £2.4 billion of supplies, services and construction works in 2008-09 representing nearly 25% of all public expenditure.^[20]

39. Figure 1 highlights the spread of procurement spend across all Northern Ireland Civil Service (NICS) departments in 2008-09. This does not include local government spend which is accounted for individually by councils and is not monitored by CPD.

Figure 1: Expenditure on public procurement across Northern Ireland Civil Service Departments^[21]



40. The three largest spending departments are Regional Development, Health and Education. This reflects expenditure not only on large infrastructure projects but also on supplies and services. The research paper Public Procurement and the Social Economy included at Appendix 6, highlights the range of procurement expenditure incurred by Departments, Agencies and NDPBs from 2005 -2008. A comparative table on procurement spend across Departments over those three years is included in Figure 2.

Figure 2: Public Procurement Expenditure incurred by Departments, Agencies and NDPBs by Category 2005 – 2008^[22]

Category	2005/06	2006/07	2007/08
	£m	£m	£m
Construction/Maintenance Services	794	711	897
Medical/Surgical Equipment and Supplies	187	186	235
Consultancy Services	121	102	115
Energy	100	125	140
Public Utilities	77	71	
Transport and Travel Services	53	63	72
Repair/Maintenance Services	53	60	67

Category	2005/06	2006/07	2007/08
	£m	£m	£m
Plant and Machinery (including tools and equipment)	45	43	59
Facilities Management	44	52	63
Rental, Leasing or Hire Services	42	24	54
Office Machines and Supplies	41	72	99
Transportation Equipment	30	61	78
Postal and Telecoms Equipment and Supplies	29	35	36
Food Stuffs	27	27	37
Chemicals/Reagents	23	21	21
Financial Services	22	17	21
Furniture and Fittings	13	17	19
Printing/Reprographic Services	13	14	14
Environmental Services	11	10	14
Publications	10	14	24
Clothing and Accessories	7	7	8
Land			19
Advertising			16
Recruitment and Personnel Services			15
Research and Development			8
Public Relations (including events/conferences)			6
Other Expenditure	70	162	65
Totals	1812	1895	2202

41. The Committee recognises the business opportunities presented to indigenous enterprises by the substantial expenditure on public procurement in the NI, all-island, GB and wider EU markets. However, the Committee is also mindful that the NI business economy overwhelmingly comprises smaller enterprises, many of which consider that the public procurement process requires more time, effort and cost than business would allow.^[23] As such, the Committee considers that it is incumbent upon the Executive and the Assembly both to create a public procurement environment that facilitates our smaller enterprises in realising their full potential and which maximises the economic and social impact from expenditure on procurement.

Public Procurement Principles

42. In its evidence, CPD explained that the administration of public procurement in NI is governed by twelve guiding principles agreed by the Executive. These are:

- i. Accountability,

- ii. Competitive Supply,
- iii. Consistency,
- iv. Effectiveness,
- v. Efficiency,
- vi. Fair-dealing
- vii. Integration,
- viii. Integrity,
- ix. Informed decision-making,
- x. Legality,
- xi. Responsiveness, and
- xii. Transparency.

The Executive considers that these principles reflect the statutory obligations relating to equality of opportunity and sustainable development and link to the PfG. More information on the twelve principles can be found at Appendix 4.^[24]

43. The Committee has been advised that the roles and expectations on commissioners and purchasers which arise from the twelve principles will be further clarified in the "Northern Ireland Public Procurement Handbook", currently being developed by CPD. The Committee welcomes this initiative as it believes that, given the aspirational terms in which the principles are cast, purchasers could find them difficult to interpret and implement without more specific instruction.

44. The Committee notes that the CPD guidance defines "best value for money" as "the optimum combination of whole life cost and quality (or fitness for purpose) to meet the customer requirements". More particularly, the guidance states that:

"While 'best value for money' is the primary objective of procurement policy, this definition allows for the inclusion, as appropriate within the procurement process, of social, economic and environmental goals, the three pillars of sustainable development".^[25]

Also, the Committee notes with interest that the CPD guidance advises that when the twelve guiding principles "have been satisfied to an acceptable level then best value for money can be said to have been achieved".^[26]

45. As outlined later in the report, evidence presented to the Committee during the course of the Inquiry suggests that, in comparative terms, public procurement practice in NI has a predominant focus on compliance (i.e. the Legality principle) and on narrow value-for-money considerations. While these considerations are undoubtedly important, the Inquiry report highlights the need for further development in good practice, which will see more weight given to some of the other guiding principles. In terms of the external perception, in its submission to the Inquiry, CBI highlighted the results of a survey which it carried out of 157 NI-based suppliers in 2008, which showed that 61% of respondents did not think that public procurement is

resulting in value for money, compared with 16% who did. Some 64% felt that further fundamental changes are required.

46. The Committee notes that an underlying theme from the Inquiry evidence suggests that government evaluations and appraisals, including as part of the procurement process, tend not to attach sufficient weighting to longer-term qualitative/non-monetary benefits for the wider economy and society, which can be realised from capital investments and procurement exercises.

47. The Committee is aware that the "Integration" principle advocates that "in line with the NI Executive's policy on joined-up government, procurement policy should pay due regard to the Executive's other economic and social policies, rather than cut across them". Moreover, the CPD guidance highlights that one implication of adopting the twelve principles for the Executive's policy on public procurement will be that "wider economic, social and environmental strategies and initiatives of the Executive should be more closely integrated into procurement policy".^[27] However, the evidence presented to the Inquiry leads the Committee to conclude that there is insufficient integration in this regard and that a more strategic and widely defined consideration of "value for money" is needed, which has a focus on longer-term economic and social well-being.

48. In addition to the Integration principle, the Inquiry report will also highlight the need for greater emphasis on Consistency (i.e. to ensure uniformity of approach across CoPEs), Competitive Supply (i.e. greater action to realise benefits of SME involvement), Informed decision-making (i.e. to establish robust management information systems and to take sufficient account of social value) and Responsiveness (i.e. to the needs of SMEs and SEEs).

Organisational structures for the development and implementation of Procurement Policy in NI

The Northern Ireland Executive^[28]

49. The development and implementation of procurement policy rests at various levels within government. The NI Executive is responsible for agreeing overall public procurement policy including the adoption of the twelve procurement policy principles. In its Programme for Government 2008 – 2011, Building a Better Future, the Executive highlighted the positive role that procurement has in furthering cross-cutting, sustainable development and socio-economic objectives.

50. The Committee notes that "growing a dynamic, innovative economy" is the cornerstone of the PfG; and, that there is a particular emphasis on "growing the private sector including small and medium enterprises" and "developing the social economy."

51. Within the PfG, the Executive recognises "the important contribution that such local economic activity promotes in both social objectives and in sustainable community development"^[29]; and that there is a commitment to ensure that any government reforms and restructuring will be compliant with recognised best practice in social procurement guidelines.

52. The Committee welcomes the recognition within the PfG of the significant role that public procurement policy can play in advancing the overall aims and objectives of government, including achieving policy objectives under the cross-cutting theme of sustainable development^[30] and in tackling patterns of socio-economic disadvantage^[31].

53. Public Service Agreement (PSA) 11 specifically addresses these issues with its objective to "support the wider Public Sector in taking account of sustainable development principles when procuring works, supplies and services". In its ongoing scrutiny of DFP's progress against PSAs in the PfG, the Committee will continue to closely monitor those PSAs specifically addressing procurement.

54. Detailed actions include the integration of sustainable development priorities; increasing access to public procurement opportunities for SMEs and SEEs; monitoring and reporting on compliance with guidance on integration of equality and sustainable development priorities within the procurement process; and basic training for all procurement staff in sustainable procurement processes.

55. Other PSAs with a focus on procurement practice include PSA 20 "Improving Public Services" which highlights "improved procurement practice" as a key target within the objective of taking forward the modernisation of the health and social services sector.

56. PSA 21 "Enabling Efficient Government" also impinges on procurement policy and practice in NI, as objective 5 commits to delivering the most economically advantageous outcomes in government procurement.

57. The Committee believes that the implementation of the recommendations arising from this Inquiry will help to achieve key objectives of the Executive's PfG, not least the emphasis on "growing the private sector including small and medium enterprises" and "developing the social economy". As a prerequisite, however, the existing drivers for public procurement will need to be realigned in support of the Executive's economic, social and environmental priorities. In particular, this will require a more balanced application of the twelve guiding principles governing the administration of public procurement in NI, which, in turn, will help achieve "best value for money". This will be discussed in more detail later in the report.

Procurement Board

58. A Procurement Board, chaired by the Minister of Finance and Personnel, comprises the Permanent Secretaries of the 11 NI Departments, the Treasury Officer of Accounts, the Director of CPD and two external experts. The Board has particular responsibility in respect of developing overarching public procurement policy for NI Departments, their agencies and other public bodies. The Board is responsible to the Executive and accountable to the NI Assembly.

59. Procurement policy and practice in NI has been under increased Assembly scrutiny in recent months as a consequence of this Inquiry. The Procurement Board will wish to carefully consider the recommendations of this Report and the Committee looks forward to receiving a formal response to the findings and recommendations.

Central Procurement Directorate

60. CPD was established within DFP in April 2002 to support the development and implementation of public procurement policy and provides a centralised professional procurement service to the NI public sector. While CPD is available to local government purchasing bodies for advice and guidance, there is no imperative to engage with CPD during procurement exercises.

Centres of Procurement Expertise

61. In addition to CPD, seven other CoPEs exist to provide a more integrated service to bodies throughout the public sector. These are:

- Roads Service
- Northern Ireland Water
- Health and Social Care Northern Ireland – BSO Procurement and Logistics
- Northern Ireland Housing Executive
- Health Estates
- Education and Library Boards (to be replaced by the Education and Skills Authority).
- Translink^[32].

62. Public procurement policy in NI requires that the competency of CoPEs is reviewed by the Procurement Board on a periodic basis. The first review was carried out by PricewaterhouseCoopers LLP (PwC) in 2005 and a second review took place in 2009, also by PwC.^[33] The twelve procurement principles are used to assess CoPEs against best value for money in their reaccreditation. This area is discussed in more detail later in the report, under the section on Public Procurement Governance Arrangements.

Procurement Practitioners' Group

63. There also exists a Procurement Practitioners' Group (PPG) where representatives from CPD and the other CoPEs meet to inform, test and develop policy and, where appropriate, operational issues.

64. Further information on the relationships and roles of the Executive, the Procurement Board, and the Procurement Practitioners' Group can be found at Appendix 4.

Construction Industry Forum for NI Procurement Task Group

65. The Committee also notes the work of the Construction Industry Forum for NI Procurement Task Group (CIFNI PTG), which was recently formed in response to the economic downturn. Several principles underpinning the Group reflect the thrust of this Inquiry, including: maximising the opportunities for enterprises to benefit from public sector construction contracts through participation in the supply chain; reducing the cost and timescale of the pre-qualification process; and reducing the costs of tendering.

Social Economy Enterprise Procurement Group

66. The Committee notes from a recent draft of the Social Economy Enterprise Strategy 2010-11, that DETI, supported by CPD, will work with the Social Economy Network (NI) Ltd (SEN) to facilitate two meetings per year of the Social Economy Enterprise Procurement Group.^[34] This will aim to increase awareness of the public sector tendering process amongst social enterprises and break down barriers to procurement.

Small and Medium Sized Enterprises in NI

67. SMEs in NI are primarily characterised by staff headcount, although the European Commission publication, The new SME definition: User Guide and Model Declaration,^[35] also allows for annual turnover and balance sheet total to be taken into account. The Annual Report on EU Small and Medium Sized Enterprises notes that SMEs range from self-employed

bookkeepers without personnel, to fast-growing, innovative and much-internationalised ICT firms with 200 employees, and everything in between.^[361]

68. For the purposes of the Committee Inquiry, SMEs have been categorised as follows:

- Micro <10 employees
- Small <50 employees
- Medium <250 employees

69. In its evidence to the Inquiry, the FSB highlighted that public bodies may consider that “they have 100% submission from the SME sector to tender notices, and a 100% success rate of award of contracts to SMEs – given that the standard definition of an SME relates to all businesses employing up to 250 people”. During the Inquiry, it became clear that there is a lack of consistency in the definition of an SME used by buyers in the public sector market, an issue that was also highlighted, in terms of the all-island context in the recent InterTradeIreland report.

70. The Inter-Departmental Business Register (IDBR) – Edition 10 (20 June 2008)^[371] shows that, of the 72,550 SMEs in NI, 7,870 businesses had more than 10 employees and, of this figure, only 1,240 employed more than 50 people. The remaining 64,680 (89%) businesses are classed as micro-businesses, employing fewer than 10 people. Fifty percent of all businesses in NI are registered as ‘Sole Proprietors’.^[381] Micro-businesses therefore have a particularly prominent place in the local economy.

71. In recognising that nearly 90% of small businesses in NI are micro-businesses, the Committee would wish to highlight the concerns of those who responded to the Inquiry requesting clarity on the definition of SMEs. As such, the Committee recommends that the Procurement Board, in conjunction with DETI, considers refining the definition of SMEs in the NI context, paying particular attention to those currently identified as small, or micro-businesses, when exploring ways of boosting access to procurement opportunities by local businesses.

72. The Committee is aware that the high proportion of small and micro enterprises in the local business sector could be viewed as a structural weakness in the NI economy. Evidence at an EU level, for example, shows that SMEs, especially micro enterprises, have a lower labour productivity than large enterprises and contribute a considerably lower share to value added than to employment. That said, the Committee also notes that, at a UK level, a report from the Department for Business, Enterprise and Regulatory Reform has found that “the small business sector has become more dynamic” and that “productivity growth in small firms has exceeded that in large firms since 1998”.^[391] Also, the Committee is conscious that the EU research highlights compelling empirical evidence of how SMEs can have a positive impact on economic growth trends, particularly from a longer-term perspective.^[401]

73. The Committee notes from this recent EU research that SMEs in general, and micro enterprises in particular, “contribute to the creation of new employment at a much higher rate than do large firms”.^[411] Also, in the context of developing the “knowledge economy” in NI, the Committee notes that SMEs contribute to the dynamism and innovative performance of an economy by providing the vehicle for “knowledge spill-over entrepreneurship”, in terms of implementing and commercialising the new knowledge generated from investment in research at universities and other research institutes.^[421]

74. The recent Independent Review of Economic Policy (IREP) indicates that local businesses “will remain the bed-rock of the NI economy.”^[431] The report also notes that NI is dominated by small firms, primarily due to a large agricultural sector, but also reflecting more small firms than

the UK average in construction, retail, transport and extraction. ^[44] It is the view of the authors of the IREP that "it is important that in practice, public policy interventions/resources are increasingly targeted at overcoming the obstacles to business growth." ^[45]

75. The Committee is also aware that HM Treasury's Office of Government Commerce (OGC) has concluded that much could be gained by enabling a greater number of smaller businesses to compete in the public sector supply chain. OGC cites benefits for both the smaller businesses and the public sector. In the case of smaller businesses, they can gain by having greater access to a large and stable market. The benefits for the public sector include: better value for money (i.e. greater competition reduces costs from all suppliers and the lower overhead costs of smaller business can result in lower prices); better quality of service; and innovative business solutions. ^[46] On the latter issue, both the DETI Matrix Group and Sir David Varney's Review of the Competitiveness of NI have highlighted how government procurement can play an important role in driving SME innovation and growth. ^[47]

76. The Committee notes that the aforementioned benefits from greater participation by smaller enterprises in the government supply chain were reiterated in a report on Evaluating SME Experiences of Government Procurement, published jointly by CBI, FSB and the British Private Equity and Joint Venture Capital Association in 2008. ^[48] Also, the Committee is conscious that, as far back as 2001, the Review of Public Sector Procurement in NI recognised both the benefits of encouraging SME access to public contracts and the associated barriers.

77. In addition to the direct benefits from greater participation by smaller enterprises in the local procurement market, the Committee also understands that wider economic gains, in terms of increased Gross Value Added (GVA) in NI, could accrue from local SME entry into other public procurement markets, including RoI and GB. ^[49]

78. Given the profile of the local business sector, the Committee would expect that the majority of contracts in NI are awarded to small and micro enterprises. However, as discussed later, it has not been possible to establish comprehensive figures in this regard, including in terms of showing the extent and spread of the indigenous SMEs which are successful in winning government contracts. Nor has it been possible within the timeframe of this Inquiry to undertake a detailed examination of the reasons why some SMEs are successful, while others have either a negative or no experience of the public procurement market. Nonetheless, the Committee sees merit in encouraging new entrants into the procurement market from the small and micro enterprise sector and also in enabling such firms to compete for higher value contracts.

79. The Committee believes that a 'win-win situation' will arise from increasing the number of indigenous smaller enterprises competing in the public sector supply chain. For the public sector there is the potential for better value for money, better levels of service and more innovative business solutions. For the smaller enterprises there is the benefit of access to a large and stable market. The Committee also believes that increased participation by indigenous small enterprises in providing services, supplies and works to government in NI could encourage their growth and participation in public procurement markets elsewhere, with the added benefits of boosting employment and of raising the level of productivity/GVA within NI.

80. The Committee notes that, for some years now, the benefits from greater SME access to the public sector supply chain and the barriers to such access have been recognised and documented both locally and internationally. Given the current economic circumstances, the Committee believes that there is now an urgent need for accelerated action in this area. Progress on this front will support the drive for "Competitive Supply", which is included in the twelve guiding principles governing public procurement in NI.

81. In light of the potential benefits, the Committee calls on the Executive to develop a strategic policy for using public procurement, as far as is permitted under the legislation, as a tool for supporting the development of our smaller enterprises and for stimulating economic growth in the longer term. The Committee considers that the implementation of such a policy will require further culture change on the part of government purchasers, which sees a stronger focus on "growing the economy" and creativity in developing procurement solutions which are sensitive to the needs of the economy, whilst also ensuring legal compliance.

Social Economy Enterprises in NI ^[50]

82. A Social Economy Enterprise (SEE) is defined by DETI as 'a business that has a social, community or ethical purpose, operates using a commercial business model and has a legal form appropriate to a not-for-personal profit status'.

83. The social economy sector in NI includes a range of organisations such as credit unions, housing associations, local enterprise agencies, community businesses, co-operatives, employee-owned businesses, community development finance initiatives, social entrepreneurs and social firms. Given the relatively low visibility to date and diversity of the sector, no firm, up-to-date, figures are available to quantify its overall size and scale.

84. According to the SEN, the sector in NI is not as well developed as it is in England and Scotland. However a UK-wide survey in 2005 estimated that there were around 600 SEEs in NI, employing in the region of 10,000 people.^[51] The Committee welcomes the recent draft of the DETI Social Economy Enterprise Strategy 2010-11, which aims to ensure that the sector is valued, encouraged and supported.^[52]

85. In oral evidence to the Committee, SEN highlighted that, for many organisations in the social economy sector, there is now a move away from funding based on government grant aid towards provision of supplies and services through a competitive tendering process. This marks a sea change for the sector in terms of funding arrangements, and a knowledge gap exists.

86. The Ulster Community Investment Trust (UCIT) told the Committee that there is evidence of a lack of awareness and understanding of the social economy on the part of departments, including of social enterprises and what they are doing in communities. In this regard, the Committee notes a suggestion made during the Inquiry that each Department should have its own Social Economy Sector champion, not only for procurement related issues but also for other concerns pertinent to the sector.

87. As part of its Inquiry, the Committee has been pleased to hear from SEEs which have a vital role to play in building sustainable communities economically, socially and environmentally; and is particularly keen that access to public procurement opportunities are opened up to the social economy sector.

Number and Value of Awards across the CoPEs

88. In order to obtain baseline data to help inform the Inquiry the Committee agreed to request information from CPD and the other CoPEs on:

- a) The number and value of contracts awarded to local SMEs from 1 April 2004 to date, including a breakdown into medium, small and micro-businesses; and,
- b) The number and value of contracts awarded to local SEEs from 1 April 2004 to date, including a breakdown into medium, small and micro-businesses.

Figure 3 below shows aggregated percentages for the numbers of contracts let by each CoPE by size of business over the three years from 2006-07 to 2008-09.^[53]

Figure 3: Number and value of contracts by CoPE 2006-07 to 2008-09

	Department of Health Social Services and Public Safety		Northern Ireland Housing Executive		Central Procurement Directorate*		Education and Library Boards	
	% of contracts (n=4389)	% of value (£516m)	% of contracts (n=4050)	% of value (£354m)	% of contracts (n=1404)	% of value (£1.29bn)	% of contracts (n=12434)	% of value (£478m)
Medium SME (NI)	6.0	87.0	69.8	77.9	89.6	88.7	3.5	23.4
Small SME (NI)	57.7	10.8	4.5	19.8	1.6	1.2	35.3	25.7
Micro SME (NI)	20.6	1.4	25.8	2.3	0.6	0.0	60.7	14.6
External SME/SEE	15.3	0.7	0.0	0.0	6.3	3.1	0.1	0.1
SEE (NI)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Non-SME (NI)	0.0	0.0	0.0	0.0	1.4	6.8	0.4	35.9
External Non-SME	0.5	0.1	0.0	0.0	0.5	0.1	0.0	0.2
Totals	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

* Figures for CPD cover both Construction Division (n=113) and Supplies and Services Division (n=1291). CPD has confirmed that Supplies and Services Division do not keep disaggregated data for small and micro SMEs.

89. While the data does not illustrate any clear patterns, some observations may be made, including:

- a) the spread of contracting activity by size of business varies considerably between the CoPEs;
- b) the number of contracts awarded to micro-businesses is higher in percentage terms than the value of those contracts. This indicates that, while micro-businesses may be winning significant numbers of contracts, these are only low in value;

c) few contracts are let to businesses from outside NI or to non-SMEs;

d) in the period covered by those CoPEs that were able to provide data, from a total of 22,277 contracts, only one was let to a NI-based SEE; and,

e) for both the Department of Health, Social Services and Public Safety (DHSSPS) and the Education and Library Boards, small numbers of contracts let to medium-sized businesses in NI accounted for relatively high proportions of the overall value of the contracts.^[54]

90. There was some difficulty in obtaining data and several CoPEs, including Roads Service, Northern Ireland Water and Translink, were unable to provide the data requested. Weak information management across CoPEs was noted in the InterTradeIreland report which stated that some buyers do not know the size of their current supply base and concluded that this “may reflect the need for centralised management information on procurement, contracts awarded and associated profiles”. The InterTradeIreland report also suggests that the new e-SourcingNI system operated by CPD has “limited scope to provide any longitudinal trend analysis.”^[55] This was further highlighted to the Committee during an evidence session with DFP officials on the Shared Services Organisation, which is bringing together HR, Financial and IT systems across the NICS. It is anticipated that, with the introduction of initiatives such as AccountNI, CPD might be in a better position to record and manage information relating to procurement spend.^[56]

91. Through Assembly Research, the Committee has identified a possible model of good practice for information management, which CoPEs in NI may be able to follow in gathering information on the participation of small enterprises in the public procurement market. This is the system called Spikes Cavell, used by the Scottish Government which collects and collates management information on procurement spend, and which has become a Best Practice Indicator for Scottish public purchasing bodies to record spend on SMEs.^[57] Belfast City Council has been using Spikes Cavell as an information management tool since 2007. Transaction data is sent to the system which cleanses the information and removes duplication. A number of different reports can be run, including information on the spend of individual departments or information on particular suppliers. The use of this information management system has allowed the Council to co-ordinate contracts more effectively, and has helped to realise efficiency savings.^[58]

92. The Committee is concerned at the inconsistency and gaps in the data held by CPD and the other CoPEs on contracts awarded to SMEs and SEEs. As such, the Committee calls on the Procurement Board to ensure that the necessary data capture and management information systems are put in place across all the CoPEs to enable the impact of procurement policy on the small business and social economy sectors to be monitored effectively. Progress in this area will be in keeping with one of the twelve guiding principles of public procurement in NI, namely “Informed decision-making”. The Committee further recommends that the criteria used in the accreditation of CoPEs should take account of the robustness of the data systems in this regard.

Improving Policy and Processes

Framework Agreements and Contracts

Background

93. CPD currently has a number of framework agreements in place, designed to facilitate the call-off of teams to undertake projects as the need arises, by means of a secondary competition between the teams appointed to the framework agreement^[59]. Under the Public Contracts Regulations 2006, the maximum duration of a framework is currently 4 years (the Utilities Contracts Regulations 2006 do not contain a limit on framework duration).

94. In correspondence with the Committee, CPD cited a number of advantages that frameworks can offer contracting authorities including:

- the value for money advantages of centralised procurement;
- a reduction in administrative effort and cost for the contracting authority;
- the initial tendering process allows contracting authorities to identify competitive suppliers, who should offer more competitive prices on the basis of an expected value for business;
- the agreed range for the supply of items or services can be given at short notice by the contracting authority; and
- a mutually beneficial longer-term working relationship can be established with the supplier.^[60]

Also, the PwC review of CoPEs viewed frameworks positively in that they promote efficiency and also encourage competition amongst suppliers.

95. From the Inquiry, however, the Committee has detected an apparent contradiction between the theoretical benefits of frameworks and how they operate in practice. Most of the evidence presented to the Committee on frameworks highlighted a perception that they have a significant negative impact on the experience of SMEs and SEEs in tendering for, and delivering public contracts. The Royal Society of Ulster Architects (RSUA) felt that imposing frameworks on all kinds of procurement did not seem appropriate. The RSUA also suggested that, as the research evidence in support of frameworks was undertaken entirely in GB, their use remains to be proven in the NI context.

96. While acknowledging the rationale behind frameworks to bring together different interests, Carson McDowell solicitors pointed out that, in an area with a relatively small local market, frameworks were probably not the most helpful approach; and that in NI two large frameworks have 'sucked up' too much work. The Construction Industry Group NI (CIGNI) felt that the use of frameworks had led to a reduction in tendering opportunities, thereby reducing access for SMEs and SEEs. The Committee also notes that the InterTradeIreland evidence suggests that frameworks are renewed too infrequently.

97. In its written submission to the Committee, the Northern Ireland Federation of Housing Associations (NIFHA) outlined an emerging situation where housing associations were encouraged to align themselves into four procurement consortia to establish frameworks and let building contracts after 'mini-competitions'. It is envisaged that, in the future, supplies and services will also be procured through consortia and frameworks. NIFHA, on behalf of its members, has expressed concern about this arrangement for a number of reasons, including budgetary constraints; threat of litigation due to the downturn in the construction industry; and difficulties in co-ordinating enough housing projects within a consortium at roughly the same time and in the same general area to confidently set up a framework.

98. Frameworks did however receive qualified support from some stakeholders. CIGNI told the Committee that frameworks do have a place and can be a useful system for subjects that are clearly identifiable, for example supplies of JCB diggers or dumpers. However, during their oral evidence the Committee heard that, in RoI, construction contracts had been intentionally excluded from framework arrangements. In a written submission to the Committee, Dr Aris Georgopoulos, University of Nottingham, suggested that only particular types of contracts are suitable for framework arrangements, such as those aimed at satisfying recurring needs for supplies and/or services.

99. Contract consultants, Quigg Golden Ltd, told the Committee that there are occasions where framework agreements are a good and useful practice. In its oral evidence to the Committee, the Confederation of British Industry (CBI) supported frameworks as an important way of reducing bidding costs, and supported aggregations only to the point where NI companies still have good opportunity of winning contracts. There was also a note of caution from a participant at the Stakeholder Conference who highlighted the enormous amount of work and resources required to be included on a framework and to dismiss that outright would be to negate a huge amount of positive economic activity.

100. Through the written and oral evidence, and at the Stakeholder Conference, a number of criticisms were levied at framework agreements and these are discussed below.

Framework lockouts leading to loss of experience

101. Representative organisations like CIGNI highlighted the fact that, if an SME is unsuccessful in making the framework agreement it can be locked out of those contracts for the length of the framework – usually a term of four years. Businesses therefore miss out on gaining any experience in that area of work and so have the potential to be doubly penalised when the framework is up for renewal. In other words, it may be even more difficult for a business to get on to a framework in the future.

102. This concern was echoed by the Royal Institute of Chartered Surveyors (RICS) both in its written submission and also during the oral evidence session on 24 June 2009. RICS also suggested that there is potential for a future negative impact on the construction skill base in NI caused by a damaging shortage of professional skills to manage the eventual upturn in the market. A similar view was expressed by the construction company, Martin and Hamilton Ltd, which contended that the longer the current framework system is in operation the more competitive advantage larger firms will accumulate. In turn, this will widen the gap between their growing capability and that of smaller firms who have missed out and lose out on the experience.

103. The Committee heard that frameworks have a particularly negative impact on professional services such as architects. The RSUA drew the Committee's attention to a situation where an architect's firm may, for a nominal fee or at no cost, provide advice and initial work for a local community organisation. However if the group's public funding reaches a threshold of over 50% (of the contract value) then they must use the framework for aspects of the project. If that particular architect practice is not on the framework, they cannot compete for the work. This results in lost work and also the benefits that knowledge of the local community would bring to that project, not being realised.

Duplication of information and onerous pre-qualification criteria

104. Other respondents drew attention to the fact that framework arrangements can often give rise to duplication of information. Lestas Consulting, in a written submission, suggested that the primary process for frameworks does not in any way lessen the documentation for the secondary process, thus leading to a situation of double tendering. However, the Committee notes the written evidence from CPD that thee-sourcingNI portal has the ability to hold a supplier's corporate information, thereby reducing the amount of information required from suppliers at the pre-qualification stage in the procurement process.

105. The construction company, Martin and Hamilton Ltd considered that framework arrangements penalised SMEs due to the minimum thresholds required, including company turnover and insurance compliance. This view was also highlighted by others including the RSUA

which suggested that, once projects are bundled together, the selection criteria can be set to a much higher specification than is necessary for an individual job on that framework.

106. The FSB report on SME experience of accessing government contracts showed that 15% of SMEs believe that they would not meet the eligibility criteria to tender to public bodies and in particular the excessive insurance requirements. Nearly one in four of those who participated in the electronic voting at the Stakeholder Conference indicated that this was their primary concern in relation to framework arrangements.

107. The InterTradeIreland report highlighted best practice in Romania, where a guidance document has been published which points out that the minimum levels of ability required when awarding a framework agreement must be related and proportionate to the largest contract due to be concluded, and not the total amount of contracts planned for the entire duration of the framework agreement.^[61]

Consequences of an SME/SEE not being the main contractor

108. The Committee welcomes the input from a number of statutory committees to its Inquiry. One area highlighted by the Committee for Employment and Learning is that local SMEs/SEEs can often find themselves as sub-contracted parties, doing the bulk of the work involved in a contract but for much less than the full payment. The Committee for Employment and Learning cited a particular case of a tender exercise undertaken by CPD, on behalf of the Department for Employment and Learning, as evidence of the need for the capacity of SMEs and SEEs to bid for these contracts to be greatly enhanced and supported by government. This issue was also raised by the Law Society of NI. It contended that "solicitor firms based in England and Wales, when awarded a contract to provide a Government Department in NI with legal services, often rely on Northern Irish based firms to provide knowledge and expertise in the local law".

109. A further concern was highlighted by the RSUA in both its oral and written evidence, over the use of framework agreements in procuring the services of architects. Its primary concern is that such frameworks have the potential to restrict professional architectural appointments to a small number of practices, mostly within the Greater Belfast area. In turn, this would have a significant negative impact on smaller practices in other parts of NI with the long term result being the concentration of public sector projects into a small pool of consultancies. The RSUA remains unconvinced that large scale framework agreements are necessarily the most efficient and effective method for the public sector to procure all consideration and design services.

Propensity to litigation

110. The RSUA also considered that large scale framework agreements will be more liable to challenge as the stakes are so high for companies who are unsuccessful. This view was echoed by Quigg Golden Ltd who highlighted that the frameworks currently being challenged are worth £1.5 billion, while the individual projects involved would be of much smaller value. The Committee notes that this also places another issue in the spotlight, namely that unsuccessful companies have no other recourse but to appeal to the courts over decisions they wish to challenge. There is further consideration of litigation issues at paragraphs 299 - 312.

Impact on Voluntary and Community Sector

111. The Northern Ireland Council for Voluntary Action (NICVA) highlighted that the trend towards the use of large scale contracts, leading to a rationalisation of the supplier base, rules out many voluntary and community organisations which might otherwise be eligible to tender for

smaller scale projects. This was a view shared by SEN who indicated that aggregating contracts can exclude the social economy sector from a large number of procurement opportunities.

112. Many within this sector considered that purchasing organisations are risk averse when considering social economy suppliers. Some felt that more attention was paid to meeting EC directives and regulations than allowing less well established enterprises to bid for contracts. This is reflected in the PwC review of CoPEs where it was deemed that they had performed well in the extent to which they met EC directives and UK regulations.^[62]

113. Lestas Consulting argued that one of the biggest barriers to small companies securing contracts through the frameworks is the lack of belief by the project managers in the capacity and capability of the smaller businesses to deliver on a contract. This was a perception shared by those attending the Stakeholder Conference with the digi-voting results indicating that the issue of most concern to those attending was the perceived risk aversion to SMEs/SEEs.

114. Procurement commentator, Professor Andrew Erridge, addressed the issue of risk specifically through the question he posed to participants at the Stakeholder Conference. He asked, "How much risk of legal challenge are you prepared to accept in order to assist local SMEs/SEEs to win government contracts?" Sixty-eight participants responded to the question, with more than 70% indicating that they would be prepared to accept a medium or high level of risk compared to just under 30% who responded "low" or "none". While this is solely indicative of those conference participants who chose to respond to this question, it points to an acceptance that some element of risk is unavoidable. However, rather than asking one side or the other to accept a greater burden of risk, a principle of "risk-sharing" was advocated.

115. Whilst accepting that CPD and the other CoPEs must comply with both EU and UK legislation, the Committee is of the view that the Procurement Board should reconsider the distribution of risk within the procurement process and bring forward a policy on risk sharing, which takes account of the barriers to smaller enterprises accessing the supply chain.

116. Further, while not rejecting the concept of framework agreements outright, the Committee recognises the concern of many respondents to the Inquiry, that large frameworks have presented a barrier to smaller enterprises accessing procurement opportunities, particularly in the current financial and economic climate. As such, the Committee recommends that large-scale framework agreements should not be used in future unless the Procurement Board can first establish a robust evidence base for following such practice in the NI context.

Frameworks and Contracts: Key suggestions

117. Those who contributed to the Inquiry evidence base made a number of constructive suggestions including:

(i) Splitting Contracts

118. This would involve a significant departure from the current framework protocols. The Committee heard from the Chartered Institute of Purchasing and Supply (CIPS) that, while it is essential that one considers all the work in a given area over the lifetime of a contract, it does not necessarily follow that there has to be one large contract. Indeed there could be many small contracts. The Western Innovations Network (WIN) suggested that large contracts should be split to allow for greater competition across SMEs and the Social Economy sector. Paul Davis, a procurement specialist from Dublin City University and commentator at the Stakeholder Conference advocated that breaking contracts into lots should be seen as the first recourse of any procurement tender. The Committee notes that this approach is also advocated in

the European Code of Best Practices Facilitating Access by SMEs to Public Procurement Contracts.^[63]

119. Indeed, during the digi-voting on proposed solutions under Frameworks and Contracts during the conference, breaking up large contracts was one of three ideas considered to be most helpful. This approach was also advocated by InterTradeIreland in its evidence to the Committee on 17 June 2009, while Carson McDowell solicitors considered that this would encourage the participation of SMEs in the procurement process. Also, the Committee notes that, in his Review of the Competitiveness of NI, Sir David Varney highlighted that public contracts in areas such as IT tend to be given to large, multi-national companies and concluded that "there may be further opportunity to achieve value for money by breaking down large contracts, or by linking contractors with sub-contractors more effectively, to make it easier for small companies to win business". As such, Varney recommended "reforming public procurement policy, subject to EU law, so that small and medium-sized companies can benefit where this can still give value for money".^[64]

120. During the course of the Inquiry the Committee considered an article in UNITE Magazine Ireland which suggested that up to 20% of any contract can be exempt from the European tendering process, in effect a local placement allowance. The article pointed to other EU countries where contracts are unbundled into smaller lots to ensure they remain below the Official Journal of the European Union (OJEU) threshold. While the UNITE article was written with regard to procurement practices in RoI, the Committee requested a response from CPD on these issues. CPD advised members that it is not aware of any Articles within the EC procurement directives that would permit the application of a local placement allowance and expressed its view that such allowances would be a breach of these directives.

121. The Committee notes that the European Code of Best Practices Facilitating Access by SMEs to Public Procurement Contracts observes that the "sub-division of public purchases into lots clearly 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)".^[65]

122. In highlighting experience in RoI, the European Code of Best Practices Facilitating Access by SMEs to Public Procurement Contracts also notes that there is evidence to show that the cost of disaggregating contracts is offset by increased SME involvement in the procurement process.^[66]

123. The Committee recommends that the Procurement Board gives careful consideration to a procurement policy that advocates breaking contracts into lots as the first recourse of any procurement tender. The intention of such action should not be to avoid the application of the appropriate public procurement regulations, but rather to make a conscious effort to reduce barriers to access for SMEs and SEEs.

(ii) Range of Frameworks

124. While critical of the current operation of framework agreements, many of those who contributed to the Inquiry recognised that, with some amendment, frameworks do have a part to play in the procurement process. RSUA suggested that each CoPE should have a number of frameworks reflecting contract size. CIGNI suggested the development of separate minor works frameworks while others such as the Quarry Products Association Northern Ireland (QPANI) advocated packaging of contracts according to size and geographical location.

125. Similarly, RICS recommended the development of smaller frameworks that could be geographically based. Regionalising frameworks in this way would allow a company that has

been unsuccessful in tendering for a project in Belfast to bid for a similar opportunity in a different region in NI. However a note of caution was raised during a breakout session at the Stakeholder Conference, in that, geographically, NI does not have the capacity to sustain such localised contract arrangements and would negate any proposed efficiencies which frameworks are designed to achieve. Notwithstanding this, the Committee notes that, under its Charter for SME Friendly Procurement, the Welsh Assembly Government has given a commitment to “package large contracts into separate elements or make use of regional lots if appropriate, to ensure that SMEs are not excluded from tendering”.^[67] Dr Georgopoulos, University of Nottingham, has noted that such an approach may attract greater cross-border interest thus increasing competition for local SMEs. That said, the Committee is aware that increased competition is not necessarily a bad thing (certainly from the purchasers side) as it should lead to a more efficient market, with those businesses which are effective being more likely to grow.

126. Having a range of frameworks reflecting various sizes of contracts was perceived to be a helpful proposal during the Stakeholder Conference. During its oral evidence, Martin and Hamilton Ltd indicated that if frameworks were smaller then they would be viewed as just a different form of procurement.

127. In acknowledging the views of some stakeholders that frameworks have a place within the procurement process, the Committee recommends that, when using framework agreements, CPD and the other CoPEs develop frameworks reflecting various sizes of contracts and opportunities and, where appropriate, give consideration to regional contract variations to increase access to opportunities for smaller enterprises.

(iii) Alternative Procurement Methods

128. While splitting contracts and developing smaller scale framework contracts have the potential to open up the procurement market to a larger number of SMEs and SEEs, there was recognition amongst respondents and Conference participants that frameworks and contracts are not always the most appropriate method of procurement, particularly in relation to services.

129. In its evidence, Quigg Golden Ltd suggested that every project can be procured in a different way. Advice NI suggested that a competitive tendering approach to securing resources does not always foster an appropriately collaborative approach. SEN advocate that the purchasing method should be proportionate to the services required, while RSUA cited design competitions and the Performance Related Partnerships currently used by Health Estates as positive alternatives to frameworks.

130. A key suggestion arising from the Stakeholder Conference highlighted that in some instances it might be more appropriate and efficient to use mechanisms, other than frameworks, to procure services. This was felt to have particular relevance to the voluntary and community sector/social economy sector. Many such organisations are moving from a situation of reliance on government funding to service level agreements/contracts.

131. The Committee recommends that the Procurement Board gives careful consideration to the full range of methods of procurement, including the use of alternatives to frameworks agreements and traditional contracts where appropriate. In particular members are keen to see a flexible approach taken to contract variance.

Opportunities to Bid

Background

132. Robust and timely information on the availability of contracts is a key factor in increasing access to suppliers across the board. This was reflected by those who gave written and oral evidence to the Committee and was also a theme considered at the Stakeholder Conference. EU regulations stipulate that all contracts over certain thresholds (see Figure 4 below) must be advertised in the OJEU.

Figure 4: EU Procurement Thresholds Public Contracts – 1 January 2010^[68]

	Supplies	Services	Works
Entities listed in Schedule 1	£101,323 (€125,000)	£101,3232 (€125,000)	£3,927,260 (€4,845,000)
Other public sector contracting authorities	£156,442 (€193,000)	£156,442 (€193,000)	£3,927,260 (€4,845,000)
Prior Information Notices (Regulation 11)	£607,935 (€750,000)	£607,935 (€750,000)	£3,927,260 (€4,845,000)
Small lots (regulation 8 (12))	£64,846 (€ 80,000)	£64,846 (€ 80,000)	£810,580

133. The Committee heard from InterTradeIreland that there is a lack of visibility to SMEs of lower value threshold contracts in each of the two jurisdictions and on a cross-border basis. However, it indicated that there is a higher visibility of RoI tender opportunities to NI SMEs than vice versa.

Sourcing Information/Highlighting Opportunities

134. A survey of SMEs undertaken by Lestas Consulting for the FSB in 2009 found that there is a low level of awareness among SMEs in NI on the sources of information for procurement opportunities, with almost 50% of those responding unaware of any information sources.^[69] This concurs with a 2008 CBI survey of private sector attitudes and experiences of public procurement in NI, which found that 46% of respondents found it difficult or very difficult to obtain information on forthcoming tenders.^[70]

135. The FSB report also found that a number of barriers prevent SMEs from identifying suitable procurement opportunities, primarily due to a lack of time and resources needed to source contracts. There was also a lack of clarity about which information sources to use when looking for opportunities. This was an area of particular concern within the social economy sector and was highlighted by NICVA and the Bryson Charitable Group. In this regard, the Committee welcomes a key action within a recent draft of the DETI Social Economy Enterprise Strategy 2010-11, which will see CPD working with the Social Economy Policy Group and the sector to "raise awareness of public tendering processes" and also to have "appropriate systems in place to allow access by ... SEEs to opportunities for doing business with CPD".^[71]

136. The Committee heard concerns from a number of witnesses about a lack of consistency in the publication of opportunities. This was predominantly the case for those contracts falling below EU thresholds which, as Dr Georgopoulos noted, tend not to attract interest from foreign competitors. Members also noted that these contracts were mostly within the realm of local authorities. CIPS supported wider publication of notices falling under EU thresholds in order to attract SMEs at lower levels of entry into the market. The Committee also heard about www.supply2.gov.uk, a UK Government sponsored national web portal that offers consolidated access to lower-value public sector contract opportunities from across the UK. The service is self-

funded through subscription fees. However, the Committee notes that the European Code of Best Practices Facilitating Access by SMEs to Public Procurement Contracts advocates that such services should be free to use.

137. Identifying current opportunities is not the only priority. The Committee heard that it is also important for SMEs/SEEs to know about future plans for procurement spend by public sector bodies in order to help them with forward planning. This point was emphasised in the written submission from the Committee for Regional Development, and was further highlighted by the RICS and participants attending the Stakeholder Conference. Perceived delays in the implementation of the Investment Strategy NI (ISNI) were of particular concern to the construction industry.

138. There was widespread support from all those submitting evidence to the Inquiry for a single web portal for all public procurement opportunities in NI. A single web portal approach was also advocated by Business in the Community (BiTC), the Committee for Enterprise, Trade and Investment (CETI), and CIPS. This was in line with the CBI survey, where 92% of companies supported the development of a web portal for all NI procurement. The CBI felt that the provision of such information would help SMEs. It is unsurprising therefore that a single portal/dedicated website was also one of the most popular proposals arising from the Stakeholder Conference.

139. During the Conference participants heard from Martin Sykes, Chief Executive of Value Wales, the procurement arm of the Welsh Assembly Government. Value Wales supports the following two procurement web portals, one specifically designed for suppliers and the second for government purchasing bodies:

- www.sell2wales.co.uk allows suppliers and potential suppliers to register their information and request tailored bulletins on tendering opportunities. Businesses can update their information on a regular basis to ensure that they are informed of the most appropriate tenders. The website also allows businesses to promote themselves and to make contact with registered public sector bodies.
- www.buy4wales.co.uk allows Welsh public sector purchasing organisations to advertise upcoming contracts to a rapidly increasing database of suppliers; submit OJEU notices; use a "Request for Quote" facility to get quotes from suppliers electronically; and attach tender documents to contract notices for suppliers to download. All this ensures transparency and ease of access to information.

The Committee notes that this parallel online information system for suppliers and purchasers allows for clarity of information and guidance.

140. The Scottish Government hosts an internet portal^[72] which holds details of contracts with Scottish Local Authorities, NHS Scotland, Scottish Government, Agencies and NDPBs, Higher and Further Education Institutions and Emergency Services. Suppliers can browse available contracts and can also register to receive email alerts. Purchasers and suppliers both use the same website which also includes information on procurement legislation and regulations. In January 2010 the site had over 44,000 registered suppliers, 448 registered purchasing bodies and over 1,203 tender opportunities.

141. The Committee is also aware of evidence across the EU of good practice in relation to the use of a single centralised website. Latvia, Estonia and Lithuania all utilise a single web portal to advertise contract notices, with the latter offering users the option of accessing information in both Lithuanian and English.^[73]

142. In its correspondence with the Committee, CPD highlighted that all its own procurement opportunities can be found on the e-SourcingNI web portal^[74] which can be accessed via CPD's own website. The portal provides a one-stop shop for all CPD procurement opportunities, is accessible 24/7 and links to both online and telephone help lines. CPD also pointed out that e-SourcingNI is part of a UK-wide system commissioned by OGC and available to public sector organisations throughout the UK. As such, local users of e-SourcingNI have access to other public contract opportunities across the UK including the 2012 London Olympics.

143. CPD also highlighted that it makes use of "Constructionline", the UK's register of local and national construction and construction-related suppliers who are pre-qualified to work for public and private sector buyers. It is used to pre-qualify contractors for all contracts above £30k and below the Public Contract Regulations 2006 ("EU Regulations") threshold. Recently CoPEs have agreed with the construction industry that Constructionline would be used to select the suppliers invited to tender for contracts below the £30k threshold. Figure 5 below shows the number and type of NI companies registered with Constructionline as at June 2009.^[75]

Figure 5: Number and type of NI enterprises registered with Constructionline at June 2009

Type of Enterprise	Number
Micro businesses	848
Small businesses	630
Medium sized businesses	147
Non SMEs	14
Total	1639

144. The Committee, however, heard from Martin and Hamilton Ltd that applications for tender can sometimes be missing from the portal, while RICS suggested that the database could be more inclusive, with information from the Ministry of Defence, Northern Ireland Prison Service and opportunities in local government currently absent from the site.

145. A more integrated web-based approach is advocated by InterTradeIreland, particularly for low value and sub-threshold opportunities (mostly those offered by local authorities). Invest NI already operates a tender alert system for those opportunities advertised in the OJEU and also sub-threshold opportunities, but at a cost to local businesses; while in RoI, thirty-two county councils have signed up to the LA Quotes system.^[76] InterTradeIreland recommends the creation of an all-island e-sourcing system to ensure maximum visibility of opportunities. The Committee sees this as having the advantage of encouraging NI SMEs to bid for work in RoI, thereby increasing the potential for enhanced NI exports and productivity levels.

146. The Committee notes that, in GB, the Glover Report recommended that "by 2010, contract opportunities above £20,000 across the whole public sector should be advertised electronically with standard indicative contract value ranges, and accessible through a single free, easy to search online portal". The Review of CoPEs recommended that steps be taken to further embed e-technology plans and develop an integrated, CoPE-wide strategy to address e-procurement to support integration among CoPE members and, where possible, move to a common e-enablement platform.

147. The Committee welcomes the progress that CPD has made in establishing the e-SourcingNI web portal for all CPD procurement opportunities. However members are of the opinion that this facility is underdeveloped both in scope and content compared to the Scottish and Welsh

equivalents and that there is significantly more to be done in developing a common portal for all public procurement opportunities. It will also be important to link e-sourcingNI with other public sector online business advice resources, including nibusinessinfo.co.uk, operated under the auspices of the DETI.

148. As such, the Committee recommends that the Procurement Board takes steps both to consolidate all NI public sector procurement opportunities within the remit of thee-SourcingNI web portal, including local government tender notices, and to integrate tendering opportunities in GB and RoI.

149. The Delivery Tracking System (DTS), under the auspices of the ISNI, was launched in June 2009 and is administered by the Strategic Investment Board (SIB). It also has a role in providing access to information, particularly for construction contracts. However, it came under criticism from some witnesses as the level of information was not always up to date and accurate. RICS felt that more pressure should be put on other government departments to regularly update the ISNI Delivery Tracking System. It is however recognised that, as the system is relatively new, some time is required to deal with any initial teething problems.

150. OPANI also highlighted that the resourcing, updating and general management of online systems is crucial to ensure that SMEs have access to accurate procurement and tender information.

151. Given the concerns raised in the evidence, the Committee recommends that the provision of timely and accurate information on thee-SourcingNI portal and the ISNI Delivery Tracking System should be written into both the business plans of each CoPE and the personal performance agreements of the responsible officials. Moreover, CoPEs should also be required to publish their annual procurement plans on thee-SourcingNI portal to assist SMEs and SEEs in forward planning.

152. The Committee notes the efforts made by CPD to facilitate sixteen "Meet the Buyer" events over the period June 2008 – September 2009, with the attendance of over 900 representatives of small business and social economy enterprises. CPD has also been working with a number of government, cross-border and representative bodies to increase awareness of local SMEs and SEEs of the opportunities to compete for public sector contracts for supplies and services. These include the Tender Support Programme part-financed by EU funds through INTERREG IIIA and also the InterTradeIreland Go2Tender Programme.^[77]

Setting Targets for SME/SEE Uptake

153. The Committee heard a range of views from witnesses on the merits, or otherwise, of establishing targets for SME/SEE uptake of procurement contracts. The FSB, for example, advocated a target of awarding 30% of low value public procurement contracts to micro-businesses (fewer than 10 employees), while WIN suggested a target for awarding contracts to community enterprises. However, the CBI told the Committee that introducing such targets would be difficult and costly to measure. It contends that the best way to improve SME involvement in the procurement process is to improve information and raise awareness of opportunities. It also advocated a reduction in procurement bureaucracy, leading to reduced bidding costs as a fairer and more deliverable way of increasing SME involvement than setting targets. This is a view echoed in the European Code of Best Practices Facilitating Access by SMEs to Public Procurement Contracts, which suggests that "what is most needed in order to facilitate SMEs' access to public procurement is not legislative changes in the Public Procurement Directives, but rather a change in the contracting authorities' procurement culture".^[78]

154. Early consultation with potential suppliers was also seen to be a key factor. NICVA identified this as a particular issue for the voluntary and community sector, specifically for those organisations with little or no experience in tendering in procurement competitions.

155. The Committee notes that opinion is mixed on the establishment of government targets as the most effective way to increase participation by smaller businesses and social enterprises in the public procurement market. The Committee has already commented on the deficiency in information management across CoPEs and acknowledges that establishing targets requires baseline information and more robust data collection. In particular, it considers that the PfG commitment to "grow the economy" must be measurable in this respect. Notwithstanding the need for improved data collection by CoPEs, the Committee believes that the Executive should keep under review the option of setting targets for increased participation by SMEs and SEEs in the public sector supply chain, for possible future use in the event that the other identified policy interventions do not have sufficient impact.

Collaboration/Joint Ventures

156. At various stages throughout the Inquiry, the Committee heard evidence about the experience of SMEs and SEEs that have collaborated to bid for contracts. In its oral evidence, FSB stated that encouraging SMEs to form clusters is not part of business culture. On the other hand, Advice NI felt there was merit in promoting a joined-up approach to working between advice providers given the specialist nature of this market.

157. The Committee also heard about the experience of those organisations that had chosen to go down this route. There was a consensus amongst suppliers that purchasing bodies were not confident in assessing consortium bids. This was reflected in views from organisations like the Independent Consultants Adviser Group NI (ICAGNI) which suggested that consortium bids should be considered whether or not they have worked together before. InterTradeIreland suggested that buyers should consider the joint turnover of all companies involved in a collaborative bid. This was also a view expressed at the Stakeholder Conference, where a participant perceived that buyers made their assessments against the "weakest" partner in a collaborative bid.

158. InterTradeIreland recommends that consideration is given to providing SMEs on the island of Ireland with support in relation to the formation of joint ventures/consortia for public sector tendering, which could include mentoring and workshops.^[79] In this regard, the Committee is aware of a cross-border example of good practice in encouraging collaboration, in the case the Irish Central Border Area Network, which was established in 1995 as a group of NI and ROI councillors from the central border area. This concluded a successful programme involving 107 small businesses, which provided "individual, tailored training" and encouraged collaboration and was able to "create some remarkable results in terms of developing associate and cross border links, developing staff and actually winning public sector tenders".^[80]

159. At a European level, the Committee notes that, within the EU, the Enterprise European Network (EEN) offers support and advice to businesses across Europe, including helping companies find business partners. In terms of GB, the Committee notes that collaboration received special attention in the Glover Report, which recommended that those tendering opportunities which may be particularly suitable for consortia of SMEs should be flagged by the procurer during the advertising process.

160. Whilst recognising that businesses instinctively compete rather than collaborate, the Committee recommends that CPD encourages local SMEs and SEEs to collaborate, where appropriate, by highlighting the benefits of such initiatives and by providing guidance on the legal and practical implications of joining consortia to facilitate joint tendering. In noting the

ongoing work by CIFNI on collaborative bids in relation to the construction sector, the Committee recommends that the Procurement Board considers the potential application of this model to also cover supplies and services and its extension to all CoPEs.

Consideration of the Supply Chain

161. The Committee recognises that, for some SMEs, their place is not as the main contractor but is further down the supply chain. For large works contracts in particular, government purchasing bodies tend to use larger contractors which then sub-contract work. In recognition of this the IREP advocates "much greater integration between SMEs and the supply chains of larger, often inward investment, companies".^[81]

162. The Committee would highlight two issues of concern in this area: firstly, large companies may sub-contract to their own preferred companies which may not be local; and, secondly, local sub-contracted parties can end up undertaking most of the work but lose out on the financial reward that comes from being the main contractor.

163. Elsewhere in the EU, it is enshrined in German law that the contracting authority must "stipulate in the documentation that the successful tenderer may not impose less favourable conditions on its sub-contractors than the conditions agreed on between him and the contracting authority, especially as far as payment arrangements are concerned".^[82] In the UK, while there is no legislation in place, it is common practice for contracting authorities to encourage visibility of the supply chain.

164. In its evidence, CIGNI provided the Committee with the example of Health Estates which runs a performance related partnering system. They have insisted that, when major firms come over from GB, they partner with local firms to input experience to the local economy.

165. In his submission, Dr Georgopoulos, University of Nottingham was supportive of further examination of the supply chain, an idea arising from the Stakeholder Conference. He stated that "a proposal for the competent departments of the NI Executive to conduct an ex post examination (by means of a study perhaps) in order to ascertain the general level of involvement of SMEs and SEEs as sub-contractors in public procurement carried out by contracting authorities in NI, is an excellent idea"^[83].

166. The Committee also notes that the CIFNI PTG report indicates that it will seek to maximise the opportunities for those enterprises to benefit from public sector contracts through participation within the supply chain. However, this initiative applies only to construction related procurement and, in the view of the Committee, there is a need to roll this out across other CoPEs and procurement areas. The Committee also believes that efforts should be made to monitor supply chain participation. This would enable CPD to have a fuller picture of SME and SEE involvement in public sector contracts in NI.

167. The Committee considers that purchasers should give more consideration to the overall supply chain when awarding contracts and calls on the Procurement Board to examine the scope for government to take greater control of sub-contract arrangements in public contracts, with a view to ensuring more open competition and added transparency.

Finance Constraints and Cash Flow

168. Concern around the issue of finance and, in particular, the availability of credit facilities for SMEs and SEEs, was a strong theme throughout the Inquiry. This was also reflected in the findings of a recent Institute of Directors' (IoD) survey on banking lending, which was submitted

to the Committee outside the remit of the Inquiry. The August/September 2009 survey showed that local businesses reported difficulties in a number of areas including:

- length of time taken to get a decision;
- increased levels of bureaucracy;
- lack of local decision making; and
- an increase in the amount of information required which was adding to costs.

169. Consequently, the Committee reiterates its call for local banks to be supportive in their treatment of local businesses and to avoid unnecessary obstacles which would be detrimental to their performance. In terms of developments elsewhere, the Committee notes that in Malta, for example, the bank guarantee requirement has been abolished for tenders below EU thresholds.

170. The CBI also raised this concern with the Committee in its written submission, calling for an assessment of the availability of finance to those SMEs seeking to provide public contracts. Frank McGlone, a commentator at the Stakeholder Conference, suggested that a supplier focused payment model, including up-front payments, would help to address the barrier to SMEs and SEEs with regard to credit facilities. In recognising the cash flow challenges for smaller enterprises, OGC guidance recommends that purchasers consider whether stage/interim payments (linked, for example, to work done) or advance payments could be used.^[84] Also, the Committee understands that the Scottish Government has changed the terms and conditions of all new contracts, whereby main contractors are required to pay sub-contractors within 10 days of receipt of a valid invoice, which is in line with the current government targets for payments to main contractors.^[85]

171. A member of the Committee tabled an Assembly Written Question to each Executive Minister on the action that departments are taking to ensure that the 10-day prompt payment scheme, currently in operation for public sector contracts, is passed on to sub-contractors by businesses who are receiving direct payments from departments and their related bodies^[86]. The majority of departments referred back to the CPD guidance, which again highlights the significant role played by CPD in the procurement process across the NICS. The Committee is aware that supplies and services contracts require main contractors to enter into sub-contracts on the same terms and conditions as the main contract. Also, CPD is working with CIFNI PTG to ensure that main contractors pass on the benefits of prompt payment to sub-contractors.

172. The Committee recommends that CPD and the other CoPEs consider the scope both for greater use of up-front and interim payments, within the constraints of government accounting rules,^[87] and for the introduction of a requirement on main contractors to pay sub-contractors within 10 days of receipt of valid invoices, with a view to increasing the borrowing potential and/or easing the cash flow pressures on SMEs and SEEs.

173. For the social economy sector, the issue of finance raises concerns that maintaining and developing asset bases may be neglected in the search for public sector contracts. Similarly, it was pointed out to the Committee that SEEs often hold a certain amount of cash in reserve as part of their good accounting practice. In some instances this can be a disadvantage when seeking to secure public sector contracts.

174. The Committee notes the proposal from UCIT for the development of a finance brokerage scheme specifically to enable SEEs to enter the procurement market. The initiative has the backing of key sectoral organisations including SEN, Bryson Charitable Group and the School for Social Entrepreneurs in Ireland. Similar initiatives exist in England and Wales, through Access to Finance and Business Support programmes, and in Scotland, through Access to Finance and

Strategic Support programmes. In a written submission to the Inquiry, UCIT outlined the key objectives of the service, which would help like-minded social enterprises come together to win public service contracts including:

- build the business capacity of social enterprises and their readiness for public procurement;
- facilitate business links and strategic alliances between social enterprises working in, for example, education and training, health and social care, and with the private sector. This will help build the sector's collective business strength and ability to tender for public service contracts;
- link with CPD "Meet the Buyer" events and advice sessions on the tendering process;
- segment the public procurement marketplace and source new procurement opportunities on behalf of social enterprises; and
- assist social enterprises with writing proposals for public service contracts.

175. The Committee notes that the proposed public procurement brokerage service would establish a pool of expertise and resources associated with tendering for contracts – such as bid writing, financial modelling, contract negotiation and performance management. More generally, the Committee is aware that, a key action for DFP under the draft Social Economy Enterprise Strategy 2010-11 is to:

"consider responses to the recent consultation held on the Dormant Account Scheme to ensure that a focused set of priorities under the general definition of "social or environmental purposes" is established which provide real benefits to all communities across NI".^[88]

176. The Committee looks forward to being apprised by DFP on how the social economy sector might benefit from the unclaimed assets in dormant bank and building society accounts. Related to this, the Committee recommends that the Minister of Finance and Personnel, in conjunction with the Minister of Enterprise, Trade and Investment, gives careful consideration to the establishment of a public procurement brokerage service as identified by UCIT, which could also act as a "one-stop shop" for the social economy sector in terms of availing of public procurement opportunities.

Tendering and Delivering

Background

177. A key topic in this theme centred on the actual tendering process including pre-qualification requirements, how tenders are assessed and the accessibility of guidance. This ranged from an emphasis on perceived onerous pre-qualification criteria, too rigid an interpretation of the value-for-money (vfm) test and inflexibility around the application of European directives, particularly in comparison with other EU countries.

178. In response to Committee queries, CPD highlighted that legislation requires that the tendering process be transparent with a robust audit trail. The InterTradeIreland report noted that in a number of EU members states contracting authorities are not allowed to request tenderers to provide information which the contracting authority can verify easily and free of charge. The same report also suggested that pre-qualification questionnaires often require excessive effort and are unnecessarily detailed.^[89]

179. The FSB survey highlighted that 51% of SMEs found that bidding to the public sector is significantly more difficult than bidding to the private sector. This was attributed to the amount of formality, lack of responsiveness and unrealistic timescales. And, in answer to a different question, 50% of SMEs felt that the process of tendering for government contracts requires more time and resources than their business can allow. This reflects evidence from CIGNI, who told the Committee that the tendering process is too detailed, protracted and expensive.

Communication and Accessibility of Guidance

180. The Committee heard from a range of organisations about difficulties in accessing guidance around procurement policy and practice. These included professional bodies, such as CIPS, which referred to a “complex process with little guidance”; while Business in the Community highlighted that the language can be off-putting. Others, such as the Anderson Spratt Group, called for more clarity on tender documentation, while Employers for Childcare reflected their own experience of poor communication during the tendering process.

181. CPD has pointed out that, throughout the tendering process, bidders are encouraged to utilise the e-messaging system one-SourcingNI to seek clarification. Guidance is also available for both suppliers and purchasers through CPD’s own website www.cpdni.gov.uk. The Committee has, however, expressed its concerns about the adequacy and scope of one-SourcingNI earlier in this report.

182. During the Stakeholder Conference, reference was made to the fact that there is much guidance available and that suppliers simply need help to access it. A key example would be the joint Equality Commission for Northern Ireland (ECNI) and CPD document titled Equality of Opportunity and Sustainable Development in Public Sector Procurement. This is designed to help both purchasers and suppliers understand what social value might mean in the local context, yet the guidance does not appear to be widely recognised. The Committee acknowledges the note of caution aired during the Conference, that there was no need for new guidance, just greater clarity and accessibility in terms of the guidance that already exists.

183. The Committee notes that, across the EU, there are various approaches to ensuring advice and information is accessible by SMEs. These include establishing information centres which provide general information on public procurement law, information on award procedures and offer consultation and training (Germany, RoI and Lithuania). In Italy a project on local help desks and structures is being developed in a bid to increase participation of SMEs and improve their familiarity with e-procurement tools.^[90]

184. Whilst acknowledging that there is a range of procurement guidance available, the evidence received leads the Committee to believe that this is not easily accessible. Therefore, the Committee recommends that CPD reviews existing procurement guidance, in conjunction with local stakeholders, with a view to ensuring that it is fit for purpose and brought together as a central online resource for public sector procurement, which is linked to the one-SourcingNI web portal.

Experience of Social Economy Sector in Public Procurement

185. Throughout the Inquiry, the Committee was interested to hear about the experience of the social economy sector when tendering for public sector contracts. It heard that SEEs feel particularly disadvantaged when tendering for public sector contracts.

186. In written evidence, NICVA indicated that the sector perceives that there is a failure amongst purchasing bodies to properly assess voluntary and community sector capabilities,

accompanied by an insufficient recognition of its strengths and skills. NICVA was also one amongst several voices to highlight that public sector procurement focuses heavily on financial information and processes rather than outcomes. This can lead to a "one-size-fits-all" approach to auditing and monitoring which can be disproportionate and burdensome to the social economy sector.

187. In its evidence, Bryson Charitable Group, while highlighting that non-monetary costs are included in the Treasury Green Book guidance, nevertheless called for greater flexibility for newer organisations which may find it difficult to satisfy the requirements. WIN went so far as to recommend that the rule for new community enterprises to provide three years of accounts before being allowed to tender should be waived.

188. Whilst acknowledging that, whenever public funds are at stake, proper audit, monitoring and accounting arrangements are an unavoidable necessity, the Committee recommends that DFP, in conjunction with DETI, takes steps to ensure that proportionate monitoring arrangements are applied, which are sympathetic to the ethos and needs of the social economy sector.

Pre-Qualification Process and Criteria

189. A number of issues in relation to pre-qualification were brought to the attention of the Committee throughout the Inquiry. The most common concern was around the lack of standardisation of Pre-Qualification Questionnaire (PQQ) documentation in CPD and across the CoPEs.

190. During oral evidence sessions members heard from the CBI that upfront information can often be asked for in different formats by different bodies; InterTradeIreland highlighted the limited standardisation of PQQs across buyers; while Quigg Golden Ltd called for the simplification of the PQQ and Carson McDowell solicitors recommended greater standardisation.

191. Several organisations, including FSB, suggested that a universal PQQ would be the most useful way forward. ICAGNI recommended that this should be available through a universal web-portal. Streamlining the process also received considerable support at the Stakeholder Conference and was also a recommendation flowing from the Review of CoPEs which stated that "there is a need for a uniform tendering and contracting documentation across CoPEs where permissible". This echoes a recommendation in the Glover Report which proposed that, where qualification criteria are not specific to a sector, they should be standardised and incorporated into all pre-qualification questionnaires.^[91]

192. A concern common to SMEs and SEEs is the cost involved in tendering, both in actual monetary terms and in the resources necessary to prepare a bid. On behalf of the voluntary and community sector, NICVA pointed to the high transaction costs of the bidding process, while CIGNI expressed the same views on behalf of the construction industry. They indicated that the tendering process is too detailed, too protracted and too expensive. For the Anderson Spratt Group, the relationship between bid cost and potential commercial return can often be unattractive. QPANI also called for a reduction in bidding costs.

193. Reflecting on the resource issue, ICAGNI suggested that PQQ be limited to contracts worth more than £50,000. This was echoed by the Early Years organisation which suggested that the resources required for pre-qualifying should reflect the size of the contract.

194. Pre-qualification criteria were also identified as an area of concern by many of the respondents to the consultation, though Dr Georgopoulos, University of Nottingham, pointed out

that, while the issue of proportionality is important, the requirements are necessary to ensure a certain level of professionalism and reliability of the providers.

195. In its evidence, NIFHA felt that the pre-qualification criteria are often set in ways that effectively preclude smaller organisations, while Drilling and Pumping Supplies deemed the criteria unrealistic. In particular, it highlighted a situation where it had taken on an additional insurance burden to meet the pre-qualifying criteria of a specific contract, only to find that the tendering process stalled and the extra cost was incurred for no benefit. This point is also emphasised by InterTradelreland in their report which found that stipulated levels of Professional Indemnity and company turnover are often too high for SMEs and not proportionate to the contract value.^[92]

196. In an oral briefing to the Committee, Martin and Hamilton Ltd indicated that the information required at pre-qualification stage was often implicit in the certification demanded for a contract.

197. Both RICS and CIGNI highlighted that insurance requirements and company turnover were often set at levels beyond the capacity of most SMEs, particularly in the larger framework agreements. While, on the one hand, this may encourage collaborative bidding and joint ventures, on the other it is considered by many to be an unnecessary burden. RICS recommended that pre-qualification criteria should be proportionate to the nature and size of the workflow. It was suggested that over bureaucratic procurement practices can get in the way of project delivery which in turn has implications for the overall effectiveness and efficiency of the public procurement process. These views were also reflected during the Stakeholder Conference, when nearly 25% of those taking part in the digi-voting indicated that onerous pre-qualification criteria was of concern to both SMEs and SEEs.

198. The Committee recognises that the requirement for, and duplication of, information in the tendering process can be onerous for smaller enterprises, and may be exacerbated by a lack of knowledge or experience of the procurement process. Also, the Committee is strongly of the view that pre-qualification processes and criteria should not be so burdensome as to deny both SMEs and SEEs the opportunity to develop their business and thereby benefit the local economy. As such, the Committee recommends both that the principle of proportionality (i.e. the resources required to bid should be proportional to the size of contract) should be embedded into all public procurement tendering exercises and that the next review of CoPEs, due to take place in 2013, places a particular focus on progress in improving pre-qualification processes.

199. As highlighted earlier in the report, the Committee believes that access to procurement opportunities should be one way in which smaller enterprises are able to take the next step in growing their business. The Committee notes some positive steps being taken in the construction sector and welcomes the intention for a CIFNI working group to consider how SMEs can be given further opportunities for growth in public sector construction contracts.^[93] The Committee also anticipates that work to streamline and standardise the pre-qualification questionnaire should help to reduce the costs involved in the tendering process.

200. In particular, the Committee welcomes the development of a standardised pre-qualification questionnaire for works contracts, which is currently being taken forward by CIFNI. The Committee recommends that, once an agreed approach has been established, the Procurement Board considers its application to all procurement sectors and across all CoPEs.

Demonstrating Relevant Experience

201. The Committee heard from a number of organisations about issues around demonstrating relevant experience when tendering for contracts. The Law Society contended that there is an

overemphasis placed on experience gained in large scale government projects in other jurisdictions while experience gathered on smaller scale projects is often underestimated. CIGNI acknowledged that, while experience criteria may be set to encourage overseas bids in line with European guidelines, local companies may in turn be disadvantaged. CIGNI cited the Waterfront Hall, which was built by a local company with no previous similar experience in NI, suggesting that it would be harder to repeat that situation today.

202. Participants at the Stakeholder Conference suggested that experience gained in both the private sector and the social economy sector should be given equal weighting to experience gained in the public sector. This reiterated a point already made by ICAGNI that all relevant and demonstrably applicable experience should be considered when assessing contracts.

203. The Committee noted the UK example of the Small Business Service (SBS) receiving six proposals for a particular contract, one of which was from a consultancy of six employees. Although only established for less than a year, the previous experience of leading individuals was taken into account allowing the business to be awarded the contract, which was successfully fulfilled.^[94] This reflects the view of the Glover Report that businesses should have the opportunity to detail all previous relevant experience when bidding for contracts.^[95]

204. In noting that CIFNI is actively considering the weighting of relevant experience in the assessment process for works contracts, the Committee recommends that the Procurement Board considers the potential for applying any lessons arising from this work across the other CoPEs and to supplies and service contracts.

Feedback

205. The nature, consistency and level of feedback was a recurring theme in the Inquiry evidence base. The obligation to give feedback to tenderers is ensured by the Public Procurement Directives. CIPS argued that feedback should be open and transparent and suggested that it needs to work both ways, with suppliers having the opportunity to feedback to purchasing bodies as well as purchasers giving feedback to unsuccessful bidders. This was also a point raised by ICAGNI, which suggested that the evaluation and assessment process of responses to tender should be open to external scrutiny.

206. During oral evidence, the FSB indicated that businesses were not getting feedback on the reasons why contract bids are being turned down. However, InterTradeIreland informed the Committee that buyers themselves report that a large number of SMEs do not avail themselves of the debriefing process. The Committee believes that these points may not be mutually exclusive. If SMEs and SEEs consider the level of feedback to be inadequate and unhelpful then they are less likely to avail of this provision. These views were supported by the last Review of CoPEs, which found an inconsistent application of CPD policy guidelines across CoPEs, particularly with regard to whether or when to conduct face-to-face feedback to suppliers.^[96]

207. The Committee notes that OGC has introduced a Supplier Feedback Service which provides "a clear, structured and direct route for suppliers and public bodies to raise concerns about significant or systemic instances of poor practice in public sector procurement".^[97] It is also a vehicle through which reasoned feedback can be provided to enquirers on their concerns.

208. The Committee recommends that feedback mechanisms across all the CoPEs are standardised and aligned with good practice, with greater monitoring to ensure effectiveness. As outlined later in the report, the Committee believes that the creation of a "Supply Chain Ombudsman" may be one mechanism through which feedback arrangements could be improved.

Special Contract Arrangements

209. The Committee heard from a number of organisations, in particular SEN, about an “offer back” system, which is part of the Special Contracts Arrangements (SCA) introduced in 1994. SCA can be applied to UK contracts that are below the EU threshold and involve the contracting authority specifically reserving a contract for supported businesses where more than 50% of employees are registered as severely disabled. Such contracts cannot be reserved for one specific organisation but must be open to supported firms from anywhere in the EU.

210. SCA incorporates the “offer back” system under which a registered supplier whose tender is unacceptable on price alone should be given the opportunity to submit a revised tender for part, or all, of a contract. No information is given about the costs of the competing company. If on “offer back” the registered supplier is able to match the best offer, its revised tender should be accepted.^[98]

211. The Committee was advised that there is only one company in NI, Ulster Supported Employment Limited (USEL), which would qualify under SCA. However, written correspondence from SEN indicates that, where USEL has tendered under SCA, there has been a lack of understanding of the system amongst purchasing bodies.

212. The Committee recommends that CPD provides specific guidance and support to government purchasers in relation to the social economy, including on Special Contracts Arrangements. Also, as more social enterprises enter the procurement market, tailored advice should be available to those organisations that would be eligible for supported status (i.e. where more than 50% of employees are registered as severely disabled).

Maximising Social Benefit

Background

213. In the Inquiry terms of reference, the Committee undertook to consider the nature, extent and application of social clauses within public sector procurement contracts. Of wider consideration is the aim of identifying improvements to procurement policies and practices with a view to maximising both the economic and the social benefits for the local community.

214. At the outset, the Committee would acknowledge the variable and sometimes overlapping or interchangeable terminology applied as regards the practice of using public procurement to achieve social outcomes. For example, terms such as “green procurement”, “social procurement”, “socially responsible procurement” and “sustainable procurement” are used in relation to the non-monetary, qualitative or longer-term social, economic or environmental considerations which can be applied in procurement exercises. The Committee is also aware of the growing body of local and international literature and guidance on procuring social benefits, including publications by OGC, the Cabinet Office, ECNI and, more recently, by SIB.

215. The Committee received a written submission from Professor Christopher McCrudden of Oxford University, whose work focuses on reconciling the “social” and “economic” approaches to public procurement. In highlighting some principles common to both approaches, Professor McCrudden concludes that the question is not whether to introduce social policy outcomes but how best to introduce social policies and which such policies should be integrated into the procurement process.^[99]

216. As outlined earlier in the report, in terms of existing public procurement policy in NI, social value falls under the procurement principle of “Integration”, which states that “in line with the NI

Executive's policy on joined-up government, procurement policy should pay due regard to the Executive's other economic and social policies, rather than cut across them".^[100]

217. The Committee is mindful that, at the strategic level, the Executive's PfG recognises "the important contribution that ... local economic activity promotes in both social objectives and in sustainable community development"^[101] and also commits to ensuring that public sector reforms and restructuring will be compliant with recognised best practice in social procurement guidelines.^[102] In its initial response to the Inquiry's written submissions, CPD recognised the key role which it and the other CoPEs can play in the drive towards the integration of social considerations in the public procurement process in NI and also to embed the wider sustainable development considerations into its spending and investment.^[103]

218. As alluded to earlier, the PfG also highlights the significant role for public procurement policy in advancing the overall aims and objectives of government. Procurement has a particular role in achieving policy objectives under the cross-cutting theme of sustainable development.^[104] It acknowledges the positive role that procurement can play in the process of tackling patterns of socio-economic disadvantage.^[105] This was highlighted in evidence presented by ECNI. Also, this context was reflected in the submission from the Committee for the Administration of Justice (CAJ), which stated that the rationale for social clauses has already been addressed and that the focus should now move towards implementation of guidance that already exists.

219. The Committee noted that the Treasury Green Book, which governs public sector spending and provides guidance on the assessment of business cases and economic appraisals, states that:

"Wider social and environmental costs and benefits for which there is no market price also need to be brought into any assessment. They will often be more difficult to assess but are often important and should not be ignored simply because they cannot easily be costed."^[106]

It is therefore already established in principle that non-monetary benefits, including social value should be taken into account when assessing bids. However, SEN was just one organisation to highlight that monitoring and auditing of public procurement tends to be primarily fiscal, taking account of outputs rather than the broader view of outcomes.

Definition of Social Value

220. Despite the high level aims in the PfG/PSAs, the Committee has repeatedly heard concerns about a lack of definition of social value. Indeed this was the one issue of most concern identified by participants at the Stakeholder Conference during discussion of social value. This was reflected in the response to the question posed by Jenni Inglis of the Social Return on Investment (SROI) Network. In answer to her question about what actions had the greatest potential to unlock social value from public contracting, most participants indicated that developing an understanding of social value would be most beneficial. Dr Gordon Murray, another procurement commentator at the Stakeholder Conference, also highlighted that policy direction is required on areas of delivery of social value.

221. In its oral evidence InterTradeIreland suggested to the Committee that a little more understanding of what social value actually means is needed on behalf of both buyers and suppliers. NOW, a social economy enterprise operating in North and West Belfast, identified a nervousness and lack of clarity around the subject of social outcomes especially in relation to procurement or government contracting.

222. There was evidence to suggest that, for those involved in the construction industry, social value centres on compliance with health, safety, equality and environmental considerations, as suggested by the written submission from QPANI. The Irish Congress of Trade Unions NI recommended that, in awarding any public procurement contract, there should be an obligation to engage and train apprentices. Considering social value in this regard lends weight to the view, as held by CIGNI, that social clauses are more applicable to construction contractors rather than professional bodies.

223. In its written evidence NICVA advocated that procurement should be used as a vehicle to deliver the sort of society that we hope to create in NI. Other witnesses cautioned against using social clauses in procurement contracts as a means for SMEs to address the perceived failings in government policy initiatives.

224. In its written submission to the Committee, UNISON advocated that equality of opportunity and sustainable development policies in the public sector should be mainstreamed through procurement contracts, while ECNI signposted its guidance on equal opportunities and sustainable development, which was developed in conjunction with CPD. The Committee notes that some stakeholders view social value simply in terms of the inclusion of specific clauses within procurement contracts whilst others cite wider considerations as indicated in the PfG.

Social Clauses

225. An emerging theme from the evidence was that, while the PfG recognises the role that public procurement can have in reducing inequalities and promoting social inclusion, this is not being reflected to any significant extent in procurement contracts. The Committee heard a range of views from witnesses on the use of social clauses within public procurement contracts. Employers for Childcare stated that, in their experience, there is no recognition of social clauses within any public contract. Similarly, NIHFA were unaware of any public procurement exercises in NI that have included social/environmental clauses, while NICVA felt that they were underused. SEN spoke of the limited use of reservation of contracts for organisations providing supported employment opportunities to people with a disability, where appropriate.

226. While many of those contributing to the Inquiry were in favour of social clauses, there was an element of realism about their use. SEN, for example, considered that it would be possible to recognise wider social issues within a procurement process as long as they are part of the primary purpose of the contract, a view echoed by Dr Georgopoulos of the University of Nottingham. However, this would require an understanding of social value that could then be embedded in the practice and processes of public procurement and the application of specific weighted criteria for social value to be incorporated into specifications for tenders. At the other end of the spectrum, Employers for Childcare advocate that all public sector contracts should include a social clause which clearly states that recognition and reward will be given to those suppliers who bring added social value.

227. In response to specific queries from the Committee, CPD indicated that the Public Contracts Regulations 2006^[107] provide the scope to take account of social issues where they are relevant to the subject or performance of the contract and fit with the detailed rules for specifications, selection and award. CPD emphasised, however, that procurers must still meet their value-for-money and EU obligations in awarding their contracts.

228. In reviewing the outputs from the Stakeholder Conference, Professor McCrudden of Oxford University also sounded a note of caution as to the limits that European law places on the use of procurement to advance social policy and stated his view that "it is ... not legally permissible to construct the social policy to be advanced so as to seek to benefit, or to have the effect of benefiting, a local area or a local population primarily".^[108] The example was cited of the ECJ

permitting social clauses to encourage the use of long-term unemployed, but not the use of only local long-term unemployed as that is likely to be protectionist.^[109]

229. During oral evidence, CPD officials indicated that, since April 2009, several contracts had been awarded with specific reference to the training of apprentices and providing opportunities for the long-term unemployed. The officials pointed out that, at the time of appearing before the Committee on 25 November 2009, twelve apprenticeships had been secured and jobs provided for four previously unemployed people as a result of conditions within public procurement contracts. The Committee is aware that, while such opportunities are open to any citizen within the EU, in practice the most likely beneficiaries will be local people.

230. The Committee also heard about examples of good practice in the use of social clauses elsewhere. The Committee for Employment and Learning indicated that the Scottish Government has used social clauses effectively in public procurement. Carson McDowell solicitors were amongst several witnesses to highlight the London 2012 Olympic Delivery Authority (ODA) as an example of good practice in several areas including social value. The ODA is the public body responsible for building the new venues and infrastructure for the Olympic Games and their subsequent use. The ODA's work is underpinned by six priority themes: design and accessibility; employment and skills; equality and inclusion; health safety and security; sustainability; and legacy.^[110] These priority themes represent the promotion of social value through the capital projects associated with the Olympic Games.

231. In its evidence, Bryson Charitable Group argued that appropriate social clauses provide added value to public procurement. UCIT stated that such clauses should not be so onerous that they disadvantage others. CBI acknowledged that social clauses may add to the complexity of a contract but this could be mitigated if the clauses are relevant to the procurement contract and a proportionate approach is required.

232. In its oral evidence, Quigg Golden Ltd considered that the biggest problem with social clauses is affordability, while SEN identified the lack of available metrics around social value as a key barrier to access for the social economy sector. Also, there was a recognition amongst stakeholders that the lack of an accepted definition of social value or consistent application of social clauses within public sector contracts means that it is subsequently very difficult to monitor their usage and effectiveness.

233. That said, the Committee is aware of the Pilot Project on Utilising the Unemployed in Public Contracts,^[111] which was approved by the Procurement Board and taken forward in conjunction with the University of Ulster. The project commenced in June 2003 and ran for two years, which was also during a period of unprecedented high employment levels in NI. The subsequent project evaluation found that the pilot demonstrated that public procurement policy in relation to social goals, specifically unemployment, can be achieved economically, efficiently and effectively. Importantly, it also noted that the process was "compliant with EU rules". Other significant findings from the pilot project include 90% of respondents on the contractor side indicating that the pilot did not lead to an increase in direct costs, while on the client side over 64% considered that the pilot did not result in any significant increase in workload. There were however concerns about displacement.

234. In its submission, the Committee for Employment and Learning cited a recommendation, arising from its Inquiry into the Way Forward for Apprenticeships, that a quota of apprentices be incorporated into the workforce assigned to public procurement contracts.^[112] From the InterTradeIreland report, it was noted that the construction industry has attempted to create one apprenticeship position, either directly or through the supply chain, on each project for every £2m of capital spend, and to create one job for a previously long-term unemployed individual for every £5m of capital expenditure.^[113] Also on this issue, CPD advised that a CIFNI

Sustainability Task Group has agreed proposals that could promote the economic, social and environmental elements of sustainable development through sustainable procurement in construction. The Committee understands that the Sustainability Task Group identified seven key social objectives which could be pursued through construction projects including:

- to encourage the economically inactive back into the workplace;
- to encourage training and skills development to build a sustainable industry;
- to promote equality in the workplace;
- to promote respect for people;
- to promote best practice in Health and Safety;
- to incorporate 'Fair Trade' products within construction projects; and
- to promote development of essential skills.^[114]

The Committee welcomes this initiative and is also encouraged to learn that, between April to October 2009, five construction contracts awarded through CPD have included requirements for both apprenticeships and the long-term unemployed.

235. In its evidence, CIPS described social clauses as a 'double-edged sword', while RICS felt that it may be difficult to comply with social clauses in the current economic climate. If contractors have strict targets for bringing long-term unemployed into work or are required to take on a number of apprentices, this may involve laying off experienced employees. The issue of loss of skills base is also a factor which RICS felt should be considered. It was the view of CIGNI that social clauses have little applicability to professional appointments. In its evidence, the construction company Martin and Hamilton Ltd told members that it had missed a contract as the social contribution element of its proposal had not emphasised sufficiently that local labour would be employed in the scheme.

236. The Committee had an opportunity to consider an Assembly Research paper on Integrating Social Issues, which outlined the stages at which social benefits can be considered (see Appendix 6). On this issue, CBI recommended that social clauses should be built in by commissioning bodies at the very beginning of the procurement process rather than simply tagged on at the end, and this point was reiterated by Carson McDowell solicitors.

237. As mentioned earlier, Professor McCrudden concluded that the question is not whether to link social policy outcomes to public procurement but instead it is about how best and which such policies should be integrated into the procurement process. In his submission to the Inquiry, Professor McCrudden identified the theoretical pros and cons of using social considerations in public procurement contracts (which he terms "procurement linkages"). Whilst arguing that, on balance, a positive theoretical case can be made for procurement linkages, Professor McCrudden highlights some potential disadvantages, including the following points:

- a social requirement within a contract has the potential to discriminate against foreign contractors;
- larger companies are primarily able to satisfy complex social requirements;
- procurement linkages can facilitate protectionist behaviour;
- procurement linkages cannot resolve general social policy problems (because not all sectors of the economy are dependent on government contracts and can therefore be subjected to particular burdens);

- the procurement process becomes increasingly bureaucratic and overburdened when more emphasis is placed on extraneous social policy requirements; and
- unless the government as a whole sets the priorities, this will be left to the particular procuring entity, or even to the individual procurement officer.

238. The Committee considers that, in pursuing social benefits through public procurement, it will be important to be mindful of such pitfalls. The Committee also notes that Professor McCrudden has pointed to the dearth of empirical information available on which to judge "procurement linkages". In this regard, however, Professor McCrudden highlighted the local case of the Pilot Project on Utilising the Unemployed in Public Contracts, referred to earlier, the assessment of which "provides strong evidence that the advantages may considerably outweigh the predicted disadvantages, if the policy is implemented sensitively".^[115]

239. The Committee notes that Professor McCrudden has also set out criteria for applying such "procurement linkages", which can be paraphrased as follows:

- a targeted and selective approach should be taken, concentrating on the most important social policy goals so as not to overload the system;
- the requirements should be communicated effectively to suppliers throughout the procurement process; and
- linkages should be chosen which are as consistent as possible with other aspects and values of the procurement process and which are justifiable in cases where extra costs may result.^[116]

240. Finally, the Committee notes that amongst the issues which Professor McCrudden has identified as requiring empirical research in the future are the questions of whether procurement linkages make it more difficult for SMEs to tender successfully, and whether an approach based on award criteria would be more effective in practical terms than one based on contract conditions. The Committee believes that these are highly pertinent issues in the context of this Inquiry.

241. Immediately prior to finalising this Inquiry report, the Committee noted the publication of the SIB's guidance and "toolkit" on delivering social benefits through public procurement.^[117] This is accompanied by a dedicated website, which includes case studies, legal guidance and other resources. The toolkit cites emerging evidence to support the view that social benefits do not mean increased costs and states that:

"Although procuring social benefits can have resource implications for the procurer, social benefit clauses do not have to add any cost to the contract. You can ensure that there are no, or minimal cost impacts for the contract by requiring only social benefits that are appropriate to the size of the contract and the expertise of the contractors."^[118]

242. The Committee believes that this latter point regarding the need for a proportionate approach should help to ensure that social clauses do not have an excessive impact on smaller enterprises. On a different tack, the Committee has queried what scope exists for using social clauses in support of smaller enterprises and believes that this remains an area for investigation.

243. The Committee also notes that the SIB guidance advises that the best way to achieve and deliver social benefit is to ensure that it is "woven consistently through each stage of procurement" including: at the business case stage before advertising the contract; in the first notification to potential bidders; within the tender documents; as part of the evaluation; within the contract; and as part of the contract monitoring and management.

244. The Committee is mindful of the complexities of achieving social policy outcomes through public procurement and of the different approaches available, including the application of specific social clauses and the measurement and use of social value in assessments of proposed capital projects and in contract award criteria. That said, NI appears to lag behind other jurisdictions both in applying the principle of maximising social benefit from public procurement and in the use of social clauses. From the evidence provided, the Committee senses a reticence amongst local commissioners and purchasers to pursue social benefit through procurement, which may be linked to a need for greater clarity both on the Executive's policy intention in this area and on the definition and measurement of "social value".

245. As such, the Committee recommends that the Executive translates its PfG/PSA commitments in this area into a clear policy directive on procuring social benefit, which sets out the priorities that should be pursued by the Procurement Board, the CoPEs and individual commissioners and purchasers. The Committee further recommends that this policy directive, which should be underpinned by the necessary legal guidance, is reflected, as appropriate, in departmental business objectives, in the forthcoming NI Public Procurement Handbook and in the personal performance objectives of commissioners and procurement professionals.

246. The Committee notes the growing body of guidance on procuring social benefit and, in particular, welcomes the practical toolkit which has been published recently on behalf of SIB. However, the Committee is concerned that this resource will be underutilised without the necessary policy direction from the Executive.

247. In the meantime, and given the positive evaluation of the Procurement Board's Pilot Project on Utilising the Unemployed in Public Contracts, the Committee recommends the use of clauses setting quotas for employing apprentices and the long-term unemployed in all suitable public contracts. Also, in recognising the need for further empirical evidence on best practice use of social clauses, the Committee recommends that CPD makes a rigorous assessment of the social clauses applied in recent construction contracts, with a view to identifying lessons and opportunities for further initiatives in this regard.

Measuring Social Value

248. As alluded to earlier, the Treasury Green Book acknowledges that the valuation of non-market impacts is a challenging but important element of appraisal; it advises that "costs and benefits that have not been valued should also be appraised; they should not be ignored simply because they cannot easily be valued".^[119] The Green Book also explains that the most common technique used to compare both unvalued costs and benefits is weighting and scoring, which involves assigning weights to criteria, and then scoring options in terms of how well they perform against those weighted criteria.^[120] The Committee also notes with interest that the Green Book advises that decisions on the weightings to be given to key non-monetary factors "cannot be decided by 'experts'" and advocates the involvement of stakeholders and decision makers.^[121]

249. In addition to the aforementioned evidence on the need for both the economic appraisal and the public procurement processes in NI to take greater account of the value of qualitative or longer-term social and economic considerations, the Committee also received evidence from the Ministerial Advisory Group for architecture and the built environment (MAG) on the importance of including design quality in the assessment of building projects. The Committee notes that this is also recognised in the Treasury Green Book. Indeed, the Committee is aware that the difficulties around assessing value for money are not unique to NI. A recent report on Sustainable Government Procurement in Australia, for example, has noted that, in that context, "current value for money calculations also fail to consider the long term benefits and foregone costs (such as future environmental repair) associated with choosing more sustainable products and services

that may be initially more expensive than less sustainable alternatives. ^[122] In another example from Australasia, the Committee notes that guidance from the Tasmanian Government on public procurement allows for 'wider benefits to the state' to be part of the evaluation criteria for contracts. ^[123]

250. The Committee is aware that Social Return on Investment (SROI) is one methodology for measuring the impact of non-monetary benefits and, in this context, members particularly welcomed the input from the SROI Network Director, Jenni Inglis, at the Stakeholder Conference.

251. SROI is a framework for measuring and accounting for this much broader concept of value; it seeks to reduce inequality and environmental degradation and improve wellbeing by incorporating social, environmental and economic costs and benefits. ^[124] Value is quantified in monetary terms as a ratio between the finance invested and the social value created. An SROI analysis can take many forms and it can encompass the social value generated by an entire organisation, or focus on just one specific aspect of the organisation's work. In essence, SROI seeks to put financial value on the important impacts identified by stakeholders that do not have market values. The Committee is aware that the SROI Network, in conjunction with the UK Cabinet Office, recently published guidance for commissioners and suppliers on measuring social value. ^[125]

252. Whilst the evidence to the Inquiry suggests that work on SROI is currently most advanced in England and Scotland, the Committee notes some local initiatives. A written submission from the Committee for the Office of the First Minister and deputy First Minister (COFMDFM) highlighted the work, which was at that stage still underway, by SIB, in conjunction with Deloitte MCS Ltd, on the development of social value measurement within contracts. As referred to earlier in the report, in 2008, CPD collaborated with ECNI to develop a guidance document for purchasers and suppliers on Equality of Opportunity and Sustainable Development. ^[126] Also, the evidence from Bryson Charitable Group referred to a Knowledge Transfer Partnership Initiative (KTPI) with the University of Ulster, which involves the development of suitable metrics for the measurement of social value. In addition, the Committee received a written submission from the social enterprise NOW, which has developed GAUGE, a social enterprise business designed to help organisations understand, measure and communicate their value.

253. The Committee is strongly of the view that, in future, value-for-money assessments must strike a balance between short-term monetary considerations and longer-term economic, social and environmental costs and benefits. This is especially important in the context of the constrained public expenditure environment, when departments must not lose sight of the Executive's strategic priorities. As such, the Committee calls on DFP to put in place a suitable model for systematically measuring, evaluating and incorporating wider social value considerations within economic appraisals and business cases, and which will inform public procurement processes. Moreover, the Committee recommends that socially responsible procurement should be included as a scored criterion in the next CoPE accreditation exercise.

Building Capacity for Purchasers and Suppliers

Background

254. A theme cutting through all the issues already discussed is the need to build the capacity of both purchasers and suppliers in the procurement process. There is also a recognition that CPD and other public procurement personnel are under a huge resource pressure. The Committee noted that CBI took the view that procurement expertise is spread too thinly over a wide range of procurement bodies.

255. The Committee also heard from organisations which considered that engagement with senior CPD officials was generally positive. In oral evidence, Carson McDowell solicitors stated that they believe procurement practices in NI to be fairly good and would rank these quite high in comparative terms. However, the Committee also heard of inconsistencies across CoPEs when dealing with those involved in the practical daily running of procurement services.

256. From the evidence it is clear to the Committee that the social economy sector is at the early stages of accessing the public sector supply chain and work is still needed to increase confidence of both purchasers and suppliers in this area. Several organisations highlighted that this sector is undergoing a sea change regarding funding, having traditionally been reliant on government grants. More of these organisations are now turning to social economy models as a means to more sustainable methods of funding. The Committee commends the voluntary and community sector in its attempts to move away from a dependency on government grant aid towards a social enterprise model and would encourage the sector as it moves forward in this way. However, most social enterprises have no experience in tendering for public procurement contracts and find that those they are dealing with have no experience of the sector itself.

257. Although many SMEs are experienced in tendering for public procurement competitions, the evidence suggests that some need to raise awareness of the ways in which they can maximise their chance of winning public sector contracts, while others lack knowledge or understanding of how to approach the market.

258. In highlighting aspects of procurement policy and practice for improvement, the Committee is conscious that capacity building for both purchasers and suppliers will also be vital to maximising the outcomes from public procurement. The Committee is mindful that, whilst DFP, through the Procurement Board, must take the lead in developing the capacity of purchasers, DETI has lead responsibility in terms of the small business and social economy sectors. As this latter area falls outside the Committee's direct remit, it could only be incidental to the Inquiry considerations.

Training & Capacity Building for Contract Managers

259. A key suggestion put forward by Dr Paul Davis at the Stakeholder Conference was the development of a licentiate approach for procurement professionals. Such licensing could be graded according to the level of spend involved. There was support for this approach from purchasing bodies at the Conference. CIPS, in evidence to the Committee, also suggested that professionally trained procurement people should be at the forefront of delivering procurement initiatives. The Committee is also aware that opportunities for training and guidance for contracting authorities, including increasing professionalism in procurement, is supported by the European Code of Best Practices Facilitating Access by SMEs to Public Procurement Contracts.^[127]

260. CPD currently has a Procurement Competence Career Path Framework,^[128] which has been in place since 2005. This was introduced following the first review of CoPEs, which highlighted the need to introduce an effective public sector career path structure that would facilitate an increase in the proportion of staff with procurement skills appropriate to their level of responsibility.

261. In a briefing to the Committee, CPD acknowledged there is a need to consider the skills within individual departments through which individual contracts are often managed. In contrast, all branches within CPD are required to have a member of staff with a professional procurement qualification. CPD also informed members that discussions are taking place about the development of a Masters degree in commercial skills in construction, in conjunction with the University of Ulster.

262. The Committee notes that Housing Associations in NI find themselves on both sides of the procurement equation. On the one hand, they submit tenders for public contracts while, on the other, they invite tenders for multi-million pound contracts for the construction of social housing. In its evidence, NIFHA acknowledged that "more training is required to enable all the relevant stakeholders, including housing associations, to understand the relevant principles, rules, procedures and terminology".

263. Increasing purchasers' understanding of the voluntary and community sector was a key priority especially for those speaking on behalf of the social economy sector. NICVA pointed to the OGC publication, Think Smart/Think Voluntary Sector^[129] which has an emphasis on training public sector commissioners and procurement professionals in the role of the voluntary and community sector. The importance of providing such training was also echoed by Early Years.

264. Lestas Consulting advocated a similar educational process for contract managers on the opportunities provided by SMEs in delivery of public contracts. More specifically, QPANI suggested regular training in partnership with industry trade organisations, to ensure public procurement officials are aware of new construction product standards, quality, safety and environmental standards. In its submission, CBI highlighted the results of a survey which it carried out of 157 NI-based suppliers in 2008, which showed that 49% of respondents described the commercial skills of public procurement professionals as poor or very poor, while only 12% described them as good or very good.

265. While acknowledging the requirement within CPD to have professionally trained personnel within each branch, the Committee is unclear as to how this might be replicated across all CoPEs. As such, the Committee urges the Procurement Board to consider the possibilities for introducing licentiate arrangements for procurement professionals across the public sector, with a view to ensuring greater uniformity in the professional competencies of purchasing staff. In addition, the Committee considers that it is essential that the continual professional development of procurement personnel should include awareness of the benefits of doing business with both the small business and the social economy sectors.

Training & Capacity Building for Suppliers

266. As alluded to earlier, the Inquiry terms of reference did not have a focus on the capacity of suppliers, including the reasons for success or failure of particular SMEs or SEEs in accessing the public sector supply chain. While the Committee believes that this should be the subject of separate research, it did nonetheless note some related points from the Inquiry evidence, including discussions during the Stakeholder Conference.

267. In its written evidence, NICVA suggested that there has been a lack of investment in preparing voluntary and community organisations to bid for contracts. In turn this has led to a lack of knowledge and experience of government procedures alongside difficulties in breaking into the market. SEN suggested that, while the social economy sector may lack an understanding of procurement, purchasers also lack an understanding of how SEEs work and what they can bring to the table.

268. In its submission to the Inquiry, the Committee for Enterprise, Trade and Investment suggested that the social economy sector might benefit from the development of case studies demonstrating effective delivery of public service contracts by SEEs. Another suggestion was that CPD should provide training and support for voluntary organisations to assist them in understanding and bidding for contracts.

269. The Committee notes that the potential development of a Procurement Brokerage Service, discussed earlier in this report, would also have the potential to assist SEEs in accessing public procurement contracts. Another organisation, BiTC, suggested that a toolkit be developed for social enterprises.

270. The evidence also highlighted the case for providing further training and information to local SMEs. The FSB suggested that SMEs are not always aware of ways in which they can maximise their chances of winning public sector contracts. In terms of international models of good practice, the Committee notes that in Austria, a checklist has been developed for suppliers which aims to prevent the most common mistakes made by suppliers when submitting a bid.^[130] This could be applied to both SMEs and SEEs alike.

271. From a cross-border perspective, InterTradeIreland has found that there is a lack of knowledge or understanding of how to approach both the local and the cross-border markets. Its Go-2-Tender programme seeks to assist SMEs in this regard. InterTradeIreland also advocates support for SMEs in terms of "intelligent" tender writing.

272. At the Stakeholder Conference, procurement commentator Frank McGlone suggested that suppliers can often feel isolated and without a voice. In terms of international approaches, the role of Italian Chambers of Commerce, which provide support to local SMEs, was cited as a possible model of good practice.^[131]

273. The Committee notes with interest the recent statement to the Assembly by the Minister of Enterprise, Trade and Investment on DETI's response to the Independent Review of Economic Policy.^[132] In particular, the Committee considers that the planned development of a small business unit within Invest NI to provide a more dedicated resource to supporting small businesses throughout NI, including opening up supply chain opportunities, could in conjunction with CPD also provide support for companies involved in public procurement. Furthermore, the Committee sees the potential for the online business advice service businessinfo.co.uk to link closely with online procurement facilities.

274. Given the importance of addressing weaknesses in the supply side through training and capacity building for SMEs and SEEs, the Committee believes that further research is needed to assess the needs of both sectors and to identify potential solutions, including resource requirements. In this regard, the Committee notes recent DETI initiatives, including the draft Social Economy Enterprise Strategy 2010-11 and the plan to create a small business unit within Invest NI to, amongst other things, develop the supply chain capabilities throughout the NI business base. The Committee calls on the Minister of Finance and Personnel to liaise with the Minister of Enterprise, Trade and Investment to ensure that sufficient funding is in place for measures to build the capacity of smaller enterprises to access the public sector supply chain. The Committee sees a vital role for CPD in contributing to procurement training and development for both SMEs and SEEs and will wish to be apprised of plans for taking this forward.

Cross-Sectoral Training

275. A theme which emerged both from the written evidence base and the Stakeholder Conference was the opportunity for cross-sectoral training. QPANI advocated opportunities for public sector officials to experience at first hand working in the private sector environment. In their contributions, both Dr Gordon Murray and the CBI also endorsed more exchange and secondments between the private sector and the public sector as a means of improving procurement capabilities.

276. The Procurement Competence Career Path Framework, published in 2005 advocated the establishment of a Procurement Exchange Programme within CPD and the CoPEs. However the most recent Review of CoPEs noted that there is a minimal degree of cross-functional staff development, an area which all CoPEs would need to improve upon to foster deeper and widespread knowledge of public procurement among the CoPEs.

277. The Committee endorses the concept of a "Procurement Exchange Programme" and urges the Procurement Board to bring forward options on how this might be developed so as to facilitate cross-sectoral training and knowledge transfer across the public sector and the private sector.

Local Government Procurement

278. While matters pertaining to local government are not within the remit of this Committee, it is appropriate to make comment, not least because many of those making submissions to the Inquiry did not make a distinction between local and central government procurement. Indeed, several stakeholders expressed their concern over the uncertainty of the impact of the RPA on local government procurement. This was particularly evident during the Stakeholder Conference. Given the division of responsibilities, however, the Committee will wish to communicate its findings in this area to DoE and the Northern Ireland Local Government Association (NILGA), via the Assembly Committee for the Environment.

279. While CPD aims to "develop and promote best practice in procurement within the Northern Ireland Public Sector"^[133] district councils comply with the guidance and policy on a voluntary basis. There is no compulsion for local authorities to adhere to the policy direction of CPD. This was highlighted to the Committee by those stakeholders that engage with both local and central government. NIFHA considered that the procurement rules for local authorities seem to be different from those of central government and its agencies.

280. The Committee understands that public procurement within local authorities will continue to be within the remit of DoE following the reorganisation due to take place in 2011. It is also anticipated that, under the new structures, local councils will have some responsibility for developing the social economy. In light of this, the Committee welcomes a proposal in DETI's draft Social Economy Enterprise Strategy 2010-11 that SEN will engage with local councils to promote SEEs as potential suppliers of goods and services.

281. The Committee notes that the total value of local government purchasing per annum in NI is estimated between £220m - £300m^[134] and the majority of procurement opportunities are valued below the EU thresholds for advertising. A recent survey by the FSB found that the majority of SMEs "bid for contracts below £50,000 with most of the work being provided to Local Authorities."^[135] This was reflected at the Stakeholder Conference, where the visibility of lower value contracts was one of the top three concerns highlighted by participants.^[136]

282. Newry and Mourne District Council was identified by NILGA^[137] as an example of good procurement practice at local level. Since 2003 its procurement process has been available online, allowing for greater openness, competitiveness and increased savings. Tenders have been broken down into separate contracts to ensure that local SMEs can compete, and the Council also aims to provide detailed and constructive feedback to unsuccessful SMEs to ensure that they are better informed when bidding for future tenders. In 2004 and 2005 the Council received awards for excellence in public procurement.

283. As highlighted earlier, the Committee believes that local government procurement contracts should be included on the eSourcingNI single web portal to maximise the communication of

procurement opportunities to SMEs and SEEs and to realise value-for-money through increased competition.

284. The Inquiry also found that another general concern amongst suppliers is a perception that local government bodies will opt to keep services in-house following the Review of Public Administration, and build capacity within their own organisations rather than stimulating the economy by outsourcing to SMEs and SEEs. Again, this was highlighted at the Stakeholder Conference.

285. Collaborative procurement is one option available within the proposed new structures and the Committee considered an Assembly Research paper^[138] which highlighted examples across local authorities in England, Scotland and Wales. Such arrangements are already underway for local authorities in NI in the area of Waste Management. Members noted that benefits included both cashable savings and non-cashable process savings. However the process of collaboration is initially resource intensive and requires trust between the bodies concerned. There exists already a Local Government Procurement Group (LGPG), where local procurement officers can come together to consider ways of collaborative working and also to share best practice. One representative organisation highlighted difficulties in making contact with the LGPG. This was considered to be essential for ensuring that best practice in procurement is embedded in the planning stages of the amalgamation process.

286. The Committee is aware that, in late 2009, DoE held a consultation on options for local government service delivery.^[139] One option under consideration is the creation of a Business Services Organisation which would consolidate a number of services including ICT support, transactional services and procurement. The model proposed envisages the creation of one local authority CoPE accountable to its clients (local councils) through service level agreements and management/board representation. However, local councils would retain the option to procure locally for low value contracts. It is estimated that annual savings of between £10m and £20m could be achieved through this model.

287. In welcoming moves towards a more collaborative approach to local authority procurement, the Committee considers that, in the event of the proposed new local authority CoPE being established, then appropriate linkages should be developed with the central government procurement structures. Whilst recognising the independence and autonomy of local councils, the Committee urges greater synergy between central and local government purchasing policy and practice, with a view to achieving consistency in the application of good practice procurement across the public sector.

Collaborative Procurement and Efficiencies

288. Whilst the issue of collaborative procurement and the scope for realising further efficiency gains in procurement was touched on in the Inquiry evidence, the Committee will be giving this more detailed consideration as part of a separate investigation into efficiency savings in general. To inform this exercise, the results of which will be published shortly, the Committee has been receiving written and oral evidence from a range of expert witnesses and the issue of procurement efficiencies has featured in the deliberations.

289. As indicated above, the Committee also considered an Assembly research paper^[140] that focused on collaborative local government procurement but which also outlined the various models of collaboration, including centralisation/decentralisation, consortia and shared services. This research has also highlighted evidence that "aggregation of demand does not always require aggregation of supply", which the Committee sees as important in terms of any concerns that SMEs may have around collaborative procurement.

290. The Committee also notes the findings from a recent Treasury report which show both that suppliers, including SMEs, are disadvantaged by a disjointed approach from government to supply markets and that SMEs play an important role in the delivery of greater efficiency through collaborative procurement. The report states that "successful collaborative procurement commercial strategies must consider approaches to all existing markets, including disaggregating government spend to capture the best SME expertise available". As an example of this in GB, the Treasury report cites "a framework agreement in the professional services category, which has been awarded to a consortium of SMEs and is now available nationally to all government departments".^[141]

291. In its evidence to the Committee investigation into efficiency savings, the Northern Ireland Audit Office (NIAO) considers procurement to be a key area for the achievement of efficiency gains and informed the Committee that Treasury has identified the potential to make savings of almost £6 billion by the use of more collaborative procurement. Indeed, the Committee notes that the Procurement Board Strategic Plan 2008 – 2011 cites the following as its first objective: "Departments to ensure that the procurement process plays an optimal role in achieving efficiency savings while continuing to base procurement on best value for money".

292. Also, the Committee notes that CPD guidance on the implications of adopting the twelve guiding principles governing the administration of public procurement in NI states that:

"In order to optimise efficiency gains, greater emphasis should be placed on integrating the North/South, as well as the UK and European-wide procurement markets, and there should be greater collaboration between NI public bodies, but only to the extent that it meets the wider social, economic and environmental goals of procurement policy".^[142]

293. The Chartered Institute of Public Finance and Accountancy (CIPFA) also provided the Committee with written evidence in relation to achieving efficiency savings in NI government departments. In terms of good practice, CIPFA identified a number of ways efficiencies could be made including through improving the management of the procurement function; and, adopting IT-enabled procurement techniques, such as e-marketplaces, online auctions and purchasing cards. CIPFA also recommended partnering more closely with the voluntary sector, a point which relates to the earlier discussion on the potential for increased involvement of SEEs in the procurement process.

294. From 2005 – 2008, CPD and the other CoPEs achieved estimated value-for-money savings on procurement of £250m, a specific target set for that period. That target has not been carried forward under the current efficiency programme, despite a recommendation in the Committee's Report on the Executive's Draft Budget 2008 – 11 for a new target to be set which includes monetary value for further savings. In its evidence, the NIAO informed the Committee that "it is clear that improved procurement by competitive tendering, collaborative purchasing and the use of e-procurement mechanisms has the potential to drive out considerable efficiency savings".^[143]

295. Committee members have expressed concern at the lack of joined-up thinking on procurement between central and local government. In response, NIAO stated that there must be scope for greater joined-up thinking between CoPEs; including the centre in local government and those in central government, and that the RPA will provide an opportunity for a shared service facility under the procurement discipline. Thus, the Committee concludes that there is scope for more strategic co-ordination of the public procurement landscape in NI to realise efficiencies, not only between central and local government but also in terms of arms-length public bodies. Moreover, the Committee proposes that the Executive explores opportunities to achieve additional efficiencies through collaborative government procurement on a North-South and East-West basis.

296. Also, the Committee reiterates its call for a new target to be set for achieving further efficiencies from public procurement, to include a monetary value and baseline for such savings, with an associated implementation plan which links to individual departmental efficiency delivery plans.

297. In the evidence from expert witnesses to the Committee's ongoing investigation into efficiency gains, the point has been emphasised that there is a risk of localised efficiency savings (e.g. at a CoPE or departmental level) having a negative effect on the efficiency of the whole system. In calling for a further efficiency drive through collaborative procurement, the Committee emphasises the need for such collaboration to be co-ordinated at a strategic level by the Procurement Board to avoid counterproductive localised efficiencies being pursued which have an adverse effect on the efficiency of the wider public sector and/or are detrimental to the local economy.

298. In recommending further procurement efficiencies, the Committee is mindful of the findings in a recent Treasury report on collaborative procurement, which highlights the need to improve management information on procurement spend in the context of achieving greater efficiencies.^[144] In light of this, the Committee recommends that, in reviewing the data capture and management information systems within CoPEs, the Procurement Board also considers the position more widely across departments to ensure that robust systems are in place to facilitate evidence-based decision making in terms of the identification and monitoring of procurement efficiencies.

Litigation and Lessons Learned

299. A number of witnesses highlighted the impact of legal challenges on local public procurement processes, particularly in relation to construction projects. Throughout the course of the Inquiry, CPD provided the Committee with regular oral and written updates on current legal challenges and the lessons that had been learned. Also, the Committee notes that reducing the likelihood of legal challenge was an issue considered by the CIFNI PTG.

300. One witness described NI as "the market leader for litigation" while another more euphemistically noted that "NI is the UK leader in dealing with procurement issues". Many felt that the stakes were so high in relation to frameworks that often businesses considered legal action to be their only recourse.

301. In its evidence Quigg Golden Ltd explained that, while contract size and an over emphasis on quality can lead to challenges from unsuccessful bidders, such challenges "will fail unless there has also been a failure to follow the regulations or common law obligations". Quigg Golden Ltd cited the following failures:

- i. issues not relevant to Most Economically Advantageous Tender (MEAT) taken into account at award stage;
- ii. criteria not being set out in advance;
- iii. unequal treatment;
- iv. subjective criteria not being used;
- v. failing to publish correct notices;
- vi. failing to take into account relevant issues; and

vii. ambiguous tender documentation.

302. Whilst recognising that the rules are to some extent complex, Quigg Golden Ltd took the view that "they are not so complex that competent professionals cannot comply with them". The Committee believes that the proposal, outlined earlier in the report, for a licentiate approach amongst procurement professionals could assist in this regard.

303. InterTradeIreland, in its All-Island Public Procurement Competitiveness Study, suggested that, with an increased number of companies tendering for opportunities (partly as a consequence of the economic downturn), there was also an increase in the number of legal challenges and litigious behaviour amongst suppliers. They estimate that claims are up on average by 50 – 70 per cent. This is reflected in the information submitted to the Committee by CPD. The first submission relating to legal challenges in April 2009 indicated that legal proceedings were underway in 12 cases since 1 April 2007. However, by October 2009 this had increased to 23, although 12 had already been concluded.

304. Another factor which may have increased the propensity for legal challenges is the introduction through the 2006 Regulations of the Alcatel 10-day mandatory "standstill" period at the award stage before contract signature to permit unsuccessful tenders to consider taking action in the courts.

305. However it is not only large frameworks or construction projects that attract legal challenge. The Committee heard evidence from one organisation that had instigated legal proceedings against a Department following a procurement exercise. While the case was subsequently withdrawn, the incident highlighted the shortcomings arising from the lack of an appeals mechanism within the procurement process in NI.

306. Frank McGlone, a commentator at the Stakeholder Conference, highlighted that the legal process is only open to those organisations that can afford to go down that route and emphasised the need for an independent appeals process. During the course of the Conference, he posed the question whether an independent appeals process might potentially build the trust of SMEs and SEEs in the procurement process. The majority of those Conference attendees who voted agreed that an independent appeals process would help build the trust of SME/SEEs.

307. As mentioned earlier in the report, another question, this time posed by Conference commentator Professor Andrew Erridge, asked participants to consider how much risk of legal challenge they would be prepared to accept in order to assist local SME/SEEs win government contracts. Just over one-quarter of those participating in the digi-voting indicated that they would be prepared to accept low, or no risk at all. The overwhelming majority of those who voted therefore indicated they would be prepared to accept medium to high risk. This acceptance of risk in principle does not correlate with the number of legal challenges in practice, which again suggests that the stakes are too high in relation to winning contracts. A further suggestion arising from the Conference was that, rather than loading risk on one party in particular, risk should be shared amongst those involved in the procurement process, both purchasers and suppliers.

308. In correspondence with the Committee, CPD acknowledges that the legal process requires the allocation of resources until a case is resolved, which can have a consequential knock-on effect on the delivery of public services. However, with regard to the construction framework, CPD has, on legal advice, continued to deliver contracts on a project-by-project basis.

309. The Committee was interested to note that, in its written evidence, CPD indicated that the CIFNI PTG has been working on developing an early warning system for potential disputes and an alternative dispute resolution procedure that will mitigate the need for legal action.^[145] In

terms of existing arrangements, CPD outlined the two-stage appeals process, which includes assessment by the relevant director followed by referral to the Director of CPD. Officials are also investigating a possible route with the OGC, whereby it could look at a complaint that has been made to the Director of CPD and the award of contract could be suspended. Currently suppliers can approach the NI Ombudsman if there is a specific issue regarding process, but if the complaint is about the award decision itself then legal action is the only recourse.

310. In providing evidence to the Inquiry, CIPS informed members of a "Supply Chain Ombudsman" within Sellafield UK. Subsequently, the Sellafield Supply Chain Ombudsman provided the Committee with more information about the role, which was established in 2005 and has a number of facets. These include:

- i. providing a confidential and unbiased route for the supply chain to raise issues pertaining to procurement at Sellafield;
- ii. acting as the first point of contact for the supply chain and developing improvements to Sellafield Ltd's supplier communication and engagement, through events and also through an internet presence;
- iii. acting as an interface between Sellafield Ltd and various business support and development agencies and also local authorities;
- iv. encouraging new entrants to the market through various means; and,
- v. developing the supplier area of the website to provide useful, relevant and timely information for suppliers.

311. The Committee welcomes the positive response from CPD in relation to the idea of an independent "Supply Chain Ombudsman", including its suggestion that such a post could provide a confidential and unbiased route for the supply chain to raise issues pertaining to procurement across all public sector bodies in NI. CPD further suggested that the Ombudsman's role could also include local supplier development; encouraging new entrants and public sector opportunities outside NI, working in conjunction with InvestNI and InterTradeIreland.

312. Given the cost of litigation and the associated disruption to capital projects and other procurement exercises, the Committee believes that a conciliatory approach is needed in resolving procurement conflicts and considers that the absence of an independent mediator between purchaser and supplier is a key deficiency within the procurement process in NI. As such, the Committee recommends that the Procurement Board urgently examines the possibility of providing for a "Supply Chain Ombudsman" function in NI, which would, amongst other things, fulfil this important mediation role. The Committee also believes that the proposal for licentiate arrangements for procurement professionals could help to reduce the level of litigation arising from failure to meet legal obligations.

Public Procurement Governance Arrangements

313. As noted earlier in the report, "Consistency" is one of the twelve guiding principles of public procurement in NI. The principle states that "suppliers should, all other things being equal, be able to expect the same general procurement policy across the public sector". Arising from the Inquiry, it became clear to the Committee that, while public procurement policy has a prominent place within the PfG and high level governance through the Executive and the Procurement Board, there are inconsistencies in practice at the level of CPD and the other CoPEs. It was also evident that there is a lack of clarity on the strategic policy aims in relation to procurement. As

highlighted earlier, this was most apparent in the discussion of social value and the uncertainty as to the agenda to be pursued.

314. Members also heard of a lack of co-ordination and lesson learning in the procurement of ICT. The evidence from one SME, with experience of tendering for ICT projects, suggested that such projects tend to be managed on a one-off basis, with selection committees that are often inexperienced. The SME considered it a weakness that there did not appear to be any methods in place to assess the success of each procurement against objectives or to determine if the procurement represented value for money. The SME also pointed out that potential suppliers have no point of contact for having their systems evaluated and assessed for potential applied use within the wider NICS.^[146] The Committee will wish to seek assurances that the establishment of IT Assist, a shared service centre for all ICT services in the NICS, will go some way towards addressing these issues and ensuring joined-up procurement in this area.

315. During the Stakeholder Conference, Dr Gordon Murray called for high-level cultural change. He reminded participants that procurement professionals implement the policy direction and that the commitment to change is required from the political leadership. In this regard, Conference participants voted for the top three areas which they considered would require improvement to maximise the socio-economic benefit for SMEs/SEEs. The most popular results were:

i. Political and management commitment to make changes;

ii. Culture of public sector; and,

iii. Competence of public procurement

316. It became apparent during the Inquiry that the relationship between CPD and the other CoPEs is not tightly bound. This was clear not only through the varying standards of data collection and management information across the CoPEs, discussed earlier in this report, but also when information was requested by the Committee which fell within the remit of other CoPEs or departmental structures. At times there has appeared to be a discrepancy between the pursuit of objectives at a departmental or organisational level and the pursuit of overall procurement policy objectives. For suppliers this inconsistency was evident in the requirements for documentation for tenders in the first instance, and at the final stages of the process in varying experiences regarding feedback.

317. As noted earlier in the report, there is a requirement that the competency of CoPEs be reviewed on a periodic basis. The first review was carried out by PwC in 2005 and a second review took place in 2009, also by PwC.^[147] The twelve procurement principles are used to assess CoPEs against best value for money in their reaccreditation. The Committee notes, in particular, a recommendation from the 2009 review that: "CoPE organisations should consider appointing an in-house, dedicated resource to drive procurement compliance and conformity to CoPE requirements". The review report also highlighted the need for "further improvements in knowledge sharing of best practice and greater interplay across all CoPE organisations to avail of collaborative procurement opportunities with support from the Procurement Practitioner's Group".^[148]

318. All CoPEs were included in the 2009 review apart from the Education Sector, in anticipation of the move towards a single Education Skills Authority (ESA). The ESA will be assessed separately twelve months after it has been established. However, the Committee is mindful of the findings of a Public Accounts Committee (PAC) report in 2009,^[149] which noted that all the ELBs failed the independent assessment of their CoPE status in 2005, although all were reaccredited in 2006. The report went on to recommend that CoPEs which demonstrate persistent poor practice should have their status removed "if the concept of 'Centre of

Procurement Expertise' is to mean anything". The Committee for Finance and Personnel concurs with this PAC recommendation and intends to closely monitor both the robustness of further reaccreditation exercises and the implementation of recommendations arising from such reviews.

319. Whilst acknowledging the need for flexibility within the public procurement process to allow CoPEs to meet the differing needs of commissioners, the Committee also recognises the benefits of standardising practice, both for suppliers (in terms of making the process less complicated across the system) and for purchasers (regarding information and data management). The Committee calls on the Procurement Board to bring forward options for strengthening and formalising the relationship between CPD and the other CoPEs, with a view to ensuring consistency in applying good practice procurement in support of the Executive's key priorities.

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[3] All-island Procurement: A Competitiveness Study: InterTradeIreland, October 2009, p.9.

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[10] Department of Finance and Personnel, 2009, Northern Ireland Procurement Policy www.cpdni.gov.uk/pdf-public_procurement_policy.pdf

[11] <http://www.opsi.gov.uk/si/si2006/20060005.htm>

[12] Northern Ireland Assembly Committee for Finance and Personnel – Minutes of Evidence, 16 September 2009.

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The results of the digital voting are referred to from time to time throughout the report as they accurately reflect the views of conference participants who voted on the issues and proposals put to them.

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[18] Office of Government Commerce, 2008 10 - Day Mandatory Standstill period: OGC revised guidance note for public sector contracts: www.ogc.gov.uk

[19] http://www.ogc.gov.uk/procurement_policy_and_application_of_eu_rules_guidance_on_the_UK_regulations.asp

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[23] Federation of Small Businesses NI/Lestas Consulting, September 2009, Evaluating SME Experiences of Government Procurement in NI, p.11.

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[30] Northern Ireland Executive 2008 : Programme for Government 2008 – 2011 : Building a Better Future, p.7.

[31] Northern Ireland Executive 2008 : Programme for Government 2008 – 2011 : Building a Better Future, p.17.

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[33] PricewaterhouseCoopers, 2009:Review of Centres of Procurement Expertise Status and Policy Implementation (included at Appendix 4).

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http://ec.europa.eu/enterprise/policies/sme/files/craft/sme_perf_review/doc_08/spr08_annual_reporten.pdf

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- [134] Collaborative Local Government Procurement, Assembly Research paper.
- [135] Federation of Small Businesses NI/Lestas Consulting, September 2009, Evaluating SME Experiences of Government Procurement in NI, p.5.
- [136] Three proposals voted most helpful in relation to "Opportunities to Bid" were: Having a single portal/dedicated website; increasing purchasers' understanding of SMEs/SEEs; providing access to smaller contracts (SMEs).
- [137] See NILGA submission at Appendix 5.
- [138] Collaborative Local Government Procurement, Assembly Research paper, November 2009. See Appendix 6.
- [139] Local Government Service Delivery: Economic Appraisal October, 2009, www.doeni.gov.uk/index/local_government/local_government_service_delivery-2.htm
- [140] Collaborative Local Government Procurement, Assembly Research paper.
- [141] HM Treasury, May 2009, Operational Efficiency Programme: Collaborative Procurement (hm-treasury.gov.uk/d/oep_collaborative_procurement_pu731.pdf)
- [142] www.cpdni.gov.uk/index/guidance-for-purchasers/12-procurement-principles.htm
- [143] Northern Ireland Assembly Committee for Finance and Personnel, Minutes of Evidence, 18 November 2009.
- [144] HM Treasury, 2009, Operational Efficiency Programme: Collaborative Procurement.
- [145] Correspondence from Central Procurement Directorate, 14 October 2009.
- [146] Correspondence from SCM received October 2009, at Appendix 5.
- [147] PricewaterhouseCoopers, 2009: Review of Centres of Procurement Expertise Status and Policy Implementation.

[148] PricewaterhouseCoopers, 2009:Review of Centres of Procurement Expertise Status and Policy Implementation, p.7.

[149] Northern Ireland Assembly Public Accounts Committee Report 01/09/10:Investigation of Suspected Contract Fraud within Education and Library Boards.

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Appendix 2 – Minutes of Evidence

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26 November 2008
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11 February 2009
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13 May 2009
Ulster Community Investment Trust

20 May 2009
DFP Central Procurement Directorate

20 May 2009
Construction Industry Group Northern Ireland Professional College (CIGNI)

27 May 2009
Confederation of British Industry (CBI)

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Martin and Hamilton Ltd

17 June 2009
InterTradeIreland

24 June 2009
Royal Institute of Chartered Surveyors

16 September 2009
Royal Society of Ulster Architects

30 September 2009
Chartered Institute of Purchasing and Supply

14 October 2009
Social Economy Network
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25 November 2009
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14. Construction Industry Group
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16. Martin and Hamilton Limited
17. Royal Society of Ulster Architects
18. Confederation of British Industry
19. Federation of Small Businesses
20. Bryson Charitable Group
21. Business in the Community
22. Law Society of Northern Ireland
23. Anderson Spratt Group
24. Northern Ireland Federation of Housing Associations
25. Fold Housing Association
26. Employers for Childcare
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2. Interim Report of the Construction Industry Forum for Northern Ireland Procurement Task Group
3. CPD paper on SME Access to Public Procurement Opportunities
4. DFP follow-up to issues raised at CPD evidence session
5. DFP response to Committee for Employment and Learning report on "The Way Forward for Apprenticeships"
6. DFP Response to the Committee's Inquiry into Public Procurement
7. Contracts awarded to SMEs and Application of Public Contracts Regulations 2006 to the procurement of social housing
8. DFP Update on InterTradeIreland Report & Output from the Construction Industry Forum for NI
9. DFP Response to suggestion for establishment of Supply Chain Ombudsman
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11. DFP: Completed templates from NIHE & Health Estates
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14. DFP: CPD Response to Follow up issues arising from session on 25 November 2009
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Appendix 5 - Memoranda and Papers from Others

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5. InterTradeIreland: All-Ireland Competitiveness Study
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8. Royal Institution of Chartered Surveyors briefing paper
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10. Committee for Employment and Learning: Committee Report on the Way Forward for Apprenticeships
11. RICS: Response to Design and Build Query
12. FMS (NI) Ltd: Procurement Concerns and Issues
- 13a. MAG: Request to brief Committee
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- 17a. DETI: Letter from Arlene Foster to Alban Magennis re Matrix Report on Public Procurement
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- 21a. Social Economy Network: Special Contracts Arrangements
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23. NOW: Information on Gauge Social Return and Investment
24. George Simpson: Procurement of IT Systems
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26. NILGA: Local Government Procurement Policy
27. Sellafield Ltd: UK Supply Chain Ombudsman
28. Dr Stephen Farry: Public Procurement Issues
29. Citizens Advice: Committee inquiry into procurement for Social Economy organisations

Appendix 6 – Northern Ireland Assembly Research Papers

1. Public Procurement and SMEs
2. Public Procurement and the Social Economy
3. The Integration of Social Issues in Public Procurement
4. Public Procurement and SMEs - An Update
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Appendix 7 –Stakeholder Conference

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2. Social Research Centre: Conference Presentation
3. Professor Christopher McCrudden: Comments on the Public Procurement Conference Stakeholder Report
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5. Dr Aris Georgopoulos: Comments on the Public Procurement Conference Stakeholder Report

Appendix 1

Minutes of Proceedings

Wednesday, 1 October 2008

Metro Building. 6-9 Donegal Square South, Belfast

Present: Mitchel McLaughlin MLA (Chairperson)
Simon Hamilton MLA (Deputy Chairperson)
Dr Stephen Farry MLA
Fra McCann MLA
Jennifer McCann MLA
Adrian McQuillan MLA
Declan O'Loan MLA
Ian Paisley Jnr MLA
Dawn Purvis MLA
Peter Weir MLA

In Attendance: Shane McAteer (Assembly Clerk)
Colin Jones (Assistant Assembly Clerk)
Paula Sandford (Clerical Supervisor)
Chris McCreery (Clerical Officer)

Apologies: David McNarry MLA

10.12 am The meeting commenced in open session.

6. Briefing from DFP on Procurement Awareness

The Committee was briefed by Des Armstrong, Director, Central Procurement Directorate, DFP, Aileen Edmund, Central Procurement Directorate, DFP and Ruth Fee, University of Ulster.

7. Briefing on Public Sector Procurement and Social Economy Provision

The Committee was briefed by Paul Roberts, Chief Executive, Ashton Community Trust and Colin Finnegan, Business Development Director, Capita Group Sales.

Agreed: that information will be requested from DFP on the inclusion of social clauses in contacts awarded by the public sector.

Wednesday, 5 November 2008 Room 152, Parliament Buildings

Present: Mitchel McLaughlin MLA (Chairperson)
Simon Hamilton MLA (Deputy Chairperson)
Dr Stephen Farry MLA
Fra McCann MLA
David McNarry MLA
Adrian McQuillan MLA
Declan O'Loan MLA
Ian Paisley Jnr MLA
Peter Weir MLA

In Attendance: Shane McAteer (Assembly Clerk)
Colin Jones (Assistant Assembly Clerk)
Paula Sandford (Clerical Supervisor)
Chris McCreery (Clerical Officer)

Apologies: Jennifer McCann MLA

10.03 am The meeting commenced in open session.

3. Matters Arising

Members noted that, as agreed at the last meeting, further information had been requested from DFP on the legal challenges relating to government procurement and the outcomes and costs on an individual case basis and that DFP hoped to send a response by 7 November.

Members noted that Edward Quigg, a local procurement specialist, will brief the Committee on 26 November.

The Committee considered a paper proposing a terms of reference for its consideration of public procurement and a list of representative organisations from whom the Committee could seek evidence.

Agreed: that the terms of reference will be updated to include consideration of reasons for delays in moving the process forward.

Agreed: that the Federation of Small Businesses will be invited to give oral evidence on 26 November and that the remaining organisations identified will be contacted to determine whether they would be prepared to send a written submission and subsequently give oral evidence.

Wednesday, 12 November 2008 Room 152, Parliament Buildings

Present: Mitchel McLaughlin MLA (Chairperson)
Simon Hamilton MLA (Deputy Chairperson)
Dr Stephen Farry MLA
Fra McCann MLA
Jennifer McCann MLA
David McNarry MLA
Declan O'Loan MLA
Ian Paisley Jnr MLA
Dawn Purvis MLA
Peter Weir MLA

In Attendance: Shane McAteer (Assembly Clerk)
Colin Jones (Assistant Assembly Clerk)
Vivien Ireland (Assistant Assembly Clerk)
Paula Sandford (Clerical Supervisor)
Chris McCreery (Clerical Officer)

Apologies: None.

10.03 am The meeting commenced in open session.

4. Matters Arising

Members considered a second draft terms of reference for the Committee scrutiny of public procurement practice.

Agreed: that further amendments will be made to the draft terms of reference for further consideration at next week's meeting. It was also agreed that, once the terms of reference is approved by the Committee, it will be copied to the Federation of Small Businesses and Edward Quigg for information, as they are due to give evidence to the Committee on 26 November.

Agreed: that the Social Economy Network will be added to the list of key stakeholders to be consulted as part of the scrutiny of public procurement.

Agreed: to commission a research paper on public procurement, which will help inform the Committee's initial deliberations.

Agreed: that the Committee's approach to its scrutiny of public procurement will be to invite written evidence from key stakeholders and then it will decide on which organisations to invite for oral evidence. It also agreed that, given the cross-cutting nature of public procurement, it will seek the views of the other statutory committees on the issues covered in the final terms of reference.

Wednesday, 19 November 2008

Room 152, Parliament Buildings

Present: Mitchel McLaughlin MLA (Chairperson)
Simon Hamilton MLA (Deputy Chairperson)
Dr Stephen Farry MLA
Fra McCann MLA
Jennifer McCann MLA
David McNarry MLA
Adrian McQuillan MLA
Declan O'Loan MLA
Ian Paisley Jnr MLA
Dawn Purvis MLA

In Attendance: Shane McAteer (Assembly Clerk)
Colin Jones (Assistant Assembly Clerk)
Vivien Ireland (Assistant Assembly Clerk)
Paula Sandford (Clerical Supervisor)
Chris McCreery (Clerical Officer)

Apologies: Peter Weir MLA.

10.08 am The meeting commenced in open session.

8. 3rd Draft Terms of Reference for Scrutiny of Public Procurement Practice in Northern Ireland

Members considered and agreed an amended terms of reference for the Committee's Inquiry into Public Procurement Practice in Northern Ireland.

Members noted that, as agreed last week, the agreed terms of reference will be copied to the Federation of Small Businesses and Edward Quigg in preparation for their evidence sessions next

week and will be included with an invitation to make a written submission to be sent to key stakeholders.

Wednesday, 26 November 2008

Room 152, Parliament Buildings

Present: Mitchel McLaughlin MLA (Chairperson)
Simon Hamilton MLA (Deputy Chairperson)
Dr Stephen Farry MLA
Jennifer McCann MLA
David McNarry MLA
Adrian McQuillan MLA
Declan O'Loan MLA
Dawn Purvis MLA
Peter Weir MLA

In Attendance: Shane McAteer (Assembly Clerk)
Colin Jones (Assistant Assembly Clerk)
Vivien Ireland (Assistant Assembly Clerk)
Paula Sandford (Clerical Supervisor)

Apologies: Fra McCann MLA
Ian Paisley Jnr MLA

10.10 am The meeting commenced in open session.

5. Committee Inquiry into Public Procurement: Assembly Research

The Committee considered a briefing paper by Assembly Research on Public Procurement and Small and Medium Enterprises.

Members considered a draft public notice for the Committee's Inquiry into Public Procurement Policy and Practice in Northern Ireland.

Agreed: that the public notice is placed in the appropriate newspapers in line with normal procedures.

9. Committee Inquiry into Public Procurement: Evidence from Quigg Golden Contract Consultants

The Committee took evidence from Edward Quigg and James Golden, Directors of Quigg Golden Contract Consultants; and Caroline Eccles, Contracts and Arbitration Manager of Quigg Golden Contract Consultants. The session was recorded by Hansard.

12.10 pm Dr Farry left the meeting.
12.17 pm Mr Weir left the meeting.
12.24 pm Mr Weir returned to the meeting.
12.24 pm Mr McQuillan left the meeting.
12.29 pm Mr O'Loan left the meeting.
12.47 pm Ms McCann left the meeting.
12.51 pm Ms McCann returned to the meeting.
12.52 pm Mr Hamilton left the meeting.

12.52 pm Mr McQuillan returned to the meeting.

1.00 pm Mr Hamilton returned to the meeting.

Agreed: that the representatives of Quigg Golden Contract Consultants will be invited back at a later date in the Inquiry, to provide additional evidence on issues that emerge from the Committee's consultation with stakeholders.

Agreed: that any further issues which the Committee wishes to raise in the meantime would be forwarded to the representatives of Quigg Golden Contract Consultants for a written response.

10. Committee Inquiry into Public Procurement: Evidence from Federation of Small Businesses (FSB)

The Committee took evidence from Wilfred Mitchell, Policy Chairman, FSB; George Dorrian, Policy Officer, FSB and Jonathan Walmsley, Public Affairs Officer, FSB. The session was recorded by Hansard.

1.07 am Mr McNarry left the meeting.

1.18 pm Mr McNarry returned to the meeting.

1.18 pm Mr Weir left the meeting.

1.21 pm Mr Weir returned to the meeting.

1.30 pm Mr McQuillan left the meeting.

Agreed: that the FSB will be afforded the opportunity to provide a further written submission to the Committee's Inquiry as part of the forthcoming consultation with stakeholders.

Agreed: that any further issues which the Committee wished to raise in the meantime would be forwarded to the representatives of FSB for a written response.

Wednesday, 11 February 2009 Room 152, Parliament Buildings

Present: Simon Hamilton MLA (Deputy Chairperson)

Dr Stephen Farry MLA

Fra McCann MLA

Jennifer McCann MLA

David McNarry MLA

Adrian McQuillan MLA

Declan O'Loan MLA

Ian Paisley Jnr MLA

Dawn Purvis MLA

In Attendance: Shane McAteer (Assembly Clerk)

Vivien Ireland (Assistant Assembly Clerk)

Colin Jones (Assistant Assembly Clerk)

Paula Sandford (Clerical Supervisor)

Chris McCreery (Clerical Officer)

Apologies: Mitchel McLaughlin MLA (Chairperson)

Peter Weir MLA

10.11 am The meeting commenced in open session.

4 Public Procurement Policy and Practice in Northern Ireland: Evidence from Carson McDowell Solicitors

The Committee took evidence from the following consultants from Carson McDowell Solicitors: Declan Magee, Public Procurement Consultant and Catherine Thompson, Public Procurement Consultant. The session was recorded by Hansard.

Members noted a written submission received from the Drilling and Pumping Supplies Limited on the Committee Inquiry into Public Procurement Policy and Practice in NI.

Members were updated on the progress with the Committee's Inquiry and were advised that a summary of the issues raised in the written evidence will be prepared by the Committee Secretariat following receipt of all submissions.

11.25 am Mr McCann left the meeting.

11.26 am Mr McCann returned to the meeting.

11.27 am Mr McNarry left the meeting.

Wednesday, 18 March 2009 Room 152, Parliament Buildings

Present: Mitchel McLaughlin MLA (Chairperson)

Simon Hamilton MLA (Deputy Chairperson)

Fra McCann MLA

David McNarry MLA

Adrian McQuillan MLA

Declan O'Loan MLA

Peter Weir MLA

In Attendance: Shane McAteer (Assembly Clerk)

Vivien Ireland (Assistant Assembly Clerk)

David McKee (Clerical Supervisor)

Heather Galbraith (Clerical Officer)

Chris McCreery (Clerical Officer)

Apologies: Dr Stephen Farry MLA

Jennifer McCann MLA

Ian Paisley Jnr MLA

Dawn Purvis MLA

10.10 am The meeting commenced in open session.

5 Lessons Learned from Legal Challenges to Public Procurement Exercises: Evidence from DFP

The Committee took evidence from the following DFP officials: Des Armstrong, Director, Central Procurement Directorate; Brian Doherty, Deputy Head, Departmental Solicitors Office and Brendan O'Neill, Policy Advisor, Central Procurement Directorate. The session was recorded by Hansard.

11.07 am Mr Hamilton left the meeting.

11.15 am Mr Hamilton returned to the meeting.

11.37 am Mr McCann left the meeting.
11.39 am Mr McCann returned to the meeting.
11.40 am Mr Hamilton left the meeting.
11.52 am Mr Weir joined the meeting.
11.52 am Mr McNarry left the meeting.
11.59 am Mr Hamilton returned to the meeting.
12.00 pm Mr McNarry returned to the meeting.
12.00 pm Mr Weir left the meeting.
12.02 pm Mr Weir returned to the meeting.
12.06 pm Mr O'Loan left the meeting.
12.07 pm Mr O'Loan returned to the meeting.

Agreed: that the DFP officials will provide further information to the Committee as requested during the briefing session.

Wednesday, 22 April 2009

Room 152, Parliament Buildings

Present: Mitchel McLaughlin MLA (Chairperson)
Simon Hamilton MLA (Deputy Chairperson)
Dr Stephen Farry MLA
Fra McCann MLA
Jennifer McCann MLA
Adrian McQuillan MLA
Declan O'Loan MLA
Ian Paisley Jnr MLA
Dawn Purvis MLA
Peter Weir MLA

In Attendance: Shane McAteer (Assembly Clerk)
Vivien Ireland (Assistant Assembly Clerk)
Colin Jones (Assistant Assembly Clerk)
David McKee (Clerical Supervisor)
Chris McCreery (Clerical Officer)
Dr Robert Barry (Assembly Research)

Apologies: David McNarry MLA

10.08 am The meeting commenced in open session.

7. Committee Inquiry into Public Procurement Practice in Northern Ireland

The Committee was briefed by Assembly Research on a research paper 'Public Procurement and the Social Economy.'

11.22 am Mr McCann left the meeting.
11.23 am Mr Paisley left the meeting.

Agreed: that the Committee will consider the scope for also examining local government procurement as part of its current Inquiry.

Members considered a news release from DFP on the Procurement Task Group.

Agreed: that the Committee will request a briefing on the report from the Construction Industry Forum for Northern Ireland Procurement Task Group.

Wednesday, 29 April 2009

Room 152, Parliament Buildings

Present: Mitchel McLaughlin MLA (Chairperson)
Simon Hamilton MLA (Deputy Chairperson)
Dr Stephen Farry MLA
Fra McCann MLA
Jennifer McCann MLA
David McNarry MLA
Adrian McQuillan MLA
Declan O'Loan MLA
Ian Paisley Jnr MLA
Dawn Purvis MLA
Peter Weir MLA

In Attendance: Shane McAteer (Assembly Clerk)
Vivien Ireland (Assistant Assembly Clerk)
Colin Jones (Assistant Assembly Clerk)
David McKee (Clerical Supervisor)
Chris McCreery (Clerical Officer)

Apologies: None

5. Interim Report from the Construction Industry Forum for Northern Ireland Procurement Task Group: Evidence from DFP

The Committee took evidence from Des Armstrong and Stewart Heaney from DFP's Central Procurement Directorate. The session was recorded by Hansard.

11.46 am Mr Paisley left the meeting.

11.47 am Dr Farry joined the meeting.

Agreed: that the DFP officials will provide further information as requested by the Committee during the evidence session and will update the Committee on progress on implementing the Report's recommendations in October 2009.

7. Committee Inquiry into Public Procurement Practice in Northern Ireland: Consideration of Written Submissions and Scheduling of Oral Evidence Sessions

The Committee noted the thirty three written submissions received, and information on those organisations which had indicated that they would be prepared to give oral evidence. Members noted that the Committee's work programme to summer recess could facilitate approximately ten oral evidence sessions.

Agreed: that the Committee will consider the forthcoming oral evidence before deciding whether to invite further evidence from the legal sector.

Agreed: that a further paper on potential oral evidence sessions will be considered at next week's meeting.

12.24 pm Mr O'Loan left the meeting.

12.25 pm Ms Purvis left the meeting.

Members noted that the Committee's bid for commissioned research to supplement the inquiry had been successful. Consideration was given to a secretariat paper setting out advice from the Assembly's Head of Procurement on sourcing the commissioned research.

Agreed: that, on the basis of the advice received, appropriate academic institutions will be approached to carry out the research and that a specification of requirements will be drawn up for the Committee's consideration.

Agreed: that an audit of Departmental action to promote social and environmental clauses in procurement contracts will be conducted as part of the research commissioned by the Committee.

12.32 pm Mr McCann left the meeting.

Wednesday, 6 May 2009

Room 152, Parliament Buildings

Present: Simon Hamilton MLA (Deputy Chairperson)

Dr Stephen Farry MLA

Fra McCann MLA

David McNarry MLA

Adrian McQuillan MLA

Declan O'Loan MLA

Ian Paisley Jnr MLA

Peter Weir MLA

In Attendance: Shane McAteer (Assembly Clerk)

Vivien Ireland (Assistant Assembly Clerk)

Colin Jones (Assistant Assembly Clerk)

David McKee (Clerical Supervisor)

Chris McCreery (Clerical Officer)

Apologies: Mitchel McLaughlin MLA (Chairperson)

Jennifer McCann MLA

Dawn Purvis MLA

10.04 am The meeting commenced in open session.

5. European Public Procurement Seminar on Sustainable Procurement: Assembly Research Briefing

The Committee received a briefing from Assembly Research in relation to the integration of social issues in public procurement.

11.15 am Dr Farry left the meeting.
11.16 am Mr Weir joined the meeting.

Agreed: that clarification will be obtained from DFP on how social clauses on apprenticeships link the number and type of apprenticeships required to industry forecasts of need. It was also agreed to request DFP to provide a background briefing on Northern Ireland case law on social /environmental clauses.

6. Committee Inquiry into Public Procurement Policy and Practice in Northern Ireland: Scheduling of Oral Evidence Sessions

Members examined the list of organisations that were willing to give oral evidence to the Committee inquiry. The Committee was advised that the Social Economy Network had also made a written submission and was willing to give oral evidence.

11.19 am Mr Paisley Jnr left the meeting.

Agreed: that an evidence session with the Central Procurement Directorate officials will be scheduled into the Committee work programme as soon as possible. It was also agreed that the following organisations will be called first to give oral evidence: Confederation of British Industry, Construction Industry Group for Northern Ireland, Bryson Charitable Group, Chartered Institute for Purchasing and Supply, Royal Institution of Chartered Surveyors and Martin & Hamilton Ltd. The Committee agreed that further evidence sessions will be considered in September.

Agreed: that the secretariat will consider the practicalities of members visiting Bryson House and holding a Committee meeting at the venue.

11.25 am Mr McCann left the meeting.

Wednesday, 13 May 2009 Room 152, Parliament Buildings

Present: Mitchel McLaughlin MLA (Chairperson)
Simon Hamilton MLA (Deputy Chairperson)
Dr Stephen Farry MLA
Jennifer McCann MLA
David McNarry MLA
Declan O'Loan MLA
Ian Paisley Jnr MLA
Dawn Purvis MLA
Peter Weir MLA

In Attendance: Shane McAteer (Assembly Clerk)
Vivien Ireland (Assistant Assembly Clerk)
Colin Jones (Assistant Assembly Clerk)
David McKee (Clerical Supervisor)
Chris McCreery (Clerical Officer)

Apologies: Fra McCann MLA
Adrian McQuillan MLA

10.01 am The meeting commenced in open session.

5. Committee Inquiry into Public Procurement Practice in Northern Ireland: Evidence from Ulster Community Investment Trust (UCIT)

The Committee took evidence from the following UCIT officials: Brian Howe, Chief Executive and Mark Dougan, Research, Policy and Fundraising Officer. The session was recorded by Hansard.

12.01 pm Dr Farry left the meeting.

Agreed: that the UCIT officials will provide further information as requested by the Committee during the evidence session.

Agreed: that a written update will be requested from DFP on progress on taking forward the distribution of monies in Northern Ireland under the new Dormant Accounts legislation.

Members noted a further submission to the Committee's Inquiry from the Social Economy Network.

Agreed: that the Social Economy Network will be invited to give oral evidence after summer recess.

Wednesday, 20 May 2009 Room 152, Parliament Buildings

Present: Mitchel McLaughlin MLA (Chairperson)
Simon Hamilton MLA (Deputy Chairperson)
Dr Stephen Farry MLA
Fra McCann MLA
David McNarry MLA
Adrian McQuillan MLA
Declan O'Loan MLA
Dawn Purvis MLA

In Attendance: Shane McAteer (Assembly Clerk)
Vivien Ireland (Assistant Assembly Clerk)
Colin Jones (Assistant Assembly Clerk)
David McKee (Clerical Supervisor)
Chris McCreery (Clerical Officer)

Apologies: Jennifer McCann MLA

10.03 am The meeting commenced in open session.

4. Committee Inquiry into Public Procurement Policy and Practice in Northern Ireland: Small and Medium Enterprises (SMEs) Access to Public Contracts: Evidence from DFP's Central Procurement Directorate (CPD)

The Committee took evidence from the following CPD officials: David Carson, Director of Policy and Support Division; Roy Mitchell, Works Procurement Division and Tom Gilgunn, Strategic and Information Communication Technology Procurement. The session was recorded by Hansard.

10.59 am Mr McNarry left the meeting.
11.07 am Mr Hamilton left the meeting.
11.10 am Mr McNarry returned to the meeting.
11.14 am Dr Farry left the meeting.
11.20 am Mr Hamilton returned to the meeting.
11.23 am Ms Purvis left the meeting.
11.25 am Ms Purvis returned to the meeting.
11.31 am Mr McCann left the meeting.
11.32 am Mr McCann returned to the meeting.

Agreed: that the CPD officials will provide information on a number of issues as requested by the Committee during the evidence session.

5. Committee Inquiry into Public Procurement Practice in Northern Ireland: Evidence from Construction Industry Group Northern Ireland Professional College (CIGNI)

The Committee took evidence from the following CIGNI officials: Dr Lynda Martin, Chairperson; John Finlay, Vice-Chairperson and George Coulter, Secretary. The session was recorded by Hansard.

11.44 am Mr McCann left the meeting.
12.13 pm Mr McNarry left the meeting.

Agreed: that the Committee will write to CIGNI if it requires any further information on the issues discussed during the session.

Agreed: that the Committee will request that Assembly Research and Library Services draw up a list of 'expert witnesses' on public procurement for the Committee to consider in terms of inviting additional oral evidence to inform the Committee inquiry.

Agreed: to defer consideration of the agenda items on Subordinate Legislation and Correspondence until next week's meeting.

Wednesday, 27 May 2009 Room 152, Parliament Buildings

Present: Dr Stephen Farry MLA
Fra McCann MLA
Jennifer McCann MLA
David McNarry MLA
Adrian McQuillan MLA
Declan O'Loan MLA
Dawn Purvis MLA
Peter Weir MLA

In Attendance: Shane McAteer (Assembly Clerk)
Vivien Ireland (Assistant Assembly Clerk)
Colin Jones (Assistant Assembly Clerk)
David McKee (Clerical Supervisor)
Chris McCreery (Clerical Officer)

Apologies: Mitchel McLaughlin MLA (Chairperson)
Simon Hamilton MLA (Deputy Chairperson)
Ian Paisley Jnr MLA

10.03 am The meeting commenced in open session.

4. Committee Inquiry into Public Procurement Policy and Practice in Northern Ireland: Evidence from Confederation of British Industry (CBI)

The Committee took evidence from the following witnesses: Nigel Smyth, Director, CBI; Peter Spratt, Managing Director, Anderson Spratt Group (ASG); and Mark Campbell, Senior Manager, Radox Laboratories Ltd. The session was recorded by Hansard.

Agreed: that the witnesses will provide further information as requested by the Committee during the session.

10.56 am Mr O'Loan left the meeting.

11.25 am Mr McNarry left the meeting.

Wednesday, 10 June 2009 Room 152, Parliament Buildings

Present: Mitchel McLaughlin MLA (Chairperson)
Simon Hamilton MLA (Deputy Chairperson)
Fra McCann MLA
Jennifer McCann MLA
Adrian McQuillan MLA
Declan O'Loan MLA
Ian Paisley Jnr MLA
Dawn Purvis MLA

In Attendance: Shane McAteer (Assembly Clerk)
Vivien Ireland (Assistant Assembly Clerk)
Colin Jones (Assistant Assembly Clerk)
David McKee (Clerical Supervisor)
Chris McCreery (Clerical Officer)

Apologies: Dr Stephen Farry MLA
David McNarry MLA
Peter Weir MLA

10.06 am The meeting commenced in open session.

4. Committee Inquiry into Public Procurement Policy and Practice in Northern Ireland: Evidence from Martin and Hamilton Ltd

The Committee took evidence from David Hamilton, Managing Director, Martin and Hamilton Ltd. The session was recorded by Hansard.

10.41 am Mr Paisley Jnr left the meeting.

11.03 am Ms McCann left the meeting.

Agreed: that the Committee will write to Martin and Hamilton Ltd if it requires any further information on the issues discussed during the session.

Wednesday, 17 June 2009

Room 152, Parliament Buildings

Present: Mitchel McLaughlin MLA (Chairperson)

Simon Hamilton MLA (Deputy Chairperson)

Dr Stephen Farry MLA

Fra McCann MLA

Jennifer McCann MLA

David McNarry MLA

Adrian McQuillan MLA

Declan O'Loan MLA

Dawn Purvis MLA

In Attendance: Shane McAteer (Assembly Clerk)

Vivien Ireland (Assistant Assembly Clerk)

Karen Jardine (Assistant Assembly Clerk)

Colin Jones (Assistant Assembly Clerk)

David McKee (Clerical Supervisor)

Chris McCreery (Clerical Officer)

Apologies: Ian Paisley Jnr MLA

Peter Weir MLA

10.02 am The meeting commenced in open session.

4. Committee Inquiry into Public Procurement Policy and Practice in Northern Ireland: Evidence from InterTradeIreland

The Committee took evidence from the following representatives from InterTradeIreland: Aidan Gough, Director of Strategy and Policy; and Dr Eoin Magennis, Policy Research Manager. The session was recorded by Hansard.

10.39 am Mr McQuillan left the meeting.

10.45 am Dr Farry left the meeting.

Members noted further information from both the Ulster Community Investment Trust and the Confederation of British Industry, following their recent oral evidence to the Committee.

7. Secretariat Paper on Proposed Procurement Stakeholder Conference

The Committee was informed that efforts to contract an academic institution to take forward commissioned research on the Committee's behalf, had been unsuccessful to date. Members discussed a number of options for supplementing the oral and written evidence gathered to date as part of the Committee's ongoing Inquiry.

Agreed: that, as an alternative to commissioning external research, a procurement stakeholder conference will be held after summer recess

Wednesday, 24 June 2009

Room 152, Parliament Buildings

Present: Mitchel McLaughlin MLA (Chairperson)
Dr Stephen Farry MLA
Fra McCann MLA
Jennifer McCann MLA
David McNarry MLA
Declan O'Loan MLA

In Attendance: Shane McAteer (Assembly Clerk)
Vivien Ireland (Assistant Assembly Clerk)
Karen Jardine (Assistant Assembly Clerk)
David McKee (Clerical Supervisor)
Chris McCreery (Clerical Officer)

Apologies: Simon Hamilton MLA (Deputy Chairperson)
Adrian McQuillan MLA
Ian Paisley Jnr MLA
Dawn Purvis MLA
Peter Weir MLA

10.04 am The meeting commenced in open session.

5. Committee Inquiry into Public Procurement Policy and Practice in Northern Ireland: Evidence from the Royal Institution of Chartered Surveyors (RICS)

The Committee took evidence from the following RICS representatives: Ann Stewart, Public Policy Executive; John Phelan, Head of Construction Group; and Colm Lavery, Deputy Head of Construction Group. The session was recorded by Hansard.

11.30 am Mr McNarry joined the meeting.
11.31 am Ms McCann joined the meeting.
11.47 am Mr O'Loan left the meeting.
11.51 am Mr O'Loan joined the meeting.
12.06 pm Mr McCann left the meeting.
12.11 pm Mr McCann joined the meeting.

Agreed: that the RICS representatives will provide information as requested by the Committee during the evidence session.

Agreed: that all written evidence submitted to the Committee Inquiry into Public Procurement Policy and Practice in Northern Ireland and the Official Report from this evidence session will be forwarded to DFP for comment.

Agreed: to request from DFP an assessment of progress by departments in the implementation of investment delivery plans and the implications which any slippage will have on budgets for 2009/10.

Members noted a response from the Ulster Community Investment Trust on a number of queries raised by the Committee at its meeting on 13 May 2009.

Members considered a request from the Royal Society of Ulster Architects (RSUA) to give oral evidence to the Committee's Inquiry into Public Procurement Policy and Practice in Northern Ireland

Agreed: that RSUA will be invited to give oral evidence to the Committee's Inquiry into Public Procurement Policy and Practice in Northern Ireland after summer recess.

12.30 pm Mr McNarry left the meeting.

Wednesday, 9 September 2009 Room 152, Parliament Buildings

Present: Jennifer McCann MLA (Chairperson)
Peter Weir MLA (Deputy Chairperson)
Mr Stephen Farry MLA
Fra McCann MLA
Mitchel McLaughlin MLA
David McNarry MLA
Declan O'Loan MLA
Dawn Purvis MLA

In Attendance: Shane McAteer (Assembly Clerk)
Kathy O'Hanlon (Assistant Assembly Clerk)
Karen Jardine (Assistant Assembly Clerk)
David McKee (Clerical Supervisor)
Christopher McNickle (Clerical Officer)

Apologies: Simon Hamilton MLA

10.00 am The meeting commenced in open session.

12. Committee Work Programme

Members were advised that the Public Procurement Stakeholder Conference will be held in the Comfort Hotel, Antrim on Wednesday 21 October. A facilitator has been appointed to provide the Committee with professional assistance in planning and managing the conference and in reporting on outcomes.

Agreed: that a working lunch will be arranged in Room 152 for immediately after the Committee meeting on 16 September, to enable the Committee to meet informally with the facilitator to discuss plans for the conference.

Wednesday, 16 September 2009
Room 152, Parliament Buildings

Present: Jennifer McCann MLA (Chairperson)
Peter Weir MLA (Deputy Chairperson)
Dr Stephen Farry MLA
Simon Hamilton MLA

Fra McCann MLA
Mitchel McLaughlin MLA
David McNarry MLA
Adrian McQuillan MLA
Declan O'Loan MLA
Ian Paisley Jr MLA
Dawn Purvis MLA

In Attendance: Shane McAteer (Assembly Clerk)
Kathy O'Hanlon (Assistant Assembly Clerk)
Karen Jardine (Assistant Assembly Clerk)
David McKee (Clerical Supervisor)

Apologies: None

10.07 am As notification had been received that the Chairperson would be late, the Deputy Chairperson took the Chair and commenced the meeting in open session.

4. Committee Inquiry into Public Procurement Policy and Practice in Northern Ireland: Evidence from Royal Society of Ulster Architects

The Committee took evidence from the following RSUA officials: Dawson Stelfox, President RSUA and Chairman of Consarc Design Group; Clyde Markwell, Chair, Professional Affairs Committee RSUA and Partner in Knox and Markwell Architects; and, Frank McCloskey, RSUA Director. The session was recorded by Hansard.

10.44 am Mr McNarry joined the meeting.

Members noted the DFP response to issues raised in the written submissions to the Inquiry and during the evidence session from the Royal Institute of Chartered Surveyors.

Members considered a request from the Ministerial Advisory Group for Architecture and the Built Environment for Northern Ireland (MAG) to give oral evidence on the Committee's Inquiry.

Agreed: that the Committee will write to MAG providing a copy of the Inquiry Terms of Reference and requesting a written response that addresses the specific issues in the terms of reference; and, in particular, opportunities for greater access to procurement opportunities for the Small and Medium Enterprise and Social Economy Enterprise sectors.

The Committee noted correspondence from DFP on public procurement opportunities for SMEs.

Agreed: that the Committee will write to Central Procurement Directorate seeking further information on a number of areas as identified by Assembly Researchers and also on instances where EU regulations have not applied to a contract as the works were considered incidental to another objective.

10. Correspondence received up to 9 September 2009

The Committee noted the following correspondence:

- DFP: Response to Committee for Employment and Learning Report on the Way Forward for Apprenticeships;

Agreed: that the DFP response be forwarded to the Committee for Employment and Learning and also included in the Public Procurement Inquiry Report.

11. Arrangements for Public Procurement Stakeholder Conference

1.15 pm Mr Weir returned to the meeting.

Following a discussion on the outline proposals for the Public Procurement Stakeholder Conference, the Committee made the following decisions:

Agreed: that the conference title will be 'Maximising the Economic and Social Benefits from Public Procurement'.

Agreed: that the date of the conference is Wednesday 21 October 2009 and that the venue is Dunsilly Hotel, Antrim (formerly Comfort Hotel).

Agreed: that the format and structure of the event will be as outlined in the briefing paper.

Agreed: that the participants already identified be invited to the conference and that members will forward suggestions for additional participants to the Clerk as soon as possible and that the list of additional participants should, as far as is possible, reflect a balance between the SME and SEE sectors.

Agreed: that members will participate in the conference as required, including as observers during breakout sessions.

Agreed: that the Minister of Finance and Personnel will be invited to make closing remarks.

Agreed: that digivoting technology be used as a method of capturing opinions and data during the conference.

Agreed: that Committee members will be kept informed regarding progress for the Stakeholder Conference and that the facilitators will liaise with the Chairperson, Deputy Chairperson and Clerk as necessary.

Wednesday, 23 September 2009 Room 152, Parliament Buildings

Present: Jennifer McCann MLA (Chairperson)
Peter Weir MLA (Deputy Chairperson)
Dr Stephen Farry MLA
Simon Hamilton MLA
Fra McCann MLA
Mitchel McLaughlin MLA
David McNarry MLA
Declan O'Loan MLA
Ian Paisley Jr MLA
Dawn Purvis MLA

In Attendance: Shane McAteer (Assembly Clerk)
Kathy O'Hanlon (Assistant Assembly Clerk)
Karen Jardine (Assistant Assembly Clerk)

David McKee (Clerical Supervisor)
Kevin Marks (Clerical Officer)

Apologies: Adrian McQuillan MLA

9. Committee Work Programme

The Committee discussed the arrangements for the Public Procurement Stakeholder Conference on 21 October 2009, which will contribute to the ongoing Inquiry into Public Procurement Policy and Practice in Northern Ireland.

Agreed: that the Committee will invite the chairpersons, deputy chairpersons and clerks of the committees for OFMDFM, Regional Development, Employment and Learning, and Enterprise, Trade and Investment to participate in the conference, as these committees had made submissions to the inquiry.

Agreed: a list of further participants suggested by members to date. Members will forward any additional suggested participants to the Clerk as soon as possible, to reflect, as far as possible, the balance between the SME and Social Economy sectors.

Agreed: that the written submissions received to date on the inquiry will be published on the Committee website to allow conference participants to review the evidence in advance of the conference.

Wednesday, 30 September 2009 Room 152, Parliament Buildings

Present: Jennifer McCann MLA (Chairperson)
Dr Stephen Farry MLA
Mitchel McLaughlin MLA
David McNarry MLA
Declan O'Loan MLA
Adrian McQuillan MLA

In Attendance: Shane McAteer (Assembly Clerk)
Kathy O'Hanlon (Assistant Assembly Clerk)
Karen Jardine (Assistant Assembly Clerk)
David McKee (Clerical Supervisor)

Apologies: Peter Weir MLA (Deputy Chairperson)
Simon Hamilton MLA
Fra McCann MLA
Ian Paisley Jr MLA
Dawn Purvis MLA

10.12 am The meeting commenced in open session.

4. Public Procurement Practice in Northern Ireland: Evidence from Chartered Institute of Purchasing and Supply

The Committee took evidence from Dr Glynis Davies, Fellow, CIPS. The session was recorded by Hansard.

10.51 am Mr McNarry left the meeting.
10.57 am Mr McNarry returned to the meeting.
11.08 am Dr Farry joined the meeting.

Agreed: that the CIPS representative will provide information as requested by the Committee during the evidence session.

Agreed: that a response will be sought from DFP to a number of the issues raised during the evidence session.

8. Committee Work Programme

The Committee noted progress to date on arrangements for the Public Procurement Stakeholder Conference to be held on Wednesday 21 October at the Dunsilly Hotel, Antrim as part of the Committee's Inquiry into Public Procurement Policy and Practice in Northern Ireland. It was noted that members had provided further suggestions for invitations to the conference, including local economists.

Agreed: that a number of relevant umbrella organisations will be approached to help identify further conference participants, giving due regard to achieving a balance in terms of regional spread, the SME and Social Economy sectors, and the types of procurement.

Agreed: that the Committee will forward a request to DFP for summary information on progress against the key issues raised in the inquiry evidence to date, which can be provided to the conference participants.

Wednesday, 7 October 2009 Room 152, Parliament Buildings

Present: Mr Peter Weir (Deputy Chairperson)
Dr Stephen Farry MLA
Simon Hamilton MLA
Fra McCann MLA
Mitchel McLaughlin MLA
David McNarry MLA
Adrian McQuillan MLA
Declan O'Loan MLA
Ian Paisley Jr MLA
Dawn Purvis MLA

In Attendance: Shane McAteer (Assembly Clerk)
Kathy O'Hanlon (Assistant Assembly Clerk)
Karen Jardine (Assistant Assembly Clerk)
David McKee (Clerical Supervisor)
Kevin Marks (Clerical Officer)

Apologies: Jennifer McCann MLA (Chairperson)

10.06 am As notification had been received that the Chairperson would not be present, the Deputy Chairperson took the Chair and commenced the meeting in open session.

3. Matters Arising

Members considered the request from the Ministerial Advisory Group for Architecture and the Built Environment for Northern Ireland (MAG) to present evidence on the Public Procurement Inquiry.

Agreed: that a representative from MAG is invited to attend the Public Procurement Stakeholder Conference.

Members were advised that the Sellafield Ltd Supplier Ombudsman, Zoe Whittle, has indicated that she would be willing to brief the Committee on the role of a supplier ombudsman, as discussed during the evidence session with the Chartered Institute of Purchasing and Supply on 30 September.

Agreed: that Zoe Whittle is invited to attend the Public Procurement Stakeholder Conference. The Committee will also request a briefing paper outlining the role of a supplier ombudsman.

Wednesday, 14 October 2009

Bryson House, Belfast

Present: Jennifer McCann MLA (Chairperson)
Simon Hamilton MLA
Fra McCann MLA
Mitchel McLaughlin MLA
Declan O'Loan MLA
Dawn Purvis MLA

In Attendance: Shane McAteer (Assembly Clerk)
Karen Jardine (Assistant Assembly Clerk)
Kathy O'Hanlon (Assistant Assembly Clerk)
David McKee (Clerical Supervisor)
Kevin Marks (Clerical Officer)
Colin Pidgeon (Assembly Research)

Apologies: Dr Stephen Farry MLA
Adrian McQuillan MLA
David McNarry MLA
Ian Paisley Jr MLA
Mr Peter Weir (Deputy Chairperson)

10.08 am The meeting opened in public session.

4. Public Procurement Practice in Northern Ireland: Evidence from Social Economy Network (SEN)

The Committee took evidence from Anne Graham, Director, SEN; Derek Alcorn, Chief Executive, Citizens Advice; and Marie Marin, Director, Employers for Childcare. The session was recorded by Hansard.

Agreed: that the witnesses will provide information as requested by the Committee during the evidence session.

5. Public Procurement Practice in Northern Ireland: Evidence from Bryson Charitable Group

The Committee took evidence from Sir Nigel Hamilton, Chairman; John McMullan, Chief Executive; and Brian McGinn, Director of Finance & Corporate Services, Bryson Charitable Group. The session was recorded by Hansard.

Agreed: that the witnesses will provide information as requested by the Committee during the evidence session.

11.53 am Mr McLaughlin left the meeting.
11.55 am Mr McLaughlin returned to the meeting.
11.55 am Mr Hamilton left the meeting.
11.55 am The Chairperson suspended the meeting.
11.59 am The Chairperson resumed the meeting.
11.59 am Mr Hamilton returned to the meeting.
11.59 am Mr McCann left the meeting.

9. Assembly Research Paper on Public Procurement and SMEs

The Committee noted an Assembly Research update paper on Public Procurement and SMEs.

10. Update on the Public Procurement Stakeholder Conference

The Chairperson provided an update on the Public Procurement Stakeholder Conference. Members also considered a draft press release on the Conference.

Agreed: that members will forward suggestions for additional participants to the Clerk by Friday 16 October 2009.

Agreed: that the press release be issued.

11. Correspondence

The Committee noted the following correspondence:

- Committee for Enterprise, Trade and Investment (CETI): Correspondence from Minister of Enterprise, Trade and Investment and Matrix Report on Public Procurement of Innovative Science and Technology Solutions.

Agreed: that the report will be included in the evidence for the ongoing Committee inquiry into public procurement.

- Federation of Small Businesses: Report on Public Procurement.

Agreed: that the report will be included in the evidence for the ongoing Committee inquiry into public procurement.

- DFP: Update on IntertradeIreland Report & Output from the Construction Industry Forum for NI.
- DFP: Update on Procurement issues arising from session on 16 September 2009.

Agreed: that the Committee will take evidence from the Central Procurement Directorate before completion of the inquiry into public procurement.

- Chartered Institute of Purchasing and Supply (CIPS): CIPS membership in Northern Ireland and opening statement to Committee on 7 October 2009.

Agreed: that the Committee will invite representatives from the CIPS membership in Northern Ireland to the Stakeholder Conference.

Wednesday, 4 November 2009

Room 135, Parliament Buildings

Present: Jennifer McCann MLA (Chairperson)
Peter Weir MLA (Deputy Chairperson)
Dr Stephen Farry MLA
Simon Hamilton MLA
Fra McCann MLA
Mitchel McLaughlin MLA
David McNarry MLA
Adrian McQuillan MLA
Declan O'Loan MLA
Ian Paisley Jr MLA
Dawn Purvis MLA

In Attendance: Shane McAteer (Assembly Clerk)
Karen Jardine (Assistant Assembly Clerk)
Kathy O'Hanlon (Assistant Assembly Clerk)
David McKee (Clerical Supervisor)
Kevin Marks (Clerical Officer)

10.09 am The meeting commenced in open session.

3. Matters Arising

The Committee noted correspondence from the Social Economy Network on Special Contract Arrangements in relation to the Inquiry into Public Procurement Policy and Practice.

Members noted correspondence from Carson McDowell Solicitors in relation to feedback from the Public Procurement Stakeholder Conference on 21 October 2009.

Agreed: that the Committee will consider inviting the legal firms who gave evidence to the Inquiry to comment further, should any legal issues arise as the Committee develops its Inquiry recommendations.

The Committee noted correspondence from NOW on Gauge and Social Return on Investment.

9. Correspondence

DFP: Follow up to Public Procurement evidence session on 30 September 2009.

DFP: Completed templates from Construction and Supplies & Services contracts and from Belfast Education and Library Board.

Agreed: that Central Procurement Directorate (CPD) should pursue outstanding responses on the number and value of contracts awarded to SMEs and Social Economy Enterprises. The Committee will also commission statistical analysis of the data from Assembly Research.

DFP: Update on Legal Challenges against Government Procurement Northern Ireland Local Government Association (NILGA): Local Government Policy Relationship

Agreed: the Committee will invite NILGA to provide a written submission to its Public Procurement Inquiry. The Committee will also commission Assembly Research to provide a research paper comparing local government procurement in other jurisdictions.

10. Committee Work Programme

Agreed: that a written report on the Public Procurement Stakeholder Conference will be considered at the Committee's meeting on 25 November 2009.

Agreed: that representatives from CPD and a representative from the Procurement Board are invited to brief the Committee at its meeting on 25 November 2009.

Wednesday, 11 November 2009 Room 135, Parliament Buildings

Present: Jennifer McCann MLA (Chairperson)
Dr Stephen Farry MLA
Simon Hamilton MLA
Fra McCann MLA
David McNarry MLA
Declan O'Loan MLA
Ian Paisley Jr MLA

In Attendance: Shane McAteer (Assembly Clerk)
Karen Jardine (Assistant Assembly Clerk)
Kathy O'Hanlon (Assistant Assembly Clerk)
David McKee (Clerical Supervisor)
Kevin Marks (Clerical Officer)

10.09 am The meeting commenced in open session.

5. Correspondence

Committee for the Environment: Procurement methods used by the Department of the Environment's Local Government Division to appoint consultants or agencies;

Agreed: to forward the correspondence to Central Procurement Directorate (CPD) seeking clarification on policies and processes across the board on the appointment of consultants or agencies; and, to include the correspondence in the evidence for the ongoing Public Procurement Inquiry.

George Simpson: Procurement of IT Systems;

Agreed: to forward the correspondence to CPD seeking a response to the issues raised; and, to include the correspondence in the evidence for the Public Procurement Inquiry.

- Public Accounts Committee (PAC): Composite Reports on Public Procurement;

Agreed: to include the correspondence from PAC in the Public Procurement Inquiry evidence relating to litigation issues.

Wednesday, 18 November 2009

Room 135, Parliament Buildings

Present: Jennifer McCann MLA (Chairperson)
Peter Weir MLA (Deputy Chairperson)
Dr Stephen Farry MLA
Simon Hamilton MLA
Mitchel McLaughlin MLA
David McNarry MLA
Adrian McQuillan MLA
Declan O'Loan MLA
Ian Paisley Jr MLA

In Attendance: Shane McAteer (Assembly Clerk)
Karen Jardine (Assistant Assembly Clerk)
Kathy O'Hanlon (Assistant Assembly Clerk)
David McKee (Clerical Supervisor)
Kevin Marks (Clerical Officer)

Apologies Fra McCann MLA
Dawn Purvis MLA

10.02 am The meeting commenced in open session.

8. Committee Work Programme

Agreed: that the Committee will forward an outline of the key themes from the evidence to date on its Inquiry on Public Procurement Practice in NI to Central Procurement Directorate, for consideration in advance of the evidence session on 25 November.

Wednesday, 25 November 2009

Room 135, Parliament Buildings

Present: Peter Weir MLA (Deputy Chairperson)
Simon Hamilton MLA
Mitchel McLaughlin MLA
David McNarry MLA
Declan O'Loan MLA
Ian Paisley Jr MLA
Fra McCann MLA
Dawn Purvis MLA

In Attendance: Shane McAteer (Assembly Clerk)
Karen Jardine (Assistant Assembly Clerk)
Kathy O'Hanlon (Assistant Assembly Clerk)
David McKee (Clerical Supervisor)
Kevin Marks (Clerical Officer)

Apologies: Jennifer McCann MLA (Chairperson)
Dr Stephen Farry MLA
Adrian McQuillan MLA

10.10 am As notification had been received that the Chairperson would be absent, the Deputy Chairperson took the Chair and commenced the meeting in open session.

4. Public Procurement Policy and Practice in Northern Ireland: Draft Report on Public Procurement Stakeholder Conference

Members considered the draft report on the Public Procurement Stakeholder Conference, prepared by the Conference Facilitator. Members also noted a Secretariat Paper on the benefits and lessons learned from the Conference process.

The Committee also considered a paper tabled by Dr Farry, in his absence, on issues in relation to the Inquiry, including the use of social clauses in public procurement contracts.

Agreed: that the report on the Stakeholder Conference will form part of the evidence base for the Committee's Inquiry and will be published as an appendix to the final Inquiry Report.

Agreed: that the issues raised in Dr Farry's paper, alongside other issues arising from the Inquiry to date, will be considered more fully during consideration of the initial draft Inquiry Report.

Agreed: that the report on the Stakeholder Conference is forwarded to Dr Aris Georgopoulos, University of Nottingham and Professor Chris McCrudden, University of Oxford for comment in order to inform the Committee Inquiry Report.

10.26 am The Committee moved into open session.

5. Assembly Research Briefing on Local Government Procurement

The Committee considered a paper by Assembly Research on Local Government Procurement. Members also noted a written submission from the Northern Ireland Local Government Association (NILGA) to the Committee Inquiry into Public Procurement.

10.30 am Mr McNarry left the meeting.

10.38 am Ms Purvis joined the meeting.

Agreed: that Assembly Research will provide further information as requested by the Committee, including details of local government procurement spend.

Agreed: that the Committee will forward the Assembly Research Paper on Local Government Procurement to the Committee for the Environment and NILGA for information.

Agreed: that the Assembly Research Paper on Local Government Procurement and the submission from NILGA will be added to the Inquiry evidence base.

6. Public Procurement Policy and Practice in Northern Ireland: Evidence from Central Procurement Directorate & Procurement Board

The Committee took evidence from the following officials from DFP's Central Procurement Directorate (CPD): Des Armstrong, Director, CPD, and member of the Procurement Board; Aileen Edmund, CPD and Stewart Heaney, Divisional Director, Construction and Advisory Division, CPD.

The session was recorded by Hansard.

10.34 am Mr Weir left the meeting.
10.34 am Mr McLaughlin took the chair.
11.02 am Mr Paisley Jr left the meeting.
11.24 am Mr O'Loan left the meeting.
11.28 am Mr O'Loan returned to the meeting.

Agreed: that CPD officials will provide further information as requested by the Committee including annual procurement plans for departments and sustainable development plans for CPD and the other CoPEs.

Agreed: that the Committee will write to CPD officials requesting a response to further questions arising from this evidence session.

9. Correspondence

DFP: Completed procurement templates from NI Housing Executive, Health Estates and the Education and Library Boards

Sellafield Ltd: UK Supply Chain Ombudsman

Agreed: that the correspondence is included in the Procurement Inquiry evidence base.

Wednesday, 2 December 2009 Room 135, Parliament Buildings

Present: Peter Weir MLA (Deputy Chairperson)
Dr Stephen Farry MLA
Fra McCann MLA
Mitchel McLaughlin MLA
David McNarry MLA
Adrian McQuillan MLA
Ian Paisley Jr MLA
Dawn Purvis MLA

In Attendance: Shane McAteer (Assembly Clerk)
Kathy O'Hanlon (Assistant Assembly Clerk)
David McKee (Clerical Supervisor)
Kevin Marks (Clerical Officer)

Apologies: Jennifer McCann MLA (Chairperson)
Simon Hamilton MLA
Declan O'Loan MLA

10.10 am As notification had been received that the Chairperson would be absent, the Deputy Chairperson took the Chair and commenced the meeting in open session.

9. Correspondence

The Committee noted the following correspondence

- DFP: Correspondence on Procurement Issues.

Agreed: that the correspondence will be included in the evidence base for the Committee's Inquiry into Public Procurement Policy and Practice in NI.

- Stakeholder Group: Advertising Policy Undermining Viability of Local Press.

Agreed: that the correspondence will be forwarded to DFP for comment.

Wednesday, 9 December 2009 Room 135, Parliament Buildings

Present: Jennifer McCann MLA (Chairperson)
Dr Stephen Farry MLA
Simon Hamilton MLA
Mitchel McLaughlin MLA
Declan O'Loan MLA
Ian Paisley Jr MLA
Dawn Purvis MLA

In Attendance: Shane McAteer (Assembly Clerk)
Karen Jardine (Assistant Assembly Clerk)
Kathy O'Hanlon (Assistant Assembly Clerk)
David McKee (Clerical Supervisor)
Kevin Marks (Clerical Officer)

Apologies: Peter Weir MLA (Deputy Chairperson)
David McNarry MLA
Fra McCann

10.10 am The meeting commenced in open session.

6. Public Procurement Policy and Practice in NI: Initial Consideration of Draft Committee Inquiry Report

Members considered a working Draft Report on the Committee's Inquiry into Public Procurement and discussed correspondence from a member on issues relating to the Inquiry.

11.00 am Mr Paisley Jr left the meeting.

11.27 am Mr Hamilton left the meeting.

11.38 am Mr Hamilton returned to the meeting.

Agreed: that the points arising from the initial consideration will be taken forward in further drafting of the Inquiry Report.

The Committee also noted the following correspondence in relation to the Procurement Inquiry:

- DFP: Final Report on the re-accreditation of Centres of Procurement Expertise;

Agreed: that the report is copied to the Public Accounts Committee for information

- Citizens Advice: Committee Inquiry into Procurement for Social Economy Organisations;

Agreed: that the correspondence will be copied to Central Procurement Directorate (CPD) for comment and clarification on the 'good governance review' stage of a procurement process and on the role of CPD.

- Assembly Research: Follow-up note Local Government Procurement.

Wednesday, 6 January 2010

Room 135, Parliament Buildings

Present: Jennifer McCann MLA (Chairperson)
Peter Weir MLA (Deputy Chairperson)
Dr Stephen Farry MLA
Simon Hamilton MLA
Fra McCann MLA
Mitchel McLaughlin MLA
David McNarry MLA
Declan O'Loan MLA
Dawn Purvis MLA

In Attendance: Shane McAteer (Assembly Clerk)
Karen Jardine (Assistant Assembly Clerk)
Kathy O'Hanlon (Assistant Assembly Clerk)
David McKee (Clerical Supervisor)
Kevin Marks (Clerical Officer)

10.03 am The meeting commenced in open session.

8. Correspondence

The Committee noted the following correspondence:

- DFP: Follow up to issues raised with Central Procurement Directorate on 25 November 2009.

Wednesday, 20 January 2010

Room 135, Parliament Buildings

Present: Jennifer McCann MLA (Chairperson)
Peter Weir MLA (Deputy Chairperson)
Dr Stephen Farry MLA
Simon Hamilton MLA
Fra McCann MLA
David McNarry MLA
Declan O'Loan MLA
Dawn Purvis MLA

In Attendance: Shane McAteer (Assembly Clerk)
Kathy O'Hanlon (Assistant Assembly Clerk)
Karen Jardine (Assistant Assembly Clerk)
David McKee (Clerical Supervisor)
Kevin Marks (Clerical Officer)

Apologies: Mitchel McLaughlin MLA
Adrian McQuillan MLA

10.05 am The meeting commenced in open session.

8. Correspondence

The Committee noted the following correspondence:

- DFP: Procurement Governance Review.

Agreed: the Committee will forward the response to the Citizen's Advice Bureau and the Committee for Enterprise, Trade and Investment for information.

Agreed: the correspondence will be included in the evidence base for the Committee's Inquiry into Public Procurement.

- Professor Christopher McCrudden: Comments on the Public Procurement Conference Stakeholder Report.
- Dr Aris Georgopoulous: Comments on the Public Procurement Conference Stakeholder Report.

Agreed: the correspondence from Professor McCrudden and Dr Georgopoulous will be included in the evidence base for the Committee's Inquiry into Public Procurement.

Wednesday, 10 February 2010 Room 135, Parliament Buildings

Present: Jennifer McCann MLA (Chairperson)
Peter Weir MLA (Deputy Chairperson)
Dr Stephen Farry MLA
Simon Hamilton MLA
Fra McCann MLA
Adrian McQuillan MLA
Declan O'Loan MLA
Ian Paisley Jr MLA
Dawn Purvis MLA

In Attendance: Shane McAteer (Assembly Clerk)
Karen Jardine (Assistant Assembly Clerk)
Kathy O'Hanlon (Assistant Assembly Clerk)
David McKee (Clerical Supervisor)
Kevin Marks (Clerical Officer)

Apologies: Mitchel McLaughlin MLA
David McNarry MLA

The meeting commenced at 10.07 am in open session.

4. Consideration of Draft Committee Report on the Inquiry into Public Procurement Policy and Practice in Northern Ireland

The Committee undertook a paragraph-by-paragraph consideration of its draft report on the Inquiry into Public Procurement Policy and Practice in Northern Ireland.

Agreed: that paragraphs 1-5 stand part of the Report;
Agreed: that paragraphs 6-11 stand part of the Report;
Agreed: that paragraphs 12-19 stand part of the Report;
Agreed: that paragraphs 20-25 stand part of the Report;
Agreed: that paragraphs 26-31 stand part of the Report;
Agreed: that paragraphs 32-40 stand part of the Report;
Agreed: that Figure 2 stands part of the Report;
Agreed: that paragraph 41 stands part of the Report;
Agreed: that paragraphs 42-48 stand part of the Report;
Agreed: that paragraphs 49-57 stand part of the Report;
Agreed: that paragraphs 58-65 stand part of the Report;
Agreed: that paragraphs 66-72 stand part of the Report;
Agreed: that paragraphs 73-79 stand part of the Report;
Agreed: that paragraphs 80-81 stand part of the Report;
Agreed: that paragraphs 82-88 stand part of the Report;
Agreed: that Figure 3 stands part of the Report;
Agreed: that paragraphs 89-92 stand part of the Report;
Agreed: that paragraphs 93-98 stand part of the Report;
Agreed: that paragraphs 99-108 stand part of the Report;
Agreed: that paragraphs 109-115 stand part of the Report;
Agreed: that paragraphs 116-121 stand part of the Report;
Agreed: that paragraphs 122-128 stand part of the Report;
Agreed: that paragraphs 129-131 stand part of the Report;
Agreed: that paragraphs 132-136 stand part of the Report;
Agreed: that paragraphs 137-142 stand part of the Report;
Agreed: that paragraphs 143-148 stand part of the Report;
Agreed: that paragraphs 149-155 stand part of the Report;
Agreed: that paragraphs 156-160 stand part of the Report;
Agreed: that paragraphs 161-167 stand part of the Report;
Agreed: that paragraphs 168-172 stand part of the Report;
Agreed: that paragraphs 173-176 stand part of the Report;
Agreed: that paragraphs 177-184 stand part of the Report;
Agreed: that paragraphs 185-192 stand part of the Report;
Agreed: that paragraphs 193-200 stand part of the Report;
Agreed: that paragraphs 201-204 stand part of the Report;
Agreed: that paragraphs 205-212 stand part of the Report;
Agreed: that paragraphs 213-219 stand part of the Report;
Agreed: that paragraphs 220-224 stand part of the Report;
Agreed: that paragraphs 225-230 stand part of the Report;
Agreed: that paragraphs 231-235 stand part of the Report;
Agreed: that paragraphs 236-240 stand part of the Report;
Agreed: that paragraphs 241-247 stand part of the Report;
Agreed: that paragraphs 248-253 stand part of the Report;
Agreed: that paragraphs 254-259 stand part of the Report;
Agreed: that paragraphs 260-263 stand part of the Report;
Agreed: that paragraphs 264-272 stand part of the Report;

Agreed: that paragraphs 273-277 stand part of the Report;
Agreed: that paragraphs 278-287 stand part of the Report;
Agreed: that paragraphs 288-296 stand part of the Report;
Agreed: that paragraphs 297-298 stand part of the Report;
Agreed: that paragraphs 299-309 stand part of the Report;
Agreed: that paragraphs 310-312 stand part of the Report;
Agreed: that paragraphs 313-319 stand part of the Report;
Agreed: that the Executive Summary, with a minor amendment, stands part of the report;
Agreed: that, mindful of the sub-judice rule, the DFP paper entitled Legal Challenges Against Government Procurement February 2010 will replace the other DFP papers relating to Legal Challenges in Appendix 4;
Agreed: that the Appendices, as amended, stand part of the Report and that all Appendices will be included on a CD-ROM to accompany the printed version of the Report;
Agreed: that the extract of the unapproved minutes of proceedings of today's meeting will be checked by the Chairperson and included in Appendix 1.

Agreed: that the Report, as amended, be the First Report of the Committee for Finance and Personnel to the Assembly for session 2009/10.

Agreed: that the Report on the Inquiry into Public Procurement Policy and Practice in Northern Ireland, as amended, be printed.

The Committee agreed the following draft motion to debate the report in plenary:

"That this Assembly approves the report of the Committee for Finance and Personnel on its Inquiry into Public Procurement Policy and Practice in Northern Ireland; and calls on the Minister of Finance and Personnel, in conjunction with Executive colleagues, to implement the recommendations contained therein."

Agreed: to request that the Business Committee considers scheduling the motion in plenary on Tuesday 23 February.

Members considered a draft press release which will be issued ahead of the plenary debate.

Agreed: that the press release will issue prior to the plenary debate subject to minor amendment.

Members noted that a typescript copy of the Report will issue to DFP by the end of the week, in line with normal protocol and in advance of printed copies being made available.

Agreed: that the report will also be issued to all MLAs when published and to the following additional recipients:

- Those who provided written and oral evidence to the Inquiry;
- Stakeholder Conference Facilitator and Commentators;
- Stakeholder Conference Participants;
- Professor Chris McCrudden;
- Dr Aris Georgopoulos;
- Centres of Procurement Expertise; and
- The Procurement Board.

Appendix 2

Minutes of Evidence

26 November 2008

Members present for all or part of the proceedings:

Mr Mitchel McLaughlin (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Dr Stephen Farry
Ms Jennifer McCann
Mr David McNarry
Mr Adrian McQuillan
Mr Declan O'Loan
Ms Dawn Purvis
Mr Peter Weir

Witnesses:

Mr Wilfred Mitchell
Mr George Dorrian Federation of Small
Mr Jonathan Businesses
Walmsley

1. The Chairperson (Mr McLaughlin): I welcome the representatives from the Federation of Small Businesses (FSB): Wilfred Mitchell, who we have met often; George Dorrian, policy officer; and Jonathan Walmsley, public affairs officer.

2. Wilfred, in case you are not aware, the session is being recorded by Hansard so please switch off any telephones that you have as they will interfere with the recording. You may want to make some initial comments.

3. Mr Wilfred Mitchell (Federation of Small Businesses): Thank you very much. I am Wilfred Mitchell, policy chairman for the Federation of Small Businesses in Northern Ireland. My colleagues here today are George Dorrian, also a policy officer, and Jonathan Walmsley, a public affairs officer.

Public procurement opportunities have great potential to benefit small businesses, especially in these difficult economic times. That is an area that the FSB in Northern Ireland has identified as a policy priority and is researching its development.

4. Part of that work will involve examining examples of best practice elsewhere. Initial findings indicate that almost three quarters of SMEs rarely, or ever, bid for Government contracts. Furthermore, more than three quarters of SMEs believe that there are barriers that prevent awareness of Government opportunities. More than half of SMEs believe that the tendering process for Government contracts requires more time and resources than their business will allow.

5. In general, SMEs find it easier to sell to the private sector than the public sector. The success rate in winning private-sector contracts is double the success rate in winning public-sector

contracts. There is concern that the procurement process is becoming increasingly geared towards large organisations, particularly in the construction sector. That is negatively affecting local SMEs in the sector.

6. In light of the current economic conditions, many SMEs are struggling, and we appeal to the Assembly to do all in its power to break down existing barriers. We have some key recommendations: improved access for SMEs to information on public-procurement opportunities; clarification and simplification of the bidding process; a reduction in bureaucracy; an increase in the processes' transparency; and the introduction of adequate support schemes for SMEs.

7. In 2007, we visited Atlanta, Georgia, to examine best practice. That region has achieved successful results over the past 25 to 30 years, with at least 28% of SMEs obtaining public procurements. Those models should be considered.

8. Mr Weir: Thank you for the presentation. You mentioned Georgia; I presume that you visited Georgia in the United States rather than holding back Russian tanks. The Committee has heard evidence from central Government, and members noticed the lack of sharing of knowledge and the lack of learning of best practice. Do you have other specific examples that demonstrate best practice?

9. Mr George Dorrian (Federation of Small Businesses): The most recent example of best practice with which we have been involved in Northern Ireland was the 2012 Olympic process. Our members have reported positively on that process. Many local organisations engaged in the process, and several national representatives visited Northern Ireland to explain the process to the businesses. Although we do not yet know how many businesses have been successful, the number that signed up to the process was higher than with normal public procurement contracts.

10. Mr Weir: The problems in the construction industry have been uppermost in people's minds recently. Does the FSB or the SME sector have an opinion on how the public procurement process is working for the construction industry, and whether it is fit for purpose?

11. Mr Jonathan Walmsley (Federation of Small Businesses): The SME sector is experiencing difficulties with time frames. Businesses must produce evidence of four to five years' tendering experience.

12. The Chairperson: Can they not meet that threshold?

13. Mr Dorrian: Unfortunately, for obvious reasons, members are reluctant to come forward. The biggest issue that has come to our attention recently concerns construction framework agreements. There is a perception that frameworks are being bundled up in order to exclude small and medium-sized enterprises in Northern Ireland.

14. Mr Weir: Is there any possibility that you might issue an anonymous questionnaire? We were advised about, and you have reinforced, the view that a number of people in the construction industry are reluctant to talk. In part, people think that if they are seen to be giving off too much about what the Government are doing, they might be disadvantaged during procurement processes. I wonder whether you might find a way around that problem by issuing, for example, an anonymous questionnaire.

15. Mr Dorrian: The Policing Board, which is another of our recent business clients, might provide a model for that. Much of the feedback from its members was anonymous, and the reply rate was much higher than we usually expect. So, a model exists to do that.

16. Mr Mitchell: It may be worth sending an appropriately worded questionnaire to our members.

17. Mr Weir: Obviously, that is a matter for you; however, such a questionnaire might be helpful to you and to us, because, given that you must speak generically about small businesses, you are less directly exposed to the market. Many of your members might be reluctant to come forward to give evidence because they feel that they would be whistle-blowing and, regardless of whether that might be a perception or reality, they feel that they might suffer, explicitly or implicitly, a level of disadvantage. Therefore, such a questionnaire may be a productive way forward.

18. Ms Purvis: In your report, you said that many SMEs experience difficulty even getting hold of information about tenders and specifications. How much of that difficulty is due to the fact that larger contracts are advertised in one place; whereas smaller contracts are advertised all over the place? Moreover, is the time and effort that small businesses must put in to finding that information a factor?

19. Mr Walmsley: With regard to time and effort, our members have told us in surveys that a considerable chunk of their week is taken up with bureaucracy and that they want simpler application and tendering processes.

20. Ms Purvis: Have they requested a central source for such information?

21. Mr Walmsley: A central source for information is a good idea. Although Invest NI operates a tender-alert service, awareness of that scheme is not overly high among our members.

22. Ms Purvis: CPD told us that it has implemented a number of initiatives in order to help small and medium-sized and social economy enterprises access Government contracts. What experience have you and your members had of that support, and, given what you said about a single point of information, could CPD do more to help SMEs gain such access?

23. Mr Mitchell: I am not aware of any support reaching the Federation of Small Businesses. The cost of insurance, such as public-liability insurance, is a problem that employers often encounter when filling in forms. When they attempt to fill in the first couple of lines on an application form, they are forced to drop out. Therefore, we are seeking a willingness to encourage small businesses and a general principle to remove simple barriers, such as those associated with filling in application forms. If applicants cannot afford insurance, they will believe that there is no point going any further with an application. Very often we are not able to reach those other barriers, because people do not get past the first one or two.

24. Mr McQuillan: Following on from Dawn's question, you have said that one of the things required is the provision of support schemes for SMEs. What other forms of support would be desirable?

25. Mr Mitchell: Support could perhaps be offered in relation to education or self-help. That would help SMEs to fill in application forms, overcome misinterpretations and educate them in what they may have to do in the future.

26. Mr McQuillan: Who do you envisage carrying out that role? Should Invest NI be taking a more proactive role or should that role be carried out by another organisation?

27. Mr Dorrian: In relation to Invest NI — and returning to one of the questions that was asked earlier — that organisation currently runs many events for its client companies. If those events could be extended to include the wider small-business community, that would be very welcome.

28. Certainly, the numbers show that 300 companies used the service to stimulate new business. That is 300 from perhaps 100,000 small businesses in Northern Ireland. If that communication could be extended to small business, that would be a positive move. Most small businesses in Northern Ireland are not clients of Invest NI; therefore the establishment of some sort of system to widen awareness is required.

29. Mr McQuillan: You need to be clearer when you say that there is a need for some sort of system to be established. If you do not know what you are asking for, it is very difficult to be given it. You need to be more specific in relation to what your needs are and then request that support. We can then examine your proposal and see what we can do to help.

30. Mr Dorrian: One area of support would be the creation of awareness campaigns in relation to the qualification questionnaires, and the issuing of guidelines as to what SMEs need to have in place before they attempt to access the system. They could spend two or three days out of the working week investigating the system; therefore it would be helpful if there were a process either online, or somewhere else, where they could input their details and see if they were eligible or suitable. An easy, one-stop shop is what is required, and the technology is there for that to be established. Those businesses may be unsuccessful at a later stage, but a system to give them guidance and get the ball rolling is what is needed.

31. Mr Walmsley: Additionally, the model of the Invest NI tendering workshops would be very helpful for SMEs. As George has said, Invest NI has assisted around 300 small firms through those workshops and has generated around £250 million for the local economy. A process that widens that out to SMEs would be very helpful.

32. Mr Mitchell: The taxman may be another model to use. [Laughter.]

33. Mr McQuillan: I do not think that we should go down that route.

34. The Chairperson: You nearly scared the life out of the Committee with that suggestion.

35. Is any encouragement given to SMEs — particularly the small businesses — to cluster and join together to compete for public-procurement contracts or do they approach it individually, and as competitors to each other.

36. Mr Dorrian: Largely, that is done on an individual basis. It is very difficult to get a number of SMEs to come together.

37. The Chairperson: Therefore, the potential benefits of that approach are not considered in either the workshops or the training programmes that currently exist?

38. Mr Dorrian: Not that we are aware of. The examples that we have are very much on an individual basis. The model that we referred to earlier — the 2012 Olympic process — was very keen to encourage clusters and groups, and that was one of its keynotes. However, in the wider sense that is not the case.

39. The Chairperson: It is not really in their culture, is it?

40. Mr Dorrian: That is another aspect.

41. The Chairperson: They are very individualistic and independent, I suppose.

42. Ms J McCann: I thank the witnesses for their presentation and their briefing paper. To sum up, the FSB seem to be suggesting that the processes must be opened to include more to small and medium-sized business and social economy enterprises.

43. In the paper provided, you state that 99% of the businesses here would be classified as small or medium-sized businesses. Furthermore, you state that three-quarters of those businesses do not apply for Government contracts, because they know that they would be unsuccessful. Clearly, that must change particularly given the economic downturn and the resulting need to create employment opportunities for local people.

44. You were present during the last evidence session, and you heard about the legal requirements under the EU regulations. Obviously, that is put up as a factor whenever anyone is trying to open up the process.

45. The Chairperson referred to clusters. I know that a number of private social partnerships have been set up to bid for public-procurement contracts, particularly delivery of services in local communities in the North Belfast and West Belfast constituencies. Have you ever considered linking up with some of the social-enterprise projects? Are the smaller businesses that have applied for contracts, but not secured them, happy with the feedback that they receive from the Central Procurement Directorate to say where they went wrong? Many smaller businesses are frustrated because they keep applying for contracts but do not get anywhere. However, no one is telling them where they are going wrong. Could the whole procurement process be opened up to smaller businesses in the social economy? Are there any small steps that we can take now? Is creating private social partnerships a way forward?

46. Mr Dorrian: On the first point, we have arranged a meeting with the North Belfast Partnership to take a look at issues such as that. We met the partnership a while ago, and it had approached us again. We are looking to put something together.

47. Very little feedback comes in a structured fashion. It is more informal, such as making telephone calls and finding out. I have a list of names in front of me and, for them, feedback is an issue that needs to be addressed. Feedback comes largely on hearsay, who was there at the time, and contacts.

48. Mr Mitchell: I think that you are right. If feedback were delivered in a structured form, we could look at each of the issues and see what has to be done to address them. However, that has not come together; it is more ad hoc at this stage.

49. Mr Walmsley: A full explanation that sets out why firms did not secure a contract would be helpful. This is purely anecdotal evidence, but one of our members told me about a tender that his firm had applied for, and which went to a larger firm. Nevertheless, his firm was subsequently subcontracted to do the work.

50. Ms J McCann: That happens all the time.

51. Mr Walmsley: The firm was given no explanation as to why it did not receive the contract first time round.

52. Mr Hamilton: Most of my points have already been answered. However, there are a couple of others that have not. You have outlined some of the barriers that small and medium-sized companies face. Aside from those barriers — even though they are major issues — some of the

problems of smaller firms is that they do not have the capacity in-house to bid for the most simple public contracts. Is any assistance offered directly to firms — or to yourselves to pass on to your members — to heighten that capacity in the sector for people to bid for contracts?

53. Mr Mitchell: I think that that issue was raised. However, we are not aware of anything.

54. Mr Dorrian: Members, who are also clients of Invest NI, will receive assistance more formally, but that would be a very small number. The business and economic development section of North Down Borough Council ran workshops but, other than that, there is nothing structured. It was just an evening at the SIGNAL Centre of Business Excellence.

55. Mr Hamilton: There should be something along those lines where guidance could be given.

56. Mr Dorrian: There should be something along those lines. It would be helpful if there were facilities at local government, and if the economic development departments were to run workshops on that basis. If companies organise events, business people will attend, and that is important, but, if there are more technical issues, they will not attend. However, if business people know that such events will benefit their business, they will come out for them.

57. Mr Walmsley: To put it into perspective, although SMEs account for around 98% of the economic environment here, the majority of the businesses that we represent have fewer than 10 employees. Therefore, they simply do not have time to fill in tendering documents, which are quite complicated.

58. Mr Mitchell: Jennifer McCann hit the nail on the head earlier when she mentioned that people are not getting feedback on the reasons why their contracts are being turned down. There could be patterns for those failures, or there could be specific areas that could be addressed easily.

59. The Chairperson: There is a debriefing for larger contracts, which I am sure is very valuable for larger contractors. However, it would be equally valuable to SMEs — even if only to find out what they are doing wrong, or to find out whether the process is as objective as it should be.

60. Mr McNarry: I really like your slogan "Keep trade local". It is a good byword, and I hope that everyone can live up to it. When we got ensconced up here during the Programme for Government times, we heard evidence from a very successful bus manufacturer who told us that if people want to do something, they can. He had ambition.

61. I will make a generalisation — and it is something that the Chairperson referred to earlier. It is a massive jump from a small to a medium business, and it is even a big jump to go into a small business. Are you aware of any rewards out there to encourage growth? If not, perhaps there should be. However, if they are seen as a hindrance or are dismissed, then we should take the figures that you offer and have them analysed. I accept the beef and support the beef, but how many people actually have a real beef? Are the rest just attached to numbers because of membership, etc?

62. I listened to the now infamous Mr Peston on the BBC last night, and it was very clear that the big boys will survive, but the small boys will find it difficult in the current economic climate. What we are discussing is very pertinent to the situation in which we all find ourselves. We are all major shareholders in banks now, but, when one sees the Bank of England having to more or less demand that the banks and the Government pull their finger out, one wonders what is going on. What role do the banks play in terms of cash flow for small businesses if they are not actually helping big businesses? I am really talking about how confidence is generated for your members to get on the procurement list.

63. Simon was quite right in what he said. The ability is not there — it is about capability. Is there any point in trying to say that there should be some kind of funding to help people into the tender process, because you need to be cute in this matter? This is a make-or-break situation for many people, and I am hearing that many of your members are opting out. There is a greater need now to opt in, because the work will be in shorter supply due to the economic situation. There may need to be a fund for this, but I do not know whether there is. I do not want to be too dismissive of Invest NI, but everything that it gets involved in seems too complicated for the type of people that we are talking about. We need to simplify that, because, as the representatives from Quigg Golden Ltd said previously, sometimes simple is best.

64. Are there rewards to help people grow? Are there any funds of the sort that Simon mentioned, because that is almost a stopping point? Owners of small businesses make decisions, but the bank has them by the short and curlies with regard to securities. That must be a horrendous worry for owners of small businesses. Can the banks be further pressured into providing the funding that will enable you to tender?

65. Mr Mitchell: I will ask Jonathan to tell you about what we have done. We put a lot of pressure on the banks. It is interesting that last night's programme said that it was only the big businesses that would survive. All the world leaders have accepted that the economy depends on the small businesses. That is crucial, and you are correct about the banks.

66. Mr Walmsley: We are calling on banks now. A lot of our members are coming to us and talking about the terrible pressures that banks are putting on them by way of calling in loans, for instance. You talked about the jump from small to medium businesses. A lot of our members tell us that they are encouraged to start up a business, but then they are in a state of limbo; there does not appear to be a process to help them to the next stage.

67. Mr Dorrian: There is a gap between starting a business and moving it from domestic to export. There is no incentive for the owner once the business is up and running.

68. The Chairperson: Let us be careful not to go off the topic. We are not discussing the broad remit of the Federation of Small Businesses, or even the small businesses. Today's discussion is on public procurement.

69. Mr McNarry: I am considering the position of small business being in the position to chase the procurement, because I am not sure whether the situation is as bad as it could be or whether it is confined to a percentage of your members. If it is confined to a percentage of your members, I want to know whether there is a trail-off on it.

70. Mr Mitchell: If a small business that has a contract for procurement went to the bank today to ask for more money or an increase to its overdraft, it would have difficulty getting it.

71. The Chairperson: Following on from David's line of questioning, if our Committee and the Assembly moved to the position of making procurement more possible for the SME sector as part of our response to the wider economic pressures — including the pressures that banks contribute — there is the question of capability and capacity when it comes to interfacing with the procurement process. If we decide to attempt to make it more straightforward, simple and objective, will there be a support mechanism that would improve that capability? I want to focus the discussion on procurement.

72. Mr Mitchell: We do not think that it is there, but we would welcome that. We believe that is where some of the problems are. That knowledge is clearly needed.

73. Ms Purvis: I have been contacted in recent days by various small businesses. Is there a difference in the small and medium-sized businesses that are gaining contracts? Are those who provide services or products, or those in the construction industry more likely to get contracts? Is there a disparity in the type of contracts won and by whom?

74. Mr Dorrian: The vast majority of contracts are for services, but I have no further breakdown of the figures for the three areas that you mentioned.

75. Ms Purvis: I am going off the subject, but is the help provided by Invest NI aimed more at exporting businesses?

76. Mr Dorrian: Yes; almost all those companies are focused on export.

77. Ms Purvis: So there is no help for small service providers at present?

78. Mr Dorrian: No; not as far as we know.

79. Mr McNarry: Has a value been placed on the business that you attained from the procurement process? Does anyone know how much that is worth?

80. Mr Dorrian: I have not seen any figures on that.

81. Mr McNarry: The business must go somewhere; I am just wondering how much it is worth.

82. Mr Walmsley: One way to think of it is that 300 companies can generate £264 million and there are 132,000 small to medium-sized enterprises in Northern Ireland.

83. The Chairperson: Yes, but those companies work across the economic spectrum, and it is the impact on the public purse that concerns the Committee. I note that Glover is considering the Government target that SMEs should win 30% of all contracts in the public sector.

84. Mr McNarry: What are the contracts worth now, what are we chasing, and how much could small businesses handle?

85. The Chairperson: The FSB is on list of stakeholders that the Committee is consulting, and you will be provided with the opportunity to make a written submission. Perhaps that will give you the opportunity to put on record more information arising from today's discussion.

86. That ends members' questions. Thank you, Wilfred and colleagues for your assistance and patience. You gave the Committee much more time than had been allotted to you. It has been a most helpful meeting, and we look forward to receiving your submission. If any issues arise that would specifically help the Committee to frame its approach to the inquiry, we will write to you about those separately. The submission is your contribution to the review, but the Committee may also require your assistance on particular issues, and we will let you know should that be the case.

26 November 2008

Members present for all or part of the proceedings:

Mr Mitchel McLaughlin (Chairperson)

Mr Simon Hamilton (Deputy Chairperson)

Dr Stephen Farry
Ms Jennifer McCann
Mr David McNarry
Mr Adrian McQuillan
Mr Declan O'Loan
Ms Dawn Purvis
Mr Peter Weir

Witnesses:

Mr Edward
Quigg
Mr James Quigg Golden Limited
Golden
Ms Caroline
Eccles

87. The Chairperson (Mr McLaughlin): We now welcome Edward Quigg, James Golden and Caroline Eccles of Quigg Golden Limited, contract consultants. I understand that this is your first appearance before the Committee, so you are very welcome. If you would like to make some opening remarks, Edward, after which we will have a question and answer session. Simply cover the salient points, because I find that the questions are, perhaps, the best way to get to know each other and to drill into the subject matter.

88. Mr Edward Quigg (Quigg Golden Limited): The background to the document that I produced for the Committee is very simple, and you will be glad to know that I do not intend to take the Committee through it word for word. The terms of reference document that the Committee Clerk forwarded to me is accurate in identifying the issues currently affecting the construction industry in Northern Ireland. I have taken the liberty of identifying one or two other issues which I have included in the document, and which members may decide are worth considering.

89. The first issue deals with putting policy into practice and the lawfulness of procurement procedure. There have been a number of disputes in Northern Ireland about the public procurement of construction works. I am sure that the Committee is aware that two contractors — Henry Brothers, and McLaughlin and Harvey Limited — mounted framework challenges for construction work that was worth some £1.5 billion collectively. In each of those procedures, the courts ruled that they were unlawfully conducted and, therefore, had to be scrapped. That work is now on hold until such times as the Central Procurement Directorate (CPD) decides, along with the industry, how they should proceed.

90. I am aware of at least 13 other disputes that have been settled by the public sector or have resulted in an award in favour of the contractor. Therefore, such challenges are not simply limited to the two cases that I mentioned. This is a big problem. It is fair to say that Northern Ireland is the UK leader in dealing with procurement issues, because we have had so many of them, which is not necessarily a good thing. I have tried, in the document before the Committee, to identify why that might be — or, at least, my initial view on the matter, which is something that the Committee will have to consider when taking evidence from the stakeholders.

91. I would like to express a word of warning: stakeholders — that is, the construction companies — are extremely nervous about commenting in a negative way about how procurement is being carried out in Northern Ireland at present, because they do want to the bite the hand that feeds them. The Committee should be aware, when taking evidence, that

witnesses are very nervous because they do not want to criticise the people who are assessing their competency.

92. The terms of reference also addressed the issue of social clauses and the ability to include them in construction contracts. There is no difficulty with doing that if it is deemed that you want to include social clauses for, for example, putting the long-term unemployed back into work or for green issues, such as recycling materials and using wood from environmentally friendly forests. There is no difficulty with doing that. However, the CPD must be careful about how that is done.

93. It is perfectly OK to specify in the contract that a contractor must comply with those issues. The difficulty, at present, is that there is no practical way of enforcing that. If a contractor does not do those things, ultimately, you can determine his contract and kick him off. That is what I refer to as a nuclear option, because it is draconian and disproportionate, and, therefore, is never done. A proportionate incentive and sanction must be built in to a contract, so that if a contractor fails to do the things that he said he would do, he faces a proportionate penalty; and if the penalty is proportionate, it might be imposed.

94. From a lawfulness point of view, however, taking social considerations into account at an award stage is extremely dangerous. The European Court of Justice is in a state of flux. For example, if one takes into account at award stage a contractor's apprentice scheme that could be successfully challenged. I have said in the document that the CPD should take expert advice if it intends to do that, because it is not clear whether that is possible.

95. The terms of reference raised the issue of opening up the market to small and medium-sized enterprises (SMEs) and social economy enterprises (SEE). SEEs do not really play a key role in the construction industry. As regards SMEs, the answer is simple: plenty of work must be let on a simple basis in suitably sized packages. Much research has been carried out on the matter throughout the European Union, and my submission document refers to a paper by the European Commission which provides guidelines as to what should be done.

96. One issue is letting the work in suitably sized packages. Two frameworks that have recently been challenged represent about £1.5 billion of work, yet the individual projects that will be constructed under that framework will be much smaller than the overall project. Therefore, by bundling the projects together into one competition, SMEs are excluded from taking part in the tendering process. There is a role for SMEs that can offer best value, but work is not being let in that way as much, perhaps, as it could be.

97. Another issue that the Committee may wish to consider is the appropriate use of a contract form. I do not want to get bogged down in detail, but, at the moment, there is a move to use a target cost-type contract, which shares the pain and gain, depending on the financial out-turn of the project. If the project goes over budget, the contractor shares in the pain, and if it comes in under budget, the contractor shares in the gain. That procurement method is entirely suitable if the contract is large enough to merit it. However, I have heard of that type of contract being used for £1.5 million of construction work.

98. In my view, that procurement method is entirely inappropriate in that situation. The use of such a contract should be limited to occasions when the value of the project is high enough to justify the administrative burden involved. Equally, the use of early contractor involvement is very sensible. That option brings contractors in at design stage and asks them to help with the design process in order to produce an economic building. Again, such an approach is entirely sensible when the value of the work and the type of work merits it. It should not be the norm.

99. The final issue that the Committee might want to consider is tendering based on the duration of the contract. We tender on price and on what is referred to as quality submissions, when we consider how good the contractor is. However, we do not ask contractors how long it will take to complete the build; we tell contractors that. That approach does not seem sensible, because it is contractors who are best able to decide how long it should take to complete a project. That is factored into the awards, so a contractor who says that he will complete the build in 10 weeks can charge a higher price and still win the contract.

100. EU-wide, contractors are asked to price on duration as well as on price. In the UK, however, it is believed that employers are better able to specify the duration of a project. It is sensible for them to specify a range with maximum and minimum points, but we should let contractors tell us the duration. Depending on their methodology, they may wish to accelerate the works and can do so efficiently. Let them tell us that.

101. Towards the end of the document, I set out questions that the Committee may wish to consider in its evidence-taking. I will not go through them, but I have set out what I believe is a way forward. To summarise, unless one can justify a more complex approach, one should keep it simple. Some of the very complex procedures that procurement bodies are adopting are leading to disputes, and overcomplicating the process creates more opportunities for mistakes to be made and, therefore, for the process to be declared unlawful.

102. When dealing with relatively small construction works such as less than £5 million, and which are designed by the employer, price and duration should be considered. Adopting such a simple tender process would open the market up to SMEs. With a large or complex project, there is justification for using target-cost contracts, early contractor involvement and what, from time to time, may be referred to as more sexy procurement methods. However, those methods must be justified. For projects somewhere in between, one should be able to opt in or out, depending on the nature of the project.

103. Those are the issues that I wanted to talk the Committee through, and I am more than happy to answer any questions that members might have.

104. The Chairperson: That presentation was excellent.

105. Mr Weir: I would like a few points clarified. You mentioned legal requirements and the issue of over-complication. You mentioned the two high-profile cases that have been settled, and another 13 of which you are aware, and there may be others. Apart from the issue of over-complication, are there any other areas that you think it would be useful for the Committee to explore when trying to determine why those sorts of legal challenges keep arising? Are there any particular areas that you feel the Committee should be probing in relation to that?

106. Mr Quigg: There are two principle reasons why contractors would like to challenge and dispute tendering processes. One is the size of the contracts. The contract tendering for the IST framework, which was challenged by McLaughlin and Harvey Limited, was worth between £500 million and £800 million. When that firm was told that it was not getting on the list, it simply could not afford not attempt to challenge it. Therefore, letting very large contracts in comparison to the total public sector construction spend is inviting trouble.

107. Secondly, in my opinion the procuring bodies have a tendency to over-mark quality. The CPD's own guidelines say that quality in repeat-type typical construction work should be marked at between 5% and 10% — price being the balancing factor — yet I have seen maintenance contracts let by health estates in which quality has been marked at 70%. Quality is marked according to the answers given by the construction companies to a number of questions. That is a very subjective approach, and it is, therefore, very easy for a contractor to claim unfair

treatment, or to complain that they did not get the work even though they are as good as their peer. Therefore, that leads to contractors wanting to challenge decisions. Ultimately, however, the challenge will fail unless the process has been unlawful.

108. It is sad to say that there has been a total failure to stick to the rules. I cannot understand the underlying reason for that, but one example is the case that was disputed by McLaughlin and Harvey Limited. Apart from the technical breach, which was referred to in the CPD's submission to the Committee, the marking scheme was drawn up only after tenders were received. Only then was it decided what weighting should be given to various characteristics. The process was carried out over two months, and yet the CPD could not produce one note of what its assessment was. That is very strange. In relation to some of the other cases of which I am aware, it is as if everyone knows what the rules are, but decide not to stick to them. I cannot understand why that is the case.

109. Mr Weir: Those appear to be schoolboy errors. I understand your point that the more the qualitative and quantitative nature of factors are considered, the more subjective the process becomes. There are more grey areas, and, therefore, the process is more open to legal challenge.

110. You spoke of a distinction between having potentially allowable built-in social factors in contracts, such as taking into account using the long-term unemployed or particular types of material, and taking into account the issue of individual schemes or firm schemes at award stage, which clearly would be illegal. What could be a potential grey area when putting together a procurement process, in order that, from a social economy point of view, it is not seen to favour or exclude particular companies? For example, I presume that it would be potentially illegal to require tendering firms to have a particular type of scheme in place, as that would seem like an unfair disadvantage to firms without such a scheme. Presumably that would pose a legal danger.

111. Mr Quigg: That is true. What can be done at selection and award stage is: first, firms that do not comply with legislation can be excluded. Therefore, an employer who does not follow equal opportunities legislation can be excluded. That is simple.

112. Secondly, at selection award stage, the capacity of a firm to comply with what it will be asked to do can be examined. For example, if the contract states that 10% of the workforce must be apprentices, and if, at award stage, a contractor says that he does that anyway, that contractor has demonstrated his ability to do that. However, if another contractor says that he has never done that and would not know how to go about it, he can be marked less highly because he has not demonstrated his ability to do what he will be required to do.

113. Mr Weir: However, to take that example of apprentices, if we were to say to the firms that will be awarded contracts that they must put in place a scheme that would have a certain number of apprentices, that would be legitimate, but, say, we were seeking a certain number from a firm that already had a scheme in place, would that firm fall on the wrong side?

114. Mr Quigg: That would probably be unlawful.

115. The Chairperson: Just to be clear, when does that discussion take place? Does it happen during pre-contract negotiations or at the pre-qualification stage when people are trying to get on the list?

116. Mr Quigg: The first stage would be for the procurement body to decide what it wants at an early stage. In Northern Ireland, there should be discussions between the construction industry and CPD as to what is wanted, so that people can point their firms in that direction. Ultimately,

the contract documents that come out from CPD, or whoever, state what must be done and how the firms will be marked. The discussion happens at that stage.

117. A bone of contention with some construction firms is that they discussed those issues and were encouraged to put in place quite heavy management and training systems in their organisation, only to discover that a competitor who did not do any of that and, therefore, did not incur any of the cost of doing it, was winning the work. The process must be fair; if a firm is being asked to do something, it must be rewarded and allowed to earn that money.

118. Mr O'Loan: Can you summarise what you see as the intended rationale for using a framework method? You have already talked about the size of frameworks. Do you think that they are a good idea generally?

119. Mr Quigg: Probably not. There are occasions where I can see framework agreements being a good and useful practice. I do not know the rationale behind the way that the two framework agreements were let, because I cannot follow it. I cannot justify what someone has done, and whether I would have done it in the same way. However, to award £1.5 billion of work in two competitions, bearing in mind the size of the public-sector market in Northern Ireland, is very disproportionate. It has not proved to be successful.

120. I do not think that the advantages of doing it in any way outweigh the disadvantage of doing it. We talked about opening the market to SMEs. However, the top company in the IST framework was a joint venture between Farrans (Construction) Ltd, Heron Bros Ltd and Tracey Brothers Ltd — three very large, very competent construction companies in Northern Ireland — yet they did not feel that they could go in on their own. They had to join forces to be able to compete and to get on the list.

121. Mr O'Loan: Is there any argument that encouraging companies to form consortia could be good for public procurement? Could there be greater efficiency and economy for the public sector as a result?

122. Mr Quigg: I have not seen any arguments that would persuade me of that.

123. Mr Golden: That is part of the thinking behind the development framework. By forcing the construction industry to step up to the mark as regards consolidation will deliver economies of scale and higher quality, but that is with the intention of assisting small and medium enterprises. It is a justifiable policy to have consolidation in the construction industry, and to deal with larger entities within the industry, but that is largely intentioned with the idea of encouraging small and medium-sized enterprises.

124. Mr O'Loan: If it is used, does the process permit SMEs, including quite small ones, to get in on a subcontract basis?

125. Mr Quigg: Yes, absolutely; there is no difficulty with SMEs coming in as subcontractors. The question is whether it is acceptable, as a policy, to tell small or medium-sized enterprises that they cannot work as a main contractor, but that they can work as subcontractors. Caroline and I have been involved in a case where my client had done the same work for 30 years, and was then told that he did not pre-qualify. The eventual winner was then going to appoint him to do 100% of the work; 100% of it would be subcontracted to the same man and the Centre of Procurement Excellence said, on affidavit, that that would be fine, and that it did not have a problem with that. The same people would be doing 100% of the work, and the only difference would be that the person who pre-qualified would take a percentage.

126. The Chairperson: Value for money.

127. Mr McQuillan: Regarding all those bigger firms merging in order to get into the procurement exercise, is that not doing away with part of the competition?

128. Mr Quigg: Yes, it is. First, they are merging only for the purpose of that one competition; they will compete against one another elsewhere. However, there is an argument that it is doing away with part of the competition. In fairness, if five people are competing, that should give a reasonable spread that should ensure competition. It has encouraged contractors who have traditionally not been based in Northern Ireland to compete for the work. Firms from the Republic of Ireland and England have taken part in that competition because it has attracted them. There is an argument that that will help to increase competition by bringing them in — giving them a big enough carrot, if you like.

129. Mr McQuillan: A double-sided coin?

130. Mr Quigg: Yes.

131. Ms Purvis: Thank you for your report; it is excellent. You said that the inclusion of social clauses poses no difficulties particularly in relation to specifications. Some of the briefings that we have had suggest that there could be difficulty with regard to the size of the award and also in relation to EU legislation. I wonder if this is in terms of equality and being able to appoint or employ who you like, or if it is for some other legislative reason. There seems to be a very restricted view coming from CPD about the inclusion of social clauses. Some Assembly Members want to see public procurement opened up to include more and more social clauses, not only regarding employment, but sustainability and environmental issues. I am trying to find out where the barriers are to that.

132. Mr Quigg: I will try to answer that. In stating that the way in which the contract is carried out means that you must comply with all of the requirements therein; there is very little restriction. If you wanted to introduce a clause stating that you would only employ people from Northern Ireland, then that would be a restriction because that is infringing the principles of the EU Treaty. For most of the types of clauses that people have wanted to introduce, there is no difficulty in specifying that in the contract.

133. However, a big problem arises where a contract is awarded, or a contractor selected, based on track record, experience or promises to do things. If you try to do that at award and selection stage, it becomes difficult: people will then talk about infringement of EU directives. As I have said, the European courts are, to some extent, sending mixed messages about social clauses. A ruling was made on a contract in Paris, which stipulated that a certain number of local unemployed people had to be employed. It was decided that that was not a factor on which a contractor could be selected, or one which could be taken into account at selection or award stage. What you could do is make it a condition of the contract, so that the successful bidder would have to comply. That is the difference.

134. Ms Purvis: Therefore, it is best that the conditions of the award are laid down at the specification stage, rather than made at selection or award stage?

135. Mr Quigg: Yes. Let us take an example: the use of wood from sustainable forests. Contractors should not be asked what their policy is on that, or what they have done in the past; rather, it should be a term of the contract that, say, at least 50% of the wood should come from sustainable forests. At award stage, the contractor can be asked to demonstrate his technical ability to comply with that provision. He would have to demonstrate that he understands what that issue is about and that he has a supply-chain management system able to verify that. If he can show that he can do it, that is as far as you can go with it. I do not know if that has helped.

136. Ms Purvis: It has. Thank you.

137. Mr Golden: Allow me to make a point about social clauses. The biggest problem by far in achieving the social aims that social clauses are supposed to advance is at enforcement stage, rather than getting them into the contract. Making social clauses clear enough to be enforceable, and ensuring that they are enforced at contract stage, is difficult.

138. Ms Purvis: That is something I wanted to ask about. You talked about a proportionate sanction, something that will affect the contractor's pocket. I worry that that would lead to more litigation and more protracted negotiations. If the contractor does not comply with the terms of the contract, he is liable to make a lump-sum payment, or an award will be made to the contractor if he does comply. Which do you think is best: to try to recoup money for failure to comply, or to award it for compliance?

139. Mr Quigg: It depends on the issue. Some things can only be done as a penalty, as opposed to an incentive. It depends on the nature of it. The member has identified one factor — it can create more disputes. However, the construction industry is getting better at dealing with disputes. The decision of whether the contract has been complied with is made by the contract administrator. The penalty or incentive will be subtracted or awarded in the same way as any other variation. It is dealt with in the same way as a wall that is built 10 metres longer than specified on the drawing.

140. Two weeks ago, I met the secretary general of the Joint Contracts Tribunal (JCT), which is the drafting body for the standard form of building contract. We talked about this. He will consult to see whether JCT can produce standard clauses that will implement that. I hope that that will take away the worry. However, sanctions and incentives must be proportionate, or there is no point in having them. There is always the danger that contractors will ignore such clauses, ask what you are going to do about it, and get away with it.

141. This is at a tangent to the discussion, and I hope you do not mind my introducing it, Chair. In construction, there is now an adjudication process to deal with disputes. It is a 28-day process to resolve disputes, and it could easily deal with this.

142. I brought that up because, when I was asked to come here by the Committee Clerk, I noticed that a reform of adjudication procedures is one of the matters under consideration. I was surprised to discover that CPD was consulting on such a reform, because, for the last two years, I have been involved in the reform of adjudication procedures in the UK, through the Adjudication Society. No adjudicator or person who represents anyone in adjudication in Northern Ireland has been approached by CPD in relation to that, yet we understand that a review is being undertaken. That sort of thing rocks people's confidence in such processes.

143. Adjudication has totally changed the way that construction disputes are dealt with. It is extraordinarily important to the industry, and it seems that a review is going on, yet there is no consultation on it. I am sorry; I know that that is at a tangent to the matter. I thank the Committee for its patience.

144. The Chairperson: That issue will come back to the Committee when the proposed legislation is introduced — probably after the summer recess.

145. Ms Purvis: I have one final question. The Committee heard some research statistics on SMEs earlier. One of the complaints from SMEs is the overemphasis that is placed on price by the awarding body. However, in your submission, you say:

"Price and duration has to be the dominant award criteria".

146. If we are to try to open up more opportunities for SMEs, how can we reconcile those views?

147. Mr Quigg: I suppose that the cop-out response is that you must ask the SMEs what they want. I looked at the issue, and I thought that one of the barriers to SMEs was the pre-qualification questionnaire, which is a bar that businesses must get over in order to get on to the tender list. I felt that it was biased in favour of larger contractors and, therefore, made it more difficult for SMEs to take part in public procurement. Therefore, I felt that simplifying the questionnaire and setting the bar lower and then asking for details of price and duration might attract SMEs. SMEs may be saying something different; they are the experts. I have looked at the issue and offered my view on it.

148. Mr Golden: I am sure that what Mr Quigg said is applicable to the medium-sized enterprises — especially the larger ones — but not to the small enterprises. There is tension within the industry about how to deal with such matters.

149. In my direct experience, the smaller enterprises in construction, which are the building blocks that make it all happen, cannot paint a picture — many of the quality questions that are being asked are mere picture-painting exercises, rather than questions that are objectively assessed. Many of the smaller contractors cannot present the picture as clearly as the larger ones can, but they are often presenting quality. The way in which they are assessed is subjective and inconsistent. If the process were consistent over a long period, I presume that it would settle in and smaller enterprises could compete. However, the remarks in the paper, to which you referred, apply only to the larger end of the medium-sized enterprises, in my experience.

150. Ms J McCann: Thank you for your presentation. You have already answered some questions that I wished to ask, but I want to ask about the social clauses. Recent procurement guidelines are supposed to be centred on the concepts of equality of opportunity and sustainability. It seems that, every time we propose including social clauses, we face the argument that, if we go down that road, we will be in breach of EU regulations. Is there anything in the EU regulations to say that a project should not be marked on the social value that it will give?

151. Mr Quigg: Yes. I must be clear about that, and perhaps I have not been. At the selection stage of determining who is best suited, you must be extraordinarily careful not to take such factors into account. You cannot state that firm A is more socially responsible than firm B. However, after the selection has been made, the contract can require the successful company to fulfil many requirements.

152. Without knowing the specific social clause that you would like to be included, I cannot understand how someone could say that it would impinge on EU regulations — unless it is something such as being willing to employ only Northern Ireland workers and not Spanish workers. That is highly discriminatory on the grounds of determining the nationality of workers and, therefore, the clause would be declared invalid.

153. Ms J McCann: My question was more about recognising a project's social value and what it delivers in local communities, as opposed to its monetary value alone.

154. Mr Quigg: I cannot see how that decision is relevant to the relationship between you and the contractor. Many factors could be taken into account in determining the need for a project, whether to allocate some of the budget to it, and whether it should be done in-house or by the private sector, and social value may be a consideration in that case.

155. However, it is not a relevant consideration in the relationship between the public sector and the contractor who carries out the work, because contractor A will be no better at adding value to the social economy than contractor B or contractor C.

156. Mr Golden: Perhaps I misunderstood the question too, but the legislation specifically states that factors such as aesthetics can be taken into account in considering the design and build or value of a project. Therefore, I do not understand how a project that is delivered from a social perspective would be automatically excluded. I imagine that the devil will be in the detail.

157. Ms J McCann: It is particularly relevant to social-economy projects when contractors are not marked according to the social contribution that they deliver to the community when bidding for a contract, but simply on monetary contribution.

158. Mr Golden: If you try to procure in a way that would discriminate against EU-wide procurement, you will run into difficulties. As long as you were happy, for example, that a project contributed to the social development in Berlin or anywhere in the EU, that would be fine. However, I completely understand why a clause that would require particular social value could be discriminatory in an EU sense.

159. Mr Quigg: Yes; that is correct. If Ms McCann is suggesting that she wants to give the job to contractor B because that contractor employs the long-term unemployed and a certain percentage of disabled people, she would run into trouble.

160. Ms J McCann: Is that in the EU regulations?

161. Mr Quigg: Yes, because you would be selecting and awarding a contract on a basis other than the highest economic advantage. You can state that everyone is welcome to tender for the work but that whoever wins the contract will have to do x, y and z, and that is not a problem. However, if you want to say that contractor A is 10% more expensive but that all that he does for the community should be taken into account, you will run into difficulty.

162. Ms J McCann: So any social value would have to be stipulated in the tender process?

163. Mr Quigg: Yes, that is where you can state what you want the contractor to do.

164. Ms J McCann: My second question is about the thresholds. There is a certain threshold at which EU regulations come into force and a threshold beneath which they do not apply. Is that right?

165. Mr Quigg: That is not quite correct. Perhaps I am being slightly pedantic, but, if the value of a construction contract is over approximately £3.5 million, EU directives must be applied. Even if the contract is worth less, your hands are not free because you must still comply with the principles of the EU treaty: the free movement of goods and services; no discrimination on grounds of nationality; and so forth. Therefore, even if you are below that threshold, you still have to comply with certain requirements, although they are less stringent — you cannot do what you like.

166. Ms J McCann: If contractors break the terms in their contracts, is disallowing them another contract a proportionate penalty?

167. Mr Quigg: In the selection procedure, you can ask that the contractor demonstrates that he has satisfactorily completed similar works in the past five years. If a contractor has not completed similar works in the past five years because he did not comply, that is a reason for not selecting him. I am not sure about suspension as a penalty for breaching terms of a contract — my gut feeling is that you could not do that, but you might be able to.

168. Mr Golden: The difficulty is that, although you would exclude contractors who have failed, you will also allow people into the competition who never would pass. Just because someone comes from outside, that does not mean that they will provide a better quality of service or that social aspects will be included properly in the contract.

169. When I referred to proportionate penalties, I meant defined penalties in the contract for people who do not comply with certain measures. For example, if someone is caught using timber that is not from a renewable source, the damage is liquidated as £1,000, which comes out of the contractor's account. Similarly, if a contractor states that he will use a certain amount of apprentices and fails to do so, there is a proportionate financial penalty.

170. I suggest that course of action because it is in the contract, which means that you do not have to go to court and sue the contractor to get the money, and it is not something that will continue into a bigger arena. If a Government organisation tells a contractor that he will never work for it again if he does not employ the correct number of apprentices, it is in the contractor's interest to dispute that because the penalty is so severe. When I talk about proportionality, I mean small penalties for small breaches to encourage people to conform rather than ignore the rules.

171. Ms J McCann: I understand that, but the difficulties arise when there are contractors who habitually breach the terms of their contracts. That does not give other people who would act differently an opportunity.

172. Mr Quigg: All the contracts provide that habitual offenders are served a notice stating that they will be kicked off site if their breaches of contract are not remedied. Although it is the last resort, that option still exists to deal with a habitual non-performer. An earlier sanction regime is required.

173. As James said, if you try to suspend a contractor from future work, he will dispute it. Equally, from an employer's viewpoint, because it is such a big issue for the contractor, it is less likely that the sanction will be imposed, which renders it ineffective, because everyone knows that it will not happen.

174. The Chairperson: Given that some contractors may decide that they can take the hits, how do you financially calculate the balance between incentivising contractors who perform and penalising those who breach their terms of contract?

175. Mr Quigg: I have suggested two ways, although I am sure that there are others. One is attaching a lump sum to work being done. Another is through key performance indicators whereby the contractor is told everything that needs to be done, and, depending on his mark, the contractor gets paid a percentage more or a percentage less. However, that creates the danger of the contractor calculating that, financially, it is better to breach the contract and take the hit, rather than to comply. In that case, the problem is that the penalty was not set at the right level.

176. The Chairperson: The contractor could, therefore, be in breach yet still satisfy the contract.

177. Mr Quigg: The contractor could be in breach, but no one would terminate the contract if it was a minor breach.

178. Ms J McCann: Will a contractor who has breached a contract and been turfed off the job be able to secure future contracts?

179. Mr Quigg: If a contractor has his contract determined or has failed to complete work, those factors can be taken into account at the selection and awards stage.

180. Mr Hamilton: This is such a serious and technical subject, but I am going to ask Edward the question that has been on the tip of my tongue since he walked in, and which may elicit a more interesting and riveting discussion: are you any relation to Eoghan? [Laughter.]

181. Mr Quigg: No.

182. The Chairperson: A penalty clause would be attached to that.

183. Mr Quigg: It has helped people to spell my name, especially when I am working in London.

184. Ms Purvis: Your hair is different than Eoghan's. [Laughter.]

185. Mr Quigg: That is only because it is growing back.

186. Mr Hamilton: At the risk of making the Committee sound as if it is obsessed with social clauses, I have a couple of questions on whether such clauses are appropriate. Are there contracts in which a social clause, or a clause of that kind, is not correct, whether because of the size, scale or complexity of a contract? Can social clauses be applied to every contract, or are there some contracts for which they are more trouble and hassle than they are worth?

187. As you rightly identified, the Committee is, obviously, concerned that small and medium-sized enterprises get a fair shot at accessing contracts. Correct me if I am wrong, because I am as new to this as many other Committee members: SMEs already have difficulty getting contracts without the inclusion of social clauses; does the inclusion of such clauses inhibit or hinder SMEs from getting a contract at all?

188. Mr Quigg: If I take off my civil engineer's hat and put on my lawyer's hat, the answer is that it depends on the social clause. An obvious example is an equal opportunities policy for employees, which is, arguably, a social clause. I do not see any contract being let in which it would not be appropriate to have such a clause. SMEs will not find that a barrier because, in common with any employer, they have equal opportunities duties.

189. If the social clause was that X percentage of people with a disability must be employed, or that there must be X number of apprentices, there is an argument that, in the small and medium-sized enterprise category, small companies in particular would find it difficult to comply because they are so small. However, medium-sized companies should not have that difficulty.

190. The answer, therefore, truly depends on the social clause. One must ask whether it is something with which every employer — regardless of size — should comply; in which case, it should be included. If it is something with which only larger employers should comply — such as those that are involved in the scheme — then its inclusion should be limited to contracts that concern only those larger employers.

191. Mr Hamilton: Are some contracts beyond the possibility of having a social clause included, or are there social contracts to which companies should adhere as a matter of right, and which should be in any contract?

192. Mr Quigg: Yes. Those could be called the minimum-hygiene social clauses that are desirable, such as the equality clause. In all honesty, I do not know of any reason why that should not be included across the board.

193. Mr McNarry: Gentlemen, you are a breath of fresh air, which I appreciate. Thank you very much for your file, the contents of which we will read very carefully. Edward, I noticed from your CV that you have acted as a crisis project manager. Are you available to do that at the drop of a hat from time to time?

194. Mr Quigg: Yes — for the right money.

195. Mr McNarry: That is a good answer. We could, perhaps, do with you up here. Your document states that the solution — rather than being found in the contracts — was generally found by refocusing the design teams and the contractors. Perhaps you could briefly elaborate on that, and also suggest something that you would like to see the Committee highlight as a net result of our work.

196. Listening to the answers that you gave and to the recent questions, is there a risk that so many clauses could be inserted that contractors — particularly small subcontractors — could be unwittingly trapped, as they are anxious for work and they could get roped into something, and large contractors will be concerned only with looking for errors in the contract. Large contractors do that already, which is probably where you come in and make a living. I have been there. In other words, they will be delighted so sign up because they have already gone through the contract and know that they will be able to recoup losses.

197. I know that that is what happens. If we extend that, the small boys could become unwittingly trapped and the big boys will have a field day. Are we so good that we could draw up a contract in which people would not be able to pick holes?

198. Mr Quigg: You highlighted several points. It is fair to say that small and medium-sized enterprises and larger contractors are sometimes their own worst enemies. When one investigates why they get excluded from competitions, sometimes they simply have not answered the question that they were asked. They are not totally off the hook in that regard.

199. As far as building too many clauses into a contract is concerned, it is all about keeping things simple. Unless making a contract more complicated can be justified regarding policy or saving the public purse, things should be kept as simple as possible.

200. Mr McNarry: I appreciate that, and I agree wholeheartedly with the idea of keeping things simple. However, how on earth do we keep things simple when we are dealing with bureaucracy?

201. Mr Quigg: You employ consultants. [Laughter.]

202. The Chairperson: Experience should have told you that, David.

203. Mr Quigg: Not those that you have used in the past, however.

204. Mr McNarry: Oh, right.

205. Mr Quigg: It is a big difficulty, and it relates to the amount of cases that are going through the courts. Peter Weir referred to schoolboy errors being made. The more complicated the process, the more likely it is that those errors will be made. Therefore, the process must be kept as simple as possible. Rather than trying to reinvent the wheel every time works are tendered for, there should be standardisation. We have tried and tested contracts and specification that can be amended, but everyone should stick to any new standardised process that is produced.

206. Small and medium-sized enterprises will, hopefully, not be penalised if the process is kept simple. The more complex procurement should be used for only larger-value work, which small and medium-sized enterprises would probably not be chasing. With regard to larger contractors seeking opportunities, that, I imagine, is part of the thrills and spills of tendering. The simpler the process, it is less likely that you will create a trap for yourself, or an opportunity for a contractor. Furthermore, if a standardised process is adhered to, revision 2.1 would remedy a situation in which a contractor attempts to exploit an opportunity. The opportunity for exploitation will increase dramatically if people try to reinvent the wheel every time works are tendered for, because the documents will not have been tried and tested or exposed to contractors for a sufficient time period.

207. Mr McNarry: My constituency of Strangford is highly populated by contractors and subcontractors. I find it very difficult to deal — or cope — with the serious allegation of a backhander culture. Can that backhander culture be stamped out?

208. Mr Quigg: A procedure can be designed that limits the opportunity for that culture to exist. Some 10 or 15 years ago, contracts were awarded to contractors based solely on the lowest price. Some contractors abused that system by submitting blank documents or documents with one or two sections left blank. They would then pay someone to complete the work for just less than the next lowest price. However, that problem was fixed. Contractors were obliged to complete documents in full, and those were then opened in front of several people.

209. The current system is extremely exposed to corruption. Consider what happened in respect of the IST framework, for example. I must be clear that there is absolutely no allegation or suggestion of wrongdoing, but it is not difficult to see. I mark essay papers for Queen's University. I could award an exam paper 65 marks if I was in a good mood, and 55 marks to the same paper if I was in a bad mood. No one could say that I had done anything wrong in that situation.

210. Similarly, no one is able to produce notes about what has gone on when tender weightings are produced only after tenders have been received. In that current system, it is extraordinarily easy for someone on the marking panel to be very sympathetic to one tender over another. The way to stamp down on that is to make the system as objective as possible. The more subjective the process, the more opportunity there is for people to massage the marks up or down. The system is exposed to people who are inclined to do that. It is a big problem.

211. Mr McNarry: We might return to that matter, because it is a major problem. Do you wish to highlight any other issue to the Committee?

212. Mr Quigg: Every project can be procured in a different way. There is a danger in some of the ways that target-cost contracting, including early-contractor involvement and complex award procedures, are being used in low-value works. Many low-value works are being grouped to form mega contracts, and, therefore, SMEs are being excluded from the place. I have suggested three categories into which projects could fall, and it will be interesting to see whether any stakeholders pick up on that.

213. If a £100 million complex is being built, a case can be made for taking early contractor involvement, for working with target costs and for doing so in a sophisticated way. However, that is not appropriate in the case of a school that costs £1.5 million. If such a process were taken, SMEs would be excluded.

214. Before I came to the Committee, I talked to many contractors in order to sound out what they felt were the issues. The big lesson that I took from that was that they were very nervous about biting off the hand that feeds them in today's marketplace. Bearing that in mind, perhaps

pictures could be painted that are rosier than they are. I suppose that if contractors do not complain now, they cannot complain later.

215. Mr McNarry: You may not be able to answer my last question now, but you may be able to come back to us. Is there anything in this field that should be considered as cost-saving efficiencies that bring added value?

216. Mr Quigg: Cost savings will be achieved if the smaller-scale works are opened up to SMEs. Ultimately, they are more efficient because they do not carry the same overheads, and, therefore, they have a place. Equally, however, some of the procedures that are used in larger value contracts, such as target costs and early contractor involvement, will introduce better value. I have no difficulty with that; it is horses for courses. In my opinion, too much of it is trying to be too sophisticated and too clever. It must be simplified and standardised, which will save money.

217. Mr Golden: One way in which considerable efficiencies could probably be made is by trusting the supply chain. Contractors and those with whom they work should be trusted to deliver solutions. The Latham report, with which I am very familiar, and the subsequent Egan report, produced by Sir John Egan in England, emphasised that leadership by the public sector and trusting the private sector is a way of achieving efficiencies. It is obvious from the way in which design-and-build contracts are being procured that there is an ingrained lack of trust, which leads to inefficiencies.

218. I will illustrate that with an anecdote. A colleague of mine who is an architect thought that design-and-build contracts would be the death of architecture. He thought that design-and-build contracts would mean that an architect would be wheeled in once to design one building, which would be reproduced 50 times. I suspect that that might also have been on the minds of Latham and Egan. In fact, he is delighted with design-and-build contracts because the way in which those contracts are procured means that an architect will work with the contractor and another architect has to be employed by the public sector in order to check that the architect who is working for the contractor is doing what they think is the right thing. Therefore, it is now architects galore.

219. Mr McNarry: Is that because architects do not trust each other?

220. Mr Golden: A lack of trust — not by architects [Laughter.] — is inculcated in the system. For example, a school may need to be built to fit a certain number of pupils in a certain kind of environment that will have a certain level of heat efficiency and use a certain amount of electricity. Instead of having the confidence to ask a contractor to deliver on that and saying that the contractor will be sued if it does not deliver, we are wedded to traditional contracting in that we want to control everything from where the doors go to what colour the walls will be.

221. The contractor should be allowed to get on with it and be allowed to develop repetitive techniques in order to become more efficient. If that was freed up, if the level of trust was developed and if we accepted the solutions that the private sector gave us, there would be dramatic savings in the industry.

222. The Chairperson: As the Committee proceeds with the inquiry, it may be valuable if you would consider returning to a subsequent meeting, because I suspect that we will reach some issues that we may want to rehearse with you.

223. Mr Quigg: Yes; I would be delighted to return to the Committee.

224. The Chairperson: I am aware that other witnesses are waiting and that they have been very patient; however, I just want to finalise this discussion. There is a current project — Workplace 2010 — that has run into some difficulty because the fall in property prices has affected the capital receipts that were estimated, and because, of the two preferred bidders, one is considering eating up the other. The options facing the Executive are to continue the suspension until that situation clarifies itself, or, perhaps, to review the entire project.

225. I am intrigued by the reference that you made, because I was thinking that if that package was disassembled, would that not provide opportunities for local contractors and the local construction industry to engage in the project. That is a mega project that has attracted two mega players, and the locals have been squeezed out of the picture altogether.

226. Mr Quigg: That is a problem. I am sure that you have heard of PFI and PPP, and one of the difficulties with such schemes, particularly the larger ones, is that there is a lack of competition. Royal Brompton Hospital was a classic example of that. Initially, three bidders went through to the preferred status, one then pulled out while the other two kept going but, at the very end, another bidder pulled out. That left only one bidder and, therefore, the public authority said that it could not continue because there was only one bidder and the entire system had to be scrapped, which resulted in a delay of two or three years. By establishing what may be called mega projects, there is a danger of reducing competition and excluding lots of contractors who would do the individual projects very competently.

227. The Chairperson: Those contractors could, incrementally, achieve the same objectives.

228. Mr Quigg: Yes. The question then arises about whether the cost-benefit analysis really exists and whether you are persuaded by the argument for allowing a project to be undertaken as a mega contract.

229. The Chairperson: That was very interesting. We may, from time to time, correspond with you if issues arise in our work. I want to flag up the possibility that we may ask you to come to the Committee again.

230. Mr Quigg: I would be quite interested to do that. We can see how the review goes.

231. The Chairperson: Thank you very much. We must move on quickly.

11 February 2009

Members present for all or part of the proceedings:

Mr Simon Hamilton (Deputy Chairperson)
Mr Roy Beggs
Dr Stephen Farry
Mr Fra McCann
Ms Jennifer McCann
Mr Adrian McQuillan
Mr Declan O'Loan
Mr Ian Paisley Jnr
Ms Dawn Purvis

Witnesses:

Mr Declan Magee
Ms Catherine Thompson
Carson McDowell
Solicitors

232. The Deputy Chairperson (Mr Hamilton): The next item on the agenda is a discussion of public procurement practice. I advise members that, in our discussion with the witnesses, they should be mindful of the legal confidentiality attached to individual procurement cases; any discussion should stick to general terms rather than specific ones. I welcome Declan Magee and Catherine Thompson, who are both public procurement consultants with Carson McDowell Solicitors. I invite Declan and Catherine to make a brief presentation to the Committee; I am sure that there will then be a few questions.

233. Mr Declan Magee (Carson McDowell Solicitors): We have not prepared a presentation, but I believe that copies of our firm's recent update on procurement have been circulated to some members of the Committee. We are here to answer any questions that Committee members may have in relation to public procurement and its growing influence in the legal sector in Northern Ireland. I am a partner in the litigation department of Carson McDowell Solicitors, and my remit includes any legal challenges brought to the courts in relation to procurement processes, either from private entities who submit tender responses or from public-sector organisations seeking to defend legal challenges.

234. Catherine works in the corporate team in Carson McDowell Solicitors and has a greater influence in advising our public-sector clients on how to procure safely and ensure that their systems are robust enough to withstand a challenge. We are here today because we have different experiences in the contentious and non-contentious areas of public procurement in Northern Ireland. We are happy to address any questions that the Committee has about those areas.

235. Ms J McCann: My question relates to small- and medium-sized businesses and social-economy enterprises. We have had discussions with some such businesses and enterprises, and they have told us that it is very difficult to get into the tendering process. Is that your sense of the situation? How can that process be improved for them?

236. Environmental and social aspects of public procurement have been flagged up by the Central Procurement Directorate (CPD). Is there any legal barrier to including those social clauses at the tendering and contract stages? It seems that value for money is given the highest priority and is regarded as more important than social and environmental benefits. Is there a legal clause that prevents social and environmental clauses being included? If there is, how can that barrier be overcome by small- and medium-sized businesses and social-economy enterprises?

237. Mr Magee: The difficulty that small- and medium-sized entities have with the procurement process is that it has become so labour-intensive for them. The days of being able to put in a straightforward tender submission to a public-sector body are going. A number of different procuring exercises are going on at the moment that requires companies to assign a procurement specialist to them. That can prove to be a heavy economic drain on small- and medium-sized enterprises (SMEs). As a result of the time that is required to prepare their responses, those businesses must carefully pick the tenders that they submit.

238. I found that some of the recent Roads Service procurement exercises placed a heavy onus on health and safety considerations. Roads Service asks many questions that must be answered in great detail in order to establish that organisations have the necessary health and safety standards to do work for the Roads Service, whereas the Construction Employers Federation

(CEF) has a process called Safe-T-Cert, which is a very detailed exercise that businesses can go through in order to become certified by the CEF.

239. It would help small- and medium-sized businesses if that certification were deemed proof that they had undergone a recognised process to obtain third party accreditation from an organisation such as the CEF. That would remove the requirement to complete a separate detailed and substantive health and safety section in tender applications. It would be beneficial to have anything that provides small- and medium-sized entities with the ability to fairly procure projects locally and reduces the labour-intensive nature of the procurement process.

240. Ms J McCann: Is it possible to insert the social clauses at the tendering and contract stages? The Committee has heard evidence indicating that there are legal barriers to doing that, even in cases in which the contract might provide social and economic benefits — do any such legal barriers exist?

241. Ms Catherine Thompson (Carson McDowell Solicitors): The regulations provide for what can be judged at each stage of the process. The contractors or providers are chosen at the selection stage; the contract is awarded on the basis of the proposed methodology at the award stage; then there is the contract stage — those are the three stages.

242. The regulations impose, in a way, barriers to incorporating certain social criteria at the beginning of the process. The process is complicated; the current law has a lot of grey areas and there have been quite a lot of court cases. However, there is more freedom to insert conditions into the contract. A detailed discussion about particular questions and particular social criteria would be required; we would normally suggest taking specific legal advice on the different criteria.

243. Ms J McCann: Can conditions be included at the contract stage so that the social clauses are part of the contract?

244. Ms Thompson: The terms that are included in a contract depend on which criteria are being considered. There is scope to insert certain environmental and social criteria not only at the contract stage but prior to it, but that would depend on the nature of those criteria.

245. Mr F McCann: Social clauses — or the lack of them — is something that people have been lobbying us about. In the past, when tenders for contracts were awarded, several major contractors came in and, rather than allowing local people to compete, they brought a workforce with them. That raises a number of major concerns. Is there any regulation stating that jobs should be competed for on an equal footing, rather than companies being allowed to come in and bring an entire workforce with them? That practice is having an impact on local contractors.

246. Mr Magee: Yes, it is possible to have such a condition. I am aware that some of the tenders for various infrastructure projects for the London Olympics contain such provisions, whereby part of the criteria for getting through the invitation-to-tender stage is that the applicant must indicate its procedures for bringing in long-term unemployed people from the locality of the project concerned.

247. The Deputy Chairperson: From your experience, can you suggest how more flexibility can be found in existing European procurement law in order to encourage SMEs? Northern Ireland is heavily dependent on SMEs but there is a sense that they are losing out to bigger companies from here and elsewhere, and that is part of the reason why we are having this discussion today. Is there a case for splitting contracts into smaller lots by way of thresholds, for example, in order to allow SMEs to compete more vigorously for contracts? Do you have any other ideas of how to achieve that?

248. Mr Magee: The main thing is to break up the contracts, as you rightly point out. Recently, some difficulties were encountered when vast projects were vacuumed up into framework scenarios. That automatically makes it difficult for small- and medium-sized entities to tender fairly for that work, and makes it more attractive to non-local firms to submit a tender. Therefore, although frameworks have their advantages in some circumstances, when a number of different contracts are packaged together to the scale that they were in the two recent frameworks, that presents a barrier for local firms, as it makes it difficult for them to get a fair return from local procurement practices.

249. Given the current market situation, it is in the interest of the public purse to split up contracts, because so many different entities are keen to obtain public work. It is in the interest of the Northern Ireland taxpayer to reconsider whether the public purse should be tied to four or five companies for a long period. I think that the short answer is yes — contracts should be split, as you have suggested, so that more people have the opportunity to go for them.

250. Mr F McCann: What are the benefits and drawbacks of using large framework agreements in the NI public-procurement market?

251. Mr Magee: The benefit of a framework agreement is meant to be the existence of a more collaborative spirit between contractors and clients. If a contractor and a client are thrown together for a four- or five-year period, they will want to create a situation in which they want to work together and that will enable the contractor to learn other elements about the client. That will reduce the risk of contentious situations arising and is the basic benefit of the framework set-up. It is believed also that frameworks make procurement easier on the public purse, because four or five entities can be called on to tender for projects rather than having to go through the full procurement process. Certainly, frameworks have their advantages.

252. In Northern Ireland, the problem was that we tried to introduce two significant frameworks, which meant that we went from one extreme to the other. So much work was pulled together in those two frameworks, which were both limited to five entities, that it was always going to be a risky situation. In creating the frameworks, a number of different public procuring bodies — which may have had good relationships with a number of different local firms — were told, all of a sudden, that the number of public procuring bodies would be limited to a set number of contractors, probably five. Therefore, creating the frameworks was always going to be high-risk, and a number of different companies felt threatened by the fact that so much work was going to be cut away from them. To be frank, the disadvantages of those two frameworks were obvious and that should have been obvious at the outset.

253. Frameworks are a good idea for procuring work such as professional services and consultancy. It is clear that they have advantages — they remove much of the labour-intensive element of the procurement process. However, the two frameworks that were used in Northern Ireland simply sucked up too much work and did not work in the local market. The situation is different in England, where there are 20 or 30 frameworks and if a firm does not hop on one, it can hop on the next one that comes along. Creating two frameworks in Northern Ireland was always going to be a recipe for trouble, given that the number of companies was limited and they had so much work under them.

254. Mr F McCann: In another Committee that I am a member of, we discussed whether housing association projects could be grouped together so that larger procurement contracts could be put out to tender. One of our concerns was that local companies would be unable to bid for those contracts because they would be far beyond their means. In the past, major multinationals have applied for contracts, sliced off a profit from the top, and then subcontracted out the work. Is there a legal way to stop that happening? Our concern is that that affects the local workforce as well as the quality of work and the finished product.

255. Mr Magee: The fact is that it is a European market; if a contract soaks up between £400 million to £600 million, it will attract UK and European-wide entities such as Laing or Balfour Beatty. That is a source of frustration for local companies, because those larger companies tender for a project and then bring in local subcontractors to do the work — the profit goes out and the workers stay here. The lesson is to make it less attractive for the UK and European entities to tender for those projects.

256. The current market is highly competitive; if a £15 million project is put out to tender, so many firms will tender for it that it will be keenly priced. In my experience, there has not been a particularly contentious situation between the local contractors and the public tendering bodies in Northern Ireland. The idea is that frameworks will bring this great collegiate spirit; however, I do not think that there has been a contentious relationship between the local contracting companies, the construction industry and the procuring bodies here. The rationale for having frameworks is that they will bring all the different interests together, but I think that we are pretty much together as things stand.

257. Mr Paisley Jnr: In your experience, what are the main reasons for legal challenges being taken in Northern Ireland? Have you noticed any trends developing?

258. Mr Magee: If a client is told that their tender has been unsuccessful, there may be a very sharp, hot period in which they will approach us. They may or may not have had a full debrief but, by and large, everyone who comes to us with a potential challenge has a genuine grievance about the way that the procurement process has gone. I have never had a client come in to say that they have not got a job but would like to have a crack at getting on the project. Without exception, everyone who comes to us has a genuine grievance about the procurement process.

259. The problem is that there is an Alcatel period, which is a pretty short standstill period during which the companies that tendered can communicate their dissatisfaction with the procurement process to the procuring body. That quickly brings about a siege mentality, as the client is unhappy because they think that they should have had a good chance of getting the job; also, the procurement process is being criticised, which causes the procuring body to become unhappy. The Alcatel period provides only a tight window in which to appeal a decision before a contract is awarded. By and large, companies are not interested in being awarded damages; they want a fair crack at getting the job.

260. In such a scenario, the next step is to advise the client to apply for an injunction to stop the contract being awarded. The client is not interested in receiving damages in 18 months' time. Paying damages is not in the interest of the public purse either, because it means that it will pay double for a contract.

261. As I said, there is a very hot period of approximately 10 days before the award is made and the reason that we are drawn to making a court injunction application is because that contentious situation arises at a very early stage. Once the court process starts, it is very hard to stop. When our public-sector clients are dealing with a company that is unhappy with the procurement process, we advise them to try to let that hot period cool a bit.

262. Often, we engage in correspondence with the private entity that is dissatisfied. If the client is happy to do so, we propose that the dissatisfied tendering party be shown the winning submission, because, by and large, the procuring body has made the right decision. If that hot period is allowed to cool a bit and if the unsuccessful tenderer is allowed to see the successful tender, they will not, by and large, raise a challenge. That is because the matter has been allowed to cool and everybody has aired their views and issues, and usually the process continues without a challenge. The industry is looking at providing an avenue that tenderers could go down, which is a very good idea.

263. Mr Paisley Jnr: Would that be something like a debrief after an interview?

264. Mr Magee: It is post the debrief stage. For example, before a legal challenge is mounted, we would contact a retired judge and tell him about the issues and points that have been raised by both the dissatisfied tenderer and the procuring body. The judge will give a quick and dirty analysis of whether he thinks that the challenge has any merit. That analysis would, therefore, be made at an early stage, before a legal challenge is mounted. If a retired judge says that he does not think that there are any grounds for a challenge, nine times out of 10, a legal case will not be taken.

265. The regulations specify that a party must have a valid remedy, which is usually an injunction. The objective is to reduce the number of people who go to court to raise a challenge. Such a system — which I know that the CEF is working on — could eradicate a large percentage of the legal challenges that are taken. No one wants the entire public spend to be paralysed through procurement challenges.

266. Mr Paisley Jnr: The role is similar to that of an ombudsman?

267. Mr Magee: Yes; that is exactly right.

268. Mr Paisley Jnr: In your experience, have you identified a common error in procurement exercises that normally results in tenderers presenting a case to you?

269. Mr Magee: No. Procurement is such a varied beast. Every client wants different criteria and goes about the tendering process in a different way. The CPD does a pretty good job, by and large, but it covers only one aspect of the procuring of public money in Northern Ireland. If that body, or another body, were to cover more of the public spend in Northern Ireland, there may be more symmetry in procurement processes and we may see the same issues arising. However, at the moment, procurement is a pretty varied beast as regards the issues that arise from it.

270. Mr Paisley Jnr: Again in your experience, is there more procurement litigation in Northern Ireland than in the rest of the UK or the Republic of Ireland?

271. Mr Magee: Yes; unfortunately, we are a market leader.

272. Mr Paisley Jnr: Why is that?

273. Mr Magee: The market here is a lot tighter.

274. Mr Paisley Jnr: What do you mean when you say that it is a lot tighter?

275. Mr Magee: People here are more aware of their legal rights. Also, there may be an impact from the publicity that the challenges have received; that has a snowball effect. The two frameworks have received quite a lot of publicity, and people are aware of their ability to challenge contracts. From our experience of advising people in Scotland, England and Wales, procuring in Northern Ireland is pretty good — public procuring exercises in other parts of the UK are probably behind ours in relation to compliance.

276. Mr Paisley Jnr: Are we market leaders because there have been a lot of successful outcomes and clever lawyers — such as you and Ms Thompson — can get successful outcomes, or is it due to the fact that there is a litigation culture here?

277. Mr Magee: No. It is important to think about the reason why the regulations were brought in, which was to have an open and transparent public procuring process throughout Europe, so that everyone had a fair crack at the contracts and they were not being awarded on the basis of historic reasons, such as people knowing each other. The courts will always view such cases very carefully, because the reason for the process is to ensure objectivity and transparency. I would be surprised if, in five years' time, the experience that we are going through now had not been replicated in England and Scotland.

278. Mr Paisley Jnr: Therefore, we are not only market leaders, we are trailblazers.

279. Mr Magee: Yes; we can take some comfort from that.[Laughter.]

280. Mr McNarry: That will provide pensions for Carson McDowell Solicitors.

281. Mr Magee: Yes; and why not?

282. Mr Paisley Jnr: Don't kill the goose that lays the golden egg.[Laughter.]

283. You mentioned a process involving a retired judge reviewing cases — which I referred to as an ombudsman-type role — that may reduce some of the need for litigation or resolve some of the problems before they reach the injunction process. It is not that I want to talk you out of business, but could anything else be used to reduce litigation in the future?

284. Mr Magee: I am more than happy to be talked out of business because what I gain on litigation, Catherine in the corporate team loses. Everyone is impacted by the outcome of cases. We have discussed why there are so many challenges: another reason is that public bodies seem to be conscious of their budgetary position; if they do not let a contract in a particular year, the money for that drops out of their budget. That is another factor that is mentioned regarding why people cannot come to an accommodation and understanding in relation to a particular challenge.

285. As regards reducing the number of legal challenges, even if there were an agreed process whereby dissatisfied people could take their case to a body that would do a quick and dirty analysis of it, we could still never get away from the fact that the regulations contain a provision allowing tenderers a fair remedy, which tends to be an injunction. We want to stop people getting to that provision in the regulations. At the moment, the siege mentality is the norm and we must try to get away from that.

286. The Chairperson: Following on from your responses to Ian's questions, what element of the cases that you see do you regard as people taking a bit of a punt?

287. Mr Paisley Jnr: A grievance punt.

288. The Chairperson: People may have invested a lot of time, energy and resources in tendering for what may be a substantial project, which would have given them a lot of work for a long time. They may be so annoyed that they did not get the contract that they may think that they have lost enough and decide to take a bit of punt to see what happens. From some of your answers earlier, I got the sense that an element of that is happening; is that a fair comment?

289. Mr Magee: No; the opposite is the case. The number of clients who ask us to just have a crack at making a challenge is zero. In the case of a challenge, private companies are taking on the people who feed them work. It is extremely expensive to take procurement challenges. There are risks, and companies need to spend a lot of time preparing for, and being involved in,

a case. I have never come across a company saying that it wants to give a challenge a go simply because it lost out on a big contract.

290. The Deputy Chairperson: From a company's point of view, that is not be the right basis to go on anyway.

291. Mr Magee: No; it is not. We often have clients who have genuine concerns but who do not wish to challenge the procurement process, even though we have told them that the process was not compliant, because they do not wish to bite the hand that feeds them. In my experience, a company has rarely, in fact never, asked us to have a crack at a challenge after we have told them that the process was compliant. We would not take on such challenges.

292. Mr O'Loan: Following on from Ian's last question, I want to discuss the proactive approach that the public sector can take to avoid getting anywhere near a situation in which a legal challenge is made. What steps can the public sector take to ensure that it is fully compliant with legislative and common-law obligations in procurement?

293. Mr Magee: The public sector's systems for ensuring compliance are pretty good. The main thing is that the public sector learns the lessons from the cases in which it is unsuccessful, but I am not sure whether it does. The Department of Finance and Personnel (DFP) is appealing both the framework decisions to the Court of Appeal. I have a vested interest in that I am involved in one of those cases, but I have absolutely no idea why the Department is doing that. It does not serve anyone in Northern Ireland to have the frameworks frozen for another round of legal battle. The reasons why both cases were unsuccessful were clear.

294. The appeals impact not only on the construction sector but on directly related professional-services frameworks. When the framework agreements initially went out to tender, there was a framework for the consultants and a framework for the professional services — not lawyers, but quantity surveyors, architects and engineers. When the frameworks were put to the industry, all the professional services had to decide whether they went with the clients or with the contractors. It was very rare that they elected to ride both horses.

295. I am not sure why DFP is appealing the decisions. That impacts not only on the construction firms, but on the wider professional sector, which has been as badly affected by the slowdown as the construction industry has been. There are engineers, surveyors and architects who have been affected badly by the fact that they elected to go with the contractors and have no work as a result of that decision.

296. The systems for ensuring compliance are not bad; I would give them a mark of seven or seven and a half out of 10, especially the CPD processes — they are not that bad. It is important that the public sector learns the lessons from the decisions that have been emanating primarily from Belfast; however, it is in pretty good shape.

297. Mr O'Loan: You have answered one of my supplementary questions. Do you feel that DFP is being too dogged in its stance on the appeals and is unwilling to say that it has made a mistake and that it needs to learn from that?

298. Mr Magee: I am baffled as to why DFP is appealing. I must declare that I have a vested interest because I am involved in one of the cases; however, had we been involved on the other side, I would not have advised DFP to appeal. I appreciate that elements of the advice on those defences are not coming from within Northern Ireland, but I am strongly of the view that taking the cases to the Court of Appeal and thus delaying them for a further period, is not in the interests of the Northern Ireland public.

299. Mr O'Loan: That is a very important piece of evidence. Your stance is that even though some major, embarrassing public challenges have been successful, the overall quality of the public procurement system — certainly at CPD level — is, nevertheless, pretty good, although clearly not good enough, given that those challenges have been successful. Is there also an issue with the system below the CPD level — that is, with the centres of procurement expertise in Departments?

300. Mr Magee: Yes; that is right. The cases that I have been involved with have not only been challenges relating to the CPD. If there were a centralised process of procuring — that is, a unified and more structured procuring body that oversaw public procurement and took on board the issues that arise from cases — that would create a higher degree of confidence that the issues that are faced by one centre of procurement expertise would feed through and inform all of the procuring bodies in Northern Ireland. It would be good for both industry and the public sector to have a centralised body that has more control.

301. Mr O'Loan: Some of us thought that the CPD ought to be performing that function but it does not appear to be doing so; not on the basis of that evidence, at least. There is a final and more particular point that I want to ask you — I do not know how far you can go in answering it, but obviously you have a lot of experience of the recent litigation processes. Can you say anything about the manner in which the public sector — particularly the CPD — handles those actions and the quality of its systems for dealing with litigation cases?

302. Mr Magee: The two main challenges have been in relation to frameworks. In relation to the IST case that I was involved with, the judgement speaks for itself as it outlines clearly the main deficiencies that were found, particularly the lack of evidence from what was indicated as being a thorough, lengthy process of analysing the shortlisting process. That was one element that became very clear.

303. The other main point that arose from that decision was in relation to the aim of the regulations, which was to ensure that there was an open and transparent procuring process. In that instance, there were developments later in that process that did not follow the guidelines that were coming from throughout Europe about what was required in order to have an open and transparent process and what could and could not be done.

304. In relation to the schools framework the flaw was slightly different as it related to the way that the pricing system had been analysed and prepared, which may not have been reflective of the true market prices that tendering companies work with. I cannot say that lessons are not being learnt from those cases, nor can I comment on what the CPD is putting in place to learn from these issues; the fact is that a different suite of issues arose in each case. The ways that the criteria are applied tend to be the problem.

305. Mr O'Loan: Irrespective of what has happened before a challenge is made, is the CPD good at handling the challenge?

306. Do I understand by your silence that you want to pass on that question? [Laughter.]

307. The Deputy Chairperson: You do not have to answer.

308. Mr O'Loan: You can plead the fifth.[Laughter.]

309. Mr Magee: I cannot recall whether I have parliamentary privilege.

310. Mr Paisley Jnr: I think that he has answered already.

311. Dr Farry: How does Hansard report a long pause?[Laughter.]

312. Mr Magee: I am not sure whether the CPD fully reflects on issues that are raised at an early stage. There may be a better way of dealing with those issues — the ombudsman idea that was mentioned earlier, for example. I suspect that the CPD may not appreciate at an early stage the flaws in its system, because, quite often, procuring bodies — especially in Scotland and England — will recognise a problem and rectify it, but that is the exception rather than the rule here. In other jurisdictions, flaws in procuring processes are realised and dealt with before the hearing stage is reached. That is a problem from the taxpayer's perspective, as there is no recognition at an early stage that a process may not be compliant.

313. Dr Farry: The European Commission recently agreed accelerated procedures that will see the process reduce from 87 days to 30 days for major procurements, as an exceptional measure to help the economy. How can the benefit of that be maximised in Northern Ireland?

314. Ms Thompson: I have not yet had to advise on that, because it is a recent change. We want to get the requisite projects lined up and ready to go. However, the preparation at pre-procurement stage is the most important stage for a lot of procurements. It is important to get everything set up before the Official Journal of the European Union (OJEU) process begins. Therefore, a lot of planning will need to have been undertaken before the accelerated procedure is used — the planning stage is crucial to that option being taken-up.

315. Dr Farry: On the topic of European-wide issues, I am conscious of the economic downturn that we are all facing. Are you expecting an upsurge in litigation, which may reflect a potential bias from national or regional Governments trying to keep procurement contracts local?

316. Mr Magee: The short answer is no. I would be very surprised if procuring bodies started putting in criteria that were so locally focused that the process would not be compliant. There would be challenges from non-domestic firms if that were to happen.

317. Dr Farry: Is that a black-and-white process, or are there some grey areas?

318. Ms Thompson: The founding principles of the EC treaty and the European Commission include non-discrimination, equal treatment and transparency. I have never come across anyone in Northern Ireland who would question those principles or who would go down the road of only buying local; I think that is very unlikely to happen.

319. Dr Farry: I have confidence in our Government, but do Northern Ireland companies have difficulties when they are trying to do business with other European countries that may not have the same culture of compliance with European regulations?

320. Ms Thompson: I do not have a lot of experience outside Northern Ireland, England and Wales, but the principles have been around for long enough now that there should not be any distinction. Everyone in Europe should comply with the directive and with those principles. Hopefully, therefore, no issues would arise if Northern Irish contractors were tendering for contracts in Europe.

321. Dr Farry: Returning to the issue of speed, do you have any suggestions regarding how the tendering process can be made simpler, more streamlined and more user-friendly for SMEs and social economy enterprises?

322. Ms Thompson: One of the major factors that we are addressing in Northern Ireland is accessibility to information. The 2004 directive, which was implemented here as the 2006

regulations, has permitted the electronic transfer of notices. A lot of information can now be gained from the Internet, so people can find out what tenders are coming up. Many public-sector organisations are posting their tenders on their websites; that is a good start and that practice should continue. Moreover, many organisations are considering standardising documentation to ensure that SMEs have the wherewithal to obtain and provide that information at not too much expense. Those are important measures that can be helpful.

323. Ms Purvis: In your experience, what are the dominant award criteria for public procurement contracts in Northern Ireland?

324. Mr Magee: The award of contracts has moved away from the lowest price; that is a welcome development and will continue to be the case. The awarding of contracts hinges on contractors' quality and experience. Selecting on the basis of lowest price brings its own problems. No one from the procuring bodies, or from the sectors that procure, wants to return to awards based on lowest price. As the market gets tighter and more competitive, prices will become more similar, and I believe that quality and experience will remain the determining factors.

325. Ms Purvis: How can quality criteria be marked objectively?

326. Mr Magee: There is a variety of ways to do that, the best of which is to examine other examples or similar projects. At times, issues arise as to whether those examples are properly analysed and verified. That aspect might — and should — come to the fore more, whereby similar projects and experiences are analysed and tested by the procuring bodies.

327. Ms Purvis: Will you give an example?

328. Mr Magee: I know of examples of public-utility companies in Northern Ireland having tendered for equipment needs and having requested that tenderers satisfy them of their equipment standards and their availability to cover particular aspects of work. Some of our clients have known that they were the only company with the required equipment and that their competitors did not have the equipment to satisfy the tender criteria, yet our clients were still unsuccessful in the tender process. We have had to lean on those processes because we know that, had the tenders been analysed properly, the procuring body would have been satisfied that the company that won the contract was unable to carry out the required work.

329. Ms Purvis: Should the criteria be tested more rigorously?

330. Mr Magee: Yes. We should be moving away from awarding contracts to those tenderers who write the best essay and submission, because it is not a true test of a company's ability to do the work.

331. Ms Purvis: Will that result in more bureaucracy and be more time consuming?

332. Mr Magee: Yes. However, if that results in public money being spent better, it is worth doing. There is no point in awarding contracts based on goodwill because that will, ultimately, lead to the system being abused and a contractor being unable to do the work.

333. Ms Purvis: In your experience, what proportion of contracts is now awarded on the basis of price or contract duration only?

334. Ms Thompson: In the past 12 months, I do not know of any contracts that have been awarded on the basis of price only. I advise the public sector on compliance with the regulations.

The majority of awards are made on a qualitative basis ie to the "most economically advantageous tender", as is stated in the Public Contracts Regulations 2006. That allows for an assessment of quality and functional characteristics, which procuring bodies are permitted to use under the regulations, rather than selecting the lowest-priced option.

335. Ms Purvis: Is contract duration a criterion that is high on the list?

336. Mr Magee: Contract duration tends to be stipulated in the terms of the contract and tends to be a specified period. Contracts now last for longer periods, because there is, unfortunately, a natural fear of procuring. People think that procuring for a longer period places them in a safe zone where they cannot be challenged. The average duration of contracts has started to lengthen.

337. The Deputy Chairperson: Are procuring bodies allowed to give a ballpark figure when drawing up tenders? Can they state a certain sum that they expect the cost to be close to?

338. Ms Thompson: Procuring bodies have to give an estimated value that covers the life of the contract. For example, it may be decided that a three-year contract is required for a project. If there is an option to extend that contract by another two years, subject to performance in the initial three years, a value would have to be given for five years, because that is the potential full life of the contract. In any European advertisement, it is essential that that box is ticked as it ensures that tenders are received from companies that are capable of doing the job. On the flip side, companies will not tender for a job if they deem the value or scope of the contract to be too large. It is important that figures are set out as accurately as possible at the outset.

339. Mr Magee: Take the example of a health trust carrying out a procurement exercise for a hospital in which the main aim is to ensure that a hospital is well built within time; the trust may undertake that exercise through a set-price, open-book procedure that gives good collaboration between contractors and the trust so that they can see the various costs and profits. Therefore, the price for doing the work is set and there is not the scope for additions, variations or top-up fees. That is one example, but there are a variety of different ways of completing a project within budget.

340. The Deputy Chairperson: Further to Dawn's question about the contract not being awarded purely on the basis of cost, if a guideline price is given and a local company cannot get anywhere near it, price would be the determining factor that knocks that local company out of the procurement process. The local company would not even get past the starting gate.

341. Mr Magee: By and large, price is a strength for local companies. Unless a project is particularly significant, local companies tend to be as cost-effective as companies that come from other jurisdictions to carry out the work. If price is a strong feature of the tendering process, that will favour local entities that are tendering for contracts.

342. Mr McQuillan: What are the main difficulties encountered by SMEs and SEEs when delivering contracts?

343. Mr Magee: As lawyers, that is a difficult question for us to answer. We tend to find that our clients are careful about what they do and do not tender for. A fair degree of time and effort is put into preparing a tender submission, and our clients ensure that the necessary skills, capabilities and subcontracts are all available locally. As regards getting involved in something and not realising what was involved, I have not come across that.

344. Mr McQuillan: Can small- and medium-sized enterprises join together to tender for a contract? Are there any examples of that?

345. Ms Thompson: That relates to the earlier point about the flexibility of the legislation. Splitting a contract into lots was one option that we discussed. A second option is for small- and medium-sized enterprises to come together as a consortium to tender for work; that is what is happening with a lot of the contracts that are going out to procurement at present.

346. Mr McQuillan: Would that allow SMEs to take on large multinationals?

347. Ms Thompson: Yes; that is the aim.

348. Mr McNarry: Thank you both for coming to the Committee; I have found your professionalism useful and helpful. Can contractors be challenged, at tender stage, to indicate what subcontractors they are likely to appoint?

349. Mr Magee: If it is anticipated that a company will call on subcontractors to carry out work, the tender process can have a provision that calls for those subcontractors to be identified. In the framework agreements, the full suite of people working on the contracts was spelt out in great detail. So, yes.

350. Mr McNarry: In relation to specifications, how acceptable to a client is the use of other approved material? In other words, on a like-for-like tender basis?

351. Mr Magee: That depends on how the specification is detailed. If the tender process is good and open, it will give the specification and also allow the tenderer to propose a cheaper way of fulfilling the contract. In the area of waste recovery, for example, the industry is perhaps ahead of the client. Those tender exercises should always be open, so that more cost-effective and environmentally effective procedures can be proposed.

352. If the specification is not open, clients can put in two or three different tender submissions, especially if they have several group companies. Tender processes should be as open as possible, so that out-of-the-box thinking can be encouraged. The problem with a lot of tender submissions is that some of them are very tight, and the applicant might have only 400 words with which to explain what he is going to do. In those situations, the tender is not open in nature, and the tenderer is watching where the commas and full stops go because the space is so limited.

353. Mr McNarry: How can local manufacturers of materials that can be used in contract work — particularly building work — be afforded the opportunity to have their materials used? That would be of benefit to Northern Ireland and to that company and its workforce. Certain materials may have to be approved, but if they are not specified — and I do not think that the law allows them to be excluded — how much locally manufactured material, which was not the material specified, would the client accept?

354. Mr Magee: We must be careful about suggesting that, for example, a contract which specifies that 80% of the material to be used in a project must come from County Antrim and 20% must come from County Down.

355. Mr McNarry: I would put it the other way round.[Laughter.]

356. Mr Magee: Returning to the key elements of the process — that is, transparency, openness and fair competition throughout Europe — it would be tricky to specify conditions such as those which I just mentioned. However, such conditions could be linked to the social elements in the tender documentation.

357. Mr McNarry: How does a design-and-build contract operate within the procurement system? Perhaps it does not; I do not know.

358. Mr Magee: A client can specify a variety of elements in a contract, in relation to what work it expects to be done and how that is priced. As long as a client complies with the various obligations of openness and transparency, it can tell tenderers that it wants a school, show them the land and ask to be shown what the tenderers will build and how much it will cost. There is great scope for design-and-build contracts; they are not affected by the regulations. At the end of the day, the specification comes down to client preference.

359. Mr McNarry: To go back to the point that Ian Paisley Jnr raised, there is more potential for some form of litigation if a company failed to win a design-and-build contract that it had been invited to tender for but felt that its design was better than the design that won.

360. Mr Paisley Jnr: A company might also suspect that its design was plagiarised.

361. Mr McNarry: That could happen. Certainly, there was a time when schools were all built in the same way, but I know that we are looking for something a bit more than that now. Design-and-build concepts are more acceptable to the industry now, because they are easier to read and follow, but it is a much bigger decision to make — for example, if the tender is for the building of a hospital.

362. Mr Magee: There will always be an argument between subjectivity and objectivity. No single answer covers all procurement projects. Courts will be loath to determine whether a client was right in preferring one design over another. In such a subjective area, a court will be reluctant to get involved in second-guessing what the client wants, unless the decision is badly out. The court is more concerned about whether the procedures were fair, just and complied with the regulations, rather than whether it prefers a different type of school to the one selected. A court will always be reluctant to second-guess the subjective element of the client's decision.

363. Mr McNarry: Having heard from the Committee, are there any additional issues that you believe we should examine during the course of our inquiry? Has anything been left out? Would you like to put your head on the block?

364. Mr Magee: We all want greater public spend and fewer challenges. There should be a procedure for dealing with challenges before the litigation stage is reached — the ombudsman idea, for example. Once stuck in litigation, it becomes very difficult to pull one's feet out of it. We are blessed with very good and responsible construction bodies, such as the CEF and the Quarry Products Association. If those organisations are shouting that something is not right for their members, it is not right for their members, by and large.

365. A dangerous scenario can arise when the industry cracks on with a tender process and makes comments about it, but the client does not listen to those comments. The main objective is to reduce the number of challenges, and the key to doing that is to have a facility that provides a quick analysis outside of concerns about timing and budgetary restraints.

366. Ms J McCann: You said that quality and experience were the dominant award criteria — how is that calculated? Are percentage marks awarded for quality and experience, for instance? Where do the social and environmental criteria sit in the marking process?

367. Ms Thompson: To clarify: experience and quality should not be assessed at the same time. Recent case law indicates that at the selection stage, the regulations allow for the experience of the tenderer to be considered. Therefore, the company's experience is a pre-qualification hurdle at selection stage. After that, quality of the tender submissions can be assessed.

368. There is quite a restriction on how social criteria can be used at those two stages. It is easier to insert social conditions into the contract, which sits behind the tender. The fact that there are three stages makes it quite tricky to give a single answer to that question, because the way that those factors are judged will depend, first, on the criteria, and, secondly, the stage of the procurement process. We should be happy to reply in writing, if the Committee want to contact us with a particular question about that.

369. Ms J McCann: The Committee has heard evidence that makes it clear that the social and environmental criteria exist. I am interested to know what percentage is awarded to those criteria at the marking stage. For example, how are tender applications from enterprises that employ the long-term unemployed or provide apprenticeships marked? The Committee has heard that tenders are being judged on experience and price as opposed to social and environmental factors, yet we are being told that those factors are taken into account. I know that you cannot go into detail on that now, but I am keen to contact you in writing with some questions about that.

370. Ms Thompson: That is not a bad idea; thank you.

371. Mr Paisley Jnr: I am aware that the witnesses' experience extends beyond Northern Ireland and across other jurisdictions. How do you rate the Northern Ireland public sector compared to that of our neighbours? Sometimes, we take a narrow view: we look at how we stand and see things as being very good or very bad. Bearing in mind that we are top of the litigation stakes, how do our procurement practices compare with those in the rest of the UK?

372. Mr Magee: We are pretty good; I would mark us at seven or seven and a half out 10. The last exercise in which we were involved in England related to a tender process for Manchester City Council. During one of its meetings, that council confirmed which company it had decided to award a contract to; however, it had forgotten to hold a procurement process. Lo and behold, the council carried out a procurement process and awarded the contract to the same body — unfortunately, that was not our client, which was a local company.

373. I believe that procurement practices here are fairly good. I have no doubt that we are going through the learning exercise and the core process that other jurisdictions will go through in due course. It would be unfair to say that the procuring processes in Northern Ireland are deficient compared to those in other jurisdictions; in fact, our processes may be better.

374. Mr Paisley Jnr: That was very helpful.

375. The Deputy Chairperson: Thank you, Declan and Catherine, for attending this morning's Committee meeting and providing evidence. I am sure that all members will agree that it was useful and important to gain an insight on the issues from your perspective.

18 March 2009

Members present for all or part of the proceedings:

Mr Mitchel McLaughlin (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Roy Beggs
Dr Stephen Farry
Mr Fra McCann
Ms Jennifer McCann
Mr David McNarry

Mr Adrian McQuillan
Mr Declan O'Loan
Mr Ian Paisley Jnr
Ms Dawn Purvis
Mr Peter Weir

Witnesses:

Des
Armstrong
Brendan Department of Finance
O'Neill and Personnel
Brian
Doherty

376. The Chairperson (Mr McLaughlin): You are very welcome. We are joined today by Des Armstrong, who is the director of the Central Procurement Directorate (CPD), and Brendan O'Neill, who is the policy adviser for the directorate's corporate services division. We are also joined by Brian Doherty, who is the deputy head of the Departmental Solicitor's Office. Thank you for arriving earlier than planned, as it solves a logistical problem for us. I invite you to make some opening remarks, Des, which will be followed by a question-and-answer session.

377. Mr Des Armstrong (Department of Finance and Personnel): I wish to follow up on the remarks you made before this evidence session began, Chairperson, on what may or may not be said in an open forum. Brian Doherty is with us because he is an expert in the field, and he will advise us as we proceed.

378. I will give Committee members a brief background to the issue. EU directives set out the legal framework for public procurement. The directives apply when public authorities and utilities seek to acquire supplies, services or works — that is, civil engineering or building works. The two EU directives of particular importance are directive 2004/17/EC, which is for utilities, and directive 2004/18/EC, which is for the remainder of the public sector. Those directives have been implemented into national law by regulations, and they came into force on 31 January 2006. The intention has been to clarify, simplify and update the previous procurement regime and to introduce a number of new provisions. Therefore, we now have the Public Contracts Regulations 2006 and the Utilities Contracts Regulations 2006. Those regulations do not extend to Scotland — separate, but similar, regulations have been made there.

379. The purpose of EU procurement rules is to open up the public-procurement market and to ensure the free movement of supplies, services and works in the EU. The rules mostly require competition before contract award. Therefore, they reflect and reinforce the best value-for-money focus of Northern Ireland's public-procurement policy. The definition of best value for money is:

"optimum combination of whole life cost and quality (fitness for purpose) to meet the customer's requirement".

380. It is important to note that the EU procurement regime that the directives and regulations describe is not static. It is subject to change and is driven by evolving European and domestic case law, by communications from the European Commission and by new and revised directives and amendments to the UK regulations.

381. In addition to the EU member states, the benefits of EU public-procurement rules also apply to a number of other countries, because of an international agreement — the Agreement on Government Procurement (GPA) — for which the World Trade Organization (WTO) negotiated. Compliance with EU rules ensures compliance with the GPA, where it applies, and that ensures that GPA suppliers have the same rights as EU suppliers. GPA members include Canada, Hong Kong, China, Norway and the USA.

382. The Committee is interested in the experience of small and medium-sized enterprises (SMEs). The only references in the directives to SMEs lie in provisions on subcontracting and in a relief that the USA has negotiated from the GPA. That relief is designed to allow access to contracts to reserved sectors and minority communities in the USA.

383. The 2006 UK regulations introduced a number of significant changes, which we may touch on later in the session. The main changes are as follows: we now have a single set of regulations for supplies, works and services, whereas previously they were split across three sets of regulations; there is a requirement for a 10-day standstill period at the award stage, before contract signature, to allow those who have tendered unsuccessfully to consider taking action in the courts; and there is a need to inform those who have tendered unsuccessfully of the characteristics and relative advantages of the successful tender. The new regulations expressly provide for framework agreements.

384. Mr Hamilton: Thank you for your introduction. I want to address the updated table of the number of legal challenges to contracts, which is contained in your submission. To a layman, it seems to be a cause for concern. From 2005 to the present is a short period, yet there are 12 cases. The legal costs borne by the taxpayer in only six of them are listed, and they total more than £4 million. Some of the costs that are not listed in the other six cases may be relatively insignificant, but, with £4 million spent on half of the 12 cases, it is clear that a great deal of money is involved. I am sure that other members and the public agree. It may not seem a great deal of money to members of the legal profession, but everyone else will be concerned.

385. Why were those cases brought? Is there a common theme, or is each case different? What are the implications for the procurement system in Northern Ireland? In your experience, does a total of 12 cases, brought over a four-year period, constitute a high level of legal challenge? How does it compare with other jurisdictions in the UK, and further afield? Is that our fair share of legal challenges? To me, it looks like a great deal of money, but is it when compared with Scotland, Wales, England and further afield?

386. Mr D Armstrong: My first point is that the table shows firms that have tendered unsuccessfully exercising their rights under the regulations and directives. They have the right to take legal action, and we cannot avoid that: legal action is driven by the directives. We must learn the lesson that legal action is expensive. In EU procurement law, the time frames for legal action can be lengthy. Before one goes to court, it takes time to prepare the material to be presented. Time must also be allowed for the courts to reach their decisions and to take any clarifications that they need.

387. Obviously, set procedures in the legal system, such as the payment of legal fees, need to be facilitated. If the cost of each case were added up, the total would be fairly sizeable. Without detracting in any way from the legitimacy of the courts or unsuccessful tenderers to take legal action, I suppose that we could agree that the money could be spent in other ways.

388. We get a sense that the change in the regulations has driven the number of legal actions being mounted. Before the regulations changed, it was sufficient for contracting authorities to announce the award of a contract and to let the unsuccessful tenderers know who had been successful in the tendering process. The change in the regulations to provide for the 10-

calendar-day standstill means that unsuccessful tenderers can now take legal action and ask for information. It is possible that that alone has allowed for a greater consideration of legal action, because unsuccessful tenderers can seek legal advice if they find out that they have been unsuccessful.

389. We appreciate that participation in procurement competitions draws on organisations' resources. Unsuccessful organisations experience a loss of the information that they must provide for the tender. There may also be concerns about the business impact on those organisations in the longer term. Unsuccessful tenderers will look at the award decision in a number of ways. We have discussed whether more cases are raised in Northern Ireland than in some of the other jurisdictions. Feedback from Scotland and Wales suggests that Northern Ireland is more active.

390. Mr Brian Doherty (Department of Finance and Personnel): It is quite difficult to pin down the reason why there may be more legal challenges to Government procurement in Northern Ireland than there are in other jurisdictions. Recently, big cases — one case in particular and another to a certain extent — have focused on the new procurement techniques that are used in Northern Ireland. There is UK-wide policy on the use of frameworks and partnership procurement, which has been adopted and openly promulgated here. However, that policy appears to have created a particular attention. The Department of Finance and Personnel would say that it is following the policy that the Executive adopted in trying to derive best value for money from the system. However, we now face some fundamental questions that the courts have raised about aspects of that technique.

391. I do not know whether that addresses specifically the reason why more legal challenges to Government procurement in Northern Ireland are mounted I must say that it is quite difficult to pin down the reason for that. One reason could be the controversial partnership technique that is used here. We know that that technique is used in other jurisdictions, so perhaps Des can assist by explaining the extent to which it is used in those jurisdictions. Given that we presented that technique more openly, or used it more here, we were perhaps more liable to have it challenged.

392. Challenges on new techniques are not unprecedented. Roughly a decade ago, the very concept of using framework agreements was attacked. The technique was challenged in a Northern Ireland procurement case, even though it was being used across the UK. I am always tempted to consider whether part of the reason for that is because there is a greater claim culture here. That is not to take away from work we, as legal advisers, and the Department do to try to keep as close a hold as possible on the accuracy of the techniques that we use, or their legitimacy.

393. One aspect of opting for a new technique, which was perhaps contemplated at the time that the legislation was passed, is that one must draw people to the latest understanding of how the public sector thinks that it can get the best value for money in current circumstances. I understand that the Department of Finance and Personnel and the Executive accept that the partnership technique in particular is one way in which we can get best value for money.

394. Mr Hamilton: Not that that is not interesting, and it does mirror some of the evidence that we have received from folk who practise in the industry, but we do seem to be slightly ahead in where we are at. The belief was that other jurisdictions would see similar legal challenges; however, the previous regulations were lifted and shaken about, the pieces of which are now falling into place and will settle over time, and we seem to be slightly ahead of other jurisdictions.

395. Brian mentioned the frameworks, a subject that is hard to avoid, and one that we will probably spend most of our time developing. Of the £4 million in costs, £2.535 million relates to two frameworks contracts. Although there are acknowledged and accepted advantages to a frameworks approach, it can be argued that having super-contracts of such significant value increases the likelihood of a legal challenge, which is what we are talking about today. If big companies going for those huge tenders lose out, in those circumstances, they are much more willing to put in a legal challenge. In the past, when a tender was broken down into more manageable, bite-sized chunks, companies were perhaps not that keen to mount a legal challenge. They accepted that if they did not get the contract, there were other opportunities out there.

396. However, for the frameworks that those companies are excluded from — for which they are not on the list at all — it is almost a necessity, not a temptation, to give a legal challenge a bit of a go. Companies recognise that, given the immense value of the contract, they must challenge it on the off-chance that something has gone wrong during the tendering process. Does that approach — certainly in the initial stages — invite those challenges, and the substantial legal cost that accompanies them?

397. Mr D Armstrong: In order to explain how we arrived at the procurement strategies that decided that framework agreements would be of benefit to the schools modernisation programme, and to the clients of the Central Procurement Directorate's (CPD), I need to state that there are slightly different drivers in the CPD framework than there are in the schools framework. In the schools framework, there is a backlog of infrastructure investment in schools and quite a stepped rise in the amount of moneys that will be available in future. Therefore, a real opportunity existed to grab that resource and ensure that the procurement process was as efficient and as quick as possible to allow projects to be completed as quickly as possible.

398. By using framework agreements, we believe that we can shorten the procurement time frame by around five or six months, which represents almost one year of a child's education. If one can provide a school almost one school year quicker, there are obvious educational benefits. In CPD's situation, because we do not hold the budget, clients tend to come to us with a business case that has already been approved. In the past, we found that we would say to those clients that, although a business case was very good, they would have to come back in around eight months when we might have a designer for them. Once the design is complete, clients would have to come back in another eight or nine months by which time we might have a contractor.

399. There was a sense that we needed to get the infrastructure and the expenditure moving more quickly. Framework agreements were seen as a way in which to do that. There are advantages, in that they allow particular contractors and designers to focus on various bits of the market and to develop their expertise within that market, thereby providing a better service to the public sector. Those are the sorts of benefits that come out of framework agreements.

400. At the time, we did recognise that, although infrastructure spend by the Government was rising, the construction marketplace was rising substantially as well. In Northern Ireland, there is a perception that the bulk of construction spend comes from the Government, but that is not the case. Government spend is around 40% of the construction market; therefore, 60% of the market was going buoyant. Part of the strategy of the framework agreements was to grab resource and point it toward the various areas of infrastructure deficit. That would allow us, if one likes, to capture some resource and to make the Government's business with those organisations more substantial. There is a balance to be struck in how to influence a contractor or designer's business plan.

401. The system has been used in Wales. Welsh Health Estates uses a very similar framework arrangement to that which was intended for CPD. Before CPD developed the procurement strategy, it had a look at a number of organisations with sizeable procurement spend ahead of them, just to see that it was taking on board any teaching that those organisations had on best practice. Framework agreements are the right things to do. However, there is the question of whether current market conditions will allow us to go with them. Obviously, there are different types of pressure on the resource available.

402. In our discussions with contractors, they are indicating clearly that they believe that there is a place for framework agreements. It is a matter of how we work with the local market to give it an opportunity to get into those framework agreements and to ensure that we do not end up with some of the problems that we have had in the past.

403. Mr Hamilton: Finally, on a related issue, I accept that there are advantages to framework agreements, and I would not turn my face against the whole notion of framework agreements. However, the unfortunate experience of those major contracts is what we have before us — legal challenges. Those legal challenges put a cautious spin on the whole issue: are framework agreements right or wrong? There has also been fairly negative media coverage of the issue.

404. I understand that Northern Ireland Water is proceeding with a similar approach. Given that those challenges are there, and that we are awaiting their outcomes, is it wise for Northern Ireland Water to be pressing ahead with a framework arrangement — albeit under a different name; I think that they are calling it “alliance” — or would it be better for it to await the outcome of those legal challenges?

405. Mr B Doherty: That is an interesting question. There is a balance to be struck: to what degree does one feel one ought to adjust the technique being used, at least in the interim period; or does one feel that the case is robust; or does one wish to apply for interlocutory relief, which was received in both of those key cases that DFP procurement side was involved in in the initial hearings, so that one gets a certain cover from the courts in the interim period? Of course, that comes with the risk that one may be asked to give an undertaking to pay damages for what may have been lost by those who are otherwise in that period precluded from the opportunity of getting into a contract with the Department.

406. There is a delicate balance to be struck. It comes down, in part, to the use of the technique and, in part, to the case in question. The Department may wish to say more about what it is doing in those cases.

407. Mr D Armstrong: I am not familiar with Northern Ireland Water’s framework arrangements. However, in the utilities area, framework arrangements have been used widely, because of the downward pressure that regulation puts on to funding for those organisations. The concept of strategic partnering is much more widely established in the utilities sector. Much of the procurement for utilities companies in England and Scotland has been carried out in that way.

408. There is the question of whether it is correct to proceed in that way at the moment. In the McLaughlin and Harvey judgement, for example, and even the Henry Brothers case, I do not think that the courts said that frameworks were illegal, because they are provided for under the regulations. As regards the issues around the selection process, and how one arrives at the eight, or the six, suppliers that would be on the framework arrangements, it was not that the framework arrangements were illegal — the problem surrounded the method used to select those that would participate in the framework arrangements.

409. Mr B Doherty: I absolutely agree with that. The one issue in the education procurement — the schools case — was not the framework per se but the partnership approach and whether, at

the time that the award was made, and at the time that people were put on the framework, and at the time that the award was given over, sufficient expression had been given to the "economic" element of the most economically advantageous tender.

410. The Department strongly believes that it is a sufficient articulation. The whole idea of the technique is to gain better value for money. It is proper to note that a finding of wilful discrimination has not been made against any party that is involved in those processes as a result of the court's identifying perceived difficulties of compatibility with community law. It has simply to do with the technical technique, as opposed to any favouring.

411. In a sense, we are all travelling in the same direction, in that we are trying to get best value for money. In the case of the Government here, we are trying to utilise the freedoms that we still have under those directives and constraints to get the best value for money and to get firms to work to the best advantage in order to meet the Department's objectives. For example, if one group of contractors were to carry out ongoing work on schools' procurement, that should increase their experience and learning, as well as that of the Department, during the process. Des Armstrong will be able to describe that better than I can.

412. It was believed that that process would be able to drive down the ongoing costs. In a sense, the process has been bona fide, but there is now a difference of opinion over the legitimacy of aspects of the technique that has been used.

413. Mr D Armstrong: The impact of the judgements on the frameworks applies to all procurement. It is not restricted to frameworks. The selection of a contractor or a supplier on the basis of a quality submission and a financial submission impacts across all procurement.

414. Mr McNarry: Is all the legal preparation work done in-house?

415. Mr B Doherty: There has been a mix, in that outside legal advisers were involved in the original preparation of the contractual documents. That was a bought-in legal service, both for reasons of the quantity of the legal service that was required and the knowledge of the outside service compared with what could be provided internally. To the best of my knowledge, Northern Ireland is no different to the commercial contractual areas of our colleagues in other parts of the UK.

416. Although the private-sector contractors were drawn in to a degree because of their knowledge of the contractual documentation, the cases have been defended by the Departmental Solicitor's Office in conjunction with the use of counsel. In both of the larger cases involving the Department, we have also used the skills of a Treasury counsel.

417. Mr McNarry: Is a procurement process used when appointing or using, for want of a better word, outside people?

418. Mr B Doherty: That process is carried out by the relevant Department.

419. Mr D Armstrong: Legal services are subject to the same regulations. It is covered by part B of the regulations. Part B means that the full requirements of the directives do not apply, so advertising may not be required and the mandatory standstill period may not have to be used. In broad terms, a procurement is in place.

420. Mr McNarry: That is interesting, and good to know. Of the 12 cases that your submission presents, two resulted in no damages being paid, two cases were withdrawn and four are not

finalised so cannot be commented on. Four were "settled pre hearing" — I take it that that means that they were settled out of court.

421. Mr B Doherty: Yes, that is correct.

422. Mr McNarry: It is important that we can agree on that. One of the cases that was settled out of court is that of Workplace 2010. Your submission shows that the cost was £1.2 million. Can you separate the damages that were agreed from the legal costs?

423. Mr B Doherty: I have not been at the centre of preparations for settlement in that case, but I would have thought that the answer is yes.

424. Mr McNarry: It would be useful if we had that information, because that is the only case, as far as I can see, in which it is possible to identify legal costs and damages, so I would be interested in knowing the breakdown. I see no indication of the court awarding damages in any of those 12 cases.

425. Mr B Doherty: To the best of my knowledge, that is correct.

426. Mr McNarry: Is that a sign that, on the margins, the relevant Department is more willing — of course, both sides must be willing — to do a deal than to go the whole way in court and to take a risk with regard to what the judge may award? Legal costs are legal costs, but I am referring to the level of damages. There are 12 cases here, although I understand that four are not finalised.

427. Mr D Armstrong: I would need to look into the detail of those cases a bit more. I am not familiar with that detail because the support is provided by other centres of procurement expertise. However, you may wish us to come back on that point.

428. Mr McNarry: I only raised the issue to find out whether a judge had decided — like it or not — to award damages. What is taken out of other people's hands is the decision to include damages in an out-of-court settlement. That is why I am interested in Workplace 2010. If that is how things are to be done, it would be as well to tell us so.

429. I know that most people prefer to settle out of court for commercial reasons, because they have no idea what a judge will do or say, and, although they can pursue a case, they must pay big bucks for that kind of legal representation. That is why I asked who handled your matters. Should I take it that, on the margins, when you are deciding whether to settle out of court, the Department briefs counsel fully about how much it is prepared to settle for?

430. Mr B Doherty: In any case with which I have been involved, I have worked very closely with counsel, and I would always want counsel to be in the cockpit for the final decision-making on settling a case.

431. A more general point that I was going to make earlier, with which Des will be very familiar, is that we are not likely to settle any case unless, on the balance of probability and risk and taking account of commercial considerations, it is considered wise to do so. Some years ago, the problems that can be created by such precedents were experienced, whereby settlement became the order of the day.

432. Previously, in our sister Assembly in London, public-liability claims became a particular cause of difficulty, so resources were found, and efforts were made, to demonstrate that getting

damages, or settlement in lieu of damages, is no easy matter. That is the background to this issue.

433. Mr McNarry: I appreciate what you are saying about that approach; however, we are interested in how public money is spent. It is the control of public money, up to the point at which someone briefs counsel, which determines what the deal is here. I see a trend of settling out of court, only from the 12 cases that you have presented. Is that a fairly indicative trend? You may want to come back to that and give us a clearer picture; I would appreciate it if you could do that.

434. Court cases are a contest, as you well know. I would be concerned if public money was being spent on the basis that people might feel that it is prudent, or worth their while, to make a challenge in the secure knowledge that the Department does not take the full risk — and I realise the risk of going for a judgement — and is prepared to settle out of court, which would include damages and a share of legal costs. I do not want that to be the case, but I want to know whether you can give us a clearer picture.

435. The second aspect of the situation is the role of the Central Procurement Directorate, which provides a professional procurement service to public bodies. There are also various centres of procurement expertise. Is it true that known legal obligations are not being followed by Departments and other public bodies?

436. Mr D Armstrong: The regulations provide for a challenge, if that is the case. Each of the centres of procurement expertise has a complaints procedure in place in the event that an unsuccessful tenderer feels that the process was not compliant with policy or the regulations. We ask the centres of procurement expertise to provide us with details of all complaints that they receive. That information is brought forward to the procurement board. We seek feedback from suppliers in a number of ways.

437. Mr McNarry: I realise that this is not the best question to ask, but I will ask it directly: is it true or is it not?

438. Mr D Armstrong: With regard to what centres of procurement expertise do?

439. Mr McNarry: Do Departments fail to pursue their legal obligations?

440. Mr D Armstrong: My experience in dealing with the heads of procurement is that we are clear about public servants' obligations to follow EU law and how that is applied in procurement competitions. On occasions, unsuccessful suppliers may feel that the process has not been compliant; such instances may lead to legal cases. However, all of the centres of procurement expertise are accredited on a regular basis by the procurement board. We began an accreditation process at the beginning of the year, and there are other mechanisms through which unsuccessful suppliers can raise concerns.

441. The Chairperson: It is not about the process. We seem to be developing what would, by any objective judgement, be the best-practice approach. Have the legal challenges that have been made demonstrated that Departments or other public bodies have not always followed their legal obligations? Has the experience of such challenges demonstrated that mistakes have been made or that legal obligations have not been understood or followed?

442. Mr D Armstrong: I said at the start that case law, in itself, is a way of fleshing out the bones of regulations and directives. On the matter of the CPD framework, a number of significant case-law judgements were handed down before the procurement strategy was developed, before the procurement process was put into effect, and, indeed, after the pleadings

had taken place in court, but before the judge had made his decision. We are in an area in which directives and regulations provide a great deal of information and guidance, but in which the case law can be ahead of a particular situation.

443. In the case of *McLaughlin and Harvey Limited v the Department of Finance and Personnel*, the method that was used was a direct reaction to changes in the regulations. The new regulations that came in placed an onus on contracting authorities to develop award criteria and to make them known to the marketplace. It also placed a requirement on contracting authorities to be able to explain the relative merits and advantages of the successful bid against an unsuccessful bid.

444. The second part is an additional piece of work that was introduced by the regulations, which came into force in January 2006. The case of *McLaughlin and Harvey v the Department* centred on how the Department handled the dual requirements of the regulations, one of which is to let the market know how much information was required, and how it would be judged by the competition. The next requirement was to be able to explain to unsuccessful tenderers, after the contract had been awarded, why the winning tenderer was awarded the contract in comparison to their bids.

445. Mr McNarry: I understand that. I have been informed that Departments are not following known legal obligations. I do not have any basis or great evidence for that; that is why I asked you whether it was true. If you had said that it was true, I would have asked why that was the case. We need to do a bit more work on this and present more evidence whereby we could say that these legal obligations are not being followed.

446. Simon Hamilton talked at length, interestingly and correctly, on major projects and big companies. There are very extensive costs to prepare a tender on major projects. I only have the details of the 12 cases that we are addressing. Is there any danger that we could put people off from tendering because there are difficulties with the process? We could be developing a record for that, and they may wonder why they should go to the expense of tendering. That has been said in relation to *Workplace 2010*. People are asking why they should go to all the expense of tendering when the procurement service's policy can be a frustrating waste of time. Why would people want to go through that? Therefore, the risk is that we would be left with, not the best tendering, but what we already have.

447. Mr D Armstrong: We need to look at the type of projects that are being procured. In some way, you need to segment the market. Projects such as *Workplace 2010* are complex in that the client sometimes cannot determine the service that it needs until it starts to engage with the market. Again, the regulations have changed in terms of replacing what would have been a negotiated procedure — negotiations require both parties to come to a conclusion. Some of the costs that are involved are around coming to that conclusion, getting parties to settle through a negotiated procedure on an award.

448. That has now been replaced by a competitive dialogue process that is supposed to end the procurement dialogue cleanly, and to get final bids. However, the feedback that we have at the moment is that there seem to be some issues and some problems. Those complex procurements require the tenderers to put quite a bit of resource into place so that they can commit, for a long term, on a procurement and its outcome. That is sensible.

449. We have received feedback on the more routine procurement processes, which, perhaps, are less complex and which are used in instances in which clients have a better idea of what they need and how the market might provide it. The feedback suggests that there is some duplication in those processes and that we are asking for the same thing in a different way. That loads costs into the marketplace. We received feedback from the Confederation of British

Industry survey, and we received some directly. In the area of construction, for instance, we have tried to use the Constructionline method, where suppliers can load up their information on a one-time basis. That information is kept up to date and can be drawn directly into a procurement process.

450. There have been occasions when public-procurement authorities have asked for additional information or the same information that is held. If we move all the centres of procurement expertise into e-sourcing NI — the electronic tool — we are hopeful that, as part of that, we will seek to standardise the whole template of information. CPD has developed a number of templates as part of bringing forward the initiative, and we are encouraging the centres of procurement expertise to use those templates with the minimum of changes. Therefore the Northern Ireland public-sector's approach to the marketplace should be more consistent. I would like to engage with the industry side to ensure that the information that we are asking for meets their needs. I would like to try to strip out any wasted effort.

451. Mr McNarry: People have approached each of us in our constituencies and said that they would like procurement to be more user-friendly. Although we are not protectionist — and I should not even say that word — we would be sympathetic to that. I want to make sure that people will not be tendering merely because they know that the Department is a soft touch on the route to court and too easy to settle. That is how it looks to me, but, hopefully, that it is not the case. I want to ensure that the Departments are functioning within their legal obligations and that people are not put off from tendering. I accept the explanation on the complex issue, but it is good to hear that you are picking up on the feedback that is coming in on the more fundamental procurement exercises.

452. Mr D Armstrong: The move away from the acceptance of the lowest price has added costs to the procurement process. In the past, suppliers were able to use their own pricing information for any requirement that was scoped up. Now, all contracts are awarded to the tenderer who has made the most economically advantageous tender. That requires that an assessment of the quality bid, as well as a costing bid, is carried out. Inevitably, suppliers have to provide additional information. That is of benefit to the winning bid and to the public sector as it is a better overall position to be in. I am clear, however, that more needs to be done in the centres of procurement expertise.

453. Mr McNarry: The figures tell us that four are not finalised and four are finalised. That is over £4 million. I know that that is based on just 12 projects, but we do not know how many there may be. That is a lot of money that could be used elsewhere.

454. Mr F McCann: The Committee heard evidence concerning the CPD integrated supply team framework agreement. During the court case, it was discovered that the tender-marking scheme was drawn up after tenders were received and that the panel of three individuals who carried out the assessment over a period of two months could not produce notes of their deliberations. How could CPD allow that to happen?

455. Mr D Armstrong: The regulations contain the requirement to have the overt criteria specified, to provide a debrief to the unsuccessful tenderers and to be able to link their position to the successful tenderer. We prepared a detailed document on that framework for the marketplace, which showed not only the criteria and sub-criteria, but went beyond that and gave an indication as to how the tender would be marked.

456. We had another bit of the document provided for panel members, in order to assist them to provide the debriefing information, which is the second part of the regulations. The judgement in the case indicates that that approach was flawed. However, we believed at the time that we

were following best practice. We had used the toolkit that the Office of Government Commerce had put forward in its guidance as to how evaluation should be made.

457. The practice was that the documents would go to the market and the assessment panel would be put together after the procurement process had started. Before the documents were opened, the assessment team would be brought together to allow it to make the assessment. The approach that we took was ruled unlawful; however, as members know, we have lodged an appeal on that basis. I cannot say more about that.

458. Mr B Doherty: The court did not find that that point was covered in European case law. Up to now, case law, as established by the European Court, is that weighting and selection criteria that are formulated before notice is put in the Official Journal of the European Union (OJEU), need to be published. It does not say that they cannot be designed afterwards. The heart of the dispute in this case is: how far down the criteria, sub-criteria, the weightings attached to those and, in this case in particular, the guidance prepared for the team that will look at the bids, does the Department need to go to meet EU requirements?

459. It may be asked why all of that material could not be designed and made available to bidders at the outset. The instruction that I have from the Departments is that to go down as far as is now indicated by the court is more than is good for the Department's purposes when it needs to give separate guidance to its own evaluators to allow them space to decide between bids.

460. Mr D Armstrong: We have looked at the criteria used in a number of judgements. The case of Lianakis v Dimos Alexandroupolis in Greece, which came out in January 2008, gave some information as to where the cut-off line should be. There was then another case, called Letting International Limited v London Borough of Newham, which seemed to move the line a little further with regard to transparency. The case of McLaughlin and Harvey Limited v Department of Finance and Personnel moved the line substantially.

461. The issue is that award criteria need to, specifically, give commercial advantage to the contracting authority. It must be able to distinguish between one supplier and another. At some point, we have to close off transparency, but become transparent again when it is necessary to explain to someone why the tender has not been successful. That was our approach. However, the judge found that some of the information that we held for the assessment panel should have been given up, and some should have been retained. That leaves us in a difficult position in deciding how to proceed.

462. With respect to the debriefing material, we debriefed all those who tendered unsuccessfully. We received very good feedback from the tenderers: one of them said that it was the best set of information that he had ever received back from such a process, and that he would use it to improve his tendering performance in the future.

463. Mr F McCann: Does that include the notes of the panel's deliberations?

464. Mr D Armstrong: The panel recorded its deliberations on a laptop computer. We must take into account the court's ruling. The new system that we have, the e-sourcing NI tool, records a good audit trail as to when individual assessment-panel members have viewed documents and recorded information. We intend to issue fresh guidance to panel members, hopefully by the middle of next month.

465. Mr F McCann: Having sat on various panels, I know that everything that is written down is usually gathered up at the end of a process in case there is a challenge.

466. Mr B Doherty: In my view, the more transparency that is available in that respect afterwards the better, as is the case with personnel selection panels. Indeed, departmental officials spend quite a lot of time in the box explaining how they carried out assessments, and, had papers been available —

467. The Chairperson: You are implying that this is not rocket science. It applies at almost every level of recruitment, appointment and selection processes. A careful record of reasons for decisions should be kept, in the event that someone feels that he or she was less than fairly treated. Yet, the Central procurement Directorate seems to have forgotten that. Have you learned that lesson over again?

468. Mr D Armstrong: As I said, the assessment team in question logged its information on a laptop and developed information for a debriefing. We will have to look at that situation, for the purposes of transparency. If there is a criticism of our transparency at all, we must react to it and produce new guidance and procedures; that is well in hand.

469. The Chairperson: With regard to development capacity, the completion of the debriefing is something that is helpful. I do not know all the bidders, of course, but those who have talked to me about the process have found the debriefing to be a valuable exercise and much appreciated from their point of view in going forward and learning what it is that they have to do to win contracts and to address their own deficiencies.

470. Mr F McCann: As a layperson looking in, I would have thought that all of that would have been done at the start of the process, rather than in the middle of the exercise when the tenders come in.

471. Mr D Armstrong: That is a throwback to custom and practice, but we recognise that public procurement moves on, and each case that comes up will have some learning in it for us. We are determined to ensure that our processes are up to speed and that we can give confidence to the public and to those who are involved in public procurement, either as clients or suppliers, that we are running a professional service and that it runs in accordance with best practice. We have to learn those lessons.

472. Mr F McCann: In your experience, what are the dominant award criteria that are applied to public contracts in NI? How can quality criteria be marked in an objective manner? Are legal challenges not more likely where quality marks are too high a proportion of the award criteria? How do you ensure that tenders are marked equally, fairly and objectively? How much of the work that is due to be let under the integrated supply team and schools' frameworks could now be put to tender under simple price and construction duration criteria?

473. Mr D Armstrong: We moved away from lowest-price procurement, which drove the construction industry in particular in a certain way and made it less efficient. A whole set of tendering processes existed through which contractors would bid low, get the work and then set out, as they had to, to recover profit by claims, or by cutting back on quality or health and safety. Northern Ireland had a pretty poor health and safety record, much of which was down to taking the lowest price tendered, leaving contractors unable to price properly for the work.

474. Having moved to the practice of accepting the most economically advantageous tender, we find that two issues arise immediately. The first is the proportion of price as opposed to quality; the second is the assessment of quality and how to demonstrate that that assessment is robust. As a procurement professional, there is a certain comfort in opening six envelopes and finding, when looking for the lowest price, a long list of numbers; if one tender is £1 above another, there is not an awful lot of debate about that.

475. With the quality issue, one must first ensure that the questions asked are structured in a particular way. For example, one might want to reduce the number of tenderers that will produce a full tender, and that would be done using the restricted process. We would invite expressions of interest and ask people to provide information on their experience. We would then allow them to enter into a full tendering exercise. That makes the assessment and award of the tender manageable, reduces some of the cost to the industry and reduces the abortive tendering costs.

476. We were in a situation that had a tendency to produce a light first stage. It was the second stage at which tendering would really be gone for, and experience mixed up with quality. The courts have now ruled that that is illegal. Contractors or suppliers, or whatever, must be asked for their experience at the first stage. In order to get the most economically advantageous tender, criteria must be created that can be demonstrated to add a commercial advantage to the contracting authority. For example, the supplier may be asked to outline how it will approach the delivery of a service or how it will approach the creation of a product. The questions used, and the weightings given, need to be linked back to the subject matter of the contract. The questions must be relevant to the contract, and we need to be able to explain the split.

477. In construction, there was a move away from lowest price. Some competitions have, pretty much, been run with quality as the first stage, and then a split of quality. At the moment, the Department is doing some work on how that price/quality split should be taken forward. Some of the legal cases suggest that the courts were concerned that there was an over-reliance on the quality submissions and that decisions on those quality submissions were more subjective — more a matter of professional judgement. That is an issue that we need to review.

478. Mr F McCann: You talked about the lowest price, and I know that recently, in another Committee, we have been discussing procurement and the construction industry. One of the concerns that came up was that major construction companies can come in and outbid local companies, although the contract may go over to the local companies, in that the major companies subcontract the work. Is there anything that prevents that from happening, because, when we get down to it, that is profit-slicing?

479. Mr D Armstrong: In Northern Ireland, we have been, for the most part, using local suppliers. In the current market conditions, other suppliers may be interested in the Northern Ireland marketplace. We have found that, when they do come to Northern Ireland, companies look for a local partner. The view is that that is an attempt to take the profit and force the work down the supply chain. I take a slightly different view: I think that we need to encourage that sort of thing to happen. Through the regulations and directives, the public-procurement process is quite clear: one cannot discriminate in favour of local companies. Given those directives, when an external company comes to Northern Ireland, it has to be allowed to tender for contracts. That presents an opportunity for local companies to become involved in the supply chain. What we need to do is to ensure that the supply-chain operation works well; that it feels like a Government contract; that there are back-to-back terms and conditions, and payment processes, in place; that we are not into the concept of "subby-bashing". If we can do that, and the construction area has decided that that is what it wants to do, I think that it can work very successfully.

480. Local companies have been involved in some major roads contracts here, in partnership with companies from outside Northern Ireland, and those local companies have gone on to win contracts outside Northern Ireland. Therefore, Northern Ireland firms have nothing to fear from working with companies outside Northern Ireland, provided that we create conditions that are appropriate for subcontracting.

481. Mr F McCann: One concern that arose was the question of major contracts being let out. There were questions around a company's being awarded a contract and subsequently bringing its entire workforce with it. Therefore, as far as employment and delivery of supplies were concerned, there seemed to be no real benefit to the local economy, aside from what was being built.

482. Mr B Doherty: My point relates to the earlier theme regarding procurement rules, with which, I am afraid, we all must comply. The rule regarding consortium bids states that bidders can be any combination of companies working together, and it is not for the contracting authority to try to influence how that takes place or who wants to work with whom. However, when it comes to signing the contract, the authority is allowed to tell those bidders to form themselves into an entity with which it can contract. Therefore, that bundle of different companies or expertise is all brought together. The contracting authority is permitted to do that, but it is not permitted to say who works with whom or in what way. In a sense, we simply have to be receptive to what is placed before us, according to the procurement rule on consortia.

483. Mr F McCann: I thought that you could face in the direction of suggesting local supply and local employment.

484. Mr D Armstrong: There are a number of ways in which sustainable development can be best effected. One way is for a public-sector client to start thinking about sustainable-development issues when it is deciding what it wants to buy. Another way is for the client to start thinking about those issues when the contract is being discharged.

485. In the construction industry, we have agreed a number of initiatives, including advertising for opportunities in local supply chains and ways in which to try to bring people out of long-term unemployment. However, the industry is saying that it is going to keep people in jobs, rather than bring unemployed people back to work. There are also issues around apprentices.

486. The issue of how contract management is taken forward is an important one, because that is where many of the benefits can be found. If we have contracts in place that require back-to-back conditions — that is, the same terms and conditions between Government and the main supplier, and between the supplier and their subcontractors — that will work better.

487. Mr B Doherty: I have a copy of a flow chart from the document that the Executive have adopted on sustainable procurement, and it is a terrific way in which to point up the various methods from the beginning — from setting up the strategy to procurement technique. It allows one to build in the policies that are important to the Executive, to the greatest degree possible, in order to drive forward particular objectives, in so far as is possible within the European rules. All centres of procurement expertise (CoPEs) should pay attention to that, and they have been doing so.

488. The Chairperson: Earlier evidence that we heard on the topic indicates that contract compliance and contract conditions are ways in which to address, within EU regulations, the issue of the local market. There is an inherent issue for indigenous companies dealing with consortia or joint ventures, particularly if tenders attracts outside bidders with far superior in-house legal and technical professionalism to prepare and present their bids.

489. We have also heard evidence that, in some instances, up to 100% of the work was subcontracted out to local companies that were not in a position to compete originally, but that ended up "dealing". I think that someone used that expression earlier. They delivered the actual work and the product. We have that degree of capacity locally. The disadvantage exists at the technical level.

490. The Committee considered the more social priorities that the Executive are dealing with — the long-term unemployed and people on apprenticeship opportunities. At contract level, one can consider, legally, the issue of rewarding full delivery and compliance with those conditions. The issue of introducing sanctions for those people who do not comply can also be addressed.

491. I was interested to hear Des say that we must look at the idea of contract compliance. Perhaps we should be a bit creative in having those requirements built into the contracts in the first place. I do not regard that as being discrimination: I think that it is a way for the Executive to go about their work in a professional way and to deliver for the local market. We need to retain capacity, and to build and enhance that capacity.

492. The Committee also received trade-union information. I mention that now because of the reference that has been made about experience elsewhere in the EU — experience in the South. Within EU regulations, it is possible to have a percentage of the contracts designated to local contractors. Are you aware of that?

493. Mr B Doherty: On the face of a suggestion put like that, I am somewhat troubled by it.

494. The Chairperson: Not as a policy directive. The contract conditions are designed to produce that targeted outcome. Social dimensions have been built into the contracts, and local contractors can address those dimensions effectively.

495. Mr B Doherty: There is absolutely no problem. We have advised Departments on issues such as the long-term unemployed in the past and have that put into the contract conditions, so that everybody can see that from the outset. In a sense, we are saying that this is neutral: the long-term unemployed can come from Sicily or Northern Ireland. The chances are that they would be more likely to come from Northern Ireland. That type of approach can certainly be taken. At the outset, it is the scale of the procurements that are put to the market. However, as Des would say, there is a good record of local firms competing for the bigger construction contracts, and so on.

496. I fully accept that there is a number of techniques that we can utilise. Interestingly, the trade unions played their full part in being consulted and in participating in the decision-making on the policy that the Executive have adopted. I am not quite sure, but there may be a stop date at which one could look and see whether that has been done —

497. The Chairperson: Yes, to determine whether we are getting those outputs.

498. Mr McNarry: This is one of those meetings at which one says, "So far, so good." It does seem to be working well, and our agenda is made up of lessons learned from legal challenges.

499. Mr Hamilton: You are about to ruin all that.

500. Mr McNarry: However, my problem is that there is no report to work off, and I feel that the Committee should have a report of some kind. You have been frank about answering questions on your presentation. However, it is nobody's fault — except yours, I suppose — in that the heading of your submission includes the words, "Lessons learned", and I cannot find any lessons learned. No reference has been made to them.

501. Although the Hansard report of this evidence session will be helpful, I expect that you have an internal report — a list of dos and don'ts, or some kind of hit list that says, "Hang on, this is what happened to us because ... Do not let it happen again."

502. The key issue is to protect against a legal challenge — you may correct me if I am wrong. We cannot operate on the basis that we expect there to be a legal challenge. It is hoped that lessons have been learnt on the protection against that, at least.

503. I see that £4 million has been spent in four cases. I wonder whether there are areas in which Departments are sailing close to the wind, and, therefore, may not be protected. Is anybody looking at that? In view of what we have learnt, what might be on the horizon? Is there a chance that something else might arise? That is why I asked you whether the recommended guidelines were being followed. Is there something there? If you know, fine; if you do not know, someone should look for it. It seems to me that there is always something ready to bite.

504. I need to hear that the work on procurement is done — as much as to protect Departments from themselves as anything else. Procurement could become a contestant charter in which people find out how they are supposed to submit tenders, and, subsequently, discover that they might earn more money from settling out of court than they would from carrying out the work.

505. What lessons have been learnt from the legal cases so far? If possible, I would like written evidence of that. What steps does the public sector need to take to ensure that it is complying with legislation and with common-law obligations on public procurement? How can it reduce the amount of future litigation? We need to cover those matters.

506. Your submission contains legal costs, and you have said that non-departmental solicitors have been used. Do the costs provided in your submission include outside legal costs? Are they a breakdown of in-house legal costs? According to what was said earlier, in-house legal seem to account for the greater percentage by far? It is not an expectancy, but does your budget include a war chest that is to be used if required? From where did you obtain the £4 million? Who gave it to you? Do you make a bid for £4 million or £20 million, which is to be used in the event that you take a hit? If your house is in order, do you return £3 million, for instance?

507. Mr D Armstrong: We certainly do not have a war chest.

508. Mr McNarry: Perhaps that was the wrong choice of words.

509. Mr D Armstrong: To obtain the funds that are needed, Departments follow the normal bidding process.

510. Mr McNarry: Do you bid as required?

511. Mr D Armstrong: That has been the case.

512. Mr B Doherty: That is more Mr Armstrong's territory than it is mine. However, my understanding is that there is not a war chest, but bids must be made for unanticipated cases for which damages are required to be paid.

513. The Chairperson: Are the outcomes reflected in the monitoring rounds?

514. Mr D Armstrong: Unsuccessful tenderers have informed us that they are being approached by others, who are offering to help them make legal challenges. We recognise that the potential for legal challenges in Northern Ireland has increased. We need to ensure that the way in which we choose to handle that potential threat is considered carefully. However, now that centres of procurement expertise have been established, we can draw together the right people to take the matter forward. We must ensure that people in Northern Ireland have confidence in the public-

procurement process, which, in the event of legal challenges, must be capable of being defended robustly.

515. The Chairperson: Assuming that you take cognisance of best practice elsewhere, has a lessons-learned report been produced for each of the contracts mentioned in your submission to which there has been a legal challenge?

516. Mr Brendan O'Neill: Yes. However, there is some confusion, because the Committee has obviously not received the lessons-learned report that we produced.

517. Mr McNarry: Things not arriving, or not arriving on time, would be nothing new for this Committee, but no matter.

518. Mr B O'Neill: There is a report —

519. The Chairperson: You sent it, so we will get it.

520. Mr B O'Neill: The background is that heads of procurement have regular meetings at which those matters are discussed, and papers are produced, through the CPD secretariat, that set out the information gleaned from the CoPEs. Lessons-learned reports evolve from that process, and they may well end up as guidance, which my unit would draft in conjunction with the heads of procurement.

521. The Chairperson: That is fine.

522. Mr B O'Neill: The nature of the issue means that each private office must submit their proposals via its Minister. Last week, we submitted our report to our Minister, with a covering note for the Committee Clerk. Obviously, there was a hiccup somewhere along the line.

523. The Chairperson: Another lesson learned.

524. Mr B O'Neill: Indeed.

525. Mr McNarry: It is hard to procure these reports.[Laughter.]

526. The Chairperson: I am glad that you raised that point, David.

527. Mr B Doherty: I cannot pick up on all the points made, but I can outline a few of the indicators on the way to our finally producing the report for the Committee. In answer to the question about the amount of legal costs, the figure given includes all legal costs. However, we will confirm that information.

528. On the lessons learned —

529. Mr McNarry: In your confirmation, I ask that you account for the £1.2 million in legal costs and damages. You have already indicated that you will separate legal costs and damages. Will you specify how much money was paid in legal costs to commercial companies? The balance, obviously, will be in-house costs.

530. Mr B Doherty: Yes.

531. The Chairperson: Do you recollect whether there are any confidentiality requirements for that case?

532. Mr B Doherty: I hope not. When I examine the matter more closely, I will discover whether there are any such considerations.

533. The Chairperson: In any event, you will be coming back to us on that matter.

534. Mr McNarry: Given that the matter was settled, there should not be any confidentiality requirements.

535. Mr B Doherty: I would have thought that the water-under-the-bridge case is more likely to be simple.

536. As legal challenges continue to be brought, it is important that Departments, in the light of the lessons learned from the centres of procurement expertise, continually adjust their positions. I, or a colleague, but usually both of us, regularly meets with the Central Procurement Directorate, and also with its CoPEs, to brief and update it and to answer its questions, giving it as much general advice as we can in the light either of legal challenges or of any other legislative and technical developments, or in the light of issues raised by the directorate on which we have been asked to advise. One CoPE might approach us about a matter that we believe everyone should know about. Our system operates pretty flexibly in such circumstances.

537. Mr McNarry: Des Armstrong's remarks about the ongoing alertness — whether that is a red alert, I do not know — that people might attempt to make a legal challenge are helpful. That is the sort of protection that I wish to see built in somewhere. I hope that that has sent a message to the Departments not to be too casual. I sometimes think that Departments are not as on the ball as they should be with procurement.

538. The Chairperson: I suppose that that propensity should also be subject to lessons learned, as should past mistakes or learning-curve issues.

539. Mr McNarry: It is a sign.

540. Mr O'Loan: Thank you for your evidence so far: I hope that I do not duplicate any questions. If I do, please tell me smartly so that we can move as quickly as possible through the session.

541. Carson McDowell solicitors suggested that it may be useful to have a public-procurement ombudsman figure available, rather than our only course of redress to be to go down the litigation route. There may be a retired judge who might do what is referred to as a quick and dirty adjudication on the matter. What is your opinion on that?

542. Mr D Armstrong: I am certainly interested in anything that can help us to explain the awards decision and the impact on the unsuccessful tendered, and that can mitigate the likelihood of costly legal action. The question is how binding any adjudication would be, and where it would sit in a legal framework. I do not think that we could introduce something like that as a direct replacement for anything that is contained in the regulations. However, some sort of mediator could be brought in to try to take the heat out of the situation.

543. Mr B Doherty: I am sorry if I appear to be throwing cold water on the suggestion, because I am not at all adverse to it, but one problem is that there are debriefing requirements, and that they be as comprehensive as possible is part of the explanation process. If there is disagreement, and a Department is anxious to proceed with its procurement and award the contract, and the relevant 10-day standstill period has run out, it is possible for the courts to become engaged quite quickly. Once the courts are invited to come in, that is the forum in which

the matter will be dealt with. Diverting from that is not easy, when there are Departments that wish to award a contract urgently — if that is where they are at, but that is not always the case — and when the disappointed bidder is anxious.

544. The Chairperson: Is there any international experience of mediation in such circumstances?

545. Mr D Armstrong: I am not sure about international experience, but we have mentioned it to representatives of the local construction industry, who have told us that they have come across such a model in Scotland. They are preparing some details to see how that might work in Northern Ireland.

546. Some of the cases have been at the leading edge of European case law. To reach an understanding on some of those cases requires the courts to present relevant case law in order to allow the judge to make a decision. Examples of the law are brought to a judge, and a judge then makes a decision on that basis. That is quite complex, but that is how it seems to work.

547. Mr B O'Neill: I did some work with the accession states when they were applying for membership of the European Union, and each of them — Poland, Romania, the Czech Republic and Slovakia — opted to establish a public procurement office. The president of that office would then examine the issues. That is permissible under the European directives. However, the United Kingdom as a whole, and as a member state, decided not to go down that route, and to adopt only the taking of a challenge through the High Court. We, in the United Kingdom, are limited to challenges in the High Court. We cannot challenge in the lower courts.

548. Other member states have gone outside the legal system and established offices of public procurement. It is allowable under the directives, but the UK as a whole has decided not to go down that route.

549. The Chairperson: Does devolution reopen that possibility for us?

550. Mr B O'Neill: That is an issue that relates to the member state.

551. Mr O'Loan: It is important that discussion continues on this. It would be very good if something could be found that would —

552. The Chairperson: Des, could the paper with the reference to the Scottish experience be forwarded to the Committee? We may or may not follow it up but, if there is some other experience, it might be worth looking into. Sorry, Declan.

553. Mr O'Loan: May I ask about your assessment of the impact of legal challenges, in relation to both direct and indirect costs to the public purse and also in relation to delays in projects?

554. Mr D Armstrong: With regard to delays, projects are now being brought forward on a project-by-project basis, using single, one-off procurements. That will increase the time frame, by comparison with running a secondary competition off a framework. The delay is automatic. My understanding is that none of the projects that are designed to go to the frameworks are being held: they are moving forward, one at a time.

555. There is a more serious issue with respect to the potential impact on achieving value for money. The whole premise of using the frameworks was that by using them we could deliver better value for money for the taxpayer in Northern Ireland. From our discussions with the construction industry through the sifting task group, we know that it is still looking at how frameworks might be re-established in order to get work to the marketplace as quickly as

possible. The view at the moment is that the frameworks need to be broken down in terms of value. Some projects run to the market outside those frameworks. There is still a view in the construction industry that frameworks are needed in that respect.

556. Mr O'Loan: I could say more about that, but I will not.

557. I have a few supplementary points. With regard to the table that we were given, Chair, I will take your opinion and guidance on that, but, to me, it would be helpful if it could be elaborated on. Another couple of columns could be added to specify who took the challenge, and to provide a summary of the basis of the challenge, perhaps in a maximum of 20 words. I am not sure that the "Outcome / Current Position" column is complete. Sometimes, there is a financial outcome; sometimes it takes the form of instructions to do certain things. I am not sure that we have all the information at present. As to the "Total Cost" column, I doubt that it is fully complete. We need to know the Department's legal costs, those of the applicant or challenger if the case went against the Department, and damages. It would be helpful if we had all that information.

558. Mr B O'Neill: This is a copy of the paper that goes to the heads of procurement. They took a decision not to include names, lest it be deemed to form a blacklist of people who take challenges. For that reason, we avoided using names in any of those documents.

559. Mr O'Loan: The Committee would be interested in seeing them for its own purposes.

560. The Chairperson: The information exists, obviously, but Brendan has raised a valid consideration.

561. Mr B O'Neill: We could produce a separate list for the Committee. The reason that the table contains no names is that the Committee received the same information that goes to heads of procurement.

562. Mr O'Loan: How would you react to the suggestion that you are not as economical in fighting these cases as your challengers are? In certain cases, awards were made against you and you know the costs of the challenge. Can you give us substantive evidence on that?

563. Mr B Doherty: The costs as we have produced them for the Committee will help it to form its view on the economies involved. If there were another element that I would introduce for consideration, it is the fact that, in the larger cases, there are points of principle involved. They do not sit there academically; they are intended to produce better results, better economies and, for instance, better buildings. They must be as robust as possible in bringing the right resources to bear. It is obviously important not to let arguments go by default in any way. I am just putting that forward as a consideration.

564. Mr McNarry: Are those the same points of principle by which the bankers were awarded bonuses, as in the case of Sir Fred Goodwin, which was discussed in another place yesterday?

565. Mr B Doherty: No. The points of principle that I am talking about are those that govern partnership procurement techniques, or which are used to find more economical methods of procurement. They are to do with matters of policy.

566. Mr D Armstrong: The question is really about the cost of providing the legal team to defend a case. I am not sure that I can comment on that.

567. Mr B Doherty: In a sense, there is a combined responsibility; it is bouncing on the table between us. Legal resources are, obviously, required in order to fight a challenge, and we will provide the Committee with further information about that. Equally, however, there is the economic rationale for doing it. If we are talking about the most economically advantageous tender, lawyers can argue the points, but the points and theories come from the experts on the procurement side, or those who are drawn in by the Department. They are an element in this as well. Whether the technique is one that the Executive wish to take forward, it certainly falls four-square within the policy as it has currently been adopted. It is not for me to evaluate the costs against the policy gains. We can, however, certainly help identify the costs.

568. Mr O'Loan: It would be interesting to have that information, if you could present it to us in as full a form as possible.

569. The point has been made about the process being very labour intensive for small and medium-sized enterprises. I will offer one example — you can extrapolate it more widely if it can be done — which is to do with the delivery of health and safety requirements. Could those be short-circuited by a system of accreditation that is, perhaps, run by the industry?

570. Mr D Armstrong: There is no common recognised health and safety standard applied across Europe. Therefore, we must ensure that we do not preclude people outside Europe because they do not have a local registration system in place, or one that we know of. We must ensure that the market is not a barrier to trade in that respect. We must then look at anything that might be proposed as an accreditation system and ensure that it is compliant with other legislation such as the Construction (Design and Management) Regulations 2007 (CDM) and the duties that those regulations impose on contracting authorities to ensure that a contractor is competent and is applying the right resources.

571. We have been working with the industry to try to come up with a more standardised approach to assessment. Again, a lot of this is around the fact that, if we hold some information, can we recognise that, can we ensure that we do not ask for it again, and can we offer additional information? There has been a fair bit of debate about health and safety, and we have been involved in a drive to improve health and safety performance in Northern Ireland. Others may promote their accreditation schemes as a way of fulfilling the regulations, but we must ensure that they are compliant.

572. Mr O'Loan: Again, beyond encouraging what can be done in that area, you are thinking along those lines and we would want to encourage that.

573. The point has been made that CPD, contrary, perhaps, to some views, is not bad at what it is doing.

574. The Chairperson: That is a kind of compliment.

575. Mr O'Loan: However, to some degree, there is a reluctance to learn key lessons at key times, and to keep ploughing a furrow that is not productive — in particular, in going to appeal on at least one of those major cases in which the decision has been made on a significant point of law. Why not simply get on with life and learn the lesson rather than obstinately digging your heels in?

576. The Chairperson: I am not sure whether that was a question.[Laughter.]

577. Mr Weir: It was like an A-level exam paper question.

578. Mr O'Loan: It was a question.

579. Mr D Armstrong: Informed decision-making is one of the key principles of public procurement. We must ensure that any decision that we make is informed, that we have taken the right advice and that we know the likely consequences and outcomes. Public procurement in Northern Ireland is not perfect, but I assure you that we have the necessary mechanisms in place to deal with issues and learn from mistakes.

580. A lot of procurement is driven by human beings, and, as we know, human beings do things at certain times. It should be borne in mind that we have spent around £4 billion in public procurements in the course of these cases. The figures involved in public procurement in Northern Ireland are large, but we recognise the importance of ensuring that that money is spent well and that there is confidence in the process.

581. The Chairperson: As part of the new professional way of going about this, is there a process by which you examine what CPD presides over and compare that with traditional procurement methods? That would establish whether value for money is being delivered. The legal cases represent one perspective, but then there is the broad swathe of work that is rolled out under the new system with the central objective of delivering better value for money. Do we compare the new with the old to see if better value for money is being delivered?

582. The reason for my question is that we were once given an example of work that was being carried out at the Armagh Observatory. That was essentially remedial work — internal walls being taken down or whatever — and it did not appear to represent value for money in respect of the requirements of local management. Indeed, given how the work could have been carried out if it had been left to the local director, it appeared to be anything but good value for money. That is not a very good example because it is just off the top of my head, but it suggests that traditional procurement methods may have worked better in some instances.

583. Mr D Armstrong: You asked whether we do anything to measure the effectiveness of public procurement. We achieved our target of identifying and recording £250 million of value-for-money gains. We are now setting up a system to record not only value-for-money gains in cash terms but to look at sustainability. We are looking at what is being put into contracts and what can be recorded as effective sustainable-development benefits for public procurement.

584. We have heard similar stories to the example that you outlined. Some local organisations feel that they will get a better deal if they bring in a plasterer or joiner that they have found in the Yellow Pages. However, that approach creates issues in respect of transparency in the management of public money to order and pay for work. Some of the systems that we have put in place to correct that cut across well-established processes and practices. That can cause concern as well

585. The Chairperson: The meeting of the £250 million target seems to indicate that the current approach represents better value for money.

586. Mr D Armstrong: Much of that £250 million was directly due to the more modernised approach to public procurement, and the target would not have been met if a lot of the traditional methods had still been in place.

587. Mr McQuillan: You have presented a paper outlining 12 legal cases; are those all the legal challenges that have been made against Government procurement since 2005?

588. Mr D Armstrong: Yes.

589. Mr McQuillan: Are you aware of any more that may land on your table in the near future?

590. Mr D Armstrong: In the past few weeks, a couple of judgements have come to light in the criminal justice sector. Those are not included in our submission because those bodies are not covered by public procurement. A case involving Federal Security Group and the Police Service is in court, and a judgement was made in a case involving Federal Security Group and the Court Service. Those two cases are not included in our submission because they are not currently covered by public procurement policy.

591. Mr McQuillan: The next time you come to the Committee, can we expect to see many fewer cases because of the lessons that have been learned?

592. Mr D Armstrong: There are lessons to be learned from all the cases. We have not made a very good job of presenting those cases to you, but the lessons are recorded and will be covered in a subsequent report. Lessons are being learned, and, as procurement people, we are talking among ourselves to ensure that staff are aware of what happened and how to prevent a reoccurrence.

593. Mr McQuillan: What costs do you expect from the cases that are waiting on the outcome of a legal judgement? Can you provide an estimate or a guesstimate?

594. Mr D Armstrong: In the case involving McLaughlin and Harvey Ltd, there is no likelihood of damages being awarded under the current judgement. The issue is the importance of award criteria and how that might impact on the achievement of best value for money going forward and whether that needs to be clarified by the Court of Appeal or through the European Court of Justice. We need to make that decision, and, in doing so, we need to ensure that we have an idea about what the ongoing legal costs might be for that process and what the time frame might be.

595. Mr B Doherty: In a sense, we have to weigh up the arguments that are put by the other side, so, at this point, there is a degree of difficulty in providing a precise answer.

596. Mr McQuillan: Are you aware of any cases in which the public authorities have taken legal action against contractors for the purposes of enforcing social or sustainable costs?

597. Mr B Doherty: I am not aware of that.

598. The Chairperson: Brendan, you said that a report will be compiled on the lessons that have been learned. Will that report also include action points that have arisen?

599. Mr B O'Neill: Yes, the report will set out a brief history of the case, the lessons that have been learned and the action that a centre of procurement expertise or a Department needs to take to ensure that that is followed through.

600. The Chairperson: What is the mechanism for responding to or monitoring the performance of Departments under the broad procurement strategy. Does that fall to the procurement board, to CPD or to both? The procurement board is chaired by the Minister.

601. Mr D Armstrong: Yes, and all the permanent secretaries in the Northern Ireland Departments are on that board, along with the Treasury Officer of Accounts, the director of Central Procurement Directorate and an observer from the Northern Ireland Audit Office and from the Strategic Investment Board. In practice, the monitoring of public procurement performance is developed when CPD asks the centres of procurement expertise to report on

their performance. The CPD occasionally brings that forward into an overall report with some recommendations, and that is presented to the procurement board.

602. A couple of parts of the process are useful. Departments are required to provide annual procurement plans to identify the sizeable projects that there might be going forward. That gives us an opportunity, through the centres of procurement expertise, to talk to Departments about what they might want to do on sustainable development. It also gives us some idea of what the workload might be when considering procurement for larger projects going forward.

603. Public procurement, substantially, has to go through centres of procurement expertise. The target is to have 95% of public expenditure directed through centres of procurement expertise. The concept is that the expertise in those centres will lessen the likely risks of legal action — leaving aside the 12 cases. Therefore, there is a mechanism in Northern Ireland for having a good grasp of how public procurement is managed. We also use those structures to put any warning that might come from England or from Brian's people into that system.

604. The Chairperson: What happens when a challenge emerges, or when there is notification of a challenge? Does it go immediately to the Department, to CPD, or to the procurement board for assessment and direction?

605. Mr D Armstrong: The challenge is directed immediately towards a Department, and it will then involve Brian's people.

606. Mr B Doherty: In addition to responding to the need for advice that might arise at the time, it almost becomes an agenda item to bring forward to any further general briefing meeting or update meeting that we have with CPD. There are a number of other sources used. For example, all European Court decisions across the remit cross my desk. Any procurement decisions are picked out immediately and clicked off to CPD, so that it is made aware of them, and, if officials have any issues arising from that, they can come back and ask for specific advice.

607. There is also a meeting of legal procurement experts across the UK held in London every quarter, and we aim to have a representative at each of those meetings to gather information on what is happening elsewhere, including techniques, as well as any difficulties that others are having. We will feed that back to our colleagues here.

608. The Chairperson: The communication end appears to be quite effective. Has it ever resulted in an amendment to procurement practice, in advance of a legal challenge emerging? Has it required a change of tack?

609. Mr D Armstrong: I am looking at one of the sheets from the report on the lessons learned, which, unfortunately, the Committee did not get.

610. The Chairperson: The report that we did not get — we are going to harp on about that.

611. Mr D Armstrong: It begins with a need to carry out a root-and-branch review of the terms and conditions to ensure clarity. Therefore, there are definite, clear words on paper that say that we need to do certain things. There is recognition that, in this case, we used standard terms and conditions that were used across a particular sector. There is also recognition that there is a need to review those because of the work that was done on that challenge. Therefore, it is clear that lessons have been learnt.

612. Heads of procurement meet in advance of the procurement board meeting, and, as a result of the issue with legal challenges, we have decided to meet more regularly to ensure that we are

all familiar with any issues that are arising. Below that, we have a network of procurement practitioners who will look at the detail of tender competitions and make changes as necessary.

613. Mr McQuillan: There was a case only last month that started on 6 February and finished on 13 February. Costs were borne by both parties, but have we learned anything at all?

614. Mr D Armstrong: I have just referred to that case. We need to look at what happened in that case, as a standard set of terms and conditions were used, but they need to be reviewed. Therefore, there is a definite lesson to be learned from that.

615. The Chairperson: That was a very interesting session, and it turned out that we needed the extra time. Thank you all very much. We will follow up on two or three issues, including Workplace 2010 and the reference to the Scottish experience. We are interested in hearing about that, and we are interested in getting a copy of the delayed report on the lessons learned.

616. Mr McNarry: Are you sure that you actually have that report? You are not bluffing us.

617. The Chairperson: We have every confidence that the report is on its way.

618. Thank you. It was a very interesting session.

29 April 2009

Members present for all or part of the proceedings:

Mr Mitchel McLaughlin (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Dr Stephen Farry
Mr Fra McCann
Ms Jennifer McCann
Mr Adrian McQuillan
Mr Declan O'Loan
Mr Ian Paisley Jnr
Ms Dawn Purvis
Mr Peter Weir

Witnesses:

Mr Des
Armstrong Department of
Mr Stewart Finance and Personnel
Heaney

619. The Chairperson (Mr McLaughlin): Good morning, Des and Stewart, you are very welcome. Please make some preliminary comments to the Committee and then we will open up the discussion.

620. Mr Des Armstrong (Department of Finance and Personnel): To maximise the time available we will keep our opening remarks brief. I hope that the Committee has received a summary paper along with the report.

621. At the outset, I wish to say that the engagement that we have had with the construction industry has been very useful. We drew together good representation from the industry and from the Government construction clients. At the first meeting of the task group, there was a frank exchange of views and opinions, which really helped to move the process forward, and we got down very quickly to the crux of the matter, which is how the industry works as a partner with Government.

622. This is very much about building on our partnership arrangements with the industry, and we have been engaged with the industry through the Construction Industry Forum for Northern Ireland (CIFNI) for some time. It also builds on our work in July 2006, which looked at how a sustainable construction industry could be developed in Northern Ireland over the longer term. The purpose of that was to deal with the challenge of delivering the investment strategy, looking at how the industry could be developed beyond the end of that strategy, how it could seek work outside Northern Ireland, and what development individual firms would need to make that happen.

623. To support that type of work, we set up the constructing excellence centre, as a partnership between the Construction Industry Group for Northern Ireland (CIGNI), the Government construction clients, and the University of Ulster. We have been doing some work with the centre on how Departments have the capability to manage construction projects. We have received a report from the centre, which will be the subject of a discussion at the next meeting of CIFNI on 9 June. This is follow-on work to that.

624. Mr O'Loan: I have a few issues. I have looked at the documents. In some ways, I am saying what has been said before, but I feel that it needs to be said. In all these conversations, the system is presented as being very sound; and here we have a further mechanism for good consultation between CPD and the outside firms involved. Yet, when I talk to construction firms and architectural practices, I get very poor feedback on how procurement is working here: they are not happy at all. When we look at the paper that we were given last week on the legal cases and lessons learned, it seems that there is a fair bit going wrong in the system, and it goes back to the fundamental reason why the Committee is holding an inquiry, which is that it is necessary and because the system is not fit for purpose.

625. Mr D Armstrong: The Committee would not expect me to agree with that assessment directly. One must recognise that for each competition that we run there will be one winner and a set of unsuccessful tenderers. Therefore, views on the procurement process can be determined by whether one is successful or not.

626. As far as construction is concerned, the industry has failed to recognise the substantial amount of construction work and the increase in the workflow that have been taken forward over the past three or four years. For some reason, growth due to the investment strategy has not really found its way into the psyche of the industry. We still hear statements that the £1.4 billion or £1.6 billion is not being seen at ground level. That is not realistic. When people drive through the centre of Belfast they see a selection of tower cranes and the work that has been carried out on the Westlink and the M1. Belfast is being worked on from one end to the other.

627. The Chairperson: They may have been talking about west of the Bann.

628. Mr D Armstrong: There is a good project in Enniskillen — the Waterways Ireland building — which returns the highest environmental performance of any project that we have carried out in Northern Ireland. It stands alongside any standard that could be picked up in the UK.

629. A lot of activity has taken place. However, the construction industry's concerns about procurement are very diverse. In the past, we have relied on CIGNI to carry through any communication to the industry.

630. The Chairperson: The Committee's inquiry will be strategic. I suspect that there is some validity in your observation that the local construction industry has either not responded to the investment programme or does not have the composite vision of it. Has there been any analysis of the extent to which the local construction industry has benefited or has been able to win contracts?

631. More importantly, the Executive have taken measures to make procurement easier to access, especially for the SME sector, including the construction industry, in order to help it win contracts. Have those measures had an effect? The Committee will be looking at the baseline situation when the Executive was formed and how that has changed as the investment strategy has been rolled out and as the procurement process has been amended to make it more accessible and easier for local SMEs to win contracts.

632. Mr D Armstrong: To give the Committee an idea of the benefit that local firms have had, we asked our colleagues in Government Construction Clients Group (GCCG) to give us an indication as to how many contracts were awarded in the past 12 months and the types of firms that were awarded those contracts. We found that more than 90% of the contracts had been awarded to local firms. That goes against —

633. The Chairperson: As opposed to being subcontracted by —

634. Mr D Armstrong: Those contracts had been awarded to local firms, and that is totally at one side of the spectrum. I do not know from where the perception has come, but the industry perceives that the investment strategy has, somehow, been bundled up as being —

635. The Chairperson: Perhaps we need to tell them. Perhaps we need to do more.

636. Mr D Armstrong: That is what we have recognised. Part of our engagement with the construction industry must involve reassuring stakeholders that the procurement process is open and transparent, that it is effective and that it brings benefits to the local industry. We may have missed that point in our communications.

637. The Chairperson: I think so.

638. Mr O'Loan: As regards the use of most economically advantageous tender (MEAT), it has been suggested to me that the word "economically" is the only relevant word in that phrase. Ultimately, cost is what matters. I can think of an instance, outside the construction system, which was about cost. The specification was not well-designed, and the public sector was not getting a good deal. It thought that it was getting a good deal because the money was good, but it was not looking at the big picture.

639. Mr D Armstrong: I accept what you say if one were moving to procurement whereby one produced the specification for a client and took the lowest price: that has been shown in a number of reports, particularly in construction. However, if one draws up a specification and asks contractors to bid on the basis of lowest cost, and one accept contracts on that basis, it has been shown that that does not deliver value for money. Substantially, all contracts in recent times have been moved to assessment under quality and price.

640. Price has to be an important part of the equation. However, the combination of price and quality is now well-established in the construction industry, and it is being monitored carefully by the Procurement Board because any departure from the process must be explained by a senior official. An issue may arise whereby the perception of the industry is that the quality submission is not being enforced when it comes to contract —

641. The Chairperson: Did you say "equality" or "quality"?

642. Mr D Armstrong: I said "quality". The perception is that the quality bid is not being enforced by the requirements of the contract. Also, the industry has told us that we, as clients, need to create that level of quality: we need to be demanding clients. If we ask for something as part of the quality submission, we must ensure that it is put in place. As part of the conversations that we have had in the task group, it has been recognised that we need to re-examine contract management procedures as well as the procurement process that sets up those contracts: we need to ask whether the contract management procedures are sufficiently fit and robust to ensure that the commitments given by suppliers, along with the price, are put into effect?

643. The Chairperson: Are compliance, rewarding delivery, and non-compliance sanctions also part of your considerations?

644. Mr D Armstrong: In assessing whether the terms of the contract have been applied —

645. The Chairperson: Yes, but with respect to price and quality?

646. Mr D Armstrong: Yes. We need to look at both aspects and they need to be clearly delivered as part of the contract. Depending on the type and conditions of contract, there are different sanctions that one can take. Ultimately, one could run to breach of contract. Dealing with contractual issues is another set of issues that needs careful consideration.

647. As part of this discussion, the industry has said that Government must become a demanding client and force quality through. We want the industry to understand that that is what we will do.

648. Mr O'Loan: My final question is about endorsing a point that the Chairperson has made about small and medium-sized enterprises. We are still seeing, in evidence and in written submissions to the Committee, that such firms, which can be of decent size and have a substantial portfolio of work and proven experience, feel that they cannot get work here. There are two reasons: contracts are bundled together so as to be too big for them; and the whole process is extremely demanding for them. This is difficult territory: if the process is not right, then legal challenges may be made, which invite the response that the process is made even tighter.

649. We hear statements to the effect that other countries can use the system to make it friendlier to local businesses and give them a bigger slice of the cake. It enables them to get through the door more easily. We have to think about that.

650. Mr D Armstrong: As I said earlier, a substantial number of construction contracts awarded in Northern Ireland have gone to local companies, many of which would be rated as SMEs. Construction operates on the basis of subcontracting, which is a legitimate business practice. However, it requires clients to focus on ensuring that subcontracting arrangements are fit for purpose, because contractors rely substantially on the supply chain for effective delivery. Parts of the supply chain will be involved in design work as well as the provision of labour and different types of systems.

651. How supply chains operate is important for Government to recognise. SMEs must be assured that working in direct contract with Government is OK and is a good thing. They also need to know that where they are working with Government in a subcontracting arrangement, appropriate terms and conditions will be applied also. Many opportunities for SMEs occur in the supply chain, and it is a legitimate place from which they can draw business.

652. The Chairperson: Yes, but that does not mean that there is a stereotypical perspective. Subcontracting is only one dimension in the construction trade.

653. In a sense, we are trying to maximise the impact of the investment expenditure programme, and we may have to challenge cultures in Government as well as in the industry. If SMEs are being treated as SMEs, and if they already perceive that it is difficult to penetrate the procurement system because it is too complicated, expensive and cumbersome, they may not compete for all of the contracts that they could compete for. I do not see evidence of any attempt to encourage SMEs or to develop advice and support that would allow them to come together in a type of joint-venture approach. By doing so, they could create a critical mass that would enable them to compete for some larger contracts. That is how I see us delivering the opportunity to sustain and retain jobs in our economy at present. If SMEs feel that there is no point in competing for contracts, and if the Government are saying that SMEs can fit into the supply chain somewhere, the consequences of that in the circumstances of a downturn are inevitable.

654. Mr D Armstrong: I will give a couple of examples of where that type of joint-venture approach has taken place. Central Procurement Directorate has operated a framework for professional design services. In the past, Government would have chosen various professionals and put them together as a team. We have now left it to the market to do that. In effect, partners have come together in consultancy practices and have bid, as a unit, to do work for CPD. The framework has worked very successfully for us and is about to be refreshed.

655. The Farrans and GRAHAM companies are another example. They worked as partners with the main contractor on the Westlink project and have won a major contract in Scotland by taking their partnership and bidding for work in their own right. The strategic partnership approach that is being used in Belfast schools involved local contractors who created the physical infrastructure. They have also bid for work outside Northern Ireland. Part of the strategy for a sustainable construction industry in Northern Ireland involves encouraging those partnerships to happen.

656. In developing the strategy for a sustainable industry, we have recognised that we need to bring some of the smaller players together. They can come together through bidding for contracts directly, but in such instances, we look very carefully at the level of financial standing needed to allow partners to come together and work as a consortium. This is carefully assessed before the criteria are set. There are examples of local companies that have come together to do that.

657. However, all of this has to be set down within the procurement rules and with the assurance of value for money. There is an issue about overstretching firms. People operate their businesses at certain levels. When one overstretches them, one is asking them to take on more resources, responsibility, risk and liability. Normal practice has been that a contractor pays out the money, claims it back and is then paid. There is a fair bit of time involved in that process, which could have an impact on cash flow. There is a complex set of business pressures on construction firms, and, in the construction industry, cash flow is a big issue that requires great care.

658. Mr F McCann: There is public perception that — and one thinks of the Westlink, but there are others — many major companies that have won contracts bring their own workforces with them. Can that be monitored? Is the impact of that on the local workforce, or whether the local workforce is getting the jobs, monitored?

659. Mr D Armstrong: I do not think that we monitor. The premise of European procurement legislation is to allow for the free movement of labour and firms.

660. Mr F McCann: Knowing the terms of one of the firms you mentioned, I know that it had little or no impact on the locality in which the work was being done, which included some of the most deprived areas of Belfast.

661. Mr D Armstrong: Some requirements put into contracts have sought to help the long-term unemployed and apprentices. Naturally, if we put such requirements into contracts, we hope that it will be more likely that the local situation will benefit and that local unemployed people will be drawn into projects.

662. Mr F McCann: Is the impact for the unemployed across the North assessed when major contracts are being worked through, when sites are visited, and when the work has been completed?

663. Mr D Armstrong: We have not gone as far as looking at the wider social impact of particular infrastructure projects. We are starting with sustainability and are developing that in contracts to the overall benefit of the Programme for Government.

664. The Chairperson: Social clauses require you to monitor whether projects offer benefits as regards, for example, reducing long-term unemployment.

665. Ms J McCann: I want to tease out the issue of social clauses. We hear that it is now in the gift of Departments and Ministers to put social clauses into the procurement process from the advertising stage through to the delivery stage. That does not seem to be happening in a way that is delivering, for example, the Programme for Government. I know that the construction industry has an impact in delivering the investment strategy.

666. Are you confident that social clauses, and measuring social outcomes throughout the procurement process, are being implemented sufficiently vigorously? Are Departments driving that work? Small and medium-sized enterprises and businesses in the social economy sector say that the process is not being driven as it should in order to create employment opportunities and challenge poverty and disadvantage.

667. Mr D Armstrong: There is only so much of a policy that can be driven by procurement, and some of those wider issues sit outside the procurement process. Nevertheless, the construction industry now has a clear set of contractual requirements, and those requirements are being applied to contracts such as the ILEX project. The contractor for that project has been appointed, and he has told CPD that he wishes to work out with the client the best way to assure you that you will not only get the bridge work but the benefits from the social clauses. We intend to work with the contractor to identify issues that must be overcome to deliver those things. It may mean that other Departments or agencies will have to help him identify the resources he needs. For example, if the contract stipulates that long-term unemployed people must be used, other agencies and, perhaps, the local third sector, must be made aware of that and must help meet that demand. Everything cannot be driven by the procurement process, although it can be used to create demand, which must then be satisfied in a way that helps the supplier.

668. Ms J McCann: Are you confident that, in the example that you have given, the number of long-term unemployed people awarded quality apprenticeships was in proportion to the value of the contract. When companies tender for contracts, should the requirement to create quality apprenticeships not be pitched at a higher level, and that more long-term unemployed people are employed in the workforce? At the minute, the requirement is minimal. There does not appear to be a big drive to get the maximum benefit.

669. Mr D Armstrong: In order to arrive at the required number of apprenticeships, we looked at the forecasts of ConstructionSkills for the industry and we felt that we had arrived at a reasonable proportion to be driven by Government spend. With apprenticeships, one cannot over-boil the situation and end up with oversupply. I am not an expert on apprenticeship training, but I hear from the industry that there are issues regarding dropouts and people not completing their apprenticeships. At the same time, one must not create a situation in which young people are awarded apprenticeships only to find that there are no jobs for them on completion. There needs to be a demand profile that can be facilitated reasonably by a requirement. Contract requirements must be reasonable, or they may impact on those who might want to tender for contract.

670. Ms J McCann: On a wider subject, in a recent report, InterTradeIreland said that there must be better North-South co-operation between businesses, particularly smaller businesses, given that approximately 99% of the businesses in the North are SMEs. Given that approximately £6 billion a year is spent on the public procurement of services and works and that most of that money goes to overseas companies, those businesses are asking whether there is some way that small and medium-sized businesses from the South can tap into public procurement contracts here, and, likewise, that small and medium-sized companies here can tap into contracts in the South. Is anything driving procedures to make them more compatible?

671. Mr D Armstrong: With respect to opportunities in Northern Ireland, we now have the e-sourcing NI tool, which CPD introduced last year and which the Procurement Board has now approved as the template for the future. We have agreed a programme with all the centres of procurement expertise that they will come on board with during the rest of this year. Therefore, public-procurement opportunities will be visible on that portal.

672. It is about increasing awareness of opportunities. However, advertising opportunities could present problems such as over-interest, with many SMEs bidding for the same type of work. That means that all of those bids would have to be assessed, thus slowing down the award process. Indeed, there has been similar activity in the education sector in which some projects designed for the frameworks were not taken forward. That created huge interest among contractors who wanted to bid for those projects, and a large demand for contractors to submit pre-qualification questionnaires, which then had to be assessed.

673. Therefore, all of those things must be balanced to ensure that there are as few barriers as possible and that people are aware of the opportunities. However, I keep returning to the point that the opportunities need to be either direct contract with Government or working as part of a well-managed and resourced supply chain. It is there that the maximum benefits will be developed.

674. Ms Purvis: Are the social, environmental and economic clauses that you discussed with Jennifer McCann contained in any of the seven principles you have produced?

675. Mr D Armstrong: They are covered under "Principle 6 – Best Value for Money", which includes a clear commitment not only on price, but also on the wider social, economic and environmental measures in relation to supply chains. Indeed, principle 6(d)(i) relates to:

"promoting equality and sustainable development included by Government Construction Clients as contractual requirements"

676. and principle 6(d)(ii) relates to progress reporting on the implementation of those requirements. Therefore, specific reference is made to those factors in the principles.

677. We have now moved to the point where we know that the best value for money is not just about a combination of price and quality but that it also includes social, economic and environmental measures where appropriate.

678. Ms Purvis: Returning to the point that Declan made earlier in relation to SMEs, paragraph 8 of your report states that: "The Task Group also considered the most appropriate procurement and contract strategies that should be adopted by the public sector. They concluded that Framework Agreements have the potential to deliver better value for money than stand-alone contracts."

679. The Committee has received evidence suggesting that frameworks have tended to exclude or disadvantage, unfairly, SMEs due to their relative size, the nature of the selection criteria and because they excluded businesses for a long period of time, up to four years. Has any consideration been given to reducing the size of the frameworks and change the selection criteria?

680. Mr D Armstrong: I do not believe that the selection criteria will be changed. We will still be looking for a high-quality supplier who can provide the best value for money.

681. Ms Purvis: Yes, but the insurance requirements are beyond SMEs. Requirements regarding business turnover are excessive in comparison with those of some SMEs. It is about ensuring that the criteria fit the contract on offer.

682. Mr D Armstrong: The industry has said that one of the important things, in relation to the frameworks, is that they provide an opportunity to bid. The construction frameworks that we tried to develop were in a different time, when the economy was in a different position and when the construction industry was likely to be short of resources to do the types of work that Government and the private sector wanted. At that time, the procurement strategy established for those frameworks was fine and could have been closed off at any point in time.

683. Frameworks are not contractual commitments in the same way as long-term contracts; therefore they afford flexibility. If one finds that a framework is no longer appropriate or is not delivering value for money, the decision can be taken not to put any further work into that framework. There are some advantages over a long-term contract.

684. Even so, the industry says that it wants to see, and would support, a more frequent refreshing of the frameworks, or lesser value being placed on each framework. The industry prefers a number of frameworks to be working at the same time, adding to the value, and those being refreshed almost by a programme that allows the procurement process to be managed properly. That is something on which we can work with the industry to ensure happens.

685. As to entry points, we need to ensure that companies have sufficient financial standing and are not overcommitted. Those requirements need to be examined carefully. We have some guidance, through the Office of Government Commerce (OGC), as to how a supplier's financial standing may be assessed. One has to be careful about how one settles on the criteria to allow firms to tender for work.

686. Ms Purvis: It should be about making the framework appropriate to the size of the contract, rather than having a very large framework that an SME cannot get on to because of turnover and other requirements.

687. Mr D Armstrong: We found that SMEs are on those frameworks and that local SMEs are forming partnerships. The option of allowing firms to come together in partnerships is available. We can provide information that shows that those frameworks are going to deliver that.

688. Ms Purvis: I am thinking of smaller businesses at the other end of the scale.

689. Mr D Armstrong: Yes, the micro-businesses.

690. The Chairperson: The value-for-money criterion is clearly dominant: that is sensible and I am not challenging that. However, is it possible to codify what is meant by social inclusion or social clauses? That should not be an afterthought or a less significant criterion. Where can we refer to in order to judge whether we are meeting those targets? Is it in any of the principles? I did not see that it was there.

691. Mr D Armstrong: It lies in the principle of best value for money.

692. The Chairperson: Is it codified within that?

693. Mr D Armstrong: We have taken the approach with the construction industry of imposing contractual requirements. The issue with sustainability, at present, it is an undefined term, and individuals or organisations may take different views as to what it means.

694. The Chairperson: They will. That is predictable. What I am saying is that the Assembly parties are anxious to achieve maximum value for money and maximum benefit for money by using a social-inclusion approach. How can we hold ourselves to that target? How can we deliver on it? If this is an undefined term, no one can be held to account.

695. Mr D Armstrong: We will be able to report on the aspects of procurement policy or applications that have delivered visible benefits. We have identified in the construction industry those aspects that span social, economic and environmental categories. Part of the work of the centres of procurement expertise is to ensure that they start to clock up the benefits that are coming through on the contracts. We are very alert to the fact that in the future we will be asked how many contracts and how many benefits have been delivered through them? We are alerting the centres of procurement expertise to that, and to look at how we might record that. The e-sourcingNI tool includes the possibility of inserting that as part of the contract management module. As part of contract management, we should be able to pick up the success that we have had against those particular items and make sure that that is collated and reported.

696. The Procurement Board will have an interest in how its guidance on equality and sustainable development is being applied; and, again, it will fall to CPD to work on that.

697. The Chairperson: Coming at this from a different angle: has experience demonstrated that there is an upper level in the value of a public contract that SMEs have not passed and that they are operating in a certain stratum within the overall spending profile and not beyond, except as clients or subcontractors?

698. Mr D Armstrong: Again, that falls to the guidance.

699. The Chairperson: Coming back to the frameworks, it has been mentioned that they tended to be too big to be digested by the local SME sector, and we are looking at that now. I am just trying to find out how anyone measures the effectiveness of the responses or amendments to the process.

700. Mr D Armstrong: We could do some work to look at the frameworks that have been appointed, or would have been appointed, to give you some indication of the level of SME activity within those frameworks?

701. The Chairperson: That would be helpful, given that they make up 99% of our local industry.

702. Mr D Armstrong: I am anxious, with respect to perceptions, that there is a need for data and information. Therefore, we will do some work on the level of SME success.

703. The Chairperson: I am coming close to abusing my position as Chairperson.

704. Mr F McCann: Some of my questions have been asked. I will pick up on some of the evidence and points made about new businesses. They are unable to provide three years of accounts, which almost rules them out of applying. Furthermore, there is no real clear definition of an SME, the bulk of which employ between 10 and 20 people and are ruled out because of their size.

705. Furthermore, jurisdictions such as Scotland and France seem to push the boat out continually regarding social clauses and local employment. I get the impression at various meetings that we seem to be reluctant to push our boat out as far as it can go. I know that there are legal constraints, but, on some occasions, if we do not try something, we might never be able to provide employment.

706. Finally, does the Department monitor how many contracts go overseas and how many are won by local companies?

707. Mr D Armstrong: That information has not been monitored in the past, but we will be able to provide it in the future. Procurement information will be coming through on the eSourcingNI portal, which will give us very good management information. There is always the risk of protectionism, but it is not for me to comment on that.

708. We are in discussions with Wales, Scotland and the OGC regarding what other jurisdictions are doing, and we had a meeting on construction matters about 10 days ago. We are seeing what they are doing, and although the situation is not perfect in Northern Ireland, we are moving ahead on the important areas that we have to address. Procurement is something we need to continually improve in order to reassure everyone that we are doing what we can with the funding that is available to us. However, the success rate for local suppliers in Scotland and Wales is not as high as it is in Northern Ireland.

709. Mr F McCann: I notice that the evidence states that there is no clear definition for an SME.

710. Mr D Armstrong: We are happy to look at the definition and at how the financial standing issue can be addressed and is being addressed.

711. Mr F McCann: What about new companies that do not have accounts for three years and feel disadvantaged because they cannot apply for contracts?

712. Mr D Armstrong: I will take that as a specific point to look at.

713. Mr Hamilton: The thrust of questioning and probing has been about how we can help local companies, whether they are small, medium, large, or social, to take more advantage of the procurement process and the many millions of pounds that are bound up in that.

714. On the back of their work on the Westlink contract, Farrans and GRAHAM came together to take a contract to build a road in Scotland. There may be an MSP in Edinburgh today who is asking what can be done to prevent those so-and-sos in Northern Ireland from taking contracts in Scotland. There are swings and roundabouts in this issue.

715. Principle 6(d) is about and sustainable development and includes proposals for promoting equality and sustainable development and making them contractual requirements. That is one half of the equation. How will that be enforced? Are you considering the flip side in the form of sanctions for not meeting those requirements and rewards for attaining that performance?

716. Mr D Armstrong: As regards sustainable development, the practice in the environmental area is better established than it is in the social and economic areas. For the construction industry, the Department has placed a focus on site waste-management plans and on building structures with good energy performance. That is more akin to a traditional approach in construction.

717. The social and economic benefits are fresh requirements. Therefore, we have alerted the centres of procurement expertise that they need to look again at their contract-management procedures to ensure that everyone is aware that, as well as the hard infrastructure that we have always asked for in the past, we are now asking for those additional items. We want to work with the centres to look at what contract-management procedures are in place to ensure that those are effectively applied and deal with a situation where we feel that a supplier is not delivering on those commitments.

718. As I have said previously, we need to recognise the benefit that Government spend can make to the economy through its impact on individual businesses. In return for that, the Government need to get back the maximum for the money that they have made available. If there are commitments in contracts to do things, it falls to us to ensure that those are delivered. Rather than getting into a contractual dispute, we want to work in partnership with suppliers to ensure that they realise that the requirements are important and that we intend to ensure that they are delivered.

719. Mr Hamilton: Principle 1 is about visibility of opportunity. Much of the grumbling and complaining about the procurement process may come from people who are not necessarily that involved in the process or are aware of what goes on. It is useful to highlight what is going on through regular updates on websites, certainly for the big boys. Does CPD or any of the centres of procurement expertise actively talk to local businesses about opportunities? I do not mean that that should be done on a contract-by-contract basis, as that would be ridiculous, but local businesses could be educated about the procurement process and be shown how to get information on a regular basis. Do you do that already?

720. Mr D Armstrong: No. We have guidance notes on the website, on which we rely heavily. We will carry out work to see how effective that is.

721. Recently, we worked with the CBI on a conference that we held specifically to allow us to explain how the procurement process works, to demystify it, and to explain that we must operate within the boundaries set for us by European directives. Part of the conference aim was to get feedback from suppliers and to let them tell us their experience of Government procurement in Northern Ireland. We then had a break-out session in which each of the centres of procurement expertise held a surgery. First, they dealt with suppliers' general questions, after

which they were available to address individuals' concerns about their own particular procurement.

722. There is a need to continue that kind of engagement. We are planning to hold a further conference with the Construction Employers' Federation in June 2009, with a view to outlining the work that we have done on the task group and explain Government requirements. At that conference, we will also say that we expect the construction industry to come to the process as good suppliers and be able to deliver the best value for money for Northern Ireland's expenditure. There are two sides in the process. It might be interesting to hear the views of some Government construction clients against those of some suppliers.

723. Mr Hamilton: That level of engagement is positive. You said that there is one winner and many losers. It is easy for suppliers who are unsuccessful to sometimes, say that: "You cannot work with that so-and-so sitting up there", without getting the other side of the story. Equally, you cannot hide behind EU rules and regulations.

724. You used the term "demystify". It would be helpful to get out there and speak positively to businesses, whether that is through the CBI, the Institute of Directors, the Construction Employers' Federation, or the Federation of Small Businesses, to explain how they can be involved.

725. Mr McQuillan: Do you view local Government procurement as part of the process or separate altogether?

726. Mr D Armstrong: Local Government procurement is not bound by Government procurement policy. The review of public procurement recognised that there is a different legal standing for councils in Northern Ireland. Therefore, the policy that has been set for Government Departments is applied at councils' discretion.

727. Some of the developments that we have had with the local construction industry have not flowed as well as we expected because some councils have taken on the policy and others have not. That has caused a wee bit of confusion. We have taken approaches to look at how the review of public administration might have impact and to try to put on the agenda that when organisations are brought together, procurement spend increases and becomes more significant. CPB is happy to help to explain that policy —

728. The Chairperson: You do not have a role at present?

729. Mr D Armstrong: No. We do not have a role beyond volunteering our advice.

730. Mr Weir: There will be greater emphasis on local Government procurement, particularly post-2011. There will much pressure to meet the level of efficiency savings needed to deliver the best value for money from the opportunities that arise.

731. I want to pick up on Adrian's point. I appreciate that there are constraints, or, at least, that there are not the same number of opportunities for local Government procurement as there are for central Government procurement. Local government and central Government need to take a reasonably proactive approach so that, even if they cannot operate according to the same policies, there is closer co-operation.

732. There is willingness in local Government to take advantage of best practice and, indeed, to ensure that there is closer co-operation. For example, the Local Government Association has organised a local economic-development summit, which will take place this afternoon. I am not

sure whether you plan to be there. One of the sessions, with which I have been directly involved, will deal with procurement. So there is not just willingness but a desire on the part of local government to tap into the best methodologies for procurement. That needs to be more proactively explored, even if it cannot be enforced.

733. The Chairperson: One would have thought that the economic development pillar of the review of public administration discussions would have created an almost irresistible argument in favour of formalising the procurement processes.

734. Mr Weir: In the review of public administration process, policy development panels are looking at issues: I am not sure which panel is looking at this one. Procurement can play an important role in, for example, shared services. One of the panels is concerned with finance. In finance, there may be mutually beneficial savings for local government. I think that the door is open, and if it were pressed — I was going to say pressed from both sides but then one would get stuck. The analogy slightly breaks down there, but there are opportunities.

735. The Chairperson: A revolving door would not be much help either.

736. Mr Weir: That is correct — we would end up at opposite sides.

737. The Chairperson: The reference at principle 7(b) to an alternative dispute resolution procedure sounds interesting. What does that entail?

738. Mr D Armstrong: It is something in which the construction industry is very interested. It has been in contact with Scotland, has seen the Scottish model, and is to explain a Northern Ireland version to us. We are waiting on the industry coming forward with that information.

739. As regards my views on a regulated public procurement process, some things could give reassurance, up to a point, that the process is open, transparent and fair. However, it cannot replace the absolute entitlement to go to court. However, at the centre of procurement expertise, we sometimes receive complaints about particular aspects of procurement. We have a formal complaints procedure. There is a two-stage approach in CPD. The director or provisional director does his bit, and if he cannot resolve the matter with the complainant, it then comes to me and I will have it reviewed. We have had some comments that that looks as though we are acting as judge and jury in our own case and that the procedure is not as open as it could be. If we had an alternative procedure, by which we could quickly get an independent view and which may or may not be binding on the parties, it might calm some of the concerns that we are closed to —

740. The Chairperson: I presume that, if you got agreement, it would become a binding resolution?

741. Mr D Armstrong: If we could assure firms that their bid has been handled in a fair and reasonable way, and that there is no case to answer, that might encourage them to realise that it has been looked at by an independent party, to take rejection on the chin and look for the next opportunity. We would be willing to look at that as a part of the complaints procedure that centres of procurement expertise have to have in place. I have some concerns as to how it might work alongside the legal entitlement to go to court.

742. The Chairperson: I hope that this is not just an endless piece of string and I hope that there are timelines involved. Will you please keep the Committee up to date? There are certain actions against the principles that have been enunciated. It would be helpful if the Committee could be given an update.

743. Mr D Armstrong: The intention is that much of the activity will be taken forward by smaller task groups that will work through the summer. The next CIFNI meeting is in June and there will be a follow-up in October. Perhaps we could update the Committee after that.

744. The Chairperson: We are in the midst of taking a broader, more strategic approach to procurement, but you have given us very useful information this morning. We will have a continuing interest in how those protocols work out in practice, and we will come back to you on that.

745. Thank you very much for your assistance.

13 May 2009

Members present for all or part of the proceedings:

Mr Mitchel McLaughlin (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Dr Stephen Farry
Ms Jennifer McCann
Mr David McNarry
Mr Declan O'Loan
Mr Ian Paisley Jnr
Ms Dawn Purvis
Mr Peter Weir

Witnesses:

Mr Mark
Dougan Ulster Community
Mr Brian Investment Trust
Howe

746. The Chairperson (Mr McLaughlin): We will hear from the Ulster Community Investment Trust (UCIT), which is represented by its chief executive, Brian Howe, and its research, policy and fund-raising officer, Mark Dougan. You are very welcome. I apologise that the previous evidence session overran; I hope that you were not too inconvenienced. I ask Brian to make some introductory comments, after which members will ask questions.

747. Mr Brian Howe (Ulster Community Investment Trust): I will give a brief background of our organisation. UCIT is a charity that finances the social economy and that began operating in 2001. At that stage, we received approximately £8.5 million funding from Government and took over a loan book of about £6 million. Since 2001, we have invested about £22 million into approximately 150 social enterprises.

748. We help the social economy to grow, and we help to create jobs, income and wealth for local communities. Therefore, we are part of that sector, and we want to continue to support social enterprises, of which there are a large number. We estimate that approximately 1,200 social enterprises operate throughout Northern Ireland, and they employ in the region of 20,000 people. We recognise that the sector needs to grow and become more professional. As part of that, the whole sector should be able to access work through procurement. That is what the Committee is concentrating on at the moment.

749. From our point of view, procurement and having a level playing field for the social economy are important. We think that we could establish a brokerage service for the social economy. Many of the players in that sector are very small. However, they do a lot of good work in various areas. We propose to set up a brokerage service that would build those groups into a cohesive unit that could bid for jobs in public services — in health care, for instance.

750. We see ourselves joining with others in the social economy. One group that we are interested in joining with is the Social Economy Network, which has access to the sector and its members. Another organisation is the School for Social Entrepreneurs, which works alongside the University of Ulster and could build the capacity of the sector. We would provide the finance, it would provide the capacity building, and the Social Economy Network would provide access to a broad range of organisations.

751. In order to achieve that, we see further funding as being necessary. We are not suggesting that we need funding to set up the service; however, we need money that we can provide to those organisations. That is necessary not only to help them grow, but to help them take on those jobs. Our suggestion to the Committee is that part of the available dormant funds should be ring-fenced as a social economy loan fund. Part of the interest from that could be used for the brokerage service.

752. It may not be within the Committee's remit, but our sector, and particularly our organisation, must be professionalised. One way to do that is by regulation, and we advocate that our organisation is regulated by the Financial Services Authority. We will be asking the Government here to lobby central Government to regulate the sector and to regulate us within that sector. We are asking for the Committee's help in doing that, if it is within its remit.

753. The Chairperson: It is probably not. However, we certainly hear your case.

754. Mr Hamilton: You put forward some very interesting ideas. I like the fact that they are ideas to try to get the sector professionalised, which is important, and, perhaps more importantly, they are ideas to get the sector going, growing, and getting more work. You talked about establishing a brokerage service to encourage, assist and advise. That sounds like an interesting concept. How do you see that working in practice? Are there examples from elsewhere — for example, in the rest of the UK, in Ireland, Europe or beyond — of similar schemes working successfully?

755. Mr Mark Dougan (Ulster Community Investment Trust): Thank you for your question. We have done research looking at all the regions in the United Kingdom. A similar scheme, called an online matchmaking service, is provided for social enterprises by Futurebuilders England. That scheme is confined to the English region. The idea of that is to build co-operation and partnerships between social enterprises so that they can come together, increase their business strength, and go on to win public service contracts.

756. In England, there have been moves towards financing the social economy and building its capacity on a wider basis. Again, that has been done through Futurebuilders. In 2004, the Government put approximately £150 million into Futurebuilders and in 2008, they put in another £65 million, although I must stress that that is for the English region only. That money was to be used to scale up social enterprises so that they could go on to win public service contracts.

757. In addition, a programme called Capacitybuilders has been launched. The business support can be seen as working alongside the investment. Capacitybuilders has been designed to increase the business capacity of groups so that they can win public service contracts. The key is that the Government, within the English region, and the Scottish Parliament are recognising the need for social enterprises to win public service contracts. There are several reasons for that. Social enterprises are seen as important community stakeholders because of their sense of

community ownership. They are run by local people for local people and are a good way of delivering public services to vulnerable sections of society particularly in disadvantaged communities. It is recognised across all regions that social enterprises have a very important part to play.

758. Equally, social enterprises are saying that they have an important contribution to make to the economy as a whole. As members are aware, the public procurement sector in Northern Ireland is worth approximately £2 billion a year: I think those are last year's statistics. For the sector to grow, it is important that social enterprises play their part in public procurement as effective competition for the private sector. We are not talking about them working on their own; we are talking about them subcontracting with the private sector or working together in collaboration.

759. I have learned that last year the Scottish Executive have put £30 million into the social economy over a three-year period. That money, which went to Social Investment Scotland, a similar organisation to ours, is designed to allow social enterprises to scale up their operations and increase their business capacity and procurement readiness.

760. Mr Hamilton: We have taken an ongoing interest in capacity, allied to other issues. You talk about current capacity and the need to upscale and build up organisations; maybe even grow new ones. That is recognition that although there are currently 150-plus enterprises doing good work they are by and large quite small-scale, certainly in the wider economic sense. Those enterprises are getting a very small chunk of that £2 billion of public procurement every year.

761. We have been examining the possibility of inserting social and environmental clauses into major public procurement contracts, of which there are a significant number. Doing that would put pressure on existing social economy enterprises. Does the capacity exist to deal with a proliferation of social and environmental clauses or is that what you mean by upscaling and encouraging through a brokerage service? Do you see that as an essential cog in the wheel to get the sector to the level at which it could take advantage of more social clauses within contracts?

762. Mr Howe: There is a need to build capacity in the sector. At the moment, some organisations are handling large public procurement contracts very well. However, the sector is dispersed in the sense that a lot of small groups would love to do the work that they may not be able to do on their own. The idea of our offering a brokerage service would not be just so that we could bid for contracts but that we could upscale and help those organisations prepare to take on contracts. There is a lot of work involved in that.

763. Part of our work is to help grow the sustainability of the sector. Ultimately, we lend money to get it back. We are very conscious of the sustainability of the organisations that we are working with, the idea being that if there is a chance to win public sector contracts, we will support them in that. That is the idea of the brokerage service. However, a lot of work in skilling and building the sector will be required.

764. Mr Weir: Simon has covered some of the points that I was hoping to raise. Your submission is very useful and has a good focus, and I am aware of the good work that you are doing. You are to some extent a banking system for the social economy, if that is a not too pejorative term nowadays.

765. The Chairperson: That is a very pejorative term.

766. Mr Weir: On other occasions, people may think it an insult to be accused of being a banker.

767. I want to touch on a couple of points. First, you mentioned ring-fencing a level of funding within dormant bank accounts funding to help with brokerage activities. Have you given any thought to the ballpark figure that would be necessary for those sorts of activities?

768. Mr Howe: Yes. If we want to get into a brokerage service in a reasonable way, it is going to cost money. If there were a fund of, for instance, £10 million — that is just a figure I am using — and we were earning 5% interest on that, it would provide an income of £0.5 million a year. Most of that income could be directed towards the brokerage service because UCIT is sustainable in its own right. At this stage, it is very difficult to estimate the actual cost of the brokerage service. An economic appraisal should be carried out and, if the idea is shown to be feasible, a business plan should be prepared and the service properly costed. All of that work needs to be done. However, it could be achieved within that ballpark figure.

769. Mr Weir: Simon has already teased out some detail of the brokerage service with you, and I know that it is to some extent at the embryonic stage. However, as I see it, the idea seems to be potentially three-fold. First, there is what I would view as a degree of administrative and financial backup for social economy groups to help with bids. Secondly, there is the gathering together of smaller groups and helping to form them into consortia so that they can achieve the economies of scale needed. Thirdly, you indicated that there may be a situation in which the brokerage service bids for contracts and then seeks to subcontract them to various social economy groups. Are there any functions other than those three that you see the brokerage service performing, or is there anything else that we have missed out at this stage?

770. Mr Dougan: Those are the key functions. It is about getting in early and building the business capacity of the smaller groups and, as you say, connecting them with the private sector and larger social enterprises. There is also the function of segmenting the public procurement marketplace for those groups, educating them about public procurement opportunities and connecting them with the Central Procurement Directorate in its Meet the Buyer events. It is about getting social enterprise groups involved at that stage. Generally, your overview is exactly what the service would be involved in.

771. Mr Weir: I assume that part of the service is also about providing information. One of the major problems both for social enterprise groups and small businesses in the private sector is about getting a handle on the vast number of procurement opportunities that are available. The fact that one opportunity may be advertised on one website while others are advertised elsewhere means that it is difficult to get an overall picture of what is happening. Lack of co-ordination of information seems to be one of the problems.

772. Mr Dougan: That is where the market segmentation of public procurement opportunities will come into play.

773. Ms Purvis: Simon Hamilton spoke about social clauses. Some larger companies perceive social clauses in public procurement contracts to be a bit of a headache and a nightmare to try and work out. However, social economy enterprises already do much of what social and environmental clauses require with respect to environmental protection and economic regeneration by providing local employment and services. Therefore, social enterprises are probably best placed to take on large procurement contracts that have social and environmental clauses. Will you comment on that?

774. Mr Howe: As you rightly say, in most cases social enterprises have a double bottom line. They exist to provide services in the community and make a profit so that they can continue to provide those services. In many cases, organisations have a triple bottom line, because they also have an environmental aspect. I advocate including social clauses in public procurement contracts; however, such clauses should not be so onerous that they disadvantage others.

775. We are trying to professionalise the sector and get it up to speed with the "ordinary economy". The social economy sector needs to realise that it is part of that economy and that it creates great wealth for local communities. The public procurement service could help to professionalise the sector. It could help organisations realise that they are professional, that they have to bid against other companies and that unless they are properly structured and set up they are not going to win contracts, even if those contracts contain loads of social clauses. I certainly advocate the idea, but social clauses should not be so onerous that they exclude others.

776. Ms Purvis: One criterion for public procurement contracts relates to financial capacity and the financial health of a business, and that seems to disadvantage a lot of smaller or new companies and social economy enterprises. Given that a lot of smaller businesses do not have enough financial capacity, how do you see that aspect playing out? Who will take the risk? Will the brokerage service take the risk by providing security when tendering for contracts?

777. Mr Dougan: I take your point. Many smaller social economy enterprises were grant-funded, but most now have sustainable funding, having borrowed from UCIT, etc. However, they do have a weakness regarding their financial accounts. The brokerage service will connect smaller organisations that have a lack of financial history with larger social enterprises and the private sector. Therefore, the brokerage service will play a subcontracting role in local communities.

778. Beyond that, our aim is to build the business capacity of small social economy enterprises in respect of their financial accounts and how those are presented and professionalised. The connections that small social economy enterprises have with larger social enterprises and the private sector will be the key to them overcoming that obstacle and successfully winning public service contracts.

779. Ms Purvis: I like the idea of dormant bank accounts funding being used as an investment loan or fund. You provided examples of those being used in Scotland and England for the benefit of the social economy. A number of bids have been made here for dormant bank accounts funding, particularly by the community and voluntary sector. Is there room for everyone, or should it really be used for one purpose only?

780. Mr Dougan: Provision is being made in England for the establishment of a wholesale investment bank using a portion of the dormant bank accounts funding. The Irish Government used the Dormant Accounts Act, 2001 to redirect dormant account funds in the South to grant-funding. All of that money has been used up and questions are being asked about the sustainability of that decision. I did a wee bit of research into the money that the UCIT received from Invest NI in 2001 and 2002, which amounted to approximately £4.5 million. We have recycled that money, which now amounts to £8.2 million. Our original target was to support 30 projects, and we managed to support 83 as of this year. That money is still in play, and will still be in play for another 10, 15 or 20 years — for ever more, really. That gives members an idea of how that money can go on working repeatedly to build sustainable enterprises across Northern Ireland.

781. Ms J McCann: I want to talk about social clauses. During the Committee's inquiry into public procurement practice, it has become clear that individual Departments have it in their gift to implement public procurement contracts so that the social investment is as valued as the monetary investment. You are correct; the social economy provides local employment that generates income for the wider economy. You gave us statistics about the amount of money that is being put into social economy enterprises in Scotland and England. The Scottish Parliament have conducted a proactive campaign to ensure that the social economy in Scotland grows and develops. Is it fair to say that that is not happening here?

782. As far as I am aware, the social economy here is perceived to be a small enterprise that does not help to build the economy, provide employment, or, as you said, tackle disadvantage and need. Tackling disadvantage and need is one of the key commitments in the Programme for Government. Are you making any headway in convincing Departments that the social economy is a viable enterprise that requires investment? Are you making any progress towards ensuring that, in line with the Programme for Government's public service agreements, social economy enterprises can compete for public procurement contracts and can grow and develop accordingly? I am not always sure that many people are listening to us when we express that view here. I sense that Departments, Ministers and the Executive are not listening. Do you share my sense of frustration?

783. Mr Howe: You are probably right. We have not come here to criticise Government or criticise what they do for the social economy, because we have been funded by Government in the past. We are grateful for that funding and we would not be here without it. By way of example, Invest NI has just launched the social entrepreneurship programme, to which it will commit approximately £1.2 million during the next few years. That is the main vehicle for developing the social economy in Northern Ireland. We are playing our part in that investment because we are providing the loan finance, which does not come from anywhere other than the funds that we already have. However, I do not think that that is enough; it is far short of what is required compared to what is happening in Scotland where £30 million has been put into capacity-building projects. There is a great need to build the sector and put more money into it.

784. The problem here has been caused by the plethora of grant-funding that was available in the past. Organisations were built on the back of Peace I, Peace II and Peace III funding and International Fund for Ireland money. In a sense, that is coming to an end and organisations must be fit and ready to continue without grant-funding. Invariably, some organisations in the community and voluntary sector will need grant-funding consistently; and rightly so: for example, one cannot run a centre for blind people without some form of grant-funding. However, I am suggesting that social economy organisations are trying to become leaner, fitter and meaner so that they can take on their role in the wider economy, and we are promoting that.

785. However, we still feel that there is a need for investment in such organisations. Invest NI has directed money into foreign-direct investment and organisations have taken that money, set up in Northern Ireland for a while and left soon after, which has resulted in the loss of hundreds of jobs. The social economy sector has been constantly building up jobs on the ground and working away. In the current economic circumstances, such organisations are creating jobs; so a lot more funding is required for them.

786. Ms J McCann: You mentioned the capacity of some social economy enterprises to grow. I have had discussions with some that have linked with private companies to invest and try to secure public procurement contracts but which cannot get their foot on the ladder. A barrier still exists, even when those enterprises are building capacity and almost becoming part of a consortium with private companies. That seems to be the culture, and it is not only the case in the social economy sector, it is also happening with small and medium-sized businesses. Do you sense that you are making progress on eliminating those barriers? Building social and environmental clauses into contracts from advertising stage through to when the work is complete is the way to break down the barriers. That way, at least there is a format for enterprises, and they are not marked only on their financial capacity, as Dawn said, but on the social benefits that they provide. Those social benefits also benefit the economy: supporting social economy enterprises is not just about building the capacity of communities it is also about social benefits to the local economy.

787. Mr Dougan: There is evidence of a language barrier between the Departments in how they understand the social economy sector, and that causes a lack of awareness of social enterprises and what they are doing in communities.

788. I want to take up your point on how proactive other regions are, and add to some of the points made by Brian. The Department of Health has created a £100 million social enterprise fund for existing social enterprises involved in public procurement. Although the fund is for the English region only it gives a sense of how proactive and willing that Department is to bring together the social economy and public procurement. Across England, Scotland and Wales I get the sense that there are two elements in their drive to increase opportunities for social enterprises and public procurement; access to investment capital and provision of business support. To answer your question, Northern Ireland is falling behind on those two elements. For example, last year Wales announced a new £7 million investment in business capacity for 200 organisations over the next five years. That gives a sense of how proactive the various authorities are in driving new opportunities for public procurement for the sector.

789. The Chairperson: You mentioned some impediments and difficulties that the social economy sector encounters. Have you identified those difficulties in your research? It would be helpful to the Committee's inquiry if you have identified and codified the obstacles. There may be cultural or language issues, but I am sure that there are other issues too.

790. Mr Dougan: We have tabulated some information on accessing finance over the last few years.

791. The Chairperson: Will you share that with the Committee? I am sure that that would be helpful.

792. Mr Dougan: Yes.

793. The Chairperson: Can you point to examples of contracts being awarded to social economy projects that did have access to the public procurement process?

794. Mr Howe: Yes; a number of organisations are involved in public procurement in a large way. You are probably aware of the Bryson Charitable Group.

795. The Chairperson: Yes; we will be hearing from that organisation.

796. Mr Howe: The Bryson Charitable Group is involved in a number of projects. A smaller organisation, Employers for Childcare, does extremely good work and is very well organised. Praxis Care has existed for quite a while and has grown hugely over the last while. Extern Recycle is a smaller organisation that does very good work, and The Orchardville Society is another example.

797. The Chairperson: I asked about individual organisations and you have given me some very good examples. I recognise the organisations that you have mentioned although I must confess that I would have forgotten some of them had I been asked to make a list. Has there been any experience in this region of groups collaborating in order to bid for contracts?

798. Mr Dougan: We are not aware of any examples of that.

799. The Chairperson: Dawn is indicating that she knows of an example.

800. Ms Purvis: A consortium came together to do the groundwork at the hospital in Fermanagh.

801. The Chairperson: I will talk to you about that separately, because it is something that we may need to look at.

802. Mr O'Loan: I am impressed by what UCIT is doing and by your approach to your work. Your story needs to be told louder, and it is healthy that you have come here to meet the Committee. Is your organisation unique in the sector? Who checks that you are behaving yourselves financially?

803. Mr Howe: We are unique in Northern Ireland but not throughout the UK. I hate using acronyms, but we are a CDFI (community development finance institution). There are many throughout the UK, and we are part of the Community Development Finance Association (CDFA). The Charity Bank, which came to Northern Ireland recently, is not dissimilar to UCIT, although it has a banking licence and is regulated by the Financial Services Authority (FSA).

804. We want to be regulated by the FSA. If the Department or the Committee has any sway in that matter then we would like to lobby to become regulated because that would enable us to access further funding. There are a number of larger players in the social economy. Housing associations and the credit union movement, for example, consider themselves to be part of the social economy. We have had discussions with those organisations, and they would happily invest large, essentially free, funds in us and we would provide them with a return. However, they need us to be a regulated organisation.

805. Invest NI carries out checks on our organisation, and our accounts are audited by PricewaterhouseCoopers. All of the Departments that have provided us with funding are given copies of our accounts, annual returns etc.

806. Mr O'Loan: I like your views on the strategic use of dormant bank accounts funding. You partially answered this question before: approximately what sum of money are you looking for? What proportion would that be of the money that is available?

807. Mr Howe: As far as we are aware from research that we have carried out, there is something in the region of £25 million in dormant account funds in Northern Ireland. We suggest that approximately half of that should go into some sort of loan fund.

808. The Chairperson: David, I think that it was you who first flagged up the work of the Ulster Community Investment Trust to the Committee.

809. Mr McNarry: I do not want that to go against them.[Laughter.] I was very impressed by their work. To their credit, the UCIT representatives have provided information that I was unaware of. As an elected representative, that puts me in a predicament, because there are obviously avenues that they can take and directions in which I can point them. Their proposals seem to be a fundamentally natural progression. The release and use of money, subject to scrutiny, without any real direct cost to the taxpayer, has obvious attractions. It is those attractions that I would like to see the Committee take forward.

810. I heard what was said about our remit, but there are a lot of people who would like to know more about what the Committee is talking about. However, there are no people from the media in the gallery. It is no criticism of your organisation, but it seems that when we get down to unearthing something, nobody is interested. Nevertheless, we need to try to take the matter forward, tap into the professionalism that there is, learn from it and see how it can be used.

811. I heard what you said in response to other questions. I am interested to know how weak the local social economy enterprise network is when it comes to punching its weight and competing in the procurement market.

812. Mr Howe: It is weak. However, it is a sector that is growing and being developed. Part of our remit has been to build that sector. We are not just a lender to the social economy. We spend a lot of time working with community groups and organisations to build their capacity. We do not have a large staff; we have eight and a half people, so to speak, working in Northern Ireland. A lot of our time is spent working with organisations; building, helping, handholding and mentoring them. We are confident that the organisations that we are working with are building their capacity, becoming sustainable and are fighting fit to take on those jobs.

813. In our proposal, we recognise that there is still a lot of work to be done. That is why we would utilise other organisations with the capacity to do that; including, as I mentioned, the School for Social Entrepreneurs, which has access to all the University of Ulster's research and work. There is a need to grow and build the sector. However, it has become much more sustainable over the past few years. Organisations that are not fighting fit will go to the wall. That happens in every economy. If there are organisations that are not able to remain in business, we are trying to make sure that their assets are used by, or handed on to, other organisations that can use them.

814. Mr McNarry: There are 48,000 people unemployed, and that number is growing. I am not sure how many of the businesses that contributed to that unemployment can come back. Given the growth that there has been in your sector, are you able to identify a role in the procurement market that could help unemployment to be eased? Perhaps it is too early to tell.

815. It seems to me that the economy needs to be kick-started, and that is going to have to come from somewhere. I am caught as to whether private enterprise may have lost some of its entrepreneurial spirit and it may not take risks quite as easily. Some of the things that you are talking about could be used to tackle unemployment. Is growth hindered by the downturn in the economy, or can the social economy take advantage of the downturn by giving it a boost that will help the economy to grow and will help social economy enterprises to get a foot in?

816. Mr Dougan: Every quarter, we carry out a business sector report on all our clients. Over the past two quarters, there has been a huge rise in unemployment and factories have been closing down, but our clients have been performing well. They are retaining jobs, and they are contributing to economic development in their local areas. Around 70% of our clients are based in areas of disadvantage, as recognised by the various targeting social need objectives. Social enterprises are retaining jobs at a time when they are being lost elsewhere. Many private sector companies often do not want to go into those areas and take the risk of trading. That is the key to the social economy. It has been growing organically in the areas that need it most, and it is already well placed to take public procurement opportunities and provide essential community services in those areas. Hopefully, that answers your question.

817. Mr McNarry: That is helpful. Finally, a lot of people are having problems with their credit rating. Given the current climate, is there a role for UCIT to assist with credit rating? I believe that the current situation is likely to last for some time. Is there a way of enabling a credit rating to be endorsed or guaranteed that is likely to be beneficial to someone in securing a procurement contract? Even if everything is going well with tenders etc, it can be very difficult for an organisation if it is told that it cannot be lent the money that it needs.

818. Mr Howe: At the moment, we are raising further funding for the sector, and it would be beneficial if the Committee could help us to lobby the banks to free up the sector. We envision UCIT approaching the banks to lend us the money. We will take the risk, because we have proven that we are happy to work with organisations in the sector and take on loans with them, and because we know them, work with them, and provide that handholding and mentoring and support, in general, those organisations have not failed. We have a few problematic accounts,

but, in the seven years that we have been running, we have had no bad debt, which is phenomenal.

819. Mr McNarry: You ought to talk to the Presbyterian Mutual Society.

820. Mr Howe: I spoke with the society's administrator to find out whether we could help.

821. Mr McNarry: That would be very interesting; perhaps we could go down that route.

822. Mr Howe: The banks are reluctant to lend to any sector at the moment, but we are approaching them and asking them to provide loans to UCIT at affordable rates, and we will take the risk and lend the money on to the sector.

823. Mr McNarry: Is there a history of UCIT acting as the middleman? I am sure that the banks are not really interested in which organisations UCIT is going to lend the money to, because you are accepting the risk.

824. Mr Howe: We have bid into that fund. In the South of Ireland, through the Government, the banks were convinced to provide an initial fund of ·€25 million into the Social Finance Foundation. In the past few months, that foundation — backed by the Taoiseach or someone else in the Irish Government — has convinced the banks to lend it another €75 million over the next 12 years, which it will lend on to the social economy. It acts as a brokerage service that takes funds and lends them on. Therefore, it acts as a middleman.

825. The banks have decided not to move into that sector, because they do not know it well enough. They are prepared to take a small risk on the interest income, because that is all that they are losing. For instance, if we borrow from the banks at 1% below cost of funds and we lend it to groups at 1% over, that represents a 2% spread, which is adequate to allow us to take that risk. The banks lose very little. Their corporate social responsibility is helped for a small amount of money. That is the proposal that we are intending to present to the banks.

826. Mr McNarry: Chairperson, I believe that it is reasonable to request that the Committee considers assisting UCIT to find a way into the banks on that issue. We could discuss this matter all day, but is it in order for the Committee and, perhaps, our guests to outline on paper their desired approach to that matter? The banks will attend the Committee soon enough and we will, I hope, bounce them off the walls of the Senate — I assume that you have arranged that?

827. The Chairperson: The banks and the lending institutions will attend the Committee. I am particularly keen to receive a document that provides a fleshed-out account of UCIT's discussions with the banks before that meeting. Moreover, you mentioned earlier that you are seeking regulation; some detail on that would be helpful. Finally, the terms of reference for the brokerage service would be extremely helpful, because we want to discuss that matter with other witnesses during the inquiry. Those are our three requests.

828. Mr Howe: That is fine; we are more than happy to provide those.

829. The Chairperson: It has been some time since the Committee received an update on the dormant accounts issue. We participated in the development of that proposition, which eventually went to the Assembly. An update on that matter would be useful and would feed into our review of the procurement process. Anticipating the Committee's view, I believe that we want to increase the capacity of local SMEs and social economy enterprises to access more and more procurement contracts. Today's session was helpful. The follow-up information will be of

further assistance, and we might correspond with you as our inquiry progresses. Thank you for your assistance.

20 May 2009

Members present for all or part of the proceedings:

Mr Mitchel McLaughlin (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Dr Stephen Farry
Mr Fra McCann
Mr David McNarry
Mr Adrian McQuillan
Mr Declan O'Loan
Ms Dawn Purvis

Witnesses:

Mr David
Carson
Mr Tom Central Procurement
Gilgunn Directorate
Mr Roy
Mitchell

830. The Chairperson (Mr McLaughlin): I welcome the officials from the Central Procurement Directorate (CPD). We have David Carson, the director of policy and support division; Roy Mitchell, from works procurement division —[Inaudible due to technical difficulties.] — technology procurement. Today is the first time for us all.

831. Mr David Carson (Central Procurement Directorate): We are grateful for the invitation to present evidence. Small and medium-sized businesses (SMEs) represent over 99% of businesses in Northern Ireland. They are an important part of the supply base for the Northern Ireland Civil Service (NICS), its agencies, non-departmental public bodies (NDPBs) and public corporations.

832. The importance of SMEs to the local economy is recognised in the Programme for Government. Objective four of public service agreement (PSA) 11 sets a target for centres of procurement expertise (COPEs) to have in place appropriate systems to allow access by SMEs and social economy enterprises (SEEs) to opportunities for doing business with public-sector organisations. That target is also reflected in the procurement board's strategy for 2008-2011 and in the Northern Ireland sustainable procurement action plan. Progress against both of those plans is monitored by the procurement board every six months.

833. As the lead body for public procurement in Northern Ireland, CPD is acutely aware that it is only through working with the supply base that we can help support the delivery of better public services and the achievement of best value for money for the taxpayer. Our policy in relation to SMEs is to encourage and support them to compete for public-sector contracts where that is consistent with value-for-money policy, UK regulations and EU procurement directives.

834. In seeking to develop stronger links with SMEs and facilitating greater access to public procurement opportunities, we have taken a number of actions, which are outlined in the background briefing that was provided in advance of today's session and on which my colleagues

will be able to give you some more detail. The actions include guidance for SMEs and SEEs on where they can find opportunities in the public sector and how to bid for work; guidance for public-sector procurement practitioners on how to remove barriers for SMEs; engagement with lead bodies and other interested groups, including the Confederation of British Industry, the Chamber of Commerce and InterTradeIreland, and attendance at regional SME events; engagement with the construction industry on specific measures to improve access to public-sector construction contracts for local construction SMEs; and the development of guidance, in association with the Department of Agriculture, specifically aimed at helping public-sector food and catering procurement practitioners to widen access to public-sector contracts for local food producers and suppliers.

835. There is also the development of the eSourcing tool, which allows SMEs and SEEs to pre-register and provides easier access to tendering opportunities. We are currently rolling that out across all our centres of procurement expertise. CPD has also taken part in a study being undertaken by InterTradeIreland on all-island public procurement that looks at competitiveness. It is particularly concerned with enabling SMEs to access public procurement opportunities across the island. The report is expected to be published in the near future, and I understand that the Committee will be provided with a copy.

836. We have also followed closely the outcome of the Glover review in England on accelerating the SME economic engine there, and are looking at its recommendations. We intend to review the recommendations made by Glover and InterTradeIreland in the context of the recommendations that will emerge from the Committee's inquiry. That will help to avoid a piecemeal approach to implementing change, and may well include a review of our existing guidance.

837. Mr F McCann: I have a question on an issue that I referred to earlier; it probably goes to the heart of local procurement. Recently, a European judgement has been enacted here in relation to design-and-build for small and medium-sized contractors and builders. People who would normally offer land to housing associations and design the homes to be built on that land have been told that that is no longer possible. There is a lot of confusion in the sector. It will impact on thousands of jobs across the sector, and no advice has been given to the people involved. I talked to someone yesterday who was due to start a job next week — he has been told that the job has been cancelled. It will affect thousands of people across the North. The impression is that the judgement has been applied more strictly here than in most other parts, and many local builders will go to the wall because of it.

838. Mr Roy Mitchell (Central Procurement Directorate): I am not fully familiar with the situation. It may be an issue about whether a land transaction or a land transfer deal is deemed to be a contract within the definition of the construction regulations. Can it be treated as a land transaction, which is not a construction contract, or should it be a works or services contract? I do not have enough information to talk in any detail about it. However, I will find out more and give you some indication of CPD's view of it. As I understand it, it is not an issue to do with design and build per se; it is because of the land transaction enmeshed in it.

839. Mr F McCann: It has impacted directly on design-and-build, especially for small and medium-sized enterprises. Many of those contractors are small and medium-sized enterprises, and they will go out of business. One of the difficulties is that people have got wind of the legislation and moved to stop the design-and-build projects, and have not handed on any information to other people.

840. The Chairperson: Mr Mitchell is indicating that he is not au fait with all the detail. This is one aspect of the general concern that smaller enterprises have about accessing public contracts. It is understandable, in different ways, why they would feel that way. Will you return

to the Committee with a response to that, so that we might follow through with Fra McCann's particular concern?

841. Mr Mitchell: Absolutely.

842. Ms Purvis: Small and medium-sized enterprises and social economy enterprises continually raise the issue of frameworks. Has consideration been given to the time frame and size of frameworks? Frameworks, by their nature, tend to favour larger companies. Also, the duration of the frameworks means that if SMEs or SEEs fail in one tender, they are excluded for up to four years. Given the size of Northern Ireland and our SME population, SMEs cannot compete on those terms. Are frameworks a method for providing a sustainable local supply chain? The experience of SMEs in Northern Ireland is that they have the reverse effect.

843. Mr Carson: Frameworks are widely used in the UK and Ireland. They are recognised as a key means of securing value for money and reducing the administrative burden and the time taken to bring work to the market. However, you raise a valid issue about the access of smaller businesses to frameworks. We have been actively looking at that, particularly on the construction side where frameworks tend to be larger. The issues that you raised about the duration and size of the framework, and the qualification to get on the framework, are being actively looked at.

844. Mr Mitchell: The Committee is probably aware of the work of the procurement task group that the Minister established in December. Its report to the procurement board earlier this month was endorsed. The task group represented the contracting and consulting sides of industry and Government construction clients. It recognised that there might be different models for delivering projects, and that single-provider frameworks, with one team delivering a number of projects, and multi-provider frameworks, with several teams competing for projects over time, were good models with which to go forward. However, the task group recognised the issues that Ms Purvis raised about duration and value and about people being locked out of frameworks almost indefinitely, so to speak.

845. There are recommendations, particularly on the multi-provider side. Frameworks should perhaps be limited to a shorter duration of typically two to three years rather than the full four years, and the value could be based on roughly £50 million per participant, although that would not be a guarantee to an individual participant. Therefore, a five-participant framework would be a £250 million framework. Some recent frameworks have been £700 million to £800 million. Therefore, there is a recognition that there should be smaller and shorter frameworks.

846. Although there may be a perception that the big players get in, there are many SMEs within the supply chains for those frameworks. Many local consultants are involved as subcontractors, designers, architects, engineers and other professionals. The system does not prevent SMEs from participating in and benefiting from those opportunities. The big benefit is that it provides longer-term potential for planning ahead and for making work streams more secure, rather than merely relying on individual contracts to come up now and again.

847. Ms Purvis: Why it is so difficult to implement social clauses in Northern Ireland? Other European countries use social clauses to build their economies, create sustainable companies and increase employment. However, through our inquiries, the Committee has discovered that there seems to be a blockage in the use of social clauses in procurement contracts in Northern Ireland. Social economy enterprises, which invest in and provide employment in local communities, are a prime example of a model that could be used in procurement to bring those benefits to the community. However, there does not seem to be a drive to use social clauses to benefit our whole economy.

848. Mr Mitchell: I am involved in the construction side. We use the new engineering contract (NEC) form, and we have drafted several supplementary clauses that include sustainability issues. For larger projects, the uptake of the long-term unemployed and apprenticeships are included. We have included the need to publicly advertise opportunities for local suppliers to participate in the larger contracts. Those inclusions were agreed with the industry through the Construction Industry Forum sustainability task group, with which the Committee may be familiar. Those clauses are now implemented fairly routinely on new contracts. It is, perhaps, too early to measure the success of that development, because the gestation period can be fairly long, particularly in construction. Many jobs that are currently on site were tendered a couple of years ago, before the introduction of those clauses. Therefore, there is not as much of it on the ground as we might expect to see in a year or two. We are putting those clauses in there, advising clients of their availability and outlining how they can help. Of course, the clients have an obligation to produce annual procurement plans, which indicate how they will use procurement to implement the sustainability agenda in their projects.

849. The Chairperson: You talked about capital construction; does that generic phrase cover all contracts, including the major infrastructural contracts, or is there a distinction? When you say "construction", is that a discrete aspect of economic activity?

850. Mr Mitchell: I am particularly involved in capital construction works — works contracts and consultant contracts. However, the bulk of the spend is on the capital works side, such as the Public Records Office Northern Ireland (PRONI) headquarters and the like.

851. Ms Purvis: SMEs and social economy enterprises are delivered on a plate in order to meet the criteria to build the economy and create jobs. However, I do not see them being valued very much.

852. In your paper you state that, by early 2010, all COPEs should be using eSourcing NI, the common-portal single-sourcing tool. Why will it take until then for them to do that?

853. Mr Carson: The roll-out programme is being done through one supplier, which will have to work with each COPE to implement the system. The system is fairly complex, so people will have to be trained up on it and get support from the supplier in order to implement it. Over a number of months, there will be a sequence of events to allow that to happen, and that is why the system will not be fully rolled out until 2010.

854. Mr Hamilton: We are concentrating on construction, because that is the big and visible part of the package, but there are also services and so forth. You mentioned that the overwhelming majority of companies in Northern Ireland are small and medium-sized enterprises. Recently, the Minister said that nearly all construction contracts in Northern Ireland are awarded to small and medium-sized enterprises, and that compares favourably with the likes of Wales, where the proportion of contracts awarded to SMEs is closer to 50%. A lot of factors, including geography, contribute to that.

855. According to the Department's definition of small and medium-sized enterprises — those with fewer than 250 employees — many Northern Ireland companies that we might consider to be big are small, medium- or even micro-sized enterprises. We have talked a lot about construction, and I appreciate that you may not have the figures now, but what is the percentage of local companies that have been winning service, supply, repair or maintenance contracts? How does that break down among small, micro-sized and medium-sized businesses? If it were possible to get that, it would be quite useful.

856. Mr Carson: That recommendation is common to various pieces of ongoing work, both on an all-island basis and in GB, to better monitor the statistics associated with SMEs' uptake of public

procurement opportunities. That will be one of the key benefits of the eSourcing NI system. We have to have some means by which we will be able to ensure a company's designation as a SME. You are right that some businesses that are big players on the local scene fall into that category. However, the information that we have gathered must be validated to ensure that it is accurate and robust. Recently, we have produced improved information, but more must still be done.

857. Mr Tom Gilgunn (Central Procurement Directorate): The system has been up and running for the better part of nine or 10 months. We have looked at the data, particularly in relation to some questions that were asked, and we are attempting to understand the detail that suppliers have given us. We are trying to ensure that that supplier-led information is adequate to, for example, answer the questions that you asked. We are working with our supplier to ensure that we drive that through and get the information at the detailed level that the Committee wants. We want to see it as well.

858. Mr Hamilton: In your paper, it says that CPD encourages SMEs to join together as consortia to bid for contracts. No one is suggesting that we hold their hands and go out and do the work for them, but to what level does that encouragement extend? Is there active encouragement? Is there anything more than just having a commitment to doing that?

859. Mr Mitchell: I have a fairly good example. We are in the process of establishing a new integrated consultant team services framework, where we gather together all the main design disciplines to provide design services for clients. We have one in place, but it is about to expire. It has 15 firms on it and 13 of those are SMEs, so there is a high representation of SMEs. Because they are consultants, a lot of them will be at the smaller end of the SME scale. Rather than having 249 employees, they may have 49 in some cases. In establishing that, we undertook a market-sounding exercise with the professional college of the Construction Industry Group, which is predominantly made up of SMEs. We met and agreed the broad shape and outline with which we and they would be content.

860. One of the key issues was size and turnover. We agreed that the framework will have perhaps six participating teams and each will have a lead member, the person with whom we contract. We have agreed that the team leader should have a turnover of at least £1 million — a not excessive turnover. We are also willing to accept joint ventures with each participant having a turnover of £500,000. That allows firms which cannot reach the critical mass of £1 million to come together.

861. We have taken that down into the next tier: the individual members. It is conceivable that the architect would be the leader, but he may not be. It could be the quantity surveyor, or any of the other disciplines. For all the other people whom you would think of as the next tier, subcontracting to that leader, the turnover required is £500,000. We have allowed joint ventures in there, with £250,000 as their turnover. That would probably be something like a four- or five-person practice. That is approaching the micro level. Therefore, although we could be giving them fairly large projects, quite small practices will have the opportunity to compete in this framework. We have received 29 applications: those are now being processed, so I am not at liberty to discuss them in any detail. We have done all we can to ensure that that joint-venture approach can be implemented if people are so minded.

862. Also, we are not making an excessive requirement for professional indemnity insurance. We are not even requiring them to have it at £5 million: we are just asking for a declaration that they can achieve £5 million, so that we are not putting firms to the expense of taking it out at this stage if they do not have it. We are trying to lessen the costs as much as we can in order to establish this framework. If they are successful in getting on the framework, and we are tendering for a large job that needs a particular level of insurance, they will have to meet it, or they will be unable to compete for that particular project. We have had a good response to that.

863. The Chairperson: Is there a data set or a graph showing how that kind of initiative is being taken forward and the difference that it is making? Presumably, the emergence of these joint ventures or consortia is a developing picture. However, it is important to be able to report it back to the sector, which, at times, does not seem to have much confidence that it is happening.

864. You seem to be indicating that you are dealing with joint ventures, and we do not even know who they are. However, we could track the impact of the initiatives and the opening up of the procurement process from last October or November, which was when the Executive decided to examine the issue. That would provide useful information.

865. Mr Mitchell: It is our intention to analyse the responses so that we know how many SMEs have come forward, how many have been successful, how many joint ventures there have been and whether the exercise has been worthwhile. I take some confidence from the fact that SMEs make up the vast majority of participants in the existing framework, which contained similar provisions. As I see it, there is no bias in the process against SMEs; it is up to them to sell themselves and demonstrate how they can provide the required services.

866. The Chairperson: Do you recognise that there is a strong perception, even though it may not be entirely accurate, that the process is difficult for SMEs? Some SMEs may have excluded themselves, as opposed to being excluded by the process, but if the different approach has resulted in more participants and greater access, why not tell SMEs? Will you bring information back to the Committee on the difference that is being made?

867. Mr Mitchell: Yes, I will.

868. Mr McNarry: My questions seek information and are built around perceptions. Big contracts seem to go to outside design architects; in such cases, it seems to follow that outside contractors are used. Are more design-and-build contracts coming through? How do you cope with design-and-build projects in the procurement process?

869. Mr Mitchell: I am not sure what you mean by "outside".

870. Mr McNarry: I mean outside Northern Ireland.

871. Mr Mitchell: Much depends on the scale of the project in question. For example, if you are dealing with an international stadium, that is one thing — [Laughter.]

872. Mr McNarry: We were dealing with a national stadium, and we spent £4 million on a design team that did not lay a brick. That is my point about design-and-build.

873. Mr Mitchell: I will confine my remarks to projects with which I am more familiar. Typically, we find that we are getting local architects and local practices. I mentioned the PRONI headquarters — a local architect is working with the developer on that job. That is a specialist building, and there is a specialist need for someone with knowledge of buildings that hold archives.

874. Mr McNarry: I do not want to get into detail. I am talking about design-and-build projects and where they fit into the procurement process. How do you procure those projects from the start?

875. Mr Mitchell: First, the policy is to adopt the integrated design team approach, which involves the contractor as early as possible so that they can bring their expertise to the table rather than just being given the plans and being told to go ahead and build. That is important,

because a contractor will have a lot of knowledge on how innovative techniques might be used. That is the concept.

876. Mr McNarry: Is there an original tender for that?

877. Mr Mitchell: Typically, we follow the Royal Institute of British Architects (RIBA) work stages — I do not know whether Committee members are familiar with those. At RIBA work stage D, one starts to see what a building looks like. You can see floor plans and layout of the rooms, the brick cladding and the roof. At that stage, the job can practically be submitted for planning approval. However, all the fine detail, the minutiae of the size of the beams and all the services —

878. Mr McNarry: I understand that, and I understand RIBA. What I am trying to say, and perhaps I am not explaining myself, is that a design-and-build concept is fairly exclusive to a team. Someone makes a presentation and is awarded a contract on the basis of that presentation. In other words, a number of design-and-builds are tendered for. I am specifically asking where that fits into procurement.

879. Mr Mitchell: I apologise if I was not getting to the point quickly enough. Our process is to develop those jobs to stage D in-house, with our own staff or our own consultants and the client, and to tender the project at that stage, when the job is well developed and well fleshed out. There are lots of opportunities for the contractor to influence the design, but he cannot come up with a radically different proposal. That is the model that we are taking forward.

880. Therefore, we are tendering on a well-thought-out scheme and the contractor has to come back with a target cost for which he will undertake to deliver the project and complete the finer design elements that are still outstanding at stage D.

881. Mr McNarry: Can you provide figures for the number, value and type of contracts that were awarded in the past three years to companies not registered in Northern Ireland?

882. Mr Mitchell: We could certainly do that for the contracts that CPD awards on behalf of our clients.

883. Mr McNarry: That would be interesting.

884. Mr Mitchell: Are you referring to construction?

885. Mr McNarry: Well, any contracts that might fit that bill. I can see that most of them will be in construction. However, that information might address some perceptions, as well. I would be grateful if you could furnish the Committee with that information.

886. Mr Mitchell: Yes.

887. Mr McNarry: Is it, or can it be binding on a company to seek an equal approved product for supply locally for a local contract?

888. Mr Mitchell: Yes. Typically, European rules do not allow us to specify products, but —

889. Mr McNarry: An architect specifies a product, the contract is awarded, and the contractor tenders on the basis of the materials specified, and he will use equal approved materials.

890. Mr Mitchell: Yes, that is the point. What the architect might do is set a standard, because in architectural terms it is difficult to say "I want a door". Someone could get a door from B&Q or a rather plush door from somewhere else. Therefore, architects will quite often specify standards, but that always comes with the caveat "or equal approved". The contractor always has the opportunity to come forward with what he thinks is a suitable product. In other cases, the product is specified in almost output terms of being high quality for a prestige building or a normal back-office building that does not need particularly high quality.

891. Mr McNarry: The point that I am trying to get at is, basically, giving a fair opportunity to a local supplier. One hears about contractors arriving in Northern Ireland loaded with all the materials. They have not sought a source of supply locally, and the local supplier then loses out. Invariably, the reason given by the contractor is that he is supplying what has been specified or what the architect has approved. If the architect is also outside Northern Ireland, and has been working closely with that contractor for any length of time, the matter ends there, with the local supplier losing out on the business. Perhaps we could look at there being something binding in order to give the local supplier an opportunity.

892. Mr Mitchell: What can happen, depending on the nature of the procurement, is that a contractor submits his tender based on particular products and suppliers. That then is his tender and, if that tender is accepted, I do not think that very much can be done to prevent the contractor from using that supplier. However, if he offers a more generic package and there are specifications to point him in the direction of the standard that is required, there is more flexibility.

893. Mr McNarry: Does anyone ever look at it?

894. Mr Carson: There is an issue here about discrimination that we need to be careful not to offend; that is a key principle of the EU directive. We are going into that territory if we specify that tenderers must use local suppliers or products; that would be discriminatory.

895. Mr McNarry: I was not saying that tenderers "must" do that. I was taking a similar line to that taken by Dawn earlier: there should be opportunities for local people. If a material is specified as being "equal approved", then, surely, a supplier could fit into that category. On the mainland, I have seen Italian companies arriving loaded to the gills with Italian products, leaving the English suppliers up in arms because those materials could be procured locally. These are Government contracts. Why does that happen? Is there something similar to "equal approved" for suppliers? If there is not, that is OK; maybe we could look at it.

896. I will give you a hypothetical situation. If a contract is let in Northern Ireland, and the workforce is not from here, the money is not retained here, and the main supply of the products does not come from here, Northern Ireland folk are supposed to buy into it. Is that the way it is?

897. Mr Carson: I think that that is the way it is. If the winner of the contract decides to bring in products, and there are associated costs, there is nothing that we can do.

898. Mr McNarry: So while the Italians, Spanish, Germans, Dutch and everyone else protect themselves, we do not.

899. Mr Carson: They have to comply with EU legislation as well.

900. Mr McNarry: I am not too sure about that, but no matter. I take your point. Let us say that, perhaps, we are honourable and honest about these things.

901. Mr Mitchell: Our experience, from the contracts that we have let, is that the bulk of major construction contracts are being awarded to local companies. For instance, looking at the Westlink project and the major building projects in Belfast, you can see local names in charge of those contracts.

902. Mr McNarry: Floods, you mean?

903. Mr Mitchell: For the purpose of Government contracts, we include a requirement that contractors must make known to the local industry the opportunities so that the SMEs, in particular, can get on to the supply chain. The origin of many products may be elsewhere, but it may be the case that they can be sourced through a local supplier or local fabricator who has a licence to manufacture them. That happens in window systems, for example.

904. Mr McNarry: I am satisfied with what you are saying. I think that this exercise is useful in dispensing with some myths or legends, but I do not want to create any greater ones. When a glut of work was available, these questions were not asked. Now that there is a downturn, they are being asked. My constituents are asking me why they are out of work; it boils down to that.

905. Is there any role for aid funding on projects? Does that have any bearing on procurement policies?

906. Mr Carson: I am trying to think whether it would. I do not think that it would affect procurement policy per se. As you know, contracts are let on the basis of the most economically advantageous tender, and I do not see that being affected.

907. Mr Mitchell: If the funding is perceived as public funding — and you get over the magic 50% figure — the body that is procuring the building becomes a contracting authority under the terms of the regulations, and it becomes a European competition. It cannot just be conducted locally or in any other informal way; it has to comply with regulations, even though the procurement exercise may not have been instigated by a Government Department. The rules that apply to public funding also apply to lottery funding and grant aid from other sources.

908. Mr Gilgunn: Mr McNarry, are you talking about a situation in which a separately funded body is going to contract; the scenario that Mr Mitchell was painting?

909. Mr McNarry: I am not saying anything. I am only asking whether there is a role, for example, if a Department decides to fund a project, and there are other sponsors aiding that project. I will not mention any particular projects, but let us say that the Government put in so much, and there is funding from the lottery and other sources. There you have a number of elements, all contributing money. It seems logical that if I were a funder, I would want to know who was using my money and whether they were using it correctly. I worked in Italy and Spain for 25 years quite lucratively, so I am not down on them, but they are the best at breaking the rules.

910. The Chairperson: Is that why you worked there?

911. Mr McNarry: It was, yes.

912. If an Italian company came here to do some work, they would know how to do it. However, after the contractors have gone, people invariably say,

"The Government funded this, the taxpayer funded this; that was not done, or that was not done."

913. Mr Gilgunn: I concur with Mr Mitchell. If a project is 50% funded by public money, the rules apply. If the level of public funding is less than 50%, it is a commercial decision.

914. Mr McNarry: How do you monitor that?

915. Mr Mitchell: Part of my division comprises client adviser branches, which are involved exclusively in those types of grant-funded projects. Once 50% of the funding for such projects comes from the public purse, the competition must be run on a European basis, to start with. Standards must be set, depending on the value of the project. In addition, we encourage the funding Department to transfer a lot of the obligations of Northern Ireland procurement policy onto the funded body, so that it will include the sustainability clauses in the contract, commit to fair employment terms and advertise opportunities locally. We transfer the things that the Department would have done itself had it been the contracting authority in its own right.

916. Mr Gilgunn: The payment of subcontractors is another important consideration.

917. Mr McNarry: Yes; I can see the importance of that.

918. Mr McQuillan: How useful is Constructionline for small and medium-sized companies in Northern Ireland? Is it a UK-wide tool?

919. Mr Mitchell: It is.

920. Mr McQuillan: Do we have something similar that is as useful?

921. Mr Mitchell: Constructionline is a useful tool. However, as an outworking of the procurement task group, another working group will be examining how Constructionline is used in Northern Ireland. Essentially, Constructionline does two things. It provides assurance about the financial standing of the organisation. The fee is fairly modest; I have heard that some people have been unhappy about paying the fee, but if your turnover is £5 million the annual fee is £400 or £500, which is not a large sum for joining.

922. Constructionline is helpful for SMEs. For low-value work, we have an agreement with the COPEs to use Constructionline to generate a short tender list without those registered to the service having to endure all those pre-qualifications, which saves the contractors' money and saves the Department's money. It is a quick way to generate a shortlist for very-low-value work.

923. The system allows accountants to independently assess financial standing and gives the clients confidence that tenderers are sound. Those are the two main issues. They also provide other information, such as whether they are SMEs or not. There is other data collection and some basic information on health and safety. I understand that that is under discussion with the construction industry and that it could be expanded to increase its usefulness. That is just something that has been mentioned to me.

924. Mr McQuillan: How many firms use Constructionline? Do you know that figure off the top of your head, or can you obtain it?

925. Mr Mitchell: I can obtain the figure, but I do not know it off the top of my head. It is a passport to work which is under the European threshold. We require the main contractors to register with Constructionline, and a large number have done so.

926. Mr McQuillan: Could that tool help small and medium-sized enterprises get their foot on the ladder as main contractors rather than as subcontractors?

927. Mr Mitchell: We expect that to happen, because they do the financial standing. We take joint ventures on contracts of a certain value. If it is not a European-wide competition, we look to Constructionline. The difficulty with European-wide competitions is that we cannot specify things like Constructionline, because the Italians might not have a Constructionline or anything similar. Therefore, we must rely on bank statements, audited accounts, and so on. However, for local competitions that are below the £3.5 million —

928. Mr McQuillan: What sort of competitions? Will you explain those tenders? Can you give an example of a contract that someone in Constructionline could tender for?

929. Mr Mitchell: They can tender for any contract. However, contracts above £3.5 million must be tendered across Europe through the Official Journal of the European Union (OJEU), which is another nice acronym, and we cannot specify Constructionline membership as a requirement. We have to ask for audited accounts to examine financial standing.

930. Below that level, we are not so constrained. For contracts below £3.5 million, companies should be registered with Constructionline. That automatically demonstrates that a company is in sound financial health. For contracts under £30,000, Constructionline generates a shortlist. It looks at the qualified companies who could do that work and makes a random selection of five names from which to tender. That saves much administration and expense, because one can imagine how many small firms might send an expression of interest for low-value work.

931. Mr O'Loan: There is a basic disconnect, not for the first time, between the CPD stance and the broad view of the industry. That is really why we are having this major inquiry. CPD seems to be saying that a sound system of proper and timely processes for tender awards is in place, with good information flow to potential suppliers and a large percentage of tenders being awarded to SMEs and further business for them downstream. However, the industry seems to think otherwise. I have never been so aware of suppliers' level of discontent, particularly on the construction side, despite our being told that more money is being spent on capital projects than ever before. That is a fundamental issue.

932. I doubt that we can make much progress at this stage. The Committee will need to get all the evidence from the suppliers and the various interest groups and collate it. We should put that to you and get a response at that later stage.

933. I have only two questions. One, on Constructionline, Adrian has already and usefully asked. I will not go back over that. The other is about social clauses. To some extent, you have touched on that as well. We tend to think of social clauses as things that, for example, give some advantage to the unemployed, encourage apprenticeships or deal with environmental matters. However, take the broader issue of using social clauses to favour SMEs. To what extent is that legally possible? You have already touched on that, but can you elaborate? What is the potential for using social clauses with the explicit, defined function of advantaging SMEs? To what extent can we do that legally? Are there any other difficulties? More positively, what is the potential of social clauses that favour SMEs?

934. Mr Carson: I do not think that we can use social clauses to favour SMEs. That would run into areas of non-compliance. It is something that we are keen to look at, but the main object of the procurement process is to get best value for money. By stipulating an award criterion that favours SMEs, not only would we prejudice that, we might also be discriminating against other potential tenderers for the work. There is a problem with favouring SMEs per se.

935. Mr Mitchell: I support that view. On the other hand, we do everything we can so that SMEs are not disadvantaged. We can take some of the measures I mentioned earlier so that SMEs are put on an equal footing with other firms and can be successful.

936. Mr O'Loan: That is a significant answer which gives food for thought.

937. Dr Farry: I am almost tempted to engage in a defence of free trade and the single market after hearing David. Suffice to say, even in the context of —

938. The Chairperson: He usually loses this argument.

939. Dr Farry: No, no. I have 200 years of economic theory behind me on this. It is to one's advantage to unilaterally observe the rules even if others do not. That is an important point to put on the record and bear in mind.

940. To what extent can social clauses be enforced, and how does one go about enforcing social clauses in a contract? Presumably, firms make a commitment to sustainability, apprenticeships or employing people who are long-term unemployed. How can it be demonstrated that that has been done? Is there a formal audit of companies who win contracts on that basis?

941. Mr Mitchell: That is an area that needs further work, to see how we can collect and monitor that process. The social clauses, particularly those coming in on the new NEC3 forms of contract, are in the very early stages. There is a lot of work out there under old forms that did not include such clauses.

942. The social clauses are certainly enforceable — they are conditions of contract, they are not aspirational. When firms submit their tenders, they explicitly agree to abide by that contract. If they do not, it becomes a breach-of-contract issue like any other and we must look at how we address it. However, the basic principle is that they are enforceable under the contract. As project managers, we need to work with the supply side to make sure that that information is reported to us. That is another of the procurement task group's recommendations. There is an onus on:

"Government Construction Clients to monitor main contractors delivery of their commitments to ... adhere to the 'Code of practice for Government Construction Clients and their Supply Chains' ... provide Government Construction Clients with open book access to ... accounts ... administer subcontract tender processes".

943. They are required to live up to their contractual commitments, and we will monitor those things. There is probably not a great mass of information on that at present, but it will grow as more projects come online.

944. Dr Farry: It is certainly a more difficult, or perhaps subjective, process than simply inspecting a wall that has been built.

945. Mr Mitchell: Absolutely.

946. Dr Farry: You need to go in and look at personnel files, and so forth. It is at a different level.

947. Businesses often comment on the regulatory burden that is placed on them, and it is an issue, particularly for small enterprises. Often, the regulatory rules are tapered in such a way that they kick in only after a certain point. When you are considering social clauses, is there a certain trade-off in the depth of requirements that would be created against the burdens of compliance, particularly for small companies? How can we find the right balance?

948. Mr Mitchell: The sustainability task group that produced the proposals in the first place was composed of various client and industry representatives. It came up with numbers and proposals that everyone thought could be delivered. That was approximately a year ago in a different economic climate; some may be reconsidering those proposals now. The thresholds were set at £2 million for apprenticeships and £5 million for the long-term unemployed. The size of contracts won by a small contractor would fall short of those thresholds, and the burden would not, therefore, fall on companies who won small contracts.

949. Clients have to make up their minds. Although we write the clauses, the client decides whether to include them as part of their procurement plans. Typically, we are not spending our own money; we are spending on our clients' behalf.

950. The Chairperson: If an agreed contract includes, for want of a better description, the social clauses, do you reward people who deliver on their commitments or specify sanctions for those who do not?

951. Mr Mitchell: We do not apply specific sanctions or award brownie points. Award criteria are not allowed in contracts that are not related to the purpose of the contract: if the purpose of the contract is building an office block, it is not about creating opportunities for the unemployed. The creation of such opportunities must, therefore, be included as a condition of contract, rather than one contractor promising to take on 10 unemployed people and another saying 20.

952. The Chairperson: We understand that from previous evidence. I was talking about whether the conditions of contract are delivered. The key question is: if those conditions are not delivered, what sanctions are included in the terms of the contract?

953. Mr Carson: We recognise that we need to do some work in that area. The most recent meeting of the procurement board discussed how to take forward the preparation of guidance for contract management. The question of sanctions would be specifically addressed in that guidance to ensure a consistent approach across the public sector on the implementation of contract conditions. Where a contractor is not delivering, that will be picked up on and addressed.

954. The Chairperson: It has to be more than just a cover-your-back type of exercise. It does have a qualitative impact.

955. Ms Purvis: A contract to build an office block in a particular area can have written into it at an early stage that the reason for the office block being built in that area is to contribute to the area's economic regeneration and, therefore, to help with unemployment, et cetera.

956. Other European countries have used the EU rules on procurement to discriminate positively for their own businesses by saying that in applying the rules they are disadvantaging their indigenous industries. Therefore, we can use EU anti-discrimination and equality legislation to favour our own communities if they are placed at a disadvantage because of those rules. What consideration has been given to looking beyond the EU rules on procurement to invoke other EU legislation on discrimination and equality?

957. Mr Carson: That is an area about which I am not well qualified to speak. However, if there are examples and precedents of a different approach being adopted, we are certainly keen to look at them to see whether we can apply anything similar locally.

958. Ms Purvis: One case that springs to mind is the Dublin docklands development, where major benefit has been brought to the docklands community as a result of public procurement of massive construction projects. There are lessons to be learned there, and the Dublin

Government would admit that they used EU procurement legislation in order to discriminate positively in favour of indigenous firms and to bring massive benefit to the local community. Perhaps that is something that you could examine.

959. Are minor-works frameworks used to any great extent, or is consideration being given to using them?

960. Mr Mitchell: What I am thinking of in that context is what we think of as measured-term contracts. Those are very popular. They are a good way to get low-value work done with minimal overheads because no competitions are held. Typically, they are set up as a single provider, which might be a team, a main contractor, subcontractors and, potentially, designers.

961. DFP has two such contracts at the moment, split into two areas, for building work valued up to £230,000. There are a number of others for small civil engineering works. The two major building contracts have run their course, and we are in the process of re-tendering them. Again, those can be contracts from which a lot of local firms benefit, particularly through subcontracting. For example, a contract might have a two-hour or four-hour local emergency response requirement. If that firm is based in Belfast and the work is in Strabane, that is a bit of a problem and there might well be a local subcontract arrangement.

962. Mr F McCann: In Dublin, a major advantage was that the company that was set up to run the docklands was given control over planning; that greatly eased the situation.

963. There is an impression that we are far stricter in interpreting European law than other countries. Do we keep an eye on that in order to ensure that we are not being disadvantaged, and are we far stricter in our interpretation of European rules?

964. Mr Carson: Generally speaking, I do not think that we are. We have a duty to ensure that we comply with the legislation, because the consequences of not doing so are, potentially, very damaging and involve litigation and all sorts of adverse consequences. I am not aware that we apply it any differently than is the case elsewhere.

965. Mr Mitchell: There is a general perception that that is the case, but I do not have any hard and fast evidence. Emerging case law on procurement often refers to mainland European cases. Infraction proceedings are going on across Europe on people who have breached, or are perceived to have breached, regulations. It is not just a free for all — a laissez-faire attitude. If people feel that they are being unfairly disadvantaged by the misapplication of rules, you can end up in court. That can bring any process grinding to a halt and result in additional expenditure for everyone.

966. Mr Carson: Contractors may not be as keen to go to the courts to seek redress in other areas. However, I cannot speculate about that.

967. The Chairperson: The broad policy and legal framework is set down at European level. There are two distinct approaches to that, and everybody has to operate within that broad superstructure of legislative requirement. There is the member state level and the regional economy level, and I understand that there is a world of difference if people take the regional economy approach.

968. Mr Carson: A local perspective will be put on these things at a regional level. They will seek to maximise or optimise what they can do within the legislation.

969. The Chairperson: One cannot act outwith it. Are we confined to a UK approach on this, or are we taking a regional economic perspective, while operating within that broader international legislative requirement?

970. Mr Carson: I think that we are. It is still work in progress and we are still moving forward in that direction. I have no evidence that, compared to other regions, we are any less willing to look at issues or to ignore local things.

971. The Chairperson: We are all in this together. This is not meant to be a hostile question, but have you researched that position or is it your assumption that we are no different from anywhere else? Have you looked at how other regional economies are approaching issues such as procurement and whether we could learn from them?

972. Mr Carson: We have regular contact with Scotland and Wales and the Republic of Ireland on procurement issues, and it will be interesting to see the outcome of the InterTradeIreland report on public procurement. We have that dialogue, and it has not thrown up anything. In fact, we are probably in the lead in some aspects of sustainability. That is my perception.

973. Mr F McCann: The impression is that the French Government seem to take a fairly strong stance on local employment and delivery issues. The same applies to Spain and the whole tourist industry.

974. The Chairperson: I accept that it might be a perception. However, it has certainly been reflected to us and we may see more examples of concrete evidence in the process.

975. Mr McNarry: It is ironic that we are talking about this in the midst of a European election and we are knocking all the member states. Some of them deserve to be knocked.

976. Mr F McCann: We are trying to learn how they do it.

977. Mr McNarry: Maybe they do it and then see what the consequences are. The consequences are not a slap on the wrist.

978. The Chairperson: They seek forgiveness rather than permission.

979. Mr McNarry: I do not think that they even do that. I think that they just keep going and see how much they will be fined.

980. There are allegations that the tendering process is not uniformly operated across Government Departments. If it is not, that is a challenge. How does that allegation fit in? Is there a one-size-fits-all policy? It appears that the format of documents and the information required differ considerably between Departments and from project to project. Have you come across that?

981. Mr Mitchell: There is truth in that statement. I do not think that what one Department does as opposed to another is as different as chalk and cheese. A restricted procedure is usually used in competitions for construction projects; first, you get expressions of interest, then you create a shortlist and invite contractors on the shortlist to tender. That way, you are not inviting too many people to tender, as that would put them to additional expense. There are differences in the pre-qualification process — the number of questions, the detail, the amount of information sought. To hark back to —

982. Mr McNarry: Why is it not a uniform process? Why would one Department have a different approach to another?

983. Mr Mitchell: We come from different backgrounds of doing a particular type of work for a particular client or customer base. Professional people tend to be like that; they have developed their own way of doing things, and —

984. Mr McNarry: Is it efficient?

985. Mr Mitchell: It is not perceived as being efficient inasmuch as a tenderer submitting two tenders may have to work to two different sets of documents. The procurement task group has highlighted that. One of the issues that we will be looking at is a standardised pre-qualification questionnaire, so that all —

986. Mr McNarry: Is that on the cards?

987. Mr Mitchell: Yes, and that is something that we are determined to work to. It cannot be standardised in the sense that someone being asked to build a hospital and someone else being asked to build a road or a common-or-garden — and I do not mean to use that term in a pejorative way —

988. Mr McNarry: Could you put us in touch with anyone that would want to build a hospital or road in or around Ballygowan? I would certainly welcome that.

989. The Chairperson: Who would put the money up?[Laughter.]

990. Mr Mitchell: You can imagine that prospective tenderers for different types of construction project would be asked different questions. There have to be differences to reflect the nature of the project.

991. The Chairperson: However, broadly speaking there would be consistency.

992. Mr Mitchell: There should be a consistent framework. I do not think that it is a case of chalk and cheese, as I said. Some people may ask an extra few questions; perhaps they are looking for more detail on health and safety. We are looking toward standardising health and safety questions and for some generality. Perhaps we can build up a bank of information that does not have to be resubmitted —

993. Mr McNarry: You say that that is on the cards; when is it likely to happen?

994. Mr Mitchell: Those working groups will be coming together and reporting on proposals in those areas up until December of this year.

995. Mr McNarry: Will we be automatically informed about the outcome? Could someone inform us?

996. Mr Mitchell: We can certainly inform the Committee.

997. The Chairperson: We would not be automatically informed. We would need to request to be informed. Well, we are requesting that.

998. Mr Mitchell: We will comply with that.

999. The Chairperson: The documentation that you submitted refers to the CPD guidance given to local SMEs and the social economy enterprises that are seeking to do business in the public sector. Have you evaluated just how useful they find that assistance? Have you sought any feedback in a systematic way? Does the sector feel that that is a useful service?

1000. Mr Gilgunn: In my experience, we follow that up by engaging 10 or 12 times a year in group sessions that are organised by district councils' development committees and other bodies to interact with SMEs. My colleagues and I have attended a few of those sessions, and we know that they have been appreciated, as have the explanations of the process.

1001. The Chairperson: I am thinking more about the strategic development of your own function. The client base is obvious, so the question is how the CPD can, systematically and robustly, assess the value of the service and whether it is the best way to interact.

1002. Mr Gilgunn: We are cautious about that, because our connection with the marketplace has to be fair and equal. We tend to work through the groups; we do not have a direct, systematic connection with the marketplace per se. We work with industry groups and other third parties to try to assess the market. I give a lot of talks to individual companies and groups, and they do appreciate the effort in making the process simpler and ensuring that the opportunities are there. They understand that to a degree; the difficulty is usually when we meet people who have not been awarded contracts.

1003. I always say to my staff that awarding the contract is the easy part; sitting down with the people who did not get the contract is a different matter. Our processes are geared towards being able to sit down and explain to people why they did not get the contract, and build those processes up over time. It is in our interest and that of the public purse to have competitive markets, and we have to ensure that those markets exist. In that sense, the strategy is a long-term exercise. We encourage those relationships, and we have to be open to criticism and be able to understand it and respond to it.

1004. The Chairperson: What proactive steps are you taking to raise awareness in the sector of the eSourcing NI web portal?

1005. Mr Gilgunn: That is one of the key messages that we want to get across when we talk to the sector groups. I deal with Momentum in the information and communication technology sector, and I talk in particular about the legal side. At every opportunity, we explain the benefits of eSourcing NI and how to register. That is ongoing; I have to admit that it is not well structured, but we do offer that advice regularly.

1006. The Chairperson: You require companies to register with Constructionline, but that requirement is not there for eSourcing NI. I am thinking of the local sector, and of how things are done within the legislative framework that are not discriminatory but provide information that allows local enterprises to engage across as wide a range as possible. Do we know how aware local companies are of the eSourcing initiative?

1007. Mr Carson: If companies want to tender for public procurement opportunities, they must do it through the eSourcing system, as far as CPD is concerned. That is the mechanism that is used.

1008. The Chairperson: I am sorry; I have probably misled you. As Mr Gilgunn said, it is not about the people who have succeeded in gaining contracts. Perhaps the companies that have not obtained contracts do not have that level of knowledge.

1009. Mr Gilgunn: Without being rude about it, if they have not made bids through eSourcing, which is the way that things are done, they could not be unsuccessful tenders. By default, they know about the system. We broadcast as much as we can that the web portal is the way to tender for a contract.

1010. Our notices are usually in the 'Belfast Telegraph' on a Monday night and in the other daily newspapers on a Tuesday. That is when the opportunities are publicly advertised in the press. The bottom line is that people should log onto eSourcing NI and register. It is a fairly straightforward process. We are working on that to ensure that it is as user friendly as possible for SMEs.

1011. Mr Mitchell: One of the procurement task group's 25 proposed actions is to promote awareness of the rollout of eSourcing NI and electronic tendering across the COPEs. An activity will come out of that in anticipation of all the COPEs being on eSourcing.

1012. The Chairperson: So they are all going to use a common portal?

1013. Mr Mitchell: Yes, early next year.

1014. The Chairperson: Will that make their existing individual portals redundant? Will they stop using them, or will we end up with a plethora of portals?

1015. Mr Mitchell: What happens in our portal, for example, is that if you click on the 'Opportunities' button, it takes you to the eSourcing NI portal. We have other guidance and information that is not exclusively about opportunities; it may be just to get the guidance to which you referred and other contact information.

1016. The Chairperson: Will the local COPEs retain their own portals and have a link to eSourcing?

1017. Mr Mitchell: That is how I anticipate that it will work. That is certainly how we operate.

1018. Mr Gilgunn: The design is that there will be a single engine to drive the tendering process.

1019. The Chairperson: The eSourcing portal deals with opportunities here and in Britain. It does not seem to identify opportunities in the South.

1020. Mr Carson: That is something that the InterTradeIreland exercise will address. It is asking SMEs specifically about the e-procurement system and what their perceptions are of it. I am sure that that study will make recommendations, and we will look at those.

1021. The Chairperson: Are you conscious that on an island basis, there may be missed opportunities in the interim? I suppose that we will benefit from the InterTradeIreland study, but we may not have to wait on it.

1022. Mr Carson: As I understand it, it is imminent.

1023. The Chairperson: I thank you all. You gave us more of your time than we asked for, but you can see the Committee's level of interest. In the conduct of our inquiry, it is probable that we may have to write to you from time to time. I will not rule out the possibility of asking you to come back to talk to us again. It has been very helpful. On behalf of the Committee, thank you very much.

1024. Mr F McCann: When will the information about design-and-build be forthcoming?

1025. Mr Mitchell: I will chase that up when I get back to the ranch.

20 May 2009

Members present for all or part of the proceedings:

Mr Mitchel McLaughlin (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Dr Stephen Farry
Mr Fra McCann
Mr David McNarry
Mr Adrian McQuillan
Mr Declan O'Loan
Ms Dawn Purvis

Witnesses:

Mr George
Coulter
Mr John Construction Industry Group for
Finlay Northern Ireland
Dr Lynda
Martin

1026. The Chairperson: We are now joined by Dr Lynda Martin, the chairperson of the Construction Industry Group for NI; John Finlay, the vice-chairperson; and George Coulter, the secretary. You are most welcome. Please turn off any mobile phones. Even on silent mode, they interfere with the electronic Hansard recording.

1027. Dr Lynda Martin (Construction Industry Group for Northern Ireland): Thank you very much. I thank the Committee for this opportunity to meet with it and discuss public procurement in Northern Ireland. My name is Lynda Martin and I am the chairperson of the professional college of the Construction Industry Group. I represent the Institution of Civil Engineers on that college. I primarily work in the water industry. With me is John Finlay, the vice-chairperson of the Construction Industry Group for Northern Ireland. He represents the Royal Institution of Chartered Surveyors, and he works in all areas of the construction industry in Northern Ireland. I am also accompanied by George Coulter who is secretary and treasurer of the Construction Industry Group for Northern Ireland, and he is responsible for structural design on many projects in Northern Ireland.

1028. I will highlight our members' main areas of concern, and, to maximise our time, I will keep my presentation brief.

1029. First, in our experience, there is a reduced number of tendering opportunities in Northern Ireland due to the introduction of long-duration framework agreements that freeze out many SMEs for too long. Losing one such tender can exclude a business from that source of work for up to four years. Those long-term frameworks with potentially large volumes of work attract large, out-of-region firms that might not otherwise be attracted to Northern Ireland, thus increasing the number of firms that apply for inclusion on framework groups, to the detriment of Northern Ireland firms.

1030. Secondly, the tendering process is too detailed, protracted and expensive — especially for SMEs. The quantity of information required is excessive. It requires a large amount of input from the SME and adds an unnecessary burden on the construction professionals in Northern Ireland. In contrast, under what we might call traditional procurement methods — where services are procured on a single-project basis — professional practices apply for the projects that are appropriate to the size of the practice and capability of the firm. Also, the tendering process is not uniform across Government bodies; there is considerable variation in format and information required between Departments and from project to project.

1031. The inclusion of social clauses in the construction industry is a relatively new concept which has considerable merits, although, as yet, we have little experience upon which to make meaningful comment. The inclusion of a social clause to promote opportunities for SMEs in Northern Ireland would be of enormous benefit to the Northern Ireland economy, and it would be a step forward if it could be included as part of the qualitative assessment of tenders.

1032. The Department of Finance and Personnel should address many problems, one of which is the fact that SMEs are excluded from long-term frameworks and have no opportunity to gain the necessary experience to compete for further work in that sector. Our construction professionals are among the best trained in the world, and, as such, are much sought after abroad. They are trained in the art of problem solving and are highly adaptable professionals.

1033. Too much Government work in Northern Ireland is procured through large frameworks that attract large outside companies, which causes Northern Ireland companies to miss out. There is too much emphasis on specific experience for projects, and that automatically precludes Northern Ireland-based professional practices. The current system freezes firms in their current position and does not allow them the opportunity to expand. Should that situation be allowed to continue, there will be a reduction in the number of quality jobs and in the skills base in Northern Ireland, thus resulting in a loss of revenue to the Northern Ireland economy. The experience of procurement of construction projects in the Republic of Ireland and its effect on indigenous firms appears to be different, with many local construction companies given the opportunity to grow and develop on local projects rather than being excluded by frameworks that favour larger firms.

1034. We recommend that the opportunities for local consultants be maximised by increasing the number of professional consultants on frameworks, and consideration should be given to minor frameworks. The risk of legal challenge should be minimised by increasing the number of opportunities for local professional consultancies, and long-term exclusion should be avoided. Consideration should be given to quality versus fees to reduce the emphasis on low-cost tendering and to shortening the protracted planning process in Northern Ireland, as it adversely impacts on the delivery of public contracts.

1035. The scale of turnover should be considered as a selection criterion to be appropriate to the local market, and future procurement strategies in Northern Ireland must have Northern Ireland scale and provide more opportunities to local firms to tender. The use of long-term exclusive framework agreements as a method of procurement in the Northern Ireland market should be reviewed.

1036. A procurement task group was established recently at the request of the Minister of Finance and Personnel. That group produced a report on procurement which we commend to the Committee for consideration, as it contains useful principles on procurement that will provide opportunities for firms of all sizes to bid for construction-related public-sector contracts. We also commend the Central Procurement Directorate on its willingness to consult us in respect of its recent tender for its integrated consultative team framework, in which it took on board some of our concerns with regard to increasing opportunities for local SMEs.

1037. Ms Purvis: You commended the procurement task group report. As I understand it, that report said that frameworks are the best way in which to go forward with procurement. You have outlined many of the difficulties with frameworks. Can you suggest what you would like frameworks to include to make them more accessible to SMEs and SEEs?

1038. Mr George Coulter (Construction Industry Group for Northern Ireland): I was involved in the procurement task group, and I am not sure that it came out entirely in favour of frameworks. The construction sector tried to push the idea of using clusters, through which smaller groups of work would be done and large frameworks that run for three or four years at a time would not be used.

1039. Although the task group received us very well, unfortunately, it sometimes had one ear cocked towards Treasury and Office of Government Commerce directives, and we were not able to drive all references to frameworks out of the report. On the task group, we were looking to create more opportunities for more firms in Northern Ireland to bid for work. Firms get into difficulties because there are huge arrangements that are costly to bid for. If a firm is not successful, it is locked out of the system for years at a time, which could put a business under. That is where the legal problems have come from recently, as firms try to survive. If a firm misses an opportunity but knows that another one is coming along shortly, it will not take it as hard and will look for the next opportunity. We put that point to the task group, and the principle of clustering is enshrined in the report, which will provide more opportunities and smaller jobs in shorter time frames. We hope that this Committee and others will police that and see that that principle does not become too diluted as time rolls on.

1040. Ms Purvis: You talked about the need to remove criteria that encourage consultants from overseas to apply. What are the criteria for experience?

1041. Dr Martin: For example, a prestigious project in Northern Ireland will ask for a consultant with design experience only in that particular type of project. We are trained to solve problems. I shall give an example of my experience, which is probably relevant. In the 1990s, I did a lot of work in clean-water treatment, which is one of my passions. Through a framework, Northern Ireland Water procured its clean-water treatment with designers and contractors to build the works in the late 1990s. The team that I was with was unsuccessful. If Northern Ireland Water were to tender again, it would ask for my experience in the past five years, but it is more than five years since I designed a water-treatment works in Northern Ireland. I am still perfectly capable, but my firm and I would be excluded. I find that to be very common, not only in the water industry but in all types of business.

1042. Mr G Coulter: Northern Ireland is a sea-locked area. New systems may be introduced from the mainland, and to get in to the tendering opportunity you are asked for your experience. In Northern Ireland, we have not had the opportunity. Those systems may have been trialled for a period on the mainland, and firms from the mainland bring that experience, while our firms have none. It is very difficult to have experience of a new system.

1043. Ms Purvis: A way round that would be that, if someone were brought from overseas, Northern Ireland people would be included.

1044. Dr Martin: I would not agree with that either. That would only give the profits for that work to an outside company. Their directors and main shareholders would spend that money somewhere other than Northern Ireland. We want to keep as much as possible of the money that is made from our industry in Northern Ireland. I do a lot of work on wastewater treatment, and the principles are the same. We are too focused on the type of project, rather than on the skill base that we have. We want to keep our skill base here.

1045. Ms Purvis: How does a firm get the experience of doing something new if it is not allowed to participate in something new?

1046. Mr G Coulter: The problem is that the new something tends to be the process of a large framework or some type of alliance. That is where we do not have the experience. We have the experience of the work. There has been one example of what you are talking about. For a number of years now the health estates have been running a performance-related partnering system. They have insisted that, when major firms come over from the mainland, they partner with local firms to input experience to the local economy. We were all very supportive of that.

1047. That system is not as strong as it was. It was discovered that Northern Ireland firms had as much skill to do the work as the firms from the mainland, although those mainland firms had a bit more experience of some of the peripheral processes. The recent documents from the Health Service say that the local firms should have control of documents and archives, because they are finding that the local firms are much more responsive. Once the large firm goes away again, if one wants to check a drawing or find a piece of information, they charge for that. Local firms do not; they retain the archive and leave it open to anyone who wants to examine it.

1048. Mr John Finlay (Construction Industry Group for Northern Ireland): The answer is to formulate the contracts in a way that brings in that experience, then to see how one could improve the technological base and knowledge of the local firm, and how that could be retained after the project was delivered.

1049. Ms Purvis: I am asking how that can be done.

1050. Dr Martin: For example, our company is involved with the new library at Queen's University, but the architects that are designing it are based in North America. A new police training facility is being built in mid-Ulster, which is a good place for it to be built, as it is west of the Bann, but it is being designed by an American company. It will probably be designed in America, and the fees generated by that will be spent in America. The fact that it is a police training academy, and may be the first that has ever been built here, should not mean that it could not have been designed by the people here who have designed schools and hospitals. We seem to think that someone who can claim to have designed one previously can design it better. The skills required are here. The issue is how we present those skills for a Government body to judge.

1051. The Chairperson: How can we legally proof the process? If, for instance, that requirement was removed, or was presented in a way that allows local companies to develop the expertise, how would the process then be protected from challenge by those companies that would use that as a basis for a legal challenge?

1052. Mr G Coulter: What we were trying to do with the procurement task group was to see things in a Northern Ireland scale. We have companies here in Northern Ireland. We argue on scale. The Province has a population of slightly less than that of greater Manchester, yet there is a determination to establish huge frameworks. The Central Procurement Directorate has recently established a professional-services framework, and it was advertised as having fee revenue of between £16 million and £20 million. That drew the whole world and its mother to Northern Ireland, yet when one drilled down into the document, small pieces of work were arising from it; jobs worth £3 million, £4 million and £5 million. Those jobs were all perfectly within the competency of local firms. The fact that it was aggregated so much brought everybody descending in on us.

1053. Mr Finlay: There is a need to find a balance between the low end — jobs worth £1 million, £2 million and £3 million — and the need for a larger-scale operation for anything over £10

million to £20 million. Anything over £50 million will usually need more technological expertise, and that is when the requirement is brought in. There is a need to break it up, which would allow the different tiers that there are here to have a go. They seem to be completely excluded from the work. The integrated consultant team framework that was recently produced is all-encompassing. If the number of consultants is reduced to six, then the rest are going to be excluded.

1054. The Chairperson: Have you formally responded to that new procurement tender?

1055. Mr G Coulter: We have all responded insofar as we have all put in applications to be on the framework for the next four years. We have to do that.

1056. Mr Finlay: We input to the —

1057. The Chairperson: Did you challenge the £20 million threshold?

1058. Mr Finlay: We were asked to speak to CPD on two or three occasions, and to comment on four points. However, they were not about the size of the framework; it was about the documents that they were putting out and about the structure.

1059. Ms Purvis: Perhaps we should look at the Hansard report to see what was said in the previous session. My recollection of it is that the integrated consultant team framework was about reducing the size. They talked about having one lead partner where there was a turnover of £1 million, or two joint partners each contributing £500,000.

1060. Mr G Coulter: Two things are getting slightly mixed up. The overall framework is very large. We met CPD on a number of occasions. We asked them to bring down the threshold to allow local firms to bid for that work — and, to be fair, they did. They reduced the threshold, which allowed more Northern Ireland firms the opportunity to bid. Whether they will be successful will be revealed in the next couple of months. The threshold was reduced, but the funding remained at the same level.

1061. Dr Martin: If you offer a contract worth £3 million or £5 million, local Northern Ireland consultants will bid for the work, but if you raise its value to £20 million, external firms will be attracted. We have kept our turnover thresholds lower to enable us to compete on quality marks, we have attracted larger players by offering contracts of higher value. There is nothing illegal about keeping contracts small. There is nothing in the journal that says that we must make our projects larger. Our civil servants have decided, because they are driven by Westminster, that large is big and beautiful. I do not deny that procuring large frameworks saves time and money. Initially, the Civil Service will save money, which is good, but the long-term effect on Northern Ireland is bad.

1062. Ms Purvis: I am missing something completely. If the frameworks are upward of £16 million to £20 million, and some of the tenders within that are for only £3 million or £4 million, and they have lowered the threshold to let local firms compete, where does the £16 million to £20 million come from?

1063. Mr Finlay: The overall fees available are £20 million over four years. You split it by four, then you split it by the six teams.

1064. Ms Purvis: Therefore, reducing the time frame of the frameworks will reduce the cost of that.

1065. Mr Finlay: The frameworks could be smaller insofar as they deal only with one or two of the quotes or one or two of the projects.

1066. Ms Purvis: That is where your proposal for minor frameworks comes from.

1067. Mr Finlay: They are more numerous and there is a rolling aspect; in two years' time, there will be another one to go for. If a firm misses one at least it will not be cut out of the process for four years.

1068. Mr G Coulter: Firms are excluded for four years, and that is where Northern Ireland suffers. Most of us work in the Northern Ireland community. A firm is excluded for four years, and then when the bid comes up again it is asked what its experience has been over the past four years. It is then excluded for life.

1069. Dr Martin: It puts you out forever.

1070. The Chairperson: That is a clear enough point.

1071. Ms Purvis: That was very useful.

1072. The Chairperson: If we develop at CPD level and take a proactive attitude to retaining as much of that revenue as possible within the local economy, we can do it within European legislation. However, if we go for the one-size-fits-all approach, or what might suit larger perspectives such as that of Westminster, that sort of injustice emerges, which affects local industry.

1073. Dr Martin: That is exactly right.

1074. Mr G Coulter: I also think that we should not decry our own contractors just because we are slightly smaller. There is a considerable level of expertise in the Province. There seems to be this view in the Civil Service that to do one, you must have done it before. The local example is the Waterfront Hall — an internationally-recognised building, built by a local firm that had no previous experience of it. If that building were being procured now, that firm would have no chance of winning the contract, because it had not done one before. There is too much of an emphasis on companies having done exactly the same type of work before.

1075. The Chairperson: I think that the Committee has got that message.[Laughter.]

1076. Mr McNarry: You may be accused of being from a protectionist lobby, and if that is the case, I am with you and will stand up for you. I am glad to hear what you are doing.

1077. I do not wish to lead you, but I get a sense, as the Committee gets more into this particular issue, that Government officials are out of touch with commercialism. Are those officials connected to you, and is there any way that you might offer to train them in some way, bringing them into a world that they, I believe, do not frequent too often?

1078. Mr G Coulter: It is an interesting question, and one that I have not been asked before.

1079. We would have to think about how we would train them. I have a sense that — and we have discussed this outside as well — when, for example, you are talking to Des Armstrong from CPD, who comes from a private-sector background, you get a sense that he knows what you are talking about and that he has an understanding and can make common ground with you.

1080. Mr McNarry: Sorry, who is Des Armstrong?

1081. Mr G Coulter: He is the head of CPD.

1082. However, it is different when you go below him to the career civil servants. For example, we met Des and the procurement task group, and we had a very productive meeting and agreed with him the way that we wanted to proceed. However, getting a document drafted with his civil servants afterwards was like drawing teeth. It was horrendous.

1083. The Chairperson: You needed four years' experience?[Laughter.]

1084. Mr G Coulter: Yes. They seemed to have an ear to the Office of Government Commerce in London, and not as big an ear to the MLAs and the people who are driving them here. Des is good, but sometimes you sense when you go down a little bit that you are dealing with people who are driven by policy from Treasury, and not by what you guys want.

1085. Mr McNarry: That is very interesting. I think that we will bank that issue for the meantime.

1086. In your recommendations, you refer to a "Northern Ireland Scale." What do you mean by that? You say that selection criteria should be "appropriate to local market" and that we:

"must have a Northern Ireland Scale and provide more opportunities for Local firms to tender."

1087. I agree with all of that, but I need to explain it to myself. Therefore, can you explain it to me?

1088. Mr G Coulter: For years the Northern Ireland economy has gone through a process where a piece of work comes up and that work is procured by some methodology that has come out from the various Departments. The job comes out, we all tender for it and the appropriate firm is picked. Previously, there were lots of those opportunities about. However, in recent times, there seems to be a drive towards huge frameworks where you do not even know what work is coming through. Nobody knows what work will be on the current framework. It is simply a system or mechanism for pulling someone out. It creates a huge framework with a lot of fees, and it is huge for Northern Ireland. If one was doing the same thing in Northumberland or wherever in England, and you were not successful, you would have the opportunity to go to the next county. The opportunities here are not the same.

1089. Mr McNarry: Is the manner in which you are being asked to proceed cost-effective?

1090. Mr G Coulter: It depends on what you mean by cost-effectiveness. The establishment of frameworks is probably cost-effective for the Civil Service, because it does not have to do as much work. As to whether it is cost-effective for the Northern Ireland economy, that is a different matter. We suspect that it is not.

1091. Dr Martin: John and I share an experience which we feel quite passionately about, because it is the work that we do. Northern Ireland Water (NIW) — which is one of the COPEs, but does not seem to adhere to very much of what others do — is hoping to bring in an alliance system.

1092. In Northern Ireland, NIW has employed approximately 20 consultants, all of whom received a rough share of the potential work that was there. That meant that small or medium-sized consultants — in Northern Ireland terms — would perhaps construct a few pumping

stations or water mains for NIW; larger consultants perhaps constructed water-treatment or wastewater-treatment works. That worked reasonably well.

1093. The new alliance system that NIW wants to introduce will employ two consultants, two contractors and two process houses, initially for three years but possibly up to eight years. The two successful consultants will be those who can demonstrate experience of working in that type of alliance. However, there are none in Northern Ireland. The successful consultants will be fairly large, because they must be able to do everything that Northern Ireland Water wants for the duration of that alliance. That excludes smaller consultants who can only do some of the work. There are only two consultants with such capacity. What will the other 18 consultants in Northern Ireland do for the next eight years? I do not know.

1094. Mr G Coulter: We are unsure how that situation benefits the Northern Ireland economy if those other firms go out of business. When Northern Ireland Water's work will come up again in eight years — and that seems contrary to the public procurement legislation, which states that such deals should have a maximum of four years; this seems to go beyond that — and the other firms are gone and those two are left, I wonder how economically viable the bids will be. It is shrinking the market so much that it will cause long-term problems.

1095. Mr Finlay: We accept that, in the current climate, there will be consolidation in the market. That is not a bad thing. However, the issue is how far it shrinks. On the NI scale, we went back to CPD on turnover. The average consultant's turnover is less than £2 million, which equates to approximately 20. That is an example of the scale.

1096. Dr Martin: They had hoped for £5 million, which would have excluded almost all Northern Ireland's architects and chartered surveyors. There are a few larger ones, but not many.

1097. Mr Finlay: They are multidisciplinary companies.

1098. Mr G Coulter: We have got the bar lowered, and local firms have had the opportunity to price this framework. However, we must wait for the results in order to see whether anybody has actually got anything.

1099. Mr Finlay: Lowering the bar has allowed everybody else to bid.

1100. Mr G Coulter: They are not in until they win.

1101. Mr McNarry: I apologise in advance to you and to my colleagues for asking questions and then leaving; it is normally rude to do so. Your submission mentions shortening the protracted planning process that adversely impacts on the delivery of public contracts. What are you getting at there?

1102. Dr Martin: Many contracts for potentially large employers in Northern Ireland are being stalled by the Planning Service. They have been protracted for a long time.

1103. Mr McNarry: Do you have evidence of that? Can you provide a list?

1104. Mr G Coulter: Yes, but we do not have it at the minute.

1105. Dr Martin: Our professional college is innovative, and we are proud that we have brought together all the professionals in the Northern Ireland construction industry. Our architects, who feel very strongly about this issue, are not with us, but they contributed to the document. The Committee will meet the Royal Society of Ulster Architects (RSUA) during this process. That is an

experienced body and it will have those numbers. We will speak to the RSUA and ensure that it brings that information. We are speaking on behalf of approximately 18 different organisations today. Unfortunately, our architects were unable to attend today because we were limited to three representatives.

1106. Mr McNarry: Does somebody have a piece of paper that says this is it for the next four years — this is what we are going to do; this is the money allocated; these are the contracts we are going to tender for; and these are the people? Then we could see Northern Ireland companies and jobs that risk being excluded. Does somebody have that? It is difficult to get an overall picture.

1107. Mr G Coulter: I do not think that such a paper exists. The Strategic Investment Board (SIB) is trying to reinvent itself now that there is not so much to invest. It is trying to produce a tracking system to identify the flow of jobs and what stage they are at so that we can all see that. That information has never been visible before. Although I have little time for the SIB, that might be something useful.

1108. Mr McNarry: To me, a picture tells a story. You said earlier how well-respected your colleagues are outside Northern Ireland in other fields of work. How many companies apply for work outside Northern Ireland and are successful in other people's frameworks? We have a suspicion that companies might not get into other countries as easily as they can get in here.

1109. Dr Martin: We are facing some problems in that regard.

1110. Mr McNarry: It seems to be easier to get in here.

1111. Mr G Coulter: It is easier to get into Northern Ireland than it is to get into other countries.

1112. Mr McNarry: Have your members given up trying to get into other countries? Have they said that it is too difficult, or are they just beefing about it, without being able to say that they have tried and that there are obstacles? Outside Northern Ireland, we have a fine reputation in many professional walks of life, but I am thinking about bringing that economy back to Northern Ireland. You were saying that we are losing business to the Americans over the policing college.

1113. Mr G Coulter: Northern Ireland firms do not seem to be very successful on processes, but if a framework process were set up, we would be successful. The scale of Northern Ireland makes us look small in comparison with mainland firms. Northern Ireland firms have been reasonably successful in exporting some expertise, but that has come through personal contacts. For example, if Tesco comes here and uses a local firm, it tends to be impressed and takes that local firm back to do work for it on the mainland. That type of thing has happened.

1114. Mr McNarry: Do the Government provide any help on how to access the ladder? I assume that the Germans are given all the help in the world to access ladders to get into other countries.

1115. Mr Finlay: There is support to go abroad, outwith the UK; delegations have visited Romania and Poland.

1116. Mr G Coulter: We are involved in a joint venture with a German consultant engineer to look at a landmark scheme for Belfast. They were utterly shocked to find that there was a fee competition, because, in Germany, that is illegal. All firms charge the same in Germany, and the only incentive to pick one particular firm is because they do a good job, and not because they are cheaper.

1117. Mr McNarry: I must ask to be excused.

1118. The Chairperson: I do not wish to be unfair to other members, but Dawn has given me notice that she has to leave, so we are going to lose our quorum.

1119. Mr O'Loan: With reference to the point about supporting local business, obviously there is a big advantage in the openness of the system, and firms from here are winning work elsewhere. There was reference to a local consortium winning a major roads contract in Scotland. I know of local firms that are building schools in Scotland and winning frameworks there. Firms in the North want to be able to bid in the South, and firms in the South want to be able to bid in the North, and all that is very good. I do not see those as incompatible positions at all.

1120. We can value that openness and still say that we want to create opportunities and ensure that there are no barriers against our local firms fully participating in the public procurement process. Clearly, you are saying that there are significant barriers. Your critique of the large frameworks, is one example of that. Your points have to be taken on board. The CPD representatives were in earlier, and I talked to them about the fundamental disconnect between the positions that they are presenting and what we are hearing from the industry. That is really why we are conducting the inquiry. It is a very necessary inquiry.

1121. You referred to, and advocated the use of, social clauses that would encourage the SMEs gaining advantage under them. I put that specific point to the CPD representatives, but I used the word "favour" with the social clauses — that they "favour" SMEs. They were absolutely clear in answer to that: they regard it as being fundamentally illegal and as being an improper process. I do not know whether there is a big difference between the words "encourage" and "favour". How might social clauses be written to encourage SMEs?

1122. Mr G Coulter: That is a difficult one. At first glance, the social clauses appear to be more applicable to contractors than to professionals such as us, who are initially required to have a third-level degree. We may be able to work with some element of them; however, they are more applicable to contractors than to the professional side of the industry.

1123. Although I do not wish to criticise civil servants or to be seen as kicking them, they always seem to have problems with legalities and with interpreting public procurement rules. The Republic of Ireland, France and Germany do not appear to have the same problems with the same rules. Given that no one else has those problems, I am not sure why civil servants in Northern Ireland do.

1124. Mr O'Loan: You are raising a genuine point. Some people seem able to work within the system and use the rules —

1125. Dr Martin: And still manage not to discriminate against their indigenous industry.

1126. Mr O'Loan: Indeed, and others seem to find every difficulty possible.

1127. Dr Martin: There must be a mechanism to consult with an equivalent Committee in the South of Ireland in order to ask its advice. Unfortunately, there has been a downturn, but, two or three years ago, the Republic's Government were able to use its economy's growth to promote its local firms. We seem to have missed that opportunity, but we must learn from the South, because its Government were excellent at doing that. If a road scheme had to be built, the Government there ensured that local people were involved. It was local projects for local people.

1128. Mr O'Loan: You referred to reducing the emphasis on lowest-cost tendering. When we put that point to CPD, it said that it is not about the lowest cost; it is about a full value-for-money estimate. The acronym MEAT — the most economically advantageous tender — is used. I think that that acronym is unhelpful, because, funnily enough, it suggests that lowest-cost tenders are being used. However, for all the talk otherwise, many contractors and suppliers seem to hold the view that the tendering process is about the lowest cost.

1129. Training is not your area of work, but many concerns have been expressed about major training contracts being awarded to English firms that do not even have an office or a telephone number here. Yet, when contracts are awarded to those companies, they do not appear even to be at the starting point for delivery. Therefore, the suspicion exists that —

1130. The Chairperson: They are hoping to collapse local training organisations so that they can pick up their staff.

1131. Mr O'Loan: Yes, and that it was the bottom line that won the contract, rather than ability to deliver. Those views seem to be diametrically opposed.

1132. Mr Finlay: In a conversation with the Central Procurement Directorate about its most recent integrated consultant team framework, we said that it should not be lowest, and CPD agreed. CPD said that the quality:price split should be 80:20. Our view is that the quality offered by the top six or 10 companies should be similar. Everyone should be capable of delivering, so it will go down to price. The price part of the marking system is lowest cost, not the mean average that we suggested should be used, because the lowest cost produces the poorest service. From a consultancy point of view, you need to recover. Therefore, you knock off the top and the bottom and take an average. The average then gets the highest score, and positive and negative are based on that. I believe that the last framework has an element of lowest cost. If you assume quality, it should be similarly, if not closely, marked at the top end and come down to price at the end of the day.

1133. Mr G Coulter: It strikes me as slightly strange, as it must the Committee, that a company has won a competition for any work that comes up for the next four years, with no idea of what it is. This strange mechanism cuts the number of applicants to six. When a particular job comes up, that mechanism is used to appoint one of them. I am not entirely sure how that represents value for that particular scheme to anyone.

1134. Mr Finlay: As soon as the secondary tendering begins, each group will say that it must readdress the fee in its original tender because the parameters have changed.

1135. Mr O'Loan: We should not turf out the concept of frameworks, because they have their place in certain types of work.

1136. Mr G Coulter: Absolutely.

1137. Mr O'Loan: There may be an advantage to the public sector in getting value for money.

1138. Mr Finlay: Our concerns relate purely to the size and the breakdown of the frameworks.

1139. The Chairperson: What is missing from the debate, although the Committee has started to focus on it, is an assessment of the regional economic impact. That can be addressed while staying within the wider legislative frameworks. It appears not to be a current focus of the inquiry, but we may come back to you, as well as exploring the issue with other witnesses, because it is important.

1140. Mr G Coulter: Frameworks have a place; they are a useful system for subjects that are clearly identifiable, such as the supply of sandwiches, JCB diggers or dumpers. However, at one stage, the South of Ireland actually excluded construction from the regulations because it was considered to be an intellectual service. As construction work could not be easily defined, the industry was exempted from the regulations.

1141. Mr Hamilton: I agree with Declan. I am not entirely convinced that frameworks are as bad as they are portrayed to be. There have been legal problems, but in my recollection they have not focused on the frameworks per se but on the process. They have not been judged as unacceptable in their totality. Even your comments and submission concentrate on the size and focus, rather than the concept, of frameworks.

1142. We have heard in other evidence sessions from construction firms. Even when a big firm from outside Northern Ireland has won a contract or got on to the framework, it has subcontracted significant portions of work to local building firms. I am not saying for a second that local firms should be satisfied with getting a second dig; far from it. You said that local firms were missing out, but they can gain from certain aspects of the frameworks. Are you saying that, in your field of work, the entire picture is one of local firms losing out?

1143. Dr Martin: The service that we provide is not the same as buying a repetitive product, such as car maintenance or toilet cleaning. It is an intellectual service, and it is hard to define even when we know what the project is. Even I consider that it is ludicrous to try to have a one-size-fits-all definition for unknown projects. It makes no sense. I cannot see how bringing in as part of the framework an umbrella organisation that subsequently subcontracts the work to local firms represents value for money for Northern Ireland. That is introducing another tier, and there must be a cost there. If you can employ us directly without somebody above us telling us what to do, we will do just as good a job — if not better — and charge you less.

1144. Mr Hamilton: The argument is the one that Declan referred to, which is value for money. As much as we, as locally elected representatives, want to help local firms, there is also the pressure, particularly at this time, of value for money. I am not saying that that is the correct argument every time.

1145. Mr Finlay: It goes back to scale. My company is a multinational company, and the office here employs 24 people. I have the same problems gaining work, and therefore I can bring in that scale. However, we retain the intellect here, and we try to build on that and bring it in. There is an opportunity for a good section of the firms here to deal with the lower-value projects where that expertise is not needed.

1146. Mr G Coulter: The divide between construction and the professional end has been made. Obviously, if one is building something, one requires people on the ground to physically build it. Big contractors will come in and they will subcontract, and a lot of local people will get work on that building, and that is very good. However, it is not quite the same at the consultancy end, because it is an intellectual service and it can be carried out remotely from the site. If a large firm gets the contract, it will use its own slack resource to fill that space. It will look for a local firm to carry out supervisory or similar work only when it finds that it does not have enough capacity, and one does not learn a lot from that.

1147. Dr Martin: The design can be done in New York or Los Angeles — or Mumbai, where some of them are being done. It is not like construction; it can be farmed out all over the world and the people can be anywhere. What we provide must be provided locally.

1148. Are frameworks value for money? I am on one of the frameworks, as is Mr Finlay, and they are great. If one is on a framework, they are fantastic. Our framework started off fine, but

some auditor came along and decided that it was not demonstrating value for money. We had all spent a lot of money tendering to get onto the framework. There are four contractor consortiums on the framework. As it is not demonstrating value for money, the auditors have decided that the four of us must now compete against each other. We have almost taken back a step. The initial concept was that we divided into regions and worked together as a team; we partnered. We put a lot of effort into gaining the framework because we thought that that would bring great rewards. Now we are a step back and the auditors are insisting that the four of us tender.

1149. Mr Finlay: The value for money in that case is money, rather than the partnering. The partnering that we have now in our region is working excellently because we have not had any contentious litigation with the contractor in the past four years. That is complete partnering because that contractor has delivered all the projects. He has had that workflow and that work stream, and he has known that he has been able to do that. However, that is only in one region. There is an opportunity for three other contractors to work in three other regions. It was not closing off the market.

1150. Mr Hamilton: I see the point that you are making. Equally, another part of me is saying that I am glad that there is someone in Government who is continuing to assess value for money on an ongoing basis. I have other questions that I could ask, but I know that we are running out of time. Perhaps the Committee could forward its queries.

1151. The Chairperson: It is obvious that a number of issues have not been teased out fully. The Committee will correspond with you, if that is OK. As the inquiry proceeds, we may come across additional issues that we would like to check with you. Thank you.

1152. Dr Martin: Thank you for your time.

27 May 2009

Members present for all or part of the proceedings:

Ms Jennifer McCann (Acting Chairperson)
Dr Stephen Farry
Mr Fra McCann
Mr David McNarry
Mr Adrian McQuillan
Mr Declan O'Loan
Ms Dawn Purvis
Mr Peter Weir

Witnesses:

Mr Mark Campbell	Radox Laboratories Ltd
Mr Nigel Smyth	Confederation of British Industry
Mr Peter Spratt	Anderson Spratt Group

1153. The Acting Chairperson (Ms J McCann): I welcome Nigel Smyth, director of the CBI, Peter Spratt, managing director of the Anderson Spratt Group and Mark Campbell, senior manager of Radox Laboratories Limited. You are all very welcome. There will be a Hansard report of the

meeting, so all mobile phones should be switched off. Please give your presentation, and then members will ask questions.

1154. Mr Nigel Smyth (Confederation of British Industry): We welcome the opportunity to provide oral evidence today. I will make some comments additional to our submission and invite my colleagues to illustrate some of the problems that small and medium-sized enterprises (SMEs) have in accessing the Northern Ireland public procurement market. We will be delighted to answer questions from members.

1155. Public procurement policy has been a major issue for CBI for several years. Members will have seen from our submission that we completed a major survey of suppliers to the Northern Ireland public procurement market around 12 months ago. We believe that we have a good understanding of the key issues about which SMEs are concerned, and that is supported by a strong evidence base. Since we published our survey, we have had constructive dialogue with central procurement directorate (CPD) and the centres of procurement excellence (COPEs).

1156. At the outset, I emphasise the importance that CBI puts on maintaining an open, fair, transparent and competitive market. That is what businesses want, and it should be the best way to deliver value for money, which is something that we should all want. We do not want the playing field tilted to favour SMEs unfairly, but we want to create a culture and a system that ensures that they are given the maximum opportunity of winning contracts. There are many barriers in the way to achieving that; however, those can be addressed, and are being addressed, within the existing rules and regulations.

1157. In the current economic climate, with a worrying outlook for unemployment and youth graduate unemployment rising rapidly, it is timely to assess what more can be done to give local indigenous companies a better opportunity of accessing the £2.2 billion public procurement market in Northern Ireland.

1158. We do not believe that setting mandatory targets for the level of SME involvement is a sensible way forward. Instead, to give SMEs a better opportunity of winning contracts, a number of actions are necessary. First, bidding costs must be reduced. There are excessive demands for information and a lack of standardisation in requesting generic information across the COPEs. That is a major problem, particularly for smaller firms. Encouragingly, it is being addressed, partly due to the move to electronic procurement, but we need to keep a watchful eye on it.

1159. Secondly, tender documents and inadequate or inappropriate specifications are a problem. They could be SME-proofed. Let me give the Committee an example from a procurement process that I was involved in earlier this year. The draft specification demanded that for those staff nominated to work on the assignment, the firm should supply examples and details of previous experience within the last five years in internal audit services to non-departmental public bodies and the Northern Ireland public sector generally. Furthermore, it stated that the organisation was seeking a provider that was fully familiar with the operating environment and regulatory issues faced by NDPBs.

1160. When I read that, I felt that it was excessively narrow in focus and could prevent some companies that I know from competing. What was agreed on the revised tender that went out to the market was that staff nominated to work on the assignment should demonstrate previous relevant experience of providing internal audit services of a similar nature within the last five years.

1161. That is a very small example, but I use it to illustrate that the wording of a specification can very easily rule out new or emerging entrants to the market. Growing small businesses will find it a more significant barrier. We suggest that the Committee reviews half a dozen tender

documents from each of the COPEs to assess the significance of the problem. I will be surprised if other witnesses do not raise the matter. From a CBI perspective, Departments could do more to maximise the opportunities for local suppliers within the existing rules.

1162. Thirdly, better provision of information would help SMEs. The evidence that we collated demonstrates overwhelming support for a web portal for all Northern Ireland procurement.

1163. Fourthly, COPEs should become world-class clients or intelligent clients. Last week, we submitted a further document that CBI has developed in recent months. It identifies the criteria that we expect from a world-class procuring organisation. As the Committee will know, key elements of those criteria include engaging with the supply base and understanding the supply market. We believe that organisations that can meet those criteria are more likely to create more competitive markets and deliver better value for money.

1164. COPEs undergo quality assurance assessments every five years. We believe that the criteria should be included in those assessments. We understand that this is being reviewed by CPD and the COPEs. However, we believe that it is vital that the independent assessments should include supplier feedback, which is not the case at the moment.

1165. There has been some debate about the size of contracts. The CBI supports the use of frameworks as an important way of reducing bidding costs. However, significant issues have recently been thrown up that need to be resolved. We have supported the aggregation of projects, but only to the point at which Northern Ireland companies still have a good opportunity of winning contracts. We also recognise that dozens of smaller companies will be involved as subcontractors, particularly in larger construction contracts. We must also accept that companies themselves have major responsibilities to ensure that they are taking the right steps to position themselves to win. We have outlined some of those steps in our submission.

1166. Success at home should also encourage success away from home. The public procurement market is a massive market across the EU and beyond. With sterling's current weakness, there has never been a better time to encourage local companies to seek public procurement outside Northern Ireland.

1167. Mr Peter Spratt (Anderson Spratt Group): I am Peter Spratt, the managing director of Anderson Spratt Group, which is a small marketing services company based in Belfast. I do not want to delay the business, so I will make three quick points to augment Nigel's comments. The local economy is particularly important to a business such as mine, and that may be representative of a lot of SMEs. The vast majority of our business is indigenous. The local economy, the public estate, and public procurement in the local economy — particularly at a time of economic challenge — are hugely important.

1168. There are three issues that I will very quickly reference at a practical level, which is where I hope to add some value to the debate. Over the past four years, much work has been achieved in public procurement processes. A number of frameworks and protocols have been established as the process has become increasingly formalised in its journey towards ultimate professionalism. However, there are still some challenges. A very marked challenge for SMEs is in bidding costs. A small or medium-sized company such as ours, of which there are many in the Northern Ireland economy, does not have the luxury of being able to assemble major bid teams whose business it is to spend the greatest part of their time bidding for public procurement contracts. We have to make that happen as the opportunities arise. The bids have to be responded to by senior officers of the business. There is a considerable opportunity cost in that in relation to time and money.

1169. Having said that, the decision of whether to bid is ours to make. However, there is an old maxim that states that if one is not working for the public estate in Northern Ireland, one is not working. The cost-benefit relationship of bidding can be particularly punitive. Time frames are often very unforgiving. Protocols have sought to formalise the time frames, but in the biggest competition in my industry thus far in 2009, which will, arguably, be the biggest this year, 15 days were made available for bidding responses. That is a recognised time frame in the protocol, but it is the minimum period. Sadly, we do not seem to get beyond the minimum as regards time frame responses. It would be encouraging if more time were made available. For instance, while that process is live, another tender became live, with a 28-day turnaround period being made available.

1170. There is, therefore, no standardisation of the time frame for turnaround. Similarly, there is often a seasonal rush around bank holidays, particularly the Twelfth of July holidays. A lot of competitions to bid are received in late June or early July. Subsequently, the folk to whom we need to speak to for clarification of the tender documents are, by that time, on leave, which makes it difficult to formulate a cogent response.

1171. Finally, tender documentation can be extremely complex. As members will have seen, documents can run to hundreds of pages in their attempt to explain what the brief is asking for. Now, with multiple procurement channels, there is no longer a single central procurement directorate under the auspices of DFP; there are also the COPEs. Increasingly, we are considering how to standardise the process, but we have not yet reached that stage. One set of tender documents can look not like another, so before a business can even decide whether it is in a position to respond, a considerable amount of work is often involved in absorbing the tender documentation.

1172. Much work has been done and progress is being made, but I, and the industry that I represent, want to see less focus on and obsession with process and more focus on outcomes. Fundamentally, it is a matter of people working in pursuit of the best available outcome.

1173. Mr Mark Campbell (Randox Laboratories Ltd): Thank you for the opportunity to be here. I am a senior manager at Randox Laboratories Ltd, which is a healthcare diagnostics company. Therefore, my comments will largely relate to the healthcare sector, although I imagine that they will be employable broadly.

1174. We manufacture blood tests, which mainly relate to illness, but we have extended them to genetics, which means that we can test for disease and the propensity for disease. We are a world-class manufacturer and have won five Queen's Awards for Industry. Randox was the Northern Ireland Business of the Year in 2008 and the Northern Ireland innovator of the year in 2009. We employ 550 people in Northern Ireland and 250 people overseas. We could successfully sell our products to every laboratory in Northern Ireland, yet 99.87% of our product is exported overseas and only 0.13% is sold in Northern Ireland.

1175. Why is that so, given that we could sell a great deal more? That circumstance was partly brought about by a strategic decision made by the company several years ago that the commitment and effort required to sell in Northern Ireland was disproportionate to the results. That was borne out by our success in overseas markets; and, for the reasons that Nigel outlined, such as the cost of tenders, bureaucracy, and so forth, we viewed the effort that was focused on Northern Ireland as unproductive. We recently competed for a tender in Northern Ireland for which an assessment of cost, not taking into account the opportunity cost, was £15,000, and the tender was unsuccessful. Our company is of such a size that it can hold that cost, but many other SMEs would not be able to do so.

1176. However, that was then. Randox has made a strategic decision to work more in the local market because we consider that we can add significant value to it. I will outline some of our observations from the past year and a half. The healthcare market in Northern Ireland is dominated by large multinationals, and to enter it is problematic. The processes become highly reliant on several single suppliers. We have observed that an attitude of reliance, if not dependency, has developed. Many tenders have a discretionary element, in that one must buy to a certain value, beyond which that the customer can seek greater value for money.

1177. I sought advice from a particular senior clinician. He told me that I had to realise that, although I was offering efficiencies, the most important factor to him was his relationship with the main supplier. That is understandable under the circumstances, but I wondered whether any philosophy of seeking value for money was imbued in that process. I do not blame the customer; the customer will always wish to have a good relationship with a supplier, and a supplier too will seek a beneficial relationship. I wonder what more the procurement process could have done to help to generate a creative tension that would demand economies of scale in future procurements. The relationships between customer and supplier seemed quite cosy.

1178. I have a recent example of a large supplier that, towards the end of a contract, has undertaken an equipment refresh. That is a highly technical procedure that requires much staff time over many months to complete. The contract is up again in a year, and we ask ourselves how enthusiastic that site will be to go through the whole process again a year after they have completed it. I suspect that the tenderer, having sited some new equipment there, will be able to cost very effectively, because the cost of that equipment has been taken into account already.

1179. When tenders arrive, there is a clear and appropriate policy of future tenderers not visiting the sites involved in case that skews the pitch in some way. We note with interest that the sitting tenant has full access, whereas those who wish to tender do not, and there may, arguably, be some advantage gained there.

1180. I have asked organisations regulated by the tendering process about the equipment refresh, but did not get a very clear answer. It is not clear whether the procurement process takes a view on an equipment refresh where it can happen within the last year of a tender. We observe the issue as one of the relationship: if it is a relationship of reliance, is it achieving best value for money and could more be done to achieve that?

1181. We have also come up against a case of contract extensions. Many of the contracts are for five years plus a two-year optional extension. We were interested in a tender in Northern Ireland recently and had been speaking to the procurement people over the past year. However, we were disappointed to find that the tender had been extended. I do not know what benchmarking process was undertaken to ensure that there was value for money, but I can assure you that we were going to be exceptionally competitive to make our entrance into the market, but we were not given the opportunity to do so. I do not know how that was benchmarked and how rugged the assessment was.

1182. Visibility of upcoming tenders is problematic. One has to work hard to get a list of what tenders are coming up so as to plan ahead. Perhaps something could be done about that. I asked recently about an upcoming tender and the assessment of value for money, and it appears to be that price is, quite rightly, a major factor in resolving a tender. Price can often be weighted to 40% of a tender. I asked recently whether other savings, such as reduced staff levels, would be taken into account. The answer was no, that that would be very difficult. Therefore, if one had a slightly more expensive tenderer, but could save 10 staff over the next three years, the savings of 10 staff did not seem to factor into the cost of the bid, which seemed to me to be problematic. However, that featured elsewhere under additional value, but it was not clear how that would be scored against a very sharp 40% on price.

1183. My final comment relates to the philosophy of value for money. I have moved recently from the public sector to the private sector, and one of the areas that I have noticed most keenly is the value-for-money aspect in the private sector: people live, eat, breathe and sleep the value-for-money aspect. It must pervade one's whole culture.

1184. I noted with interest some of the decisions that have had to be made by Departments recently. Two examples this month relate to the Planning Service increasing costs to secure employment and Translink increasing fares to secure employment. I make no issue with those decisions: clearly, they are problematic decisions that have to be made in difficult circumstances. However, one issue that arises in the back of my mind is whether that affects the culture of seeking value for money elsewhere in the organisation, and what steps could be taken within the organisation to ensure that that value for money should have primacy, whereas some other decisions, quite rightly, are made with other priorities in mind. Thank you for your attention. That is all I have to say.

1185. Mr McNarry: Thank you for your presentation. From previous evidence, I got the distinct impression that Northern Ireland plays to the rules while other places seem to bend them. Have you come across any examples of that?

1186. Mr Smyth: Northern Ireland does play to the rules: in fact, we go further than that. There is a risk-averse culture here. The argument in Northern Ireland is that we may go beyond the rules in that one has to dot every i and cross every t. I do not have any evidence from elsewhere, but our survey indicates that things are more bureaucratic and complex for companies that are working in Northern Ireland and GB. The argument, particularly from SMEs, is that that is unnecessary and makes their lives more difficult. I do not have evidence that people are not playing by the rules elsewhere: they may be smarter and cleverer in how they go about things.

1187. Mr McNarry: I was not saying that they were not playing by the rules; I said that they are bending the rules.

1188. Mr Smyth: I do not have evidence of that.

1189. Mr P Spratt: The rules are still work in progress. Sometimes, for fear of antagonising procurers and the part of the public estate that remains important to our sector, a smaller industry with less critical mass is perhaps less challenging of the rules than bigger lobbies. The 15-day rule has been enshrined in a protocol, and that is the minimum time that is available for the turning around of procurement in my sector. We acquiesced in that, when we should have been more robust in suggesting that the time frame was not workable. The rules are still work in progress and are capable of being amended. An ongoing debate to try to take them closer to a world-class culture of procurement is the responsibility of both the bidder and the procurer.

1190. Mr McNarry: Your colleague said that he had experience in the public sector and in the private sector. May I ask what that experience is?

1191. Mr M Campbell: I worked for the Ministry of Defence.

1192. Mr McNarry: Do you think that a culture is embedded in CPD that lacks professionalism and awareness of the private sector?

1193. Mr M Campbell: We have certainly had to work very hard to explain what we can do for the public sector. The public sector has not approached us, as a local company, to say that it is aware of our existence and inquired what we do so that we can think carefully about where we can add greater efficiencies. The energy to be able to articulate what we can do has come from

us, and we are quite happy to undertake that. From our perspective, the rules are applied fundamentally. We dearly want to add significant value to healthcare in Northern Ireland, but we are told at points that we cannot access local hospitals because that might queer the pitch in some way. I assume that that is proper procedure. I said in my evidence that we note that current suppliers have daily access.

1194. Mr McNarry: Do you have any evidence of specifications altering after a bid has been accepted and a contract has been signed?

1195. Mr Smyth: There is significant anecdotal evidence for that. A high percentage of companies and respondents said that the specifications had changed. The key issue is whether Departments know what they want. The other issue is that some of the procurements are extremely —

1196. Mr McNarry: Is that fair, Nigel? I remember being told by a troubleshooter that people had the job of taking specifications apart. He said that a firm would bid on the basis that the specification was flawed: they had the knowledge and the professionalism. Is it fair that specifications are being produced that are subject to change, but only after a bid is made?

1197. Mr M Campbell: We have challenged specifications during the tendering process. Our observation is that specifications in the healthcare sector and laboratories area are highly technical. The procurement personnel seem to pass those over to the laboratory personnel, who have the technical competence to complete the bid.

1198. It is understandable that tenders are often written with a particular piece of equipment in mind. A specification might say that the handle must be on the left side, three inches from the floor, because that is what the customer has grown up with and has been used to over the past five or six years. However, there may be only one supplier who produces equipment with the handle in that place. Therefore, we often have to be rigorous with the specification prior to submission to challenge anything that we believe to be inappropriate.

1199. Mr Smyth: Our survey showed that half of respondents felt that some changes were made to specifications and that 22% of respondents felt that significant changes were made. One might expect some changes, but the customer-procuring side lacks an understanding of the overall impact and consequences of making those changes at the outset. A better dialogue and understanding may be needed between the customers and the marketplace.

1200. I want to respond to your question on commercial skills. That area came out quite strongly in our survey. When the findings were broken down, the typical response was shown to be "average" to "good". A small number of respondents described procurement as very good. Quite a significant figure, around 20% in each group, described it as poor. Therefore, different people have different experiences. Our view is that it can all be improved. There is a lot of work and activity directed at improvement. It is about getting good commercial skills and having people with the ability to do deals and get them through, because there is a lot of concern about delays in the procurement process.

1201. Mr McNarry: Can we obtain information about this? Without putting Mark in the dock, if he has details about it, would he be prepared to share it with the Committee or are they commercially private?

1202. Mr M Campbell: They are not. It was a straightforward contract for analysers and for reagents and chemicals that go into the analysers. It was awarded in —

1203. Mr McNarry: We do not need to know the details now, but if you are willing share those with us, and we can gain further information about the extensions being granted and under what circumstances that happened, that would be very interesting to the Committee.

1204. Mr M Campbell: My assumption, which I do not know as fact, is that the potential for an extension would have been stated in the contract. Our disappointment was that we were keen to be competitive but found that the contract had been extended. I am sure that there was a process that will have ticked the boxes to say that it was done properly. The process will have been followed, but, to reiterate Peter's point, the question is how rigorously it was done. There could have been a better outcome.

1205. Mr McNarry: In the response from ASG and Anderson Spratt Group Holdings, under the heading "Experience of Assessment Panels", you say that: "Professional Procurement requires resource-and said resource requires to be both experienced and intellectually imaginative. We would encourage a rigorous and ongoing assessment of the assessor in this context. We would further encourage an examination of appropriate third party expertise-perhaps a panel of qualified assessors in different disciplines-which might be drawn upon as necessary."

1206. Will you explain what you are getting at there?

1207. Mr P Spratt: My business is in intellectual capital, which is often more qualitative than quantitative and can be difficult to assess. Procurement in my industry, by definition, has to be sophisticated and well informed by industry experience and the professionals attached to it. I sit on a board in the public estate that uses third-party expertise when required to inform decision-taking in specialist areas. The CBI has encouraged some reciprocal seconding between procurer and potential bidders to facilitate understanding. The nature of assessing the work in which I am engaged requires inherited learning and professional experience and, sometimes, rigorous training. We are not sure that that is readily available to the public estate.

1208. Mr McNarry: Your point is well made. Your company is known to me and it has a fine reputation. It is interesting that you go as far as saying that, and we should take note of it.

1209. Mr Smyth: I have had one specific experience in the past few months. I was on a tender with two colleagues. We had done our homework. We had spent three hours earlier in the week on preparation and came to the meeting well prepared. From a comment made to me by the CPD representative, it was clear that at some tender evaluation meetings other people had not done their homework. I thought that was worrying, because, if you have gone through the process, there is no way you could arrive at the meeting without spending three or four hours going through each of the tender documents. I do not know how big the issue is, but it was worrying that the fact that we had done our homework was commented on and welcomed.

1210. Mr McNarry: Needless to say, Nigel, if you are worried, we are minded to be alarmed.

1211. Ms Purvis: Thank you for your presentation. Nigel, you said that you were in favour of frameworks, but that there were some difficulties with them. Will you explain the difficulties?

1212. Mr Smyth: Recent difficulties have been in construction and another large framework in which legal cases have been launched against them, leading to a delay in the whole process. That was particularly the case with the construction framework and involved the construction of schools. That has led to a great deal of problems.

1213. The CBI supports frameworks as a way forward and as a way of reducing bidding costs. I understand that the construction employers have sat down with CPD in an attempt to find a way forward in developing a number of frameworks to suit large and small companies. There is a big

investment strategy ahead of us, and several projects were aggregated, which we agreed to in principle. Those projects were legal, but I believe that there were mistakes in the tenders. Although I have not read the detail, I understand from people in the industry that there were some errors in the tendering process, and some of those have been challenged legally as a result. However, we do believe, in principle, that frameworks are a good way forward.

1214. Quite often, in the ICT sector, frameworks were over a three-year period. Going back a year, I was hearing concerns from very small ICT companies that were unsuccessful in being accepted into the framework and had to wait three years before being able to bid again. My understanding is that those frameworks have been reduced to 18 months. However, I now hear concerns that companies that have won the framework will have to go through the whole tendering process again in 18 months. It is very hard to achieve an overall balance.

1215. Overall, our opinion is that frameworks are a good way forward and a good way of reducing bidding costs. However, they do need to be thought through so as to give all key suppliers in Northern Ireland a good and fair opportunity at the potential marketplace.

1216. Ms Purvis: Representatives from SMEs who have appeared before the Committee have said that the timescales are too long and that once companies are locked out it is for the period of the framework. They have also said that companies must have a certain level of turnover to be entitled to bid for a framework; something which is not always possible for SMEs. They have also said that the need to demonstrate experience gained in the last five years often excludes SMEs. Do you have any comments on those points?

1217. Mr Smyth: As regards companies being locked out; that is the nature of a framework. I have provided the example of the ICT sector, where having the framework reduced from three years to 18 months has caused problems. It is very hard to achieve a balance in that area.

1218. At the moment, the construction industry is examining different levels of frameworks for different sizes of projects. However, as a result of the delays in the education frameworks, some projects are being rolled out individually, with a fairly low cost, which is leading to dozens of tenders being made. That process has led to massive bidding costs, which the CBI believes will undermine the industry in the medium- and long-term. The contracts will be awarded to those companies with the lowest costs, and companies are bidding below cost at the moment in an attempt to buy the work. That situation is not sustainable.

1219. Your point in relation to the size of companies needs to be examined. Perhaps dividing frameworks in two, with very large frameworks for the very large projects and smaller frameworks for the smaller projects, could be examined. As regards the criteria, I have already given an example. However, care must be taken when drafting the criteria as some companies could be disadvantaged from competing. Expertise is required to make those decisions.

1220. Ms Purvis: I am thinking particularly of a SME being locked out of a framework agreement for four years when one criterion for that framework relates to experience gained in the past five years. When the next framework comes out, again asking for experience gained in the past five years, the SME will not have had an opportunity to gain that experience.

1221. Mr P Spratt: I believe that twelve companies were accredited when the framework in my sector was last articulated. Public procurement, by definition, looks for the best in class, and companies on the framework should be best-in-class providers or be capable of being so. The criteria for getting on to the framework are rigorous, and to achieve is a consequence of employing professional people, investing heavily in businesses and seeking to build value in businesses over years that get us to the position of being capable of responding to public procurement and achieving a framework position.

1222. Not all procurement comes exclusively from the framework, and some SMEs not on frameworks are capable of bidding at certain levels of contract and finance. CPD has advised us recently that some competitions, because of their nature, must be open and go beyond the framework environment.

1223. Ms Purvis: I understand. I was talking specifically about the framework.

1224. Mr P Spratt: Ours is a two-year framework with a rolling extension, if possible. However, on behalf of the fellow-travellers in our industry who made the framework, we worked very hard and invested very heavily to be there in the first place. That is commerce.

1225. Mr M Campbell: We have had experience of one framework, which we are a party to, elsewhere in the UK. It is a very lengthy framework; 10 years. From the outset, the framework provisions stated that new applicants who arrived with capability would be reviewed every two years. The potential was written into the framework for those who had been locked out to reappear in two years' time with enhanced capability, so that they could join.

1226. Ms Purvis: In that case, what happens to a firm that comes into the framework? Is another firm booted out?

1227. Mr M Campbell: No. Everyone is kept in the framework unless someone volunteers to leave.

1228. Mr P Spratt: There does not seem to be a mandatory number allowable in the framework. We asked that question when our own framework was being developed.

1229. Ms Purvis: I read your submission on the extent and application of social and environmental clauses in public procurement contracts, and other regions have experience of using such clauses for the benefit of the small and medium-sized enterprise and social economy enterprise sectors as regards sustainable business, employment, using local produce and so on. I get the sense that some businesses in Northern Ireland, and CPD, see those clauses as a bit of a headache. What is your view on how such clauses can best be used to boost the local economy?

1230. Mr Smyth: The Equality Commission and CPD produced a volume last year about equality of opportunity and sustainable development. The guidelines are there.

1231. We agree that clauses have to be relevant to the procurement. There is the risk that people, or Departments, will try to achieve all things through procurement. In some bigger areas, such as construction, it is likely that we will be able to do more; for example, for the unemployed. There have been some pilot schemes that you will be aware of. However, in small, individual schemes, it will be much more difficult.

1232. The key message is that those need to be built in by Departments from the start and not be tagged on at the end. When Departments are undertaking a project or are considering procurement, they need to give considerable thought to equality of opportunity, sustainable and environmental aspects. Some procurement exercises offer more potential for social clauses than others. It is horses for courses and not a case of one system fits all. There is potential; however, we need to look at experiences elsewhere and learn from those. To do something for the unemployed should not be added as an afterthought.

1233. Mr M Campbell: Radox Laboratories Limited was formed in 1982 and started with six people working out of an old stable block. Its philosophy was to halt the brain drain from Northern Ireland. Prior to that, everyone who became scientifically qualified had to leave the

Province. We now employ 550 people in the Province, ranging from highly-qualified technical scientists to non-skilled and semi-skilled workers engaged in manufacturing and packing. Our workforce spans the whole spectrum of the economic base and one of our drivers is to enhance employment in Northern Ireland. However, the issue comes back to the fact that we cannot apply social contracts until such times as we can tender fairly and openly and win contracts in the first place. That is our concern at present.

1234. Mr F McCann: I have one question. Should social clauses not be included in contracts? Mr Campbell said that he would have to work out whether the tender could be won before applying for —

1235. Mr M Campbell: I am not expressing a view on that: my point is that unless we secure the business, social contracts do not become an issue.

1236. Mr O'Loan: Thank you for your presentation. All your contributions contained very significant points. I have three general questions. What is your overall assessment, or rating, of the public procurement system here?

1237. Mr Smyth: "Could do better". [Laughter.] Our evidence shows that it is average to good. There are some very good bits and some that are less good, which are easy to identify because people who have had bad experiences do complain. There are some bad examples of procurement. People in the senior levels in COPEs and CPD know what they are trying to achieve, and they are trying to move the system in that direction. However, there is a typical curve with regard to experiences. In the past, there have been difficulties in getting skilled commercial people.

1238. Mr O'Loan: I count that report as being "not good enough". On meeting procurement officials, do you find them co-operative and responsive or are they defensive and resistant to change?

1239. Mr Smyth: My colleagues may want to comment on that from an operational level, but I will give examples from fairly senior policy level. In the past 12 months, our experience has been positive. There was constructive engagement when we produced our survey. There has been a number of meetings and involvement in workshops and conferences, from which a number of actions have arisen, which we have been able to take forward.

1240. It has been recognised that there is a need for better standardisation. It is frustrating, because, in Northern Ireland, there are the CPD and eight COPEs. We are looking at the standardisation of generic information in items such as company accounts. Each COPE requests that information in a different format. In business, you get on and do it; however, in Northern Ireland, it seems to take a long time to do it. Over the next number of months, we will move towards e-procurement, and that will speed up the process.

1241. Mr P Spratt: Dialogue is good at senior level. Recently, the attitude fostered towards CBI has been increasingly professional, convivial and sensible in pursuit of the end game. However, at operational level, there is sometimes an unnecessary tension; almost an "us-and-them" environment. The process is not combat; it is about a conversation in pursuit of something, but there is, sometimes, nervousness, tension and inertia.

1242. On the qualitative side, public procurement could benefit from greater levels of courtesy to the bidder. There should be recognition of what the bidder is trying to achieve, and speed and courtesy of response when further enquiry of procurement documentation is made. Sometimes, there is still an unnecessarily large separation between private sector and public estate.

1243. Mr M Campbell: Having met procurement people in the area in which we work, I have concerns about the resource pressures that they are under. They have a great deal to do, and it struck me that they were under-resourced. That reflects in some of the work that we have seen in other places, not in Northern Ireland. One sees cut-and-paste tenders, which do the job to some degree but ask some extraordinary questions because they are not suited to the specifics of what is being done.

1244. Peter mentioned that the process was becoming almost combative. I am concerned that litigation is a problem. If there is a sniff in the air of litigation, relationships become formal and one will get only the information that one requests and nothing more, and so on. That becomes harmful to the overall flow of information and positive attitude.

1245. Mr O'Loan: Is there is variation in quality across the COPEs, as I suspect there may be?

1246. Mr Smyth: Our survey concluded that one or two came out better, but that most of them had a typical curve. A lot of them were average to good, and some were slightly better than others. None was outstanding. Anecdotally, good work and good partnership are going on between certain leading COPEs, but they all have the spectrum of being not so good at one end and a small amount of very good at the other.

1247. Mr F McCann: Is there any evidence that SMEs shy away from becoming involved in the process because of the excessive costs in bureaucracy that seem to exist around the application, certainly at tender stage?

1248. Mr P Spratt: Yes. Speaking unilaterally; in cases where we thought we could have added considerable value we have sought not to respond for reasons discussed earlier. I define bureaucracy as punitive time frames and the extent of bidding cost vis-à-vis the potential return if work is achieved. Therefore, certain tenders are dissuasive. If they dissuade our business, they must be dissuading others, and that must deny public procurement the opportunity for "best in class" on occasions.

1249. Mr F McCann: Obviously, there is a wealth of experience among the people you represent. When the process began, did anyone ask you to look at a system that breaks through the bureaucracy and uses an easier method for people to get into the tendering system? Perhaps, that is illegal. Did anyone seek to tap into your expertise?

1250. Mr Smyth: No. We do not consider that to be our role. Our role is to identify what we believe to be the most significant barriers to procurement. We have now communicated that.

1251. Mr F McCann: Do you offer advice to the Department?

1252. Mr Smyth: Our role is to try to influence and coax CPD. During the past year, we have been involved in two workshops. We have tried to influence the Procurement Board's work in various ways. We do not see ourselves as advisers to companies. As Peter said, companies have a major responsibility to put in the work and effort to achieve contracts. The CBI does not see that its role is to provide advice or assistance to companies. If companies have a problem, we can, perhaps, do a little signposting as regards with whom they can raise the issue.

1253. Mr McQuillan: The UK market is worth £120 billion. Do you see a role for Invest NI to help small and medium-sized enterprises to attract some of that money? Is it already doing so?

1254. Mr Smyth: To be fair, Invest NI is already doing so. In Northern Ireland, there are many good stories. I understand that within two years, Invest NI or its clients won around £500 million

of business. I believe that we quoted the figure in our 2008 policy paper. Clearly, Invest NI's work with the Olympic Delivery Authority has been high profile.

1255. We believe that more can be done. There is a terrific opportunity at the moment. Some multinational companies may be struggling because of the strong euro, and there are big opportunities for the UK market to exploit that and encourage more Northern Ireland companies. Our message to Invest NI is to look at the tradable-services sector, in particular, which has a relatively small level of export. Invest NI should look at that sector and determine what more it can do on a strategic level to increase exports. If we can win tenders in Northern Ireland, we have every opportunity to win in other markets.

1256. Therefore, work is under way. We believe that more effort must be made to communicate that message to potential suppliers. We must put our hands up, however: suppliers also have a responsibility. IntertradeIreland provides support, particularly on North/South tenders. Likewise, Invest Northern Ireland has a programme of activity also.

1257. Mr McQuillan: Are you fairly happy with Invest NI?

1258. Mr Smyth: Yes, we are happy. We see it as an opportunity. We have communicated with Invest NI. It is supportive. In March 2009, we ran a major conference. We have been encouraged by its response.

1259. Dr Farry: Welcome, gentlemen. I want to return to the point that was made earlier about social clauses. Your agenda is to try to reduce bureaucracy and improve the speed of the process. Will social clauses add to the system's complexity or can they be part of a programme by which the process is made faster and simpler? Are those mutually exclusive, or can they reinforce each other?

1260. Mr Smyth: That very much depends on the nature of a contract. If one wanted to outsource school meals, a clause could be included stating the need to maximise the level of free school meals in order to encourage take-up. Therefore, if one is smart enough, one can develop clauses that are relevant to the nature of the procurement. However, if the argument is that we need to employ people from x, y and z, we are probably not going to get value for money on the back of that. It is a matter of being smart in how one goes about it.

1261. If the tender is very small, it is unlikely that one will be able to build in such a clause; whereas, as has been highlighted, efforts have been made in major contracts, particularly in the construction sector, to encourage unemployed people. There are issues around that, because this is about skilled people with health and safety training, so there are no easy solutions. We must be open and look at what is happening elsewhere in the UK and in Europe to see what we can learn. Social clauses may add to the complexity, but to a lesser extent if they are relevant to the procurement.

1262. Mr P Spratt: Social clauses must have meaning in the context of the brief that is being addressed. For example, we have recently been involved in work on waste management and recycling — a big and growing subject of debate in our times. It is important that our own credentials are in good shape, and that the clauses are clearly articulated in the briefing documents. They can be a bit fudged and soft round the edges, which has been my experience. One can be uncertain about what is being requested, which underlines the imperative of having clarity in tender documentation. I subscribe to them and their legitimacy in appropriate tenders absolutely.

1263. Dr Farry: Another potential trade-off is between the emphasis on speed and simplicity of process and rigorous fairness in allocating contracts. How is the balance struck? Does opting for

a faster, simpler system create greater risk that a contract will not go to the most competitive bid or make the playing field less level than it would ideally be? On the other hand, it may lower the cost to businesses of interacting with the process. Is there a balance to be found between those different objectives?

1264. Mr P Spratt: As regards our own framework, that is work in progress. However, there has to be a balance. Public procurement, like everything, should be about meritocracy and, ultimately, fitness for purpose. Tendering is the pursuit of a fit-for-purpose provider or consortium of providers. Therefore, all types of things must be balanced, including speed of turnaround, financial competitiveness and capacity resource. Those are all criteria that are subject to continued examination within frameworks, and I do not believe them to be mutually exclusive.

1265. Dr Farry: Yes, because in theory one can go to the nth degree to demonstrate that a tender has been awarded on merit, but the cost of that may knock people out of the process.

1266. Mr P Spratt: We are all hugely sensitive to cost in today's world. Mark talked about the enshrinement of value for money in the private sector. That becomes almost counter-intuitive in public procurement when a tenderer scores highest for lowest cost. That is all very well, and it is fine for any business, like mine, to take a flier and to say "let's price to win", but, if doing so diminishes our capacity to resource that business intellectually in terms of people or capital inventory, we reduce the capacity of a business to respond properly as it progresses. Therefore, the relationship between cost and the capacity to deliver outcome must be rigorously explored and understood.

1267. Mr Smyth: Peter gave a good example of the timing involved. A massive amount of time is required for developing ideas and delivering a tender in the current process. Issuing invitations to tender for the biggest contract of the year at the end of June, at a time when people are going on holidays, and giving two weeks respond, has happened. The contract is put out at that point because the procurers are probably going on holiday. However, leaving the small and medium-sized enterprises in such a position does not seem to be a sensible or smart way forward.

1268. If it were a fairly straightforward £10,000 tender or whatever, two weeks may be fine, because the speed and time limit would not be major issues. However, that does not apply if the minimum time frame is stuck to for the biggest contract of the year. We want small and medium-sized enterprises to have the maximum opportunities. We are not trying to tilt the process unfairly towards them, because that would not deliver value for money, which is of the utmost concern. Nevertheless, we can make it a lot easier for them by cutting their costs and we should be thinking about ways of making it easier for local companies to win contracts.

1269. Mr P Spratt: I have one final point to add to that. Mark touched on notification of forthcoming procurements. The Departments are increasingly committed to following CPD advice to flag up, without being prescriptive about it, what services they may plan to procure during any financial year. That would be terribly helpful, because at least we would know well enough in advance, albeit we may have only a 15-day window, to be semi-prepared.

1270. Overall, considerable progress is being made, and it is being fostered by the level of dialogue that CBI is facilitating.

1271. Mr M Campbell: Before we move on from social contracts, I want to share an observation from our perspective, which is that when a local company bids against another local company or SME, equal criteria can be applied. However, our circumstances mean that we may be bidding against companies from the US or Japan. In such cases, we request that any social criteria

included should be equally binding. If a social clause sought take-up from the long-term unemployed, for example, an American or Japanese company would, presumably, wave bye-bye to that element, whereas it would be binding on a local company and may be, therefore, disadvantageous. It is a matter of ensuring that, regardless of how the contract is constructed, it has an equal effect across the board.

1272. Dr Farry: I am struck by the need for consistency across the board, and I welcome your opening comments about how we are not talking about Northern Ireland as a hermetically sealed entity. Some local companies seek to bid for contracts outside Northern Ireland, and fair play to them. Northern Ireland is part of the UK and Europe. Equally, there are companies that we should welcome to Northern Ireland, so that they too can provide value, because that will have implications for local supply chains. It will also have cost implications because of our geographical location.

1273. On the issue of wider comparative experience, I was struck by your comments about the time and resources spent in preparing bids for tenders. How does the experience in Northern Ireland compare with experiences in other jurisdictions? Are companies here worse off, or is the situation more or less the same? Much of the effort involved is dead economic activity. Such activity may appear as a percentage of GDP but is not particularly productive to society.

1274. Mr P Spratt: I am in a better position to comment on the resourcing required when bidding in the private sector compared to public procurement. In comparatively recent times, we tendered for a contract under the auspices of the Scottish Executive, and the process was comparable with our experience in Northern Ireland.

1275. However, procurement and tendering in the private estate remains more precise and is not as over-engineered. Over-engineering can, as you said, result in dead economic activity. There can only be one winner at the end of the day, so bidders carry out much dead activity on public procurement. If that could be lessened to some extent, the same energy could be channelled in pursuit of something else.

1276. Dr Farry: To feed off that, does the tender documentation ask questions that strike you as not particularly relevant to the awarding of the contract? Is information sometimes sought purely for the sake of it rather than for its use in determining who should win?

1277. Mr P Spratt: That is sometimes the case. Mark made the point, and it is also my experience, that it can seem as though some tender documentation has been cut and pasted, and that it has been thrown together in a rush. In such cases some gratuitous information is sought that is not going to be of pivotal consequence. Therefore, the answer is yes, but I will not be specific today.

1278. Mr M Campbell: Every market differs, but areas across the UK are broadly comparable. Some overseas markets can be extremely innovative, fast-moving, and have much less of a bureaucratic burden. Historically, we found it was much more rewarding to engage there because we got a better return for our effort.

1279. Mr Weir: Thank you, gentlemen; it has been very illuminating. A range of issues was raised about social clauses. I am keen not to misrepresent your position. Is it fair to say that you see a degree of merit in social clauses but that you want to sound a note of caution? Are "appropriateness" and "balance" the buzzwords as regards social and environmental clauses?

1280. Mr Smyth: That is correct.

1281. Mr Weir: I am going to play devil's advocate for a moment. On the one hand, you said that you are concerned that some of the tendering processes involve a degree of cut and paste. On the other hand, you said that you want to see as much standardisation as possible. Do you think that there is tension between the two? We all agree that we want to see standardisation; however, is there a danger that standardisation may lead to a greater degree of cut and paste being used?

1282. Mr Smyth: No; I think that we made it clear that requests for generic information such as company accounts and front-end information must be standardised; however, the details of a project need to be specific, so that companies can offer innovative opportunities. The tender should be as outcome-focused as possible. The request for upfront information needs to be standardised because it is being asked for in different formats by different bodies in Northern Ireland.

1283. Mr Weir: Finally, a lot of the changes that you suggested rightly focus on the process. You suggested reducing the cost of bids, providing better information, standardising generic information and enhancing skills, all of which are part of the process at certain levels.

1284. You said that there was a slight variation between the COPEs and the CPD. Should the structure of the CPD and COPEs be changed? If so, how should it be changed? Conversely, do you think that the structure is right, broadly speaking, and that the focus should be on addressing the process?

1285. Mr Smyth: The CBI's position a number of years ago was that there should be one procuring organisation with divisions therein. That was the CBI's response to the procurement review that was carried out in 2001. Our members made it clear that given Northern Ireland's size, there should be only one procuring body. The last thing that we want is to have different guidelines. We had different guidelines, and there is a risk of that happening again.

1286. Last year, a consultation exercise on sustainable procurement was carried out, and an action plan and various things were developed. Our members keep saying that they do not the Water Service doing one thing and Roads Service doing another, and that there needs to be consistency across the board to make procurement easier. Although there is a need for expertise, the business community would argue that a greater level of centralisation would provide more consistency and produce better guidelines.

1287. Mr Weir: Do you wish to have more centralisation within CPD?

1288. Mr Smyth: We suggest that all bodies should be part of one organisation. Obviously, the Health Service, the Roads Service and the Water Service have their own expertise, but there would be greater uniformity and consistency across all the organisations if there were one procuring body.

1289. Mr P Spratt: Even more important than whether there is one procuring body is whether there is a common denominator in the processes to which we have to respond; that each COPE is not reinventing the wheel in the way it goes about doing things. For example, the way in which we respond to Translink should be broadly comparable with the way in which we have to respond to the Northern Ireland Housing Executive. The CBI has championed the notion of the single portal, because that could greatly facilitate understanding.

1290. It is very important that we do not standardise to the point at which that diminishes the capacity to be imaginative. Only stock data, such as company accounts, personnel profiles and previous experience, should be standardised. Imagination needs to be implicit and allowable to the bidders in order for them to respond to the bespoke requirements of the tender.

1291. Mr M Campbell: This point might be on a tangent from Mr Weir's about process, which is terribly important. Peter Spratt made the point that process is all fine and good but that focus on outcome could be beneficial at times. We have been party to questions over several tenders in which the process had been followed to the letter and every box ticked, but where the outcome, from our perspective, was at variance with value for money and with what we thought was in the best interests of the local taxpayer.

1292. Process is very important, but if people are overworked and there is understaffing, the process sometimes becomes the end and not the outcome.

1293. The Acting Chairperson: Two of the priorities in the Executive's Programme for Government involve building a strong and vibrant economy and tackling poverty and disadvantage. Those have not cascaded down into procurement policy yet, whereby the huge budget for public procurement, both in central Government and local government, could be utilised to build a strong economy and tackle poverty, disadvantage and need. I understand that you are saying that one size does not fit all. However, some type of social clause must be put into public procurement at the beginning to create employment opportunities, sustain employment and retain the skills base. It is not being used in the way that it could by all Departments. Implementing social clauses at all stages — from advertising to delivery — is the way in which those two commitments in the Programme for Government could be delivered. What are your thoughts on that?

1294. Mr Smyth: One has to have horses for courses. Projects in some areas can do more than those in other areas. I do not think that one can generalise. One can insist on X, Y and Z for any major contract. However, the question to be asked is whether that represents value for money or whether there is a better way of doing it. It depends on what one is trying to achieve. It is a hard question to answer. There is potential, and we could probably do more. However, there is also the potential for adding complexities. There may be tension between what one is trying to achieve through the social clause and the core procurement requirement. Our message is that where the social clause is sympathetic and lined up with the procurement objective, then one should be trying to maximise the social, environmental and economic aspects.

1295. Mr M Campbell: I agree with Nigel. I made the point earlier about the impact on bids. I understand that there is a huge amount of public procurement, and it would be fantastic if public procurement in Northern Ireland could be used to create employment in Northern Ireland. None of us would take issue with that. However, we need to be careful of paradoxical implications, whereby the inclusion of a social clause disadvantages a local company in some way, and a foreign company wins the contract. Therefore, there would be a detrimental benefit for Northern Ireland. We need to think about the way in which it is constructed so that it does not impinge on the efficiency of local companies who might be held, to a greater extent, to a social clause more than an overseas company might be.

1296. The Acting Chairperson: Were there any social economy enterprises among the 157 local suppliers who responded to your survey?

1297. Mr Smyth: The vast majority were SMEs and large companies. There may have been companies such as Bryson House. I am not sure whether non-profit-making organisations were included. I cannot go into the detail as my colleague carried out the analysis. There was a spectrum of companies from the smallest to the largest. It is fair to say that there would have been a relatively small proportion of social economy enterprises involved. We do not say that we represent that sector.

1298. Mr McNarry: By way of giving the Committee an insight into the commercial mindset on public procurement, do companies price bids in order to get on the ladder? Do they use loss

leaders or reduced prices? Do CPD and the COPEs recognise that? I am aware that people price to get in, and once in, they learn a lot and work a lot. Commercially, is that an attraction and is it happening?

1299. Mr Smyth: I do not have enough evidence of that. Overall, I do not think that that is a big issue. There might be an issue in having a very attractive bid, but I do not think that companies go into this to lose money.

1300. There is a serious risk in the construction sector at the moment because of massive overcapacity. The feedback that I have received indicates that dozens of tenders are being submitted for some really small pieces of work, so there are massive bidding costs. There is a quite serious risk that some people will go into tenders just to buy the work and expect to make money from changes in the contracts. That takes us away from the quality aspects that we all want in relation to value for money. There is a serious risk that that could happen in the construction sector, but that is because of the particularly unusual circumstances at the moment.

1301. I am not close enough to be able to comment on the matter. If people want to develop a marketplace strategically, they could certainly bid more competitively. I expect that they will still want to make some money, but they may be prepared to work to a lower margin in order to get into a better position.

1302. Mr P Spratt: Although not attractive, the discipline of pricing to win has become an imperative for some businesses, particularly in these challenging economic times and in the hope that the bids will translate into appropriate commerce over time. However, as the maxim goes, if you are not in, you cannot win. Increasingly, we have found that our sector has become remarkably more price-sensitive than it was five years ago. Our sector has become much more attentive when it comes to defining cost.

1303. Another aspect linked to the issue is that procurers will sometimes inform us of the latitude in which pricing will be. In some instances, that almost dictates the margin that we may be allowed to retain. The price is not always at the discretion of the bidder.

1304. Mr M Campbell: That is the case in large EU tenders. Generally speaking, one will find that the anticipated price is published in the tender. The commercial world is competitive and hurly burly, and what Mr McNarry says does happen.

1305. Mr McNarry: I know that we are pushed for time, but I have one more question. I am not asking for a response, but one subject that we have not discussed is the credit crunch and the effect that credit is having on the ability of companies to stay in business after contracts are awarded. Could the CBI give us a short briefing paper on that issue? It seems that the credit crunch is something that comes into the situation. Companies are not just wary of the procurement process, they are also wary that they will get knocked back if they do not get the credit ratings.

1306. The Acting Chairperson: Are you happy to do that, Nigel?

1307. Mr Smyth: We will try. I am not sure what detail we will come up with. In the past six months, I have found that it is difficult to get information on financial matters from my members. I am not sure whether they would tell me the truth.

1308. Mr McNarry: I do not think that anybody would want to say; I am just trying to establish whether you had a rule of thumb.

1309. Mr Smyth: We do not have one at this stage, but we will have a look at it and discuss it.

1310. Mr McNarry: With respect, perhaps it is information that you should have and it is reasonable for us to ask you for it.

1311. The Acting Chairperson: It would also help us in relation to the session that we will have with the banks. Nigel, Peter and Mark, thank you very much for coming in today. I am sorry that we kept you longer than was anticipated, but it was interesting.

1312. Mr Smyth: We certainly welcome the opportunity.

10 June 2009

Members present for all or part of the proceedings:

Mr Mitchel McLaughlin (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Fra McCann
Ms Jennifer McCann
Mr Adrian McQuillan
Mr Declan O'Loan
Mr Ian Paisley Jnr
Ms Dawn Purvis

Witnesses:

Mr David Martin and Hamilton
Hamilton Ltd.

1313. The Chairperson (Mr McLaughlin): The next item on the agenda is the Committee's inquiry into public-procurement practice. I welcome Mr David Hamilton. Thank you for your submission. Although your report is self-explanatory, I invite you to give the Committee a brief run-through of it, after which we will discuss it.

1314. Mr David Hamilton (Martin and Hamilton Ltd): I thank the Committee for the opportunity to come here to explain the situation. Since I wrote that report, we have found that the problems outlined in it have continued and, if anything, have become worse. For our company, as a medium-sized contractor, responding to the submissions that come in is onerous and ties up our administration totally. The cost of improving our administration to deal with those submissions is prohibitive for a company of our size, whereas large companies can have an administration department as they can justify financing it.

1315. My other worry is that being excluded from that pool of work over time will leave me without any experience to put on my curriculum vitae. The first question on an application form is always about past experience, but, after between three and five years of having been excluded, I will have nothing to write on that form. I do not know how I will ever get that experience again to allow me to complete those forms.

1316. I also question the value-for-money aspect of the contracts. The feedback that I get regarding contracts that have been procured so far is that they are disadvantageous in respect of providing value for money. I have asked a few questions and tried to get behind the issue and, without wanting to be derogatory or use the wrong word, it seems that some applicants

provide information that is not fully true. For instance, if they are asked for experience and they do not have any, they will use a subcontractor's experience on their curriculum vitae.

1317. Recently, a consultant told me that a contractor asked him how he could get ISO 14001 certification quickly, because he had stated in his submission that he had it and he had been successful in securing the contract. However, if he did not have that certification, he should not have stated that in his submission. That is the type of thing that is happening, because people are desperate for work, but I come from a background where I do not put something down on paper unless I have it. I have always been honest and straightforward.

1318. There has been a lot of talk about Companies House not having accounts submitted for obvious reasons, and one must wonder about the validity of the information that is being submitted. We now employ only half the people that we were employing when I compiled the submission to the Committee, because there is no work. The frameworks have led to our being excluded. We have been runner-up three times with quality submissions that we have made to big companies. We are doing very well to get to that stage, but, at the end of the day, it is not a job and it does not contribute anything to the company. I cannot see how we can raise ourselves to the point where we can be successful, given the current set-up.

1319. Mr O'Loan: David, you are very welcome. I share the view with others that it is important that we hear evidence outlining direct practitioner experience; it is particularly valuable to us. I am familiar with your firm, and I particularly welcome you here as a firm from Ballymena, in my North Antrim constituency. Will you tell us about the type, and scale, of the contracts that your firm works on?

1320. Mr D Hamilton: Our bread and butter is commercial work; we are not house builders or developers. Some 25% of our work is in education and 25% is in the restoration and conservation of historic buildings, funded mainly by the lottery. The remainder of our work had been for the private sector, in offices and churches, for example; however, that market has dried up because of the recession.

1321. Mr O'Loan: What is the value of those contracts?

1322. Mr D Hamilton: They go up to about £3 million in value, but we have done contracts worth up to £5 million. Contracts worth from £500,000 to £1.5 million have been our bread and butter, although we extended that to £5 million for one project. However, smaller contracts are our scene. We are a locally based Ballymena company. We employ people living in the area from Ballycastle to Newtownards. The Committee may be interested to know that 20% of our employees are small farmers who want to be close to home so that they can get back to do bits and pieces on their farms in the evenings. Those are genuine guys who are good workers and who have the skills that we need; they are not interested in contracts in Dublin or England. We are a local company that tends to work within a 45-miles radius from home.

1323. Mr O'Loan: Getting your perspective is very important. Yours is by no means an insignificant company; it has substantial resources. I spoke to representatives of a significant firm of electrical and mechanical engineers who made a similar point to yours, which was that if they were starting off with the rules as they are now, they would be unable to get up the ladder. There is a significant inhibitor in the system.

1324. You are critical of the framework system and you say that they render contracts beyond your reach; education contracts, for example, require bidders to have a turnover of £35 million. Why do you think that the public sector has moved so much towards frameworks? What do you understand as being the gains of the framework system, if you see any? I imagine that the

standard response to a firm the size of yours is that you should form a consortium with other firms — how do you feel about that?

1325. Mr D Hamilton: The ethos of the framework system is that, from a Government point of view, there is one point of contact. There are eight approved contractors in the education framework and in the other there are five, and those are the firms through which work is procured. For example, if a group of primary schools require work to be done, there will be one framework and one point of contact, rather than a large number of small contracts to be administered.

1326. The new form of contract that has been introduced is the NEC3, and the ethos of that is to get away from confrontation in the construction industry. I am sure that members all know the format of the contract; essentially, the different tradespeople are brought in as a part of a team and all are in it together so a financial claims situation does not arise. However, to a large extent, such problems did not arise in Northern Ireland. In England, there was a lot of problems; for example, contracts ran over time and over budget. Here, projects are of a smaller scale.

1327. When bidding in the education framework, we were not tied in with anyone else, but we bid along with other contractors in other frameworks and were not successful. I have spoken with smaller contractors who have been in those frameworks who still find that they are getting no work, because the larger contractors look after themselves and the work is not being fed down.

1328. Furthermore, I have been an independent contractor for years and I do not want to be a subcontractor to a large contractor, because that will mean that our finances and everything else depend on it. In other words, our being paid depends on it being paid, but at what stage that happens is questionable.

1329. Mr O'Loan: Therefore, you have tried the consortium route but without significant success?

1330. Mr D Hamilton: We are not averse to participating in consortia. We put in a submission for one of the Government contracts as part of a consortium with the Patton Group from Ballymena. Five firms were chosen and we came sixth.

1331. Members may recall that the education framework came out quite quickly. A meeting was held in the Stormont Hotel and there was then a 40-day period in which to respond. We were probably quite conservative; we looked at it, read it, but we missed the opportunity by not reacting quickly enough. Once we realised that, we began to participate. However, we have not been successful in any of the others.

1332. We are now making quality submissions for other projects. We were runner-up for the Conway Mill project; we were beaten by 1.25 points. That is how close we have been. We went for a debriefing on that and found that we had missed out because of the social contribution element; we had not emphasised sufficiently that we would employ local labour. We came third in the Crescent Arts Centre competition, and we are waiting for a response on the Crumlin Road jail project.

1333. The Chairperson: Do you find the debriefing feedback constructive and helpful?

1334. Mr D Hamilton: Yes, we do. However, on the Crescent Arts Centre project, for example, our problem was that our programming was not good enough. I do not have a programmer in my company; that duty is shared among the contracts managers. It was found that our software was not as slick as that of the big companies, and we were marked down for that.

1335. Putting programming software in place and employing people with expertise to operate it would be another expense to me. It is a chicken-and-egg situation. If the money is spent and the software is put in place, a person with third-level education would probably have to be employed to operate it. They would have to be paid about £30,000 a year in addition to perks.

1336. Mr O'Loan: You talked about the system being very onerous, and you amplified that as you spoke about the different applications that you have made. Is every application that you submit significantly different, or do you see a potential for a once-and-for-all approach? Could you be registered in some way?

1337. Mr D Hamilton: Under the old system, we were required to have constructionline registration and Safe-T-Cert. A company was qualified if it had those things, so experience and the type of project were then considered. I see that as the way forward. We hanker back to the old days when the construction service and so on had approved lists. Those lists revolved, and the top six companies tendered for a certain project, and the next six tendered for the next, and so on. That meant that everybody got an opportunity. Those companies were all approved and passed a standard. There is a need for some standardisation because a lot of the questions are fairly standard and the submissions are quite alike. However, there will always be something different because that is how things are sorted out.

1338. The other issue is that, with the recession in the industry, one finds that the Central Procurement Directorate (CPD) receives anything from 30 to 70 returns. When one tries to select six companies from those returns, one needs to get down to the real nitty-gritty to pick the differences among those contractors. We would find it quite unfair if past experience was not taken into consideration. A company may have built a £1 million school, but that cannot compare to tendering for a £10 million or £15 million school. It cannot be said that that is experience of building a £10 million school, but that experience will get that company the marks because the applicants have to be sorted out in some way.

1339. I have ISO 9001 certification. I do not have ISO 14001 or ISO 18001, but when it comes to looking at safety, quality and environment, the guy who has the ISI 18001 will tick the box and will be selected. The system is currently biased towards the bigger contractors who have the resources and those things in place.

1340. Mr O'Loan: I am not quite sure what your written submission says about what I would call the quality/cost debate in the adjudication of contracts. What is your view on that?

1341. Mr D Hamilton: You can write "quality" down on a bit of paper, but delivering it in a construction project is totally different. I can sell myself on a bit of paper, but that does not necessarily mean that I will do a quality job.

1342. Mr O'Loan: Do you feel that something is currently lacking in the adjudication of the quality/cost issue?

1343. Mr D Hamilton: Yes. It is really about the presentation of a report.

1344. Mr O'Loan: I could ask other questions, Chairperson, but I know that other members have questions, so I will leave it there.

1345. The Chairperson: I am certain that that was very useful.

1346. Mr Paisley Jnr: David, you are very welcome. It is good to see you. You have painted quite a dire picture of the policy's impact on local companies.

1347. Mr D Hamilton: If you have a word with companies in North Antrim — I talk to them on a regular basis — you will find that they are all in the same situation. Not one of them has a decent workload at present.

1348. Mr Paisley Jnr: Yes: 50% of your workforce has gone.

1349. Mr D Hamilton: We would have been unusual in the fact that we employed people. An awful lot of construction companies today employ six or 10 people, who would mainly be staff. Traditionally, we like to have in-house expertise.

1350. The Chairperson: You had a work team.

1351. Mr D Hamilton: Yes. We had joiners, plasterers and bricklayers.

1352. Mr Paisley Jnr: You had a reservoir of tradesmen.

1353. Mr D Hamilton: Yes. We then subcontracted work to make up the rest. Traditionally, we trained apprentices. We were very unusual in that regard, because the big contractors do not train apprentices.

1354. Mr Paisley Jnr: That is gone now.

1355. Mr D Hamilton: I can run through the list of my employees. Most of those guys have served their time with us and have been with us from anything up to 25, 30 or 40 years.

1356. Mr Paisley Jnr: So, you were training and developing people's skills, but that situation has gone?

1357. Mr D Hamilton: Yes, that has gone. I felt that it was unfair to keep apprentices in work while paying off tradesmen who had mortgages and families to support.

1358. Mr Paisley Jnr: You also indicated that, because of their abilities and the amount that they can spend on administration, large companies can Hoover up not only the big jobs that you would not be interested in, but all the small jobs, because they are under financial pressure to get work.

1359. Mr D Hamilton: I know that the big contractors got on to the lists for recent projects for the North Eastern Education and Library Board due to of the quality of their submissions. They can provide a level of information that the rest of us cannot. I have been battling on, however. I am fortunate that my daughter works in marketing, because she has been a great help in improving the quality of our submissions. We are sticking with it and will continue to do so. I know that a lot of contractors have just given up.

1360. Mr Paisley Jnr: You also said that there are companies that embellish their CVs and take the credit for work that was done by others. You may not want to name them, but do you have evidence that that has happened? If you have such evidence, it would give us a bit of muscle when we make our arguments to the Minister and the Department about changing the arrangements in the way that you wisely set out in your letter to the Committee.

1361. Mr D Hamilton: The evidence is based on hearsay, but I know that it is happening. I met a consultant last week who put that point to me. He was called by a client who was in a panic and who asked him how he might get ISO 14001 certification quickly, because he had used it in a submission that had been successful and needed to obtain it. I know that the other side of the

coin applies to the big contractors. If they cannot include particular project experience on their CV, they will use a subcontractor's project. In other words, if the question is asked of them, they will say that they are going to use a subcontractor who has done a project of the relevant type. That is not specifically set out in the application form, but from what I have heard about the way in which applications are assessed, as long as the jargon is in the answer, the marks will be awarded. It is not checked back.

1362. Mr Paisley Jnr: So there is a lot of spin?

1363. Mr D Hamilton: Yes.

1364. Mr Paisley Jnr: Some people in this room know about that.

1365. The Chairperson: Some people know more about it than others.

1366. Mr Paisley Jnr: Everyone is guilty.

1367. Mr D Hamilton: That is life. We pride ourselves on paying our bills, doing things properly and carrying on from there. The Government must encourage that and give strength to it. We cannot be seen to be going down the other road.

1368. Mr Paisley Jnr: You are from a typical backbone-of-Northern Ireland company; you have taken some real knocks.

1369. You talked about being tied up in administration costs and how it is almost prohibitive to make applications because of the costs involved. Can you put some meat on the bones of that? What is the average administrative cost of applying for a £1.5 million contract? How much would you prefer to have to pay just to stay in the game?

1370. Mr D Hamilton: A quality submission for a £1.5 million contract will involve two weeks' administrative work. There will be health and safety, quality and environmental input, and quantity surveyors and estimators will be required to cost the project. In addition, there is a planning element, which involves drawing up a programme of work, and method statements have to be written. All of those elements are brought together. We rarely quantify it, because people do it in their working week, and we do not count the hours that they spend on a particular project. In certain instances — not regularly — we have brought in consultants to improve and polish our presentation.

1371. Mr Paisley Jnr: For a company the size of yours to ask one person to devote two weeks' work to those administrative tasks is a considerable burden compared with that of a large company that would normally tender for contracts worth £10 million and which can easily afford to ask two or three people to do that work. That is where you are disadvantaged.

1372. Mr D Hamilton: Yes. The cost of administering a £1.5 million contract might amount to £3,000 or £5,000 with consultancy added.

1373. Mr Paisley Jnr: In your submission you write about a change in the system. That could form the bones of a motion that the Committee could table in the Assembly. Together with the Department, we would have to explore whether it would be possible to achieve the recommendations that are set out in the last paragraph of your letter. However, I think that the Committee has the basis for a motion to take the issue forward.

1374. The Chairperson: We will give separate consideration to that point.

1375. Mr D Hamilton: The housing associations pulled their framework on the morning of the submission, because, I think, they were scared of a legal challenge. That framework would have enabled companies with annual turnovers of up to £500,000, between £500,000 and £2 million, and over £2 million to submit bids. I encourage those types of frameworks because they put contractors into streams.

1376. Mr Paisley Jnr: That seems to be a more open way of operating and is linked to your recommendation for the continuity of contracts that are scheduled throughout the year.

1377. Ms J McCann: Thank you for coming here. Other witnesses have said that the current system is weighted in favour of larger companies and that small and medium-sized companies cannot get a foot on the ladder to bid for contracts. Your written submission states that the present system is ignoring the social, economic and environmental advantages of local contractors, and other witnesses have said the same.

1378. People responsible for public procurement have told the Committee that, when considering bids, social and environmental factors are marked up; however, evidence that we have heard from others does not bear that out. It seems that less weight is given to social and environmental factors than other issues. For example, you said that the framework system puts contracts beyond the reach of many businesses because they must have a turnover of millions before their bid will be considered.

1379. We are in favour of pushing social requirements from the point at which a contract is put together initially through to its delivery, because that will enable companies such as yours to employ quality apprentices and the long-term unemployed in areas of disadvantage and need. Would the inclusion of social requirements in contracts from the outset help small and medium-sized companies?

1380. Mr D Hamilton: Yes, very much so, and for the reasons that you outlined. The strength of a local company lies in the fact that it does not have to travel long distances to work, it can respond quickly and it has an interest in the area and will look after that environment. Some of the new contracts include a directive that requires companies to employ apprentices. However, larger companies will simply employ apprentices for the length of a project and then lay them off again. Companies must be required to prove that they employ apprentices on a long-term basis and that they work with local colleges to develop apprentices' skills. That is an important part of it.

1381. Ms J McCann: I want to ask a question about subcontracting. A lot of small and medium-sized firms are forced into a subcontractor role because they cannot win a main contract. We heard evidence that, among other problems, subcontractors get only a small percentage of the moneys available. At present, do contracts include a provision to ensure that large companies treat subcontractors fairly and give them equality of opportunity?

1382. Mr D Hamilton: Yes, contracts must adhere to what is enshrined in European law generally; however, it is really up to the firms to administer that. For example, people have signed up to the quick-payment initiative, but there is nothing in law. The largest project we did as subcontractor was for McLaughlin and Harvey to build the in-situ concrete package at the Halifax call centre in the Gasworks. That project went well. However, being a subcontractor, we were well down the line of administration. Therefore, we could not talk directly to the architect or to the quantity surveyor. We submitted our valuations, and we got paid what the main contractor felt was right, and we could not make our case directly. That was frustrating because we were used to being at the higher level.

1383. We still subcontract, and we look at different factors. In the present recession, however, no big building companies are subcontracting work, because they are trying to keep their own people in work.

1384. Most builders here have a different mindset. That type of contract probably works well in England. I attended a lecture one night that was given by ChandlerKBS, which set up the education framework. I spoke to the representative, and he said that I should work as a subcontractor. I asked him where I would get the work, because the big firms do not subcontract. I do not want to be, for example, a joinery subcontractor. I would have to work on a decent-sized package for it to be worth my while. I cannot compete with labour-only joiners or labour-only bricklayers who work as subcontractors; that is not my market.

1385. Northern Ireland is a small entity. In a 10-mile radius of any city in England, the workload can be 10 times greater than that in Northern Ireland. Northern Ireland is also more rural. That creates a totally different picture.

1386. Ms J McCann: I was particularly interested in your comments about the social requirements, because we hear constantly that they are not being administered. Conditions to do with apprenticeships and people who are long-term unemployed are written into the applications in the tendering process, but the social requirements are not followed through to the delivery stage. Your comments have convinced me that that seems to be the case with some of the larger companies.

1387. Mr D Hamilton: Companies such as ours give employees 29 days of holidays a year, which has been standard in the construction industry for a long time. Our employees get holiday pay, sickness benefit, and, although they do not get a great pension, they get a lump sum when they retire. They have all the benefits of employment, and a subcontractor does not offer that. Expense is involved in providing that.

1388. Ms Purvis: You mentioned constructionline and Safe-T-Cert. Have you used the eSourcing NI portal, which brings together all of the tenders? How useful have you found it to be?

1389. Mr D Hamilton: Applications forms can be downloaded and uploaded from that portal. We have to use it, because it is the only way to be involved in projects.

1390. Ms Purvis: When the Committee began its inquiry, it found that many SMEs complained that tenders were often advertised all over the place. The portal brings all of them together on one website.

1391. Mr D Hamilton: That is not necessarily the case. Applications for tender are sometimes missing from the portal. Recently, I missed a tender to do with education. When I questioned it, I was told that it had been on the portal, but I did not find it. The applications only appear for a week, and then they drop off. After a certain period, it is reckoned that contractors do not have enough time to apply, so the applications are removed from the portal. If firms do not constantly look at the portal, they may miss an opportunity.

1392. Ms Purvis: According to the evidence that we have received, applicants have 14 days to apply. After that, the information drops off the website. Are you represented on the construction industry forum for Northern Ireland?

1393. Mr D Hamilton: No. I am not.

1394. Ms Purvis: Are you aware of the procurement task group report that the construction industry forum for Northern Ireland produced?

1395. Mr D Hamilton: Yes, I am aware of that.

1396. Ms Purvis: The task group report advocates the use of frameworks, and we have taken evidence from SMEs that the frameworks lock out SMEs because of their size, their annual turnover and the criteria that ask for experience gained in the past five years. One of the procurement task force's proposals was to reduce the size of the frameworks — more for maintenance contracts than for construction contracts. How do you feel about that?

1397. Mr D Hamilton: The company is a member of the Construction Employers Federation (CEF). I am not personally involved, but I know a couple of guys who are, and I receive its reports. We have been involved in setting up some of the frameworks for education maintenance contracts. The process is not complete, but a couple of meetings were held to discuss how best to progress to suit the contractors, get the best value for money, and so forth. If I come across as being against frameworks, it is because, to my mind, they are enormous packages. However, if frameworks were to be made smaller, I would view them simply as a different form of procurement.

1398. Ms Purvis: Would you like the size of all frameworks reduced to help SMEs to compete better?

1399. Mr D Hamilton: Not necessarily, because there will still be bigger projects. As I said earlier, if frameworks were separately designated for contracts of up to £500,000, £500,000 to £2 million, and £2 million and above, contractors could work to their strengths. The Construction Employers Federation realised only recently that smaller contractors are among their members. The tendency had been for the larger contractors to run the federation, but we are now able to get our point across to it.

1400. Ms Purvis: You have read and been consulted on the report: is its proposal workable?

1401. Mr D Hamilton: I think so. I spoke to Ciarán Fox recently about it. As with so many aspects of life, it is a matter of compromising, and the proposal represents a workable compromise that should allow everyone some opportunities.

1402. Mr McQuillan: David, are you saying that you do not mind frameworks as long as everyone is equal within them? If everyone in the framework has an equal say, rather than one large company treating the others as subcontractors, would you be happy?

1403. Mr D Hamilton: Yes.

1404. Mr McQuillan: You said that your company has attained ISO 9001 certification. How much would it cost to attain ISO 14001 and ISO 18001?

1405. Mr D Hamilton: It is hard to quantify the cost, but it would probably be approximately £20,000 a year. It could cost even more, because it would require the employment of a specific individual to be responsible for it. At present, the company employs a girl to look after quality, and health and safety. We also employ a part-time health and safety inspector to carry out site inspections. However, to move to ISO 14001 and ISO 18001 would require us to employ another member of staff, as well as the accompanying administration and paperwork that would be involved.

1406. Mr McQuillan: Would the frameworks mean that you would not need ISO 14001 and ISO 18001 but could work with ISO 9001?

1407. Mr D Hamilton: I am not sure; I tend to be sceptical. I attained the old BS 5750 standard long before anyone else. However, as no one ever asked me for it, and I never needed it, I let it lapse because it was costing me between £2,000 and £3,000 a year. Therefore, when ISO was introduced, I was fairly slow to adopt it. However, we now have the relevant paperwork and are progressing towards ISO 14001. I am holding back because, at present, it is an expense that I do not need, but it could be put in place quite quickly.

1408. The consultants concerned would push me to go up to ISO 18001, because one big system that does everything replaces much of the Safe-T-Cert, and so forth. I am not adverse to that, but there must be some justification for doing that, and there must be a return to enable us to pay the bills.

1409. Mr McQuillan: Is there any justification for asking for ISO in the first place for contracts worth less than £5 million?

1410. Mr D Hamilton: The requirement for ISO is possibly justified for bigger contracts, but not for smaller ones, because it places an onerous requirement on contractors. At present, the market is distorted because of the recession. Therefore, everyone is looking for work, and we all know that prices are being driven down. At present, we are working at a loss. We just have to accept that, take it for a year, keep our set-up together, and hope that the situation improves. We do not need the expense of another layer of consultancy. If all companies accepted that level of certification, fair enough; we would accept it too.

1411. The Chairperson: Your comments have been helpful. Your perspective goes to the heart of the Committee's concerns. You said that the new tendering process has brought its own difficulties. It has not made the system quicker or more efficient. You mentioned that the progress of projects has slowed down. Can you give us a specific example, or even a proposal, that you believe would address that? Apart from slowing down project delivery from a Government perspective, the system makes it difficult for local enterprise to be competitive in that environment.

1412. Mr D Hamilton: When I talk to clients, they tell me that their biggest problem is the level of submissions that they receive — between 40 and 60, even 70, big documents — all of which must be sorted through and analysed. They have to try to reduce that number to six. That takes a lot of time and slows the process down. What Declan O'Loan said makes sense: pre-qualification on many sections would bring submissions down to the specific requirements of a particular project, and that would be bound to be less onerous for us and, again, for whoever would assess those submissions.

1413. The Chairperson: Do you believe that that is doable in view of wider considerations, such as EU regulations? Can you set aside those requirements? Is there a way to short-circuit the process?

1414. Mr D Hamilton: Yes. I do not see why not. If a firm has ISO 9001, why does it need to answer all those additional questions?

1415. Mr O'Loan: The answers are implicit in the certification.

1416. Mr D Hamilton: Yes.

1417. The Chairperson: In a sense, the company is already pre-qualified?

1418. Mr D Hamilton: Yes. If, like us, a company is qualified to deal with construction contracts up to £3.5 million, the client will have copies of its insurance details and all relevant information. It will have the Safe-T-Cert and so on. Those requirements are already in place.

1419. The Chairperson: In order to make it possible, basically, for people to come to an agreed position, would you suggest a time frame for that accreditation? For example, when a company is qualified and is accepted and recognised, should that qualification remain in place for a set period?

1420. Mr D Hamilton: Yes. Obviously, it would be. Most Safe-T-Cert and constructionline registrations stand for one year. Each year, an audit is carried out on the ISO 9001. That is a high standard.

1421. The Chairperson: You do not suggest any change to that annual process of auditing? If people continue to meet the criteria, their accreditation should be accepted. They have a kind of stamped certification and, therefore, should not be required to resubmit all of the time.

1422. Mr D Hamilton: Yes. For example, car insurance is renewed each year. You send away your new certificate when it is renewed. That ticks the boxes and keeps you qualified. The same type of process could apply.

1423. The Chairperson: That has been helpful.

1424. Mr D Hamilton: I hope so.

1425. The Chairperson: Fra wants to ask a question. We have a late runner.

1426. Mr F McCann: I have two questions. I am aware that the discussion has covered much ground and a lot of questions have been answered. If there were two or three things that the Committee's inquiry could do to help small businesses like yours to compete on a level playing field, what would you advise us to do?

1427. Mr D Hamilton: At present, if work were released, it would be of great benefit. Small businesses are finding that there is an absolute dearth of work. As I said, there seem to be no smaller, school projects of less than £500,000 or between £500,000 and £1.5 million.

1428. There is a lot less work in all the sectors in which we would normally have worked. For example, although we would not have done a lot of work with housing associations traditionally, we always had some projects going on with them, but that is no longer the case. The level of inquiries from the health sector has also dropped significantly. More work in those sectors would be a big help, because it would keep the market turning and keep businesses going and paying their bills until such time as the economy improves and house building and suchlike increases.

1429. Mr F McCann: Earlier, the Committee discussed how the latest ruling from Europe has hit housing associations particularly hard. Does that impact on your company directly? Are people interpreting European Commission rules too strictly?

1430. Mr D Hamilton: Yes; there should have been a lead-in phase, meaning that the rule would take effect in, say, two years' time. Projects that are in the system — some of which are well advanced — have now been shelved. The public have lost potential houses, and developers have lost potential projects. To a large extent, those projects were good value for money because, in

the current market, developers were glad to have an outlet for those projects and were accepting reduced prices for them. It was not a case of the public purse being bled.

1431. The Chairperson: Has Europe provided scope for a phased introduction? Is it the case that we are dealing with a more over-zealous approach locally?

1432. Mr D Hamilton: I am not involved directly in any of those projects, but I know of them. There have been well-advanced projects for which housing associations have had to tell developers that they can buy the site but will have to tender for the building work, which is embarrassing for them, especially when the project had been pulled together as a package. It will probably not make financial sense for the developer to sell the land to the housing associations, so those projects will fall flat.

1433. Mr F McCann: Do major contractors use their experience and size to get contracts and then top-slice the profit, leaving less for local subcontractors and builders?

1434. Mr D Hamilton: That is difficult to answer. As you know, the bigger contractors have more influence because they work on a wider basis. That is a true statement. The bigger contractors will have experience in all spheres, whether they are working for the Health Department, the Department of Education or Invest Northern Ireland. Therefore, no matter what project comes up, they have experience and contacts, and are known. Our influence would be a lot less and is much more limited.

1435. The Chairperson: Major contractors also have the in-house capacity. You indicated a particular problem, which is that, for understandable business reasons, they will look after their own interests first. The local dimension will, perhaps, come last in the pecking order.

1436. Mr D Hamilton: If any of those contractors had an additional contract that was above their capacity, they would go out and recruit a contracts manager, a good site manager and an additional quantity surveyor; they would not go to a subcontractor.

1437. Mr F McCann: My point is that some major contracts here worth between £50 million and £100 million have been won by companies outside the North. Those companies then employ local subcontractors.

1438. The Chairperson: In such instances, 100% of the delivery is by local workers.

1439. Mr F McCann: Yes, and those companies top-slice their profit before they deliver it down to subcontractors.

1440. Mr D Hamilton: One does not mind that, providing that it is a reasonable figure, because we all have to make money. That is why we are in business; we will not survive if we do not do that. However, I know where you are coming from, and I can sympathise with that. In my experience, that is how it happens. The large contractor will not lose money; the guys below him will suffer.

1441. Mr F McCann: That approach must affect quality.

1442. Mr D Hamilton: Yes, but that is where the NEC3 contract should come in. Its ethos and theory are great, but getting it to work is another story.

1443. The Chairperson: Thank you very much, David. We may be in touch with you depending on how our inquiry progresses. We are also considering the prospect of organising a conference as part of our work, so we may be in touch with you about that.

1444. Mr D Hamilton: I will be glad to help in any way that I can.

17 June 2009

Members present for all or part of the proceedings:

Mr Mitchel McLaughlin (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Dr Stephen Farry
Mr Fra McCann
Ms Jennifer McCann
Mr Adrian McQuillan
Mr Declan O'Loan
Ms Dawn Purvis

Witnesses:

Mr Aidan Gough InterTradeIreland
Dr Eoin Magennis

1445. The Chairperson (Mr McLaughlin): I welcome Mr Aidan Gough, who is director of strategy and policy, and Dr Eoin Magennis, who is policy research manager. I remind you, gentlemen, and those in the Public Gallery that the meeting is being recorded by Hansard. Mobile phones must, therefore, be turned off. To simply turn mobile phones to silent does not protect the electronic recording system from their interference.

1446. Mr Aidan Gough (InterTradeIreland): We welcome the opportunity to make a presentation on our work on cross-border public procurement on the island. It might be useful if I begin with some background information. Members will be aware that InterTradeIreland is one of six cross-border bodies that were created by the Belfast/Good Friday Agreement. Tourism Ireland was added subsequently.

1447. Our purpose is to exchange information and co-ordinate work on trade, business development and related matters. Our corporate plan identifies two key strategic objectives. The first is to generate business value by enhancing company competitiveness through co-operative North/South initiatives; the second is to improve the competitive environment for doing business on the island to the mutual benefit of companies in the North and in the South.

1448. Our work on public procurement meets both of those priorities. The Go-2-Tender programme that we operate assists companies to navigate the public procurement process in the other jurisdiction. It is a successful programme. To date, over 370 companies have attended workshops. Business value of £15.5 million has been reported in contracts that have been won by participants of the programme. From our point of view, the programme is value-enhancing, in that the rate of return is £73 for every £1 that InterTradeIreland invests.

1449. You have invited us specifically to discuss the findings of our most recent research, which explores mutually beneficial co-operative initiatives to enhance the capability of small and medium-sized enterprises (SMEs) in particular to access public procurement contracts across the

border. I will quickly run through some of the key findings of that research, which we are currently finalising and will publish within the next month.

1450. As regards the scale, dynamics and characteristics of the marketplace, the total public procurement market in the North and South is worth around €19 billion. It is a substantial market. It breaks down to around €2.8 billion in the North and €16 billion in the South. In total, it equates to over 10% of GDP and presents substantial market opportunities for SMEs.

1451. In the North, the buyer market is more centralised than it is in the South, although the South is moving towards a similar centralised approach to public procurement. The Northern Ireland market continues to grow, but it looks as though the Southern market has peaked. Survey evidence suggests an upsurge in interest and a hungry and competitive marketplace for business. There is a low level of tendering activity into the other jurisdiction: only 3% of tender submissions in the North come from Southern companies, and the percentage going from North to South is much lower.

1452. Our findings and recommendations have been grouped around three key themes that seem to have been recurrent in evidence to the Committee. The first is visibility of contract information to SMEs; the second is access to contract information for SMEs; and the third is SME capability.

1453. As regards visibility, the research highlighted two key themes: first, a lack of visibility to SMEs of lower-value, sub-threshold contracts, not only in each region, but on a cross-border basis as well; secondly, higher visibility of Republic of Ireland public procurement tenders to Northern Ireland SMEs than vice versa. That is primarily due to the eTenders website.

1454. We are exploring a number of possible actions, including a single point of access to lower-value public-sector contracts, an awareness campaign to encourage registration of Republic of Ireland SMEs with the Central Procurement Directorate's (CPD) eSourcing system, and encouraging Northern Ireland buyers to advertise open tenders on the Irish eTenders system. We are also exploring the possibility of a single sourcing system on the island that would have one point of access for all tenders across the island.

1455. The research on the accessibility of public procurement opportunities to SMEs has highlighted a number of key findings. First, the process of responding to public procurement contracts is perceived by SMEs as overly bureaucratic and resource-intensive. Some of the issues cited are the perceived repetition between tender stages, particularly between the pre-qualifying questionnaire (PQQ) and secondary competitions, and limited standardisation of qualification criteria in PQQs among buyers.

1456. Secondly, although the aggregation of contracts can create savings and efficiencies, the practice can inadvertently exclude SMEs because they do not have the critical mass for the larger contracts. Thirdly, SMEs are faced with a number of accessibility issues with regard to frameworks. There is a view that the returned benefit of framework agreements often does not justify the cost of the application process. A view expressed in the survey of SMEs was that the frameworks were too infrequently renewed, thereby excluding new companies in particular. That also precludes companies from gaining the necessary experience.

1457. Possible actions that could be taken include giving consideration to ensuring that financial thresholds, such as those for professional indemnity insurance or company turnover, are set at a level appropriate to the individual contract. Also, in instances of consortia or collaborative partnerships, buyers could consider the joint turnover of all companies involved, which is permitted by procurement regulations. Secondly, consideration could be given to dividing appropriate tenders into smaller lots where possible; that would naturally encourage more SMEs

to tender for public-sector contracts. It was suggested by some of the SMEs that were surveyed that such measures could go so far as to include contracting authorities setting a specified percentage of contracts below an appropriately low ceiling.

1458. In regard to accessibility, a third possible action would be for more consideration to be given to the mutual recognition of standards across the border. For instance, in the construction sector there could be mutual recognition of standards such as Constructionline, Safe-T-Cert certificates, health and safety passports, etc. Buyers could also be encouraged to standardise the core components of the PQQs that are not sector-specific, which would reduce the administrative burden on SMEs. It could be done in a single jurisdiction first, and then perhaps on an all-island basis.

1459. Consideration could also be given to the creation of a central repository where suppliers could provide key statutory information on things like public liability insurance, detailed accounts, environmental policies and tax certificates. They would then not be required to provide copies of that information for every tender that they apply for. Finally, a constant call from the SME sector is that frameworks should be reviewed more frequently.

1460. The third area that I mentioned relates to the capability of SMEs to bid for the contracts. Inexperienced companies that have previously not been involved in the public procurement market and are now looking to that market cite a lack of knowledge or understanding of how to approach the market. That is a reason for not tendering, either in their own jurisdiction or on a cross-border basis, which is what we are interested in. Buyers also reported that a large number of SMEs that are bidding for public procurement contracts do not avail themselves of the debriefing process that is available after every tender competition. That is viewed as critical to enhancing capability on an ongoing basis.

1461. In the past, SMEs tended to fail more on compliance issues, whereas, in recent years, the evidence from buyers suggests that levels of compliance have improved substantially and that SMEs are now perceived to fail more on a failure-to-answer-the-exam-question-type approach. That points to the need for additional capability support for intelligent tender writing and, in particular, for cross-border tenders, where the level of understanding about buyers is more limited. We are looking to address those recommendations through our Go-2-Tender programme by making a number of adaptations to enhance the capability of SMEs so that they can be successful in that large market.

1462. The Chairperson: That is an interesting summary of a report which is going to be very relevant even though it is set in a cross-border context. It appears to have thrown up some issues that have a general applicability to the other evidence that we have already heard.

1463. Ms Purvis: Thank you for an interesting and detailed presentation, Aidan; it was much appreciated.

1464. In the report, there is a reference to the 'European Code of Best Practices Facilitating Access by SMEs to Public Procurement Contracts'. How useful was that in enabling member states to apply the EU legal framework in a way that enhanced SMEs' access to public contracts? That guidance was supposed to produce some national rules and practices. Will you give a summary of what those are and how they have been applied?

1465. Dr Eoin Magennis (InterTradeIreland): The key change in Northern Ireland has been how the issue of experience is approached. A number of rulings in the past couple of years have caused a shift. Until a couple of years ago, a company submitting a tender could be asked to demonstrate what experience it had. Now, procurement authorities across Europe and here do not like to ask that question in that way; rather, they ask companies to detail the experience that

they have gained in a particular area in the past two or five years in order to open up the market. That has been a key shift.

1466. Buyers have some reservations about that because they feel that, although it opens up access, it makes it difficult to judge tenders if they cannot judge on experience and expertise. It has created some difficulties; instead of asking the question in a slightly different way, buyers have had to find other ways of judging experience, such as through the methodologies that are used in the tenders.

1467. Ms Purvis: That is really interesting, because a number of the groups that have given evidence to us have said that that requirement to have experience gained in the past two or five years is actually excluding them from tenders and, in particular, from frameworks that lock them out for five years. Companies are locked out of tendering for five-year frameworks, if they have not had the opportunity to gain that experience in the previous five years. That EU rule is supposed to help SMEs to gain access to contracts.

1468. Dr E Magennis: In essence, the EU hopes to make experience no longer a criterion on which a tender is judged one way or the other. I suspect that the intention is do away with the requirement for any experience.

1469. The Chairperson: That might have been the intention, but what is the direction of travel? That is what Dawn is trying to get at. Is it being used as a method to weed out some of the applicants?

1470. Dr E Magennis: That depends on how the rule is implemented. One of the difficulties was that buyers were always looking for experience, particularly in goods and services, within a short time frame. That meant that new entrants to the market were not able to get into that market at all. If you were in a framework three years ago, you would have had that experience, and if you push it out further, it becomes a balancing act. I still think that the intention is to move away from using experience as a criterion at all.

1471. The Chairperson: Obviously we can only be concerned about how the Departments or procuring authorities approach the issue here, but has your study demonstrated that people are taking a more rigorous approach to interpreting EU regulations than they need to, or are they taking the opposite approach, which is to build capacity and experience by being faithful to the regulations, but not using the regulations per se as a means of —

1472. Mr Gough: We have not made a judgement on whether one jurisdiction on the island is more flexible than the other. However, in rolling out the European directives, the two jurisdictions could collaborate so that we could have a competitive environment that is the same across the island and that benefits all businesses across the island. With regard to experience, the counterbalance to that is more engagement with companies at the pre-commercial stage, particularly around the innovative needs of buyers, where there is scope for more pre-commercial dialogue.

1473. Ms Purvis: In another part of your report, you talk about the limited understanding of the concept of sustainable development and procurement among buyers and SMEs, and we are gaining evidence of that through our inquiry. Given the potential of that, how would it work out through the EU legal framework? What can we do to raise awareness of that potential among buyers and SMEs?

1474. Mr Gough: We are adopting our Go-2-Tender programme, which takes companies through the procurement process. There is definitely a need for more education about what the whole process of sustainable development means, and awareness is the key. We are building that into

our Go-2-Tender programme, which has already reached almost 400 companies. The key is to bring the buyers and SMEs together so that they are both aware and singing from the same hymn sheet.

1475. Ms Purvis: Do you think that more work needs to be done at a strategic Government level around the potential benefits?

1476. Mr Gough: If the SMEs are telling us that they are not clear what it means, then more work needs to be done.

1477. Dr E Magennis: Another key area is social economy enterprises, and there are two sides to that. One side is the sense that the procurement market is open to social enterprises, and the other side is the capability of social enterprises to enter it. As Mr Gough said, we recently looked at opening out the Go-2-Tender programme to social enterprises through working with the School for Social Entrepreneurs. It is about building up capacity and capability in that sector.

1478. The Chairperson: It seems to be an obvious thing to do.

1479. Mr O'Loan: Thank you very much for your report, which is hugely important, because it illustrates how much public business is available, and everyone can benefit in the longer run. The public sector can get better value, and firms can get more business. The more active tendering that we can get in both jurisdictions and across the jurisdictions, the better. You analysed the different types of environment in both jurisdictions, and you said that in many ways the North is more structured through the CPD and the centres of procurement expertise (COPEs), which is quite complimentary to us. You also said that things are a lot more fragmented in the South.

1480. A fair bit of clarification is required, because you go on to say that there are more examples of Northern Ireland SMEs winning business in the South than vice versa, and you refer to eTenders. If we are more structured in the North, and are putting our business up front and online, should it not be the case that it is actually easier for southern SMEs to access the system here than it would be to access a fragmented system in the South, where you have to look anywhere and everywhere to get a bit of business?

1481. Mr Gough: We find that the eTenders website is very widely and easily accessed.

1482. The Chairperson: Does it matter where you are?

1483. Mr Gough: It does not matter where on the island you are.

1484. Mr O'Loan: Is that the North's e-tendering site?

1485. Mr Gough: No, eTenders advertises the Southern contracts.

1486. Mr O'Loan: I misunderstood. Your compliments about the North apply to the system and regulation around tendering, but the Southern e-tendering system is more effective at publicly presenting opportunities to businesses.

1487. Dr E Magennis: It is more effective. There is more visibility.

1488. Mr Gough: Exactly.

1489. Mr O'Loan: OK, there is a clear lesson for us there. What level of co-operation and empathy did you get from the governmental systems, North and South, when you were carrying out this survey? What interest did you get in achieving the type of objective that we are discussing?

1490. Mr Gough: We had very close engagement and co-operation with the major buyers in the North and the South. During the study, we had an advisory group drawn from the Departments of Finance, North and South, CPD, InterTradeIreland and the National Treasury Management Agency in the South. There was a very close engagement and a real willingness to share experience and best practice and to learn from each other.

1491. Mr O'Loan: OK. That is what I was looking for.

1492. SMEs have said a lot to us about the difficulties of penetrating the system and how hard it is to tender. You have referred to some of that — the recognition of standards and so on. How big an obstacle is that going to be? Given that we are working across two jurisdictions that will presumably have different legislation, what opportunities are there to smooth the path for SMEs? Some of that legislation is EU-based and will be common; some of it will not be. There may be different ways in which EU systems are put in place. That could create a minefield for SMEs crossing the border. How much real opportunity do you see for smoothing the path for SMEs?

1493. Mr Gough: There is an immense opportunity in the scale of the business: the market is worth €19 billion, so the incentive for SMEs is massive. We have also made a number of recommendations in the report to address and improve the visibility of contracts, the accessibility of contract information, and to developing the SMEs' capability. Actions have to be taken across those three areas to improve the success rate of indigenous SMEs in the public procurement market. One specific example that we are considering is having a single point of access for lower-value public-sector contracts.

1494. Mr O'Loan: You referred to local authorities, in particular?

1495. Mr Gough: The vast majority of smaller contracts are coming through councils and local authorities. A good example of sharing best practice in improving the visibility of lower-level local authority contracts is a website called LAQuotes, which has been started by Kerry County Council. That is now subscribed to by nearly all of the councils in the South, so there is real visibility of lower-level contracts.

1496. Mr O'Loan: And we have no equivalent in the North?

1497. Mr Gough: Not to the same degree, at the minute.

1498. The Chairperson: Is that like an ad hoc development, or is there any kind of institutional direction on it?

1499. Dr E Magennis: Initially, it was fairly ad hoc. Kerry County Council took the initiative to do that, and then it spread through Munster and beyond, particularly through county councils, but including other local authority bodies.

1500. The Chairperson: Will your report pick up on the value of that? Will it be a recommendation?

1501. Dr E Magennis: We put in a recommendation to look at that as a model, with potential to roll out, not just South of the border but also in the North.

1502. Mr Gough: The relevant local authorities in the North are looking at that.

1503. Mr O'Loan: Your three key areas are visibility, accessibility and developing the capability of SMEs. I want to ask about the third. I presume that it means that we should be thinking about Invest Northern Ireland having a particular project on that. I imagine that that is the direction in which we should go.

1504. Mr Gough: We work closely with Invest Northern Ireland and with Enterprise Ireland on our Go-2-Tender programme, which addresses that requirement specifically —

1505. The Chairperson: We have not seen the full report, but we are talking about visibility. Will social economy enterprises (SEEs) have the same visibility? When we talk of SMEs, we could very often be talking about SEEs. It is your report, but it might be helpful if awareness and visibility of that particular important sector was raised in the report.

1506. Declan has focused on one of the things that is of particular interest to me. You can see the potential for efficiencies and cost savings in both jurisdictions through an enhanced or more visible procurement process on the island. Will your report emphasise that? Will it also address the wider economic benefits for both economies? I am relieved to hear that you did not meet much institutional resistance. I would have expected more, but that does not seem to have happened. People see the business benefit of this approach.

1507. Mr Gough: Without a doubt, there are two main competitive benefits. The first is a more efficient public procurement system; the second a more competitive system. It is a win-win situation for both buyer and supplier, if we get this right.

1508. Dr E Magennis: We all tend to think that people do things better elsewhere. The buyers in the South were interested to see what they could learn from this side of the border. Officials from CPD have assisted the new Department of Finance policy unit on public procurement in the South. That is trying to improve things on the buying side and looking at centralisation. It is interested in how centralisation happened in the North and how some of those systems might be applied in the South. There is sharing of practice there as well; it is an interesting situation, where the North has spread some of its practice into other jurisdictions. That might be something.

1509. The Chairperson: I think so.

1510. Ms J McCann: My question has been answered, but I would like to chip away at it a bit more.

1511. You mention different levels of development in the report, between the North and the South and between central Government procurement policy and that of local government. There seems to be an uneven playing field. You mentioned €19 billion, the huge sum of money that is available for public procurement. SMEs do not feel that they are able to access the market in the way that they should be able to. That applies particularly to social economy enterprises.

1512. At the moment, the South is creating a national public procurement policy unit, and local government here is in the process of creating a more centralised structure. Is this not an opportunity to consider public procurement on an all-island basis? I mean not just that the two structures should co-operate, but that there should be an overriding structure, to ensure that there is equal access for SMEs, North and South, and equal access for social economy enterprises.

1513. I want to touch on the social clauses. I know that that is something that has arisen in our inquiry. Do you agree that the implementation of the social clauses from the advertisement stage right through to the delivery stage would help the social economy sector in particular? Organisations in that sector would be judged on the jobs that they create in areas of disadvantage and need, the jobs that go to the long-term unemployed and the creation of quality apprenticeships, and that would offer the sector an opportunity to compete at the tendering stage in a more equitable way.

1514. Mr Gough: Businesses certainly welcome fewer differences in regulations and bureaucracy within marketplaces. The level of engagement between the two main buyer organisations in the North and the South is, as I said, a win-win situation due to the creation of mutual efficiencies and mutual benefits for companies North and South.

1515. Dr E Magennis: The implementation of social clauses is probably a practice that is more advanced in Northern Ireland. There are good examples of social clauses being applied on an individual basis for some contracts in Dublin; the Dublin Docklands Development Authority has one such contract and the Limerick Regeneration Agencies will look at social clauses for some of its contracts. It is something that is being rolled out more.

1516. With regard to accessibility and capability, a little more understanding is probably needed for both buyers and suppliers of what that actually means. In some cases there is probably a reservation that social clauses add an extra burden, which does not necessarily have to be the case. Therefore, education and awareness is probably required on what social clauses may mean and how social enterprises, as well as social SMEs and the local community, can benefit from them. Social clauses are coming to the fore; in 2003, this was not raised as an issue, but five years on it has risen far up the agenda.

1517. The Chairperson: That is very helpful. We look forward to the report being processed, adopted and implemented. There are some very important lessons and recommendations before us. The Committee looks forward to receiving the full report when it becomes generally available. I thank you for your assistance this morning; your evidence has been very helpful to our inquiry.

24 June 2009

Members present for all or part of the proceedings:

Mr Mitchel McLaughlin (Chairperson)
Dr Stephen Farry
Mr Fra McCann
Ms Jennifer McCann
Mr David McNarry
Mr Declan O'Loan

Witnesses:

Mr Colm
Lavery
Mr John Royal Institution of
Phelan Chartered Surveyors
Ms Ann
Stewart

1518. The Chairperson (Mr McLaughlin): I refer members to the submission from the Royal Institution of Chartered Surveyors (RICS) and its construction market survey. The Committee is joined by Ann Stewart, public policy executive with the RICS; John Phelan, head of the construction group; and Colm Lavery, the deputy head of the construction group.

1519. I welcome the witnesses and apologise for the overrun of the previous session. The Committee had a hot-and-heavy exchange with the departmental officials. I invite the delegation to make some brief introductory comments. Committee members have had the opportunity to read the RICS submission and updates. Please proceed with your evidence.

1520. Ms Ann Stewart (Royal Institution of Chartered Surveyors): We thank the Committee for giving us the opportunity to share our experience. By way of background information, our members have practices in land, property and construction markets. They are employed in multinational and local organisations; private practices; contracting firms; central, regional and local government; academic institutions; public agencies; and non-governmental organisations. Our construction membership represents the professions of quantity surveying, building surveying, building control and project management.

1521. As part of its Royal Charter, the institution is committed to providing advice to the Government of the day, and, in doing so, it has an obligation to bear in mind the public interest as well as the development of the RICS professions.

1522. The main concerns that I will highlight are the impact of the large frameworks on local small and medium-sized enterprises (SMEs) and the reduced workloads in construction markets. My colleagues will provide more detail on each area.

1523. It is clear that the downturn in the economy has had a major impact on the construction industry across the UK. However, we believe that the situation has been exacerbated in Northern Ireland due to the perceived lack of public work and the limited tendering opportunities for SMEs as a result of the large frameworks.

1524. Public-sector construction projects have traditionally provided certainty in the industry and offset any decline in private-sector work. However, continued uncertainty around public-sector work makes it difficult for the industry to plan ahead and to maintain staff levels. The potential impact of those reduced workloads on future construction skills in Northern Ireland is not often reported. Based on evidence from the last recession, it is widely believed by RICS members that there may be a damaging shortage of professional skills to manage the eventual upturn in the market.

1525. Therefore, the RICS recommends that the central procurement directorate (CPD) of the Department of Finance and Personnel (DFP) should co-ordinate the centres of procurement expertise (COPEs) to ensure that there is continued workflow to the markets and should implement targeted initiatives to avoid future shortages in construction skills.

1526. Mr Colm Lavery (Royal Institution of Chartered Surveyors): In 2007, the Northern Ireland construction industry readied itself in anticipation of the investment strategy for Northern Ireland (ISNI) 2008-2018. However, since the strategy was published, the anticipated workflow has not been realised. The RICS construction market survey for the first quarter of this year indicated that the total workloads in Northern Ireland declined at a faster rate than anywhere else in the UK. Workload expectations have also continued to deteriorate. The Committee has copies of that survey.

1527. The RICS acknowledges that work held up due to legal challenges against two large frameworks is now being released on a project-by-project basis. However, anecdotal evidence

indicates that that process is very slow. RICS members are concerned that Departments do not have enough resources to deliver the work to the market within the original time frame set out in ISNI 2. Therefore, the RICS recommends that CPD and other Departments be provided with the necessary resources and the professional procurement expertise that is required to deliver work to the market in a consistent and timely manner.

1528. Large frameworks are also a key concern. A one-size-fits-all approach has resulted in the creation of two very large frameworks worth a total of £1.5 billion. However, both frameworks have subsequently collapsed or are subject to legal challenge. The RICS recognises the benefits of frameworks and is aware that they have been operating successfully in Northern Ireland for many years; for example, the frameworks that are managed by health estates. However, large frameworks exclude unsuccessful firms from accessing large chunks of public-sector work for up to four years. The situation is not helped by the excessively high selection criteria, which can exclude local SMEs at the first hurdle. For example, the requirements for insurance and company turnover are often set at levels that are beyond the capacity of most SMEs and which are disproportionate to the size and nature of the anticipated workflow.

1529. We are not saying that frameworks should not be used, and we understand that, under European procurement rules, frameworks cannot be tailored solely to the benefit of Northern Ireland companies. We simply believe that local SMEs should be given an equal chance to bid for local work.

1530. To ensure the success of future frameworks, the RICS recommends that frameworks be smaller in value to encourage a greater level of competition and less discrimination against SMEs. The selection criteria, such as requirements on insurance and company turnover, should be proportionate to the size and nature of the anticipated workflow. In recent procurement processes, that has been the case. The number of teams should reflect the total value of work on the framework and the number and size of projects to be let. The criteria should accurately define the technical ability and experience that bidders are required to have to distinguish successful bidding potential at an early stage and reduce bidding costs.

1531. It is essential that Departments are efficient in their procurement activities, and where there is inaction and budgets are not being spent, funds should be transferred to Departments that can use the resources to bring planned work forward to a marketplace. We also recommend that the Executive re-examine departmental construction programmes and bring forward future planned projects for 2009-2010.

1532. Mr John Phelan (Royal Institution of Chartered Surveyors): The Construction Industry Forum for Northern Ireland (CIFNI) procurement task group recently produced a report that outlined seven principles to recommend how procurement practice in Northern Ireland should move forward. Those principles attempt to resolve many of the problems that are outlined in our presentation. We welcome that report, and we recommend that DFP and the Committee for Finance and Personnel monitor procurement practice in Northern Ireland to ensure that the commitments that were given by all who were involved in the report are achieved in practice.

1533. An ongoing concern has been visibility of opportunity. In its original submission to the inquiry, the RICS recommended that a delivery tracking system go live as a matter of urgency. Since then, we are pleased to see that the delivery tracking portal is now up and running. That is a step in the right direction. We welcome the move to ensure greater visibility of opportunity. However, some of our members have run tests on the system and have raised a few concerns. The system is already out of date. Some projects are listed as being at pre-tender stage when tenders have already been submitted. Some projects are at the stage of pre-qualification questionnaire but are not listed at all.

1534. A further criticism of the system is that it does not always show who has won contracts, despite there being provision to do so. We would also welcome more information on pre-tender projects and when they will be expected to move to invitation-to-tender stage. That would provide consultants and contractors with much-needed information to help plan and target workload. ISNI 2 anticipated a workload of £20 billion. However, it is difficult to equate that amount of work to the projects that are listed on the delivery tracking system. We understand that a certain amount of the pot that is available is to be realised through Government assets, and that might affect matters.

1535. In light of the current downturn in the market, the RICS would be interested to learn what the current budget is for all projects under ISNI 2. If that has changed since publication, we want to know which areas of the strategy have changed. For example, the ISNI delivery plan for health has not yet been published. That raises questions about the budgetary ability to carry out the work that is outlined in the strategy.

1536. The CIFNI procurement task group report clearly states that the Government Construction Clients Group and the Construction Industry Group for Northern Ireland have agreed that the seven principles will be adopted in any future construction activity that is undertaken by bodies that are governed by Northern Ireland public procurement policy. Public procurement policy is defined to cover Departments, agencies, non-departmental public bodies (NDPBs) and other organisations that are largely — more than 50% — financed by the public sector. In the light of that agreement, we ask why other bodies such as local councils have not been included in the database. The Ministry of Defence (MOD) and Prison Service schemes are also not included.

1537. There has been little publicity regarding the launch of the information portal, except for its official launch at a recent procurement conference. That is a good example of visibility of opportunity being missed. Given the limited information regarding further opportunities and the incomplete and outdated details that are already on the system, the RICS is concerned that the information portal will not be updated regularly and will not achieve its objectives. There must be an obligation placed on all Departments, COPEs and CPD to keep the information up to date and to contribute to the system. Simply encouraging that to be done is not enough.

1538. Social clauses in contracts are a relatively new concept in Northern Ireland. In the current economic climate, firms may find it difficult to recruit people with little or no experience in construction, especially if they have had to make experienced employees redundant. At a professional level, it is more difficult for firms to employ the inexperienced or long-term unemployed as a third-level qualification is normally required. Contracting firms have a wider pool of employees and skills requirements and, therefore, they may be a more appropriate avenue for the application of social clauses. The best opportunity for social clauses is to ensure consistent workflow to the market. If there is enough work, recruitment to the construction industry will increase, as will the opportunity for social clauses within contracts.

1539. I thank the Committee for its time, and I welcome any questions that members might have.

1540. Mr F McCann: You have a list of recommendations. Have you talked over those recommendations with Departments? Did you get much of a response from them, especially regarding the difficulties that SMEs experience in tendering for contracts?

1541. I also want to ask you about design-and-build schemes. A recent European judgement has forced design-and-build schemes to stop. Have you taken any reading on how that impacts on the construction industry? Have there been any discussions on how people can overcome it? It certainly seems to have had an impact.

1542. You also spoke of the social clauses in contracts. Is there evidence that firms are already ceasing to implement social clauses because of economic difficulties?

1543. Ms Stewart: Our response to the inquiry has been made very public; it is on our website. Many of our members work in CPD, so they would have received a copy. All the recommendations listed in our response are also in our position statement, so CPD is aware of them. We meet CPD regularly to discuss any concerns that we have.

1544. CPD is very receptive towards the recommendations that we have put forward. We understand that there is a number of difficulties in achieving those objectives. When we were preparing those recommendations, the CIFNI procurement task group was coming to the end of its work and was in the process of producing a report. We had to wait on the outcome of that. Since then, we have not gone back to CPD to discuss the recommendations further. We want to wait to see how the report goes, and then we will go back to CPD, probably after the summer, to see how things have progressed.

1545. Mr F McCann: Do you expect any changes?

1546. Ms Stewart: We do expect changes; we have asked for them. We have asked for a commitment to the recommendations and the principles set out in the report. We absolutely expect changes. The report recommends that a number of actions be taken. For the delivery tracking system, the deadline is 30 June. The portal is live, but some of our members have criticised it, and we expect better than that. It is a really good step, and it is the facility that we have been asking for. However, there is a lot more work to be done on it. We expect changes to have been made, and we will discuss those with the Department in the future.

1547. Mr F McCann: My second question was on design-and-build schemes.

1548. Mr Lavery: I am not aware of challenges in that respect.

1549. Mr Phelan: We can come back to you on that point.

1550. Ms Stewart: Absolutely; we can look into it and get back to the Committee at a later date.

1551. Mr F McCann: What is the present position on social clauses in contracts? Have firms already started to cut back on the implementation of social clauses? Is there any evidence that they are they not taking on apprentices and the long-term unemployed? It clearly says in your submission that that could happen. Is there any evidence that it has already begun to happen?

1552. Mr Lavery: On a personal note, we have instigated sustainability clauses outside of RICS. From talking to our members at meetings, it is clear that they face employment law and human resources challenges in signing up new people while seeking to make people redundant because of the recession. They are finding it difficult to create jobs through social clauses in contracts when the market suggests that they will be under pressure to retain their long-term employees.

1553. Mr O'Loan: The written report that you submitted in advance was so good, accurate and well-presented that I do not have many questions; it will be extremely useful to the Committee.

1554. You said that the anticipated workflow from ISNI has been less than expected. However, that contradicts everything that we heard from DFP officials: for example, they told us that the gross out-turn for last year was approximately £1.7 billion against an anticipated £1.8 billion. Why is there a contradiction between what DFP officials say and your findings?

1555. Mr Lavery: On Monday, I was here for a meeting with two Ministers to discuss that very topic. The perception exists that not all Departments are spending money and that there is no visibility of where that money has been spent. The experience of members who specialise in certain areas in various Departments is that there is a lack of visible delivery of projects on the ground.

1556. Also, as we all know, legal challenges and other issues have caused delays. Therefore, we find it hard to believe that that money has been spent, at least not on projects or contracts on the ground. We have asked for greater visibility on a Department-by-Department basis of where the money has been spent. Everyone is aware that there is a great deal of expenditure on the road infrastructure, but how are the Department of Education and the Department of Health, Social Services and Public Safety performing in relation to their project budgets?

1557. Mr Phelan: In comparison with other Departments on the ground, roads have a very high value.

1558. The Chairperson: What has a high value?

1559. Mr Phelan: Road projects receive a high level of expenditure in comparison with the projects of other Departments. However, as far as employment in local SMEs is concerned, investment in road projects probably does not have the same impact as the same level of investment in a building project. Building projects have a much higher level of investment in people's employment than in machinery. That can lead to the perception that the spend on roads does not have as great an impact on the ground.

1560. Mr Lavery: There is a spread of our members across all Departments. Some may be doing well working on utilities or roads, whereas others who specialise in building schools or other facilities see no visible signs of expenditure.

1561. The Chairperson: The Committee has already decided to hold a stakeholders' conference on broad procurement issues in the autumn. With members' permission, we should send to that conference the submissions that we have received and the Hansard report of today's discussion. DFP should be asked to respond to your points about the lack of visibility and the deficiencies in the portal and available information. That would help the conference to achieve its objectives. It would benefit everyone, including the Department itself, for it to spend the summer months developing a written response to the concerns that have emerged as a result of the submissions that we have received.

1562. Mr O'Loan: You have called for no return to lowest-cost tendering. Do you agree that, for all the hoops through which people must pass in presenting information about their capacity to do a job, to some degree, lowest-cost tendering still exists? Although one must pass through all those hoops in order to put oneself in the frame, at the end of the day, the final decision comes down to lowest cost. Sometimes that final stage ignores the key elements of the bid that relate to quality. Do you agree?

1563. Mr Lavery: As one gets farther along the pipeline for a job, if it is part of a framework scenario, eventually the quality aspects of various submissions begin to converge. Inevitably, the decision sometimes comes down to cost differences. However, it is important that the quality aspects of bids are revisited and revised in order to progress.

1564. Mr O'Loan: If that were the case, I could not quarrel with the process. I was putting a rather different spin on things.

1565. Mr Phelan: In my experience, the quality requirement brings in a number of contractors who are capable of undertaking the scheme to a high level. Subsequently, as that smaller group moves to the final stages, cost ends up being a key criterion. The process that bidders must go through depends on how the contract has been drawn up. However, the intention is largely to ensure that quality is to the fore. Subsequently, cost becomes a part of the process. Anybody who tenders for a particular project should be able to prove that they are capable of producing the required quality. The RICS wants quality to be to the fore of construction in Northern Ireland, and that will result in quality public projects, which is what everybody wants.

1566. Ms Stewart: The quality criterion is essential in identifying the most economically advantageous tender (MEAT), which clearly involves demonstrating quality not just the ability to reduce costs. That must come through clearly.

1567. Mr Lavery: There must be a clear line on value for money, and there must be an assurance that quality and cost are being assessed jointly not individually, because the cost of providing a service relates directly to how one responds to quality. One must ensure that those factors are not assessed separately, because sometimes there is a danger that a bidder will not be able to deliver a service for a given cost. Given the current market conditions, there is a concern that people are so desperate to get work that they will cut costs and tender at a loss, which means that, in the long term, instead of delivering value for money, they deliver problems.

1568. Mr O'Loan: I think that CPD would probably agree with that assessment, as I do, yet there still seems to be a problem, which may relate to the fact that sometimes job specifications are loaded in such a way that firms believe that they are well capable of delivering them. It is not that people are insisting that they should win every bid; they know that they are in a competitive situation. However, there seems to be a genuine problem with bids being approved when there seems to be good reason for saying that they do not provide the best quality for the public sector.

1569. Ms J McCann: I apologise for missing the beginning of your evidence. I read your paper last night, and a couple of questions came to mind. You mentioned bringing forward public works. Recently, there has been a lot of discussion about bringing forward capital-build and public-works projects to help the construction industry. However, there seems to have been some sort of blockage in the system with respect to planning permission and other problems. Given the focus from the public and the Assembly on the issue, do you think that any headway has been made? In your submission, you state that the tracking system has not yet been put in place, yet we were being assured that everything possible is being done to bring those projects forward.

1570. I caught the tail end of the discussion on social clauses. When we talk about social clauses, we are talking about investment strategies being delivered through the Programme for Government in such a way as not just to grow the economy, which is essential, but to tackle poverty and disadvantage, which is also an essential component in growing an economy for everybody. By using social clauses, we are trying to ensure that people from disadvantaged and deprived areas in the North are given equality of opportunity and can tender for public procurement contracts.

1571. I know what you are saying about companies laying off people and about how taking on the long-term unemployed might not be an option for them at this time. However, in the longer term, to ensure equality of opportunity for all, companies that secure the public procurement contracts should be considering taking on the long-term unemployed and people who live in areas of disadvantage and need — and that is where many of the long-term unemployed come from. Not only that, but young people should be given the opportunity to take up quality

apprenticeships. I just wanted to clarify that when we call for social clauses to be included in contracts, those are our aims.

1572. Overall, do you think the blockage that was mentioned earlier is now being unplugged, so to speak? Do you think that the investment strategy and the capital-build and public-works projects are being delivered in the way that they should be? To put it another way; has there been any change?

1573. Mr Lavery: Some aspects of the planning process have improved; for example, the fast-track system for major projects. Several very high-profile projects have taken five or six months to get right through the planning system, and that can only help the situation with the new headquarters for the Public Record Office of Northern Ireland (PRONI), the Titanic Signature Project and all the high-profile projects that can get construction started on the ground. That has certainly helped.

1574. There are two aspects to our organisation. Our members represent professionals in the construction and contractor side of the industry, but we also have professional members on the consultancy side. Although there have been some improvements in getting construction projects on board, the delivery tracking system is about identifying those construction projects and outlining what stage they are at so that an interested contractor can check on their progress. Consultants need to know what is in the pipeline on the client side before there is even an opportunity to appoint a consultant. The consultants need to bring forth a project before a contractor can get involved, so the delivery tracking system is about bringing the projects right back to inception. It allows for the pipeline to be more visible from the outset, and that visibility must continue as we move through the process, until we reach the stage whereby a contractor comes on board.

1575. There is evidence to suggest that it takes a lot of time to assess tenders, whether they involve consultants or contractors. Some small projects are getting expressions of interest from more than 40 firms, and it takes a lot of time to carry out an assessment, get it turned round, issue invitations to tender and compile a shortlist. We believe that some Departments have difficulty with resources, and during the summer months the situation will get worse rather than better. I certainly think that the process for tendering, assessment and award needs to be speeded up.

1576. Mr Phelan: There was talk of the £1.7 billion of investment for this year, and it would be useful to know what the investment is for this coming financial year, how it breaks down by Department and what the projects are. The portal could provide that level of detail. In the short term, that could be done for this year, and when we come to next year, everyone will have been aware at an early stage of what the investment is and how it breaks down. In that way, there will be no questions about whether the Departments have met their targets, because the evidence will have been published early. That would be useful. The portal has been a long time coming, and although it requires improvements so that we can see the evidence coming through, it is a great step in the right direction.

1577. Ms Stewart: To give an example of John's point, the portal provides information about pre-tender projects. It does not give any dates to show when those projects are expected to come onto the market. Previous to the portal going live, CPD provided project lists, which were broken down into consultancy projects and contractor projects, and it gave the expected dates. It is difficult to understand why that cannot be done for the portal to make opportunities visible to contractors. The construction industry wants to see the opportunities that are in the pipeline so that it can ready itself for the work.

1578. Ms J McCann: You mentioned local councils. The evidence that we have received seems to suggest that although a procurement policy is being developed for central Government, there is no such policy for local councils. Therefore, small and medium-sized businesses and the social economy sector have a lack of awareness about what contracts they can and cannot apply for at that level. Is that situation improving, or is there still a gap between central and local government contracts?

1579. Ms Stewart: The CIFNI report states that any body that receives 50% or more of its funding from Government will be governed by public procurement policy. Councils are not included in the portal, so we have no sight of what work they have in the pipeline. We know that there is work with the Prison Service and the Ministry of Defence because of the tender opportunities that exist, but that information is not included in the portal. We do not know whether it is an oversight that councils are not included in the portal or whether there are any plans for them to be included in the future.

1580. Mr Lavery: Councils could benefit from some sort of marketing campaign, and the private sector could have a part to play in that. From our perspective, we play a part in marketing that as an option for local councils, and CPD could be involved in that, too. It is about giving people visibility and knowledge of what contracts are open to them. We all have a part to play in that.

1581. Dr Farry: In your submission, you say:

"Where possible frameworks should be geographically based."

1582. What do you mean by that?

1583. Ms Stewart: Our members have discussed that recommendation quite a bit. We are not sure whether it is possible to have geographically based frameworks under the European guidelines. However, if it is possible, the recommendation would create opportunities for local firms in their geographical areas and keep work more confined.

1584. Mr Phelan: We cannot place limits on who applies for a framework. Part of the problem with having a framework that covers all of Northern Ireland for a four-year period is that firms that are successful in the tendering process will do very well but those that are unsuccessful will be closed out of the market for four years. Such firms might be perfectly capable and might have been working in that market for years. If they have nowhere to go and their business depends heavily on getting that contract, they might have no choice but to mount a legal challenge or find other means to get themselves into that market. However, if the market were divided up into smaller frameworks of three or four large contracts or packages for an area, companies that miss out in Antrim could look at another package in Tyrone, which is not too far away.

1585. Dr Farry: So, you are not saying that frameworks should be based on the location of firms, which would be in clear breach of European rules; rather, you are saying that the framework should be segmented.

1586. Mr Lavery: A good example is that the health estates currently have a minor works opportunity in the five trusts. There are individual contracts for each of the five trusts, so if a firm misses out on one contract, a bid can be made for another.

1587. Mr Phelan: The problem for firms is that they can get locked out of a contract for four years, only to find that a criterion for other contracts is recent experience. Therefore, an SME that bids for work that it has not been doing for the past four years because it was not in the framework could almost be closed down as a result of going through the procurement process. The solution is to create smaller frameworks.

1588. Dr Farry: Is your organisation the Northern Ireland branch of the wider UK institution?

1589. Mr Phelan: Yes.

1590. Dr Farry: That may put you in a good position to answer my next question. I am interested in the segmentation of the market and how it works. How self-contained is the construction market in Northern Ireland? To what extent is it open to firms from the Republic of Ireland, the UK and the wider European Union? In contrast, to what extent can Northern Ireland-based firms access contracts outside this jurisdiction?

1591. Mr Phelan: It works both ways. Because we are an island, in the recent past firms may have found it less attractive to come here for relatively small contracts. Consultants would have partnered with local firms to deliver on large contracts here.

1592. We also have large firms of our own such as Lagan Construction, which has a wide international wing. Firms from the South are certainly more inclined to come up here now than they were two or three years ago, when work in the South paid a lot better than it did up here and there was no reason to cross the border. There is now a transfer of skills.

1593. Mr Lavery: There are quite a few contracting organisations that work in Scotland and England, and a fair amount of their turnover is from work outside Northern Ireland.

1594. Dr Farry: Were a large company from outside Northern Ireland to win a contract, to what extent would it use local SMEs as subcontractors and employ local people as opposed to bringing in workers from elsewhere? What are the patterns?

1595. Mr Lavery: Evidence suggests that such companies use the local supply chain. When a firm from elsewhere comes into Northern Ireland, it is usually because of the size of the opportunity and the firm's experience and expertise. If a firm's expertise and costings lead to it being awarded a scheme, the evidence suggests that it would use the local supply chain. Enniskillen hospital is an example; local suppliers such as P Elliott & Company are involved in that project. Therefore, as with any economy, it is cheaper to use local people than bring in labour from abroad.

1596. Dr Farry: I am slightly nervous about where all of this could be heading. I have a sense of the wagons being circled in Northern Ireland and a declaration being made that, as much as possible, Northern Ireland work should be matched to Northern Ireland companies. The world does not often work like that; it is more complicated and subtly layered.

1597. I am conscious of your organisation's mandate in relation to the public interest and of the wider competitive framework beyond Northern Ireland and how all that works. Is there a middle path that could lead to any recommendations that the Committee might make creating, in turn, a trickle-down effect? In a sense, this is about having a level playing field that will ensure that SMEs are able to access contracts rather than one firm being favoured over another. When large companies win contracts, what more can be done to ensure that they use local suppliers and employees? How does the effect of social clauses trickle down through the system?

1598. Mr Lavery: The CIFNI report refers to supply chain practice. It contains recommendations that relate to fair payment and the opening up of opportunities to the local supply chain if an outside company is involved, which we would endorse and which would help the situation.

1599. Mr McNarry: Thank you for your report; it is well worth reading, and it is well put together.

1600. Do you have an insight into how self-employed specialist contractors and subcontractors are faring in the current situation?

1601. Mr Phelan: It is difficult to know. The employment statistics do not show whether a self-employed person has had his or her work reduced from six days a week to three days a week. The evidence is anecdotal. We know about certain people who still seem to be doing very well, but others are possibly not doing so well, and we do not have as much evidence on that area.

1602. Mr Lavery: The RICS does not have access to data on self-employed specialist subcontractors. The RICS membership includes small self-employed chartered surveyors, and, as in every situation, it is those who adapt quickly to the market and become involved in specialist services — which have possibly been created by the marketplace at this time — who will grow stronger and get through the situation. Those who do not adapt and who do not look at the possibility of joint ventures or other opportunities will find it more difficult to survive.

1603. Mr McNarry: I understand, but I am a bit concerned about the dependency on self-employed subcontractors in the construction industry. That came about mainly because the industry changed and did not want to employ people and so made them an offer that they could not refuse, which was to become self-employed. I am anxious that you might see a loss of confidence in a crucial element of the construction industry, which will mean that it is neither fit nor ready for any upturn. There will be a loss of skills and apprenticeships, which are hard to get in companies that are run by self-employed people.

1604. I hesitate to ask my next question, and you could just answer "No.". I have always recognised the dependency on the black economy, particularly in the construction industry. I am not encouraging tax evasion, but nobody turns down a cash offer — well, nobody who I know anyhow — unless they are over at Westminster.[Laughter.]

1605. Dr Farry: I remind the member that this evidence session is being covered by Hansard.

1606. Mr Lavery: I could not possibly comment.

1607. Mr McNarry: The black economy has a role, like it or not.

1608. The Chairperson: I am sure that you mean the informal economy.

1609. Mr McNarry: It has had a role in propping up certain things, like it or not. Is that coming across your organisation's screen?

1610. Ms Stewart: That is a difficult area for us to look at because RICS represents the professional levels. As Colm mentioned, we represent professionals who work in private practice as well as those who work with contractors, so we do not look as much at the lower levels of subcontracting and apprenticeships. However, that is not to say that the downturn in the market does not affect professionals in the same way. One of our concerns, which we mentioned in the report, is that professionals are highly mobile and could leave Northern Ireland to find work elsewhere. The majority of those would be from the younger generations, and so we would have an ageing membership. If we do not have younger people coming through, there could be serious skills gaps in the future. One of the key reasons why we are urging the workflow to come from the Department is to ensure that there is work to keep people here. Therefore, the situation is having an impact at a professional level as well.

1611. Mr Lavery: From my perspective, this is where the issues of quality cost and value for money come into play; we must ensure that we get value for money. If, as so often happens

during a recession, we return to a scenario in which costs are driven down, the people who have developed the expertise over many years and who inevitably constitute the higher cost base for any firm often find that their positions are the ones being reviewed, and those people are often lost. It is those people who have the skill sets to deliver value for money and who are training our apprentices for the future. We must be careful that we do not cut our skill sets out through the scenario of cost-driven tendering.

1612. Mr McNarry: Can you give an idea of what future work is on the table? What work is being costed that you could envisage being realised? Have you any sense of that at all from the information that you are receiving? Given that you operate at virtually the beginning of the process, if you do not have any idea about that, we will all be facing quite a difficult situation.

1613. Mr Lavery: The delivery tracking system is a step in the right direction because it makes visible what is under way at different stages of the process. A lot of work could be done to improve the system for the different stakeholders who use it, including recognition of the fact that there are different stakeholders and that they require different information. It is also vital that the system is kept up to date.

1614. Mr McNarry: Did something like what happened to Workplace 2010 make a dent; did it set your organisation back? Was there some kind of dependency on that on the part of those who were involved in it?

1615. Mr Lavery: It certainly set back those who were involved in it, and it obviously set back their anticipated supply chain. It has had a big impact, as we would expect with any large programme, such as the CPD major-works programme and the schools-modernisation programme, both of which suffered delays due to mitigating factors.

1616. Mr McNarry: You said that you thought that some Departments were in trouble with resources and that that would be a particular problem this summer. What did you mean by that?

1617. Mr Lavery: My organisation is involved in tendering work, and it is apparent that the process of assessing tenderers and awarding contracts does not always have the speediest turnaround.

1618. Mr McNarry: Do you think that the Departments are holding back on some things?

1619. Mr Lavery: Sometimes the reason is as straightforward as resource availability; in other words, the resources not being available to carry out the assessment.

1620. The Chairperson: Given the significance of, for example, the ISNI investment programme, is your criticism that there is a lack of development on building the necessary capacity to deliver?

1621. Mr Lavery: The necessary capacity needs to be built in. When someone says that a pipeline will be provided and people are then invited to tender for the opportunities in the pipeline, it must be understood that bid costs and tendering costs are quite significant. Firms are given a set time to apply, and from a business point of view — and we all have experience of a commercial environment — those firms expect to be able to see a pipeline so that they can manage their workforce and resources accordingly. There is a lack of connectivity, whereby the public sector does not understand the workings of the private sector.

1622. The Chairperson: The very clear expectation, which is, I think, shared by Ministers, is that the investment programme would have not only visibility but would be accelerated through the system, particularly in the context of the economic downturn. I suppose that a queue of people

would be moving in on the issue of reduced costs. We are being told that tenders are reflecting a reduction in costs. Surely, however, those type of savings could be used to put more resources into processing the tenders and setting contracts.

1623. Mr Lavery: Process, accountability, who has the final sign-off and the visibility of the system after the tender is submitted are important.

1624. Mr McNarry: You make a recommendation in your submission that:

"It is essential that Government departments are efficient in their procurement activities. Where there is inaction and budgets are not being spent, funds should be transferred to departments that can use the resources to bring planned work forward to the market place."

1625. Does the RICS have any evidence of inaction or of budgets not being spent? I agree with the sentiment, which is logical. However, this is Government that we are dealing with.

1626. Mr Lavery: My understanding is that, in some cases, departmental underspends are reported in year-end and quarterly reviews. I understand that no Department has reported an underspend in the past year.

1627. Mr McNarry: They would not dare.

1628. Mr Lavery: On the ground, we are struggling to understand how that is achieved.

1629. Mr McNarry: Are you saying that that happens but that there is no system to jockey it? You are talking from a professional business point of view. Bear in mind that you are not talking to people who have an understanding of any of that; those people work three or four months behind the times — some would say three or four years behind the times. You are making a key point, and I am just trying to get underneath it.

1630. Mr Lavery: Where there are delays by one Department — and it might be through no fault of the Department involved; a legal challenge could have been mounted, for example — the construction industry requires assistance to keep jobs.

1631. Mr McNarry: The Committee heard of an instance not so long ago when work on a road not far from here could not be done. We had representations from the contractors who were in the middle of a contract and who had to down tools and wait until the money became available. That appalled me. You seem to be talking about the release of money just to get things moving and pointing to the fact that there is inaction.

1632. Mr Lavery: It is not so much the release of money as the process to get the money released. We are assuming that the money is there.

1633. Mr McNarry: I would not assume that.

1634. Mr Lavery: That is what we are being told. Schemes have been approved for funding and are making progress, and sometimes it is just the process of getting the scheme through economic appraisal, getting DFP approval, getting through to stages C and D, getting departmental sign-off, getting through planning, going back to the Department for final approval before tendering, going through the tendering process, being assessed —

1635. Mr McNarry: I get that picture. Could you, perhaps, paint some sort of picture for me? We have a Budget for three years. Do you get any inkling of where your business will figure in that

Budget during that period when money is allocated for projects? Do you get the sense that that is being adhered to? You talked about tracking projects; do you get the sense that you have a greater opportunity to work on the basis that that investment will happen? Is that of benefit to you?

1636. I am anxious that you are not telling me, on the other hand, that the budgets are being jockeyed around. I think that they are being jockeyed around. If I could ever get underneath the mass of figures that we get, I could prove my own intuition. Is it easy for you? We are trying to maintain jobs here, as well as stability and sustainability. It must be very difficult for you to plan alongside what is happening here.

1637. Ms Stewart: While ISNI 2 was being planned — it was due to come out last year — our members in the industry readied themselves and were geared up for the work that would result. Contracting firms and practices took on more employees in readiness for that work, which was never realised. Much of the unemployment that exists is the result of the drop-off from that state of readiness. In the past six months, Departments have issued frequent press releases about the amounts of money that have been spent and the targets that have been reached. Our members, and other people whom I have spoken to in the construction industry, are surprised. This may be anecdotal evidence, but their feeling is that what those Departments are describing is not being seen on the ground.

1638. Mr McNarry: Is there too much red tape? What is the cause of this? We see those press releases — whoopee, here we go, brilliant — and then all of a sudden you are saying that we have hit a brick wall, and that there is a slowdown with resources etc. If that is unacceptable, then it is unacceptable and we need to do something about it.

1639. Ms Stewart: There was a period in which things slowed down significantly because of the legal challenges. We cannot get away from that. However, that work is starting to come forward, and it is visible. In some areas it is not as visible; I am hearing from our members that it is not coming forward as quickly as we might have hoped. The majority of the work —

1640. The Chairperson: Does your experience point you more to resource or capacity issues as opposed to any attempt to throttle back on the rate of expenditure and investment?

1641. Mr Lavery: Some Departments are champing at the bit to spend, but process and accountability in some Departments mean that things get stuck. Resources are an issue, as is whether there is accountability and push at director level to get those things through.

1642. The Chairperson: Help me with this, Colm. I want to follow the line that David McNarry was pursuing. We can focus from time to time on efficiency, performance and delivery, but David was quite specific. Is there too much red tape? Are you pointing to elements of the process that you think are top-heavy or unnecessary, or, in fact, is it about the capacity to carry out what would be regarded as due diligence that would stand up to legal challenge and examination?

1643. Mr Lavery: I think that it is both.

1644. The Chairperson: That is not helping me.

1645. Mr Lavery: It does not help you, but —

1646. Ms Stewart: Can I give an example? We have been urging for the delivery tracking system to come online for a long time. We met the Strategic Investment Board (SIB) and CPD last

September, and we were given a commitment to the development of the tracking system. We had a procurement workshop at which the delivery of the tracking system was —

1647. The Chairperson: I am sorry. When was that?

1648. Ms Stewart: November 2008.

1649. The Chairperson: So, the first meeting with SIB was in September.

1650. Ms Stewart: We were informed that the system would be delivered in early 2009. It has not been publicly launched or widely publicised, but it is now up and running, although there have been criticisms of it. The industry looked at that process and wondered why it took so long for something that was promised, even beyond last September, to be delivered.

1651. The Chairperson: Those are the details and information gaps that John outlined in the submission.

1652. Ms Stewart: If we have to give an example, that is one of which we have evidence.

1653. Mr McNarry: Workplace 2010 has been taken out as well as the Maze stadium project. Substantial money was involved in those projects. From where you are sitting now, although you may not be able to see the replacements for those projects, are you able to see whether those gaps are being plugged?

1654. Mr Phelan: One part of the problem is that ISNI 2, which is on the website, has been published, but the Department of Health, Social Services and Public Safety has not yet published its investment plans. Therefore, we do not have the visibility to see whether the figure is £20 billion, or perhaps £10 billion now, or of how it breaks down. Subsequently, when the overall value is known, we could strip that down and ask what projects will be funded and when they will be released. When will the consultants be appointed, and when will a contractor be appointed? What process will be implemented? Which of the projects will be design and build and which will go down a traditional route? Which will go into frameworks? That level of detail is required to enable firms to plan their workloads.

1655. Mr McNarry: How do we follow delays to commitments? How do we get underneath that? I accept that the effects of the knock-backs with the Maze and Workplace 2010 will filter through, but you cannot find out what is replacing them. Other Committees may not be as intent on scrutinising the flow of money as we are, so how do we get under this to say that there are delays on commitments and to ask why there are such delays.

1656. The Chairperson: Every Department has a responsibility to report on its investment delivery plan and progress towards that.

1657. Mr McNarry: We heard about targets from the previous set of witnesses. I suppose that Hansard has reported that.

1658. The Chairperson: I am answering your question. That is how we would do it. Further to this focused discussion, the Committee should consider sending to the Department the submissions along with the range of issues covered and ask it to respond to them over the summer. I do not want to lose momentum on this issue. Perhaps we could include the Hansard report of today's Committee meeting. It would be useful to do that and keep the Department on its toes, especially since it is the lead Department.

1659. Mr McNarry: That would be useful, and I thank you for taking us in that direction.

1660. The RICS recommends that:

"The Northern Ireland Executive should re-examine the public works construction programme and bring forward future planned projects into years 2009-2010 to ensure continued workflow."

1661. I am keen that we major on that; that is how we will get under it. We have got to hear from the Ministers, and we have got to re-examine the public-works construction programme. We must realise that there is a problem. There are 50,000 people unemployed.

1662. The Chairperson: We might have to consider how we get to that point, because we will have to give the Executive or the Finance Minister the opportunity to respond. However, you are probably on to something. Perhaps we should ask Departments to report back on the investment delivery programme and then address the point about what can be built into the 2009-2010 spending programme.

1663. Mr McNarry: I would appreciate that, because I am sure that I speak for every member of the Committee when I say that not only am I a Committee member, but I am a MLA who is representing a constituency. My constituency of Strangford is dependent on the construction industry at all levels — that is why I asked about self-employment and such matters. My constituents come to me to ask what work is available. They have heard that there is a possibility that work will be done on a hospital, for instance, and they want to know what I think is going to happen. That is why it is interesting to have representatives of the RICS here. They are on the first rung of the ladder, and they know what is going to happen. If they are having problems, those problems are bound to be magnified by the time that we get up the ladder a bit.

1664. Ms J McCann: Victor Hewitt informed the Committee that the quarry industry was asking for projects to be brought forward a year. When we asked whether that could be done, we were told that Treasury accounting rules disallowed it. I would like an update on that, because we asked them to go and look at the Treasury accounting rules to see if there was some way in which we could get flexibility.

1665. The Chairperson: There was some business with the accrual.

1666. Mr McNarry: There are always plenty of reasons. Civil servants can come up with a list of reasons the length of your arm as to why something cannot be done. We would like to hear reasons why something should be done.

1667. Mr Lavery: Initial thinking about the delivery tracking system was that it would be possible to identify clearly projects that were becoming delayed and then bring forward others that could be fast-tracked. The delivery tracking system would give visibility, so that if schemes slowed down for reasons beyond control, others could be brought forward.

1668. Mr McNarry: However, that probably involves getting the Minister to give something up. If he is holding on to part of his budget for a project, he might not want to give that up to another Minister. Kudos is a big word in politics.

1669. The Chairperson: We will not go there at this stage. We will take a look at that when we come to the end-of-year returns.

1670. Colm, Ann and John, thank you very much. Apologies again for the delay; it was a very helpful and worthwhile session.

16 September 2009

Members present for all or part of the proceedings:

Mr Peter Weir (Deputy Chairperson)
Mr Simon Hamilton
Mr Fra McCann
Mr Mitchel McLaughlin
Mr David McNarry
Mr Adrian McQuillan
Mr Declan O'Loan
Ms Dawn Purvis

Witnesses:

Mr Clyde
Markwell
Mr Frank Royal Society of Ulster
McCloskey Architects
Mr Dawson
Stelfox

1671. The Deputy Chairperson (Mr Weir): I welcome the representatives from the Royal Society of Ulster Architects (RSUA). They are: Mr Dawson Stelfox, the president of the society and chairman of Consarc Design Group; Mr Clyde Markwell, the chairman of the society's professional affairs committee and a partner in Knox and Markwell Architects, and Mr Frank McCloskey, the society's director.

1672. I remind witnesses, members and those in the Public Gallery that Hansard will be reporting this evidence session. Therefore, all mobile phones must be turned off completely, because they can cause sound interference on the recording system.

1673. Gentlemen, you are very welcome. Members have been supplied with a copy of your written submission, and we are more than happy to hear a brief presentation or any additional remarks that you wish to make. I will then invite members to ask questions. Thank you for your help in this process.

1674. Mr Dawson Stelfox (Royal Society of Ulster Architects): I do not intend to take up too much of the Committee's time with my presentation. We are grateful to members for inviting us to give evidence today. Most of our information is included in the paper we submitted in February. However, two issues have strengthened in importance since then. Therefore, apart from the continuing and perhaps increasing crisis in the industry, there are two main issues that we wish to discuss today.

1675. There have been a number of cases in which firms, architects or other professionals from outside Northern Ireland, and indeed outside the UK, have been appointed to undertake large public projects without the involvement of local practices at the time of interview. That is a very worrying sign. I know that the Committee is concerned about the fate of small and medium-sized enterprises (SMEs). Therefore, it is particularly worrying when work here is effectively being commissioned to practices outside Northern Ireland. It is not that we do not welcome international expertise coming to Northern Ireland, but it should be done in conjunction with

local practices and local expertise, so that there is a flow of information, knowledge and learning, and so that resources and money from Northern Ireland stay in the Northern Ireland economy.

1676. The second worrying sign, about which I will speak a bit more, is the move towards the establishment of frameworks for housing associations. This is imminent: it was mentioned in our paper, but we now know a lot more about it. Frank McCloskey has been speaking to representatives from some of the housing associations. We would also to speak about that today.

1677. The Deputy Chairperson: Thank you. Are you aware of any recent measures taken by central procurement directorate (CPD) to make the framework agreements friendlier to SMEs? If you are, what is the potential impact of those?

1678. Mr Stelfox: As the Committee knows, the RSUA is part of the professional college of the Northern Ireland Construction Industry Group. Through that group, we have been speaking with CPD particularly about the most recent professional-services framework, for which tenders are currently being assessed.

1679. There was quite a lot of discussion between the group and CPD to try to make that framework more SME-friendly, in particular though lowering turnover thresholds and allowing partnering, so that, perhaps, two small firms could come together to make a bid. However, CPD has not taken up other measures that we proposed, including the use of more minor-works frameworks; more flexibility for smaller projects and, in particular, measures to allow the community groups scattered around Northern Ireland that are commissioning work to continue to use the local firms that, in many cases, have done all the development work for them.

1680. There has been some movement on the professional-services framework, which is out to tender at the moment, but in our view there has not been enough movement to ensure that small practices, particularly those that are spread across the country, are able to continue to bid for public-sector work. Our biggest concern is that, with the concentration of work in frameworks in the future, a large number of practices — and smaller practices constitute the majority — will be ineligible from bidding for government work.

1681. Mr Hamilton: Will you elaborate on your general concerns and what you think are the worrying signs about the move towards framework arrangements for housing associations? There has been a general move towards frameworks in all areas of procurement including, potentially, procurement for water, and now for housing associations. I have an open mind on the benefits of frameworks. I am not entirely convinced of their merits and whether they maximise any potential benefit. Even if one considers frameworks to be effective; is four the right number to have? It seems to be in some way artificial. From the practitioner's side; as architects, what do you see as the problems with housing-association procurement going down that route?

1682. Mr Stelfox: I will let Frank answer, because he has been speaking with housing associations about the issue very recently.

1683. Mr Frank McCloskey (Royal Society of Ulster Architects): Frameworks were initially designed to cope with substantial projects over a three-to-five-year period, but it seems that they will now be imposed on all kinds of procurement, which does not seem appropriate.

1684. As well as being the director of the Royal Society of Ulster Architects, I have a background in housing. Traditionally, housing associations provided small packages of work for architects around the Province. Our organisation is affiliated with 272 practices, and well over two thirds of those are very small; most have fewer than 10 members of staff, and some have fewer than

five. Housing associations always used practices that had community knowledge, and there was a very good synergy between the architectural practice and the housing association.

1685. Imposing frameworks means that all housing projects will probably be done by a relatively small number of practices. The worrying thing is that it is likely that projects will go to very large practices that may not have expertise in housing. Dawson said that we are trying to persuade CPD to use a minor-works framework, so that at least there will be some work for the very small practices around the Province. However, large practices and large syndicates can also bid for minor works; and, given the economic situation, they are likely to do just that.

1686. There is one other point about SMEs. One could argue, and I hope that I am right in saying this, that probably all of the 272 practices in Northern Ireland are classed as SMEs. There are only 21 practices with more than 20 staff, and only a handful of those have more than 50 staff. But, even those practices could be described by the Committee as being SMEs. Outside Belfast, across the Province in all counties, there are very small practices that are even smaller than SMEs. With the downturn in housing and private work, those practices will have nothing if they lose the work from housing associations.

1687. Mr Hamilton: In my experience, in most housing projects there is a rubbing point that causes friction and needs to be ironed out with the architect, and it is useful if the architect has local knowledge and is easily contactable.

1688. You made a point about small-scale projects. As most housing association developments are small scale with respect to procurement, contracts do not need to be put out to tender on a European-wide basis. If the projects were to be packaged together, they would have to go out to tender on a European-wide basis. We have been quite fortunate in recent times, because probably 99.9% of that type of work has been done by local firms, from design stage through to building stage. If those contracts were packaged together and put out to tender at the European level, all and sundry will be able to bid for them. Whether people do or do not bid is debateable, and time will tell. However, we are exposing ourselves to a risk, because the existing system has worked reasonably well for local firms. Regardless of whether there are economies of scale, going down the route of adopting four frameworks seems dubious.

1689. Mr Clyde Markwell (Royal Society of Ulster Architects): We are not interested in protectionism. Dawson made the point that we have always been open to and welcomed outside expertise, from which have learned and the Province has benefitted — we totally agree that it is better to have a well-built environment.

1690. Northern Ireland is experiencing the effects of what happened in England and Wales, where changes in the procurement strategy were based on the recommendations of the Egan and Latham reports. The purpose of those changes was to try to drive a more economic solution by making larger packages available; taking the risk of defects out of buildings, and taking overruns out of buildings. That ethos has been applied throughout Northern Ireland in the frameworks that have been put out to date, and there is a continuing drive to eradicate the potential of expertise that has existed here for a long time and that has provided a very good service.

1691. I am nervous that we will lose the point of contact in the locality by opening everything up to large-scale organisations. That is not to say that large-scale organisations cannot provide a very good service: they can. However, there is no research or evidence to indicate that Northern Ireland has the same problems as England and Wales. For example, in England and Wales it was claimed that there were overruns and defects in education projects and that projects were not produced to a high standard.

1692. If you ask the Department of Education here, you will have difficulty producing negative statistics. Good examples and standards have been set here in the design and construction of buildings, which is reflected in other construction projects. My nervousness is that a whole ethos of procurement has filtered into Northern Ireland, which is to the detriment of SMEs.

1693. The Deputy Chairperson: Did you want to say something about that, Mr McCloskey?

1694. Mr McCloskey: No, I am fine. I just feel very strongly about what they are doing with housing associations.

1695. Ms Purvis: You are very welcome. As regards frameworks, CPD set up a procurement task group, which concluded that the use of framework agreements was a good thing. It listed a number of reasons why framework agreements were good for the contracting authority, how they reduced tendering costs for public-sector contractors and enhanced continuous improvement by transferring the learning from one project to another, developing the skills and competences of supply chain members and their workforces and improved working relationships. Our interest is in ensuring that public money is spent to best effect. Your paper suggests that frameworks are not always the way to go, certainly in the interests of SMEs. How do you counter the argument that frameworks are the best way to go?

1696. Mr Stelfox: There is quite a lot in that question, Dawn. I will try to break it down into smaller pieces. To pick up on Mr Markwell's point, the use of frameworks is part of a general move by the Office of Government Commerce (OGC) towards construction excellence models. It is not just about how the Government procure buildings; it is also about how the buildings are constructed and is tied to the move from traditional procurement to design-and-build models and public-private partnerships (PPPs). It is difficult to separate those things.

1697. We acknowledge in our paper that there may be benefits in frameworks if they are used correctly for the right types of projects. There is a lot of repetitive work that provides the learning experience that you referred to, and there is a benefit there. However, lumping diverse projects together into a framework does not necessarily mean that the right people will be available for that diversity of work. Also, there will not be the same learning experience between the projects.

1698. One particular issue that we highlight is where community groups are developing community buildings in Northern Ireland. Once a group gets its 50% Government money, or perhaps as much as 90% from various sources, it has to go through the CPD process. For example, the Crescent Arts Centre development began with a firm of architects who carried out the initial design and worked with the client and all of the groups that use the centre to produce a good scheme. The development got all its funding, including lottery money as well as Government money, but as soon as it achieved 50% funding, it had to go through the CPD process in order to progress from the planning permission stage. The original firm was not even eligible to bid for that work because it was not included in the framework.

1699. There are all sorts of things that are wrong with that situation. The knowledge that was gained by the original architects over three years of working with the user groups was lost, and having designed the scheme and obtained the funding, they were not even eligible to build it. That represents a loss of knowledge and continuity in the system. Counter-arguments can be made.

1700. Ms Purvis: In a case such as that, would the traditional procurement method have been preferable?

1701. Mr Stelfox: Yes, absolutely. There is a particular issue with grass-roots community groups. I have done a lot of work with such groups, particularly on restorations. In the early stage, they are left on their own and do not get much advice or support from CPD until they have a viable project.

1702. In many cases, to make a project viable, groups go to their local architect, who works for a nominal amount of money, or sometimes for free, to get them started. The same applies to local surveyors and engineers. The project gets to the stage of being granted planning permission, and funding is applied for. Two or three years later, when everything is place, CPD, in particular, bears down with a heavy weight of bureaucracy and makes the groups jump through an extra set of hoops. In our experience, costs rise inevitably, and projects are taken out of the hands of local professionals and become part of that large procurement group. That creates a problem through the loss of knowledge and lack of continuity. In addition, it is not particularly efficient.

1703. I could go on at length on this subject because there are many examples. We are not saying that frameworks should not be used. They work fairly well in particular circumstances. The model developed by the health estates is slightly different and uses performance-related partnering (PRP), as developed by John Cole, the director of health estates. That model produces many of the benefits that you mentioned, Dawn. If, for example, a team that is appointed to one project performs well, it is awarded a second one, and, if it performs well on that one too, it is awarded a third project. The transfer of knowledge is achieved by rewarding good performance. Conversely, if a team does not perform well on the first project, it is not awarded a second one. There is, therefore, a good incentive for teams to perform well.

1704. That model has produced, in Northern Ireland, some of the best health estate buildings in the United Kingdom. The model is now well regarded because Northern Ireland has not gone down the road of design-and-build and PPP for its buildings in the health estate to as great an extent as England. Therefore, alternative models already exist.

1705. Mr McCloskey: The so-called benefits of frameworks generally have not been proven absolutely. If we consider the situation in England and Wales, particularly the use of frameworks in education, the results have been appalling, as is well documented. Theory is one thing, but what happens on the ground is quite another. Frameworks have proved to be expensive and not particularly successful.

1706. Significant buildings, particularly public buildings, should be the subject of design competitions. They should not be constructed through frameworks. I could cite specific examples, but I do not think that I should. Many of you will know about them and the resulting controversy.

1707. Mr McLaughlin: I am not speaking for the Committee, but I know that it has focused on the issue of frameworks. Even in good economic times, the Committee would have been concerned about preserving and developing capacity. That becomes particularly important during an economic downturn. We have focused on public procurement as a means of providing support for indigenous practice, and, in fact, are organising a conference on that subject a month hence. Frameworks represent orthodoxy, but some issues, such as wider British Government and European policies, require consideration. We must widen our focus beyond simple financial considerations and take into account quality.

1708. It is a matter of developing economic capacity. There is greater indigenous involvement in servicing the contracts and in retaining and expanding on the existing expertise in design-and-build capacity. I do not want that involvement to be corralled into a subcontracting mode, which is the direction in which we are being pushed. Generally speaking, you are making a pitch that

reflects some of the Committee's concerns. Have you considered some of the frameworks projects that have been brought forward? I do not expect you to be specific. However, are you in a position to indicate how a different approach would have been more beneficial to the economy and to the existing capacity and expertise?

1709. Mr Stelfox: We are at the early stages of seeing the built results of the first round of procurement through the frameworks. There is a bit of a time lag, because the move came about as a result of the Egan and Latham reports in the UK. It was not implemented here as quickly as it was implemented in England and Wales.

1710. The first proper assessments of projects are now happening in England and Wales. Those assessments examine the time taken for delivery, the cost of delivery of the building, and the design and building quality. In some cases, when it comes to PFI, assessments also look at the running and maintenance costs: the whole-life costs of the buildings.

1711. I do not think that any of the Northern Ireland procured projects are at the stage where proper assessment can be made. As Frank said, in many cases the buildings are more expensive to produce and take longer. The best way I can phrase it is to say that the quality varies. There are some very good examples and some particularly poor examples. It is fair to say that in England and Wales, there are some very poor examples of traditional procurement.

1712. The impetus for the change and the process was to take risk away from the Government as a client, because the Government had not proved to be a well-informed and active client in managing those risks, the risks of budget overruns and design quality. Frank may disagree, but I think it is too early to judge the use of the frameworks authoritatively. They have only been in existence for four years, and the first buildings are only now starting to be completed.

1713. Our paper calls for DFP to assess the buildings that have been procured through the first round of frameworks and compare them with traditional procurement. There are still plenty of buildings around that resulted from traditional procurement processes. We would like that assessment to examine whether all the benefits that CPD stated should be coming forward are being realised.

1714. Procurement stakes are raised when elements are bundled together to produce frameworks. That triggers, and has triggered, legal challenges to those procurements. If a contractor is not awarded one of those frameworks, then they will have no work in that sector for the next four or five years. It really raises the stakes. Members will be aware that there have been plenty of challenges. In my experience, that did not occur under the traditional procurement process, because if a contractor was not awarded one job, there were plenty of other jobs to tender for. Legal challenges are introduced when the stakes are high. CPD's not unnatural response to that is to add another level of bureaucracy and checks, and it all builds up into a very cumbersome process. That takes away a lot of the benefits that Ms Purvis outlined. CPD would say that it was necessary in order to improve the speed and efficiency of procurement, and the time taken. I think that the Committee should ask CPD for an analysis of the time that it has spent in putting together the professional-services framework or the contractor-integrated-design-team-led procurements, because I think you will find that the costs of those procurement processes are quite staggering.

1715. Mr F McCann: Much of what I wanted to ask has already been dealt with by other members. I want to ask a couple of questions about procurement and housing associations.

1716. Some difficulties with those were raised in another Committee. It was pointed out that the process did not guarantee quality or local employment and that it certainly did not guarantee a mechanism through which local companies could tender. One of the first concerns that we raised

was about local contractors being able to bid for the bigger contracts. The Department said that the process would eventually force most of the small builders to make bids together. Is there any evidence that that will happen?

1717. You said that there is already evidence that the processes based on the Egan report will not work as well as people had initially been told. Many complaints have been made about the quality and cost of the work on some of the maintenance contracts that have already been carried out.

1718. Was any work done over the holidays to try to work out a method through which local architects and builders can go ahead with design-and-build projects? Is there a danger of select lists of contractors being created that would totally exclude most architects and builders from applying for work?

1719. Mr McCloskey: If the housing association frameworks go ahead, there are likely to be four frameworks, with the possibility of having four practices and four architect-led teams on each of those. That accounts for 16 firms out of 272 firms. Given that that arrangement is going to last for four or five years, one must ask what the rest of the firms will do.

1720. My main point about the frameworks is that, as the saying goes, there are horses for courses. In some instances, they may well be very successful, particularly for a certain type of work such as repetitive work, as Dawson said. However, imposing frameworks on what has traditionally been small packages of work that have kept the economy across the Province going is such a nonsense that I get het up about it.

1721. Mr Stelfox: Increasingly, architects are collaborating with contractors on design-and-build contracts. The design-and-build framework was one of those subject to a legal challenge and I am not sure whether the Government decided to appeal that. Effectively, however, that framework is in abeyance. As a result, a number of single-project design-and-build contracts have come out.

1722. The Committee may know more about the extent of the backlog in the system; there is a huge backlog and delay in getting public projects into the marketplace. Some of the legal challenges may be part of that. Under some design-and-build frameworks, contractors put in their submissions between six and nine months ago but still do not know what is happening. There is a huge hiatus in getting projects to the marketplace, and that seems to be complicated by the procurement process. I am sure that it is also complicated by the legal challenges to the frameworks. Therefore, the CPD is doing all that it can to ensure that the next procurement that it makes is robust in case it comes to a legal challenge.

1723. Design-and-build contracts are a fact of life for architects. We all work with contractors, and we are tied in with a couple of contractors to work on design-and-build contracts. That type of contract works well on some types of projects, but not on others, particularly those with a high design element in a public building or those that involve working with community groups. Inevitably, design-and-build contracts dissociate the design team from the client and put a barrier in the way. That may work well with an industrial building, which would be a fairly basic project. However, a community group, for example, has specific needs and without direct contact between the group and the design team, the group may find that its needs get watered down in the process. A great danger with the design-and-build process is the dissociation of the design team from the client.

1724. Mr McQuillan: The CPD said that the frameworks will reduce the time that it takes to get a project on site by four months. Is that the case?

1725. Mr Stelfox: We have had a different experience. It depends on the point at which one starts to measure the length of time. I have no doubt that that is the case for projects that are ready to go now. Many projects are small-scale and do not have a lead-in period, whereas bigger projects do. For small-scale projects that are worth between £500,000 and £1 million and that do not need to be advertised through an Official Journal of the European Union (OJEU) notice, it is much quicker to use a traditional procurement route than a framework approach.

1726. It must be remembered that frameworks also involve a secondary tender process, which takes up a lot of time. The way in which the frameworks have been working, and are due to work, is that six teams are selected for the framework and they then take part in a secondary competition to bid for the project. The secondary competition also takes up time; it is not an awful lot longer than a traditional procurement single action takes for smaller projects. The frameworks will not save time for smaller projects; however, they will save time at procurement stage for larger, OJEU-sized projects.

1727. Mr O'Loan: Your paper is excellent and you have amplified that today by providing a substantial critique of what the Department is doing. There is a case for it to answer as regards its contention that the framework system provides economies of scale and value for money. I am going to act as devil's advocate for a moment by presenting the Department's thesis.

1728. Any profession will instinctively defend its interest. Even though the process might be painful, is there an argument for saying that it is necessary to consolidate the industry, through forced partnerships either among colleagues in Northern Ireland or with firms from outside Northern Ireland, as that might enhance the strength of the profession and put it in a better position to win significant contracts outside Northern Ireland? Northern Ireland is a very small place in which to do business. Is that a valid point?

1729. Mr Stelfox: That is a valid point, up to a point. Local firms are and have been collaborating with UK, Irish and international practices for work both in Northern Ireland and overseas. That collaboration is happening and allows expertise to flow both ways. We should not forget that there is a very high level of expertise in all aspects of the construction industry in Northern Ireland. It is a very good, professional industry on both the contracting side and the design side. Many local firms are winning work in Scotland, which is one of the few places where there seems to be quite a lot of work at the moment. A lot of tradesmen, architects, designers and contractors are working in Scotland.

1730. We have no desire to prevent the growth of that professionalism or the free flow of expertise, which tends to happen with the larger projects when the larger practices are involved. The danger, particularly in relation to housing associations contracts, is that if there is not sufficient public sector work for the small practices that are scattered around Northern Ireland, those practices will inevitably close. That will be to the detriment of the local economy and the local availability of professional advice and services. Those small practices perform a social function as much as anything else. Architects play a particular role in that by arbitrating between the client and the builder. Therefore, as well as running a business, we also play an adjudication and arbitration role. If that service is not available, people will lose out.

1731. We are very keen to develop the profession in Northern Ireland and enhance its capacity, but we do not want to see that becoming concentrated, which is what would inevitably happen if we go too far down the framework route. Expertise would get concentrated in 20 or 30 large practices that would inevitably be based in the greater Belfast area, leaving the rest of Northern Ireland without access to a professional service.

1732. Mr O'Loan: You raised two additional points at the start. One of those was to do with housing associations and has been dealt with. You also referred to a couple of recent cases in

which large outside firms were awarded business. I thought that you said that there was not any opportunity for Northern Ireland firms to compete for that business. Will you clarify what you said?

1733. Mr Stelfox: One particular, fairly high-profile case was the new police training college at Desertcreat in Cookstown. I hope that I did not say that local firms did not have any opportunity to tender for it. Local firms did have that opportunity and in most cases they partnered up with large firms because it was a big and very specialist project. In most cases, Northern Ireland firms partnered up with an outside firm.

1734. The American firm that won the contract declined invitations from local firms wishing to team up with it. The firm won the work without any local expertise whatsoever on its team. It was awarded the contract without any commitment to employ local firms or practices. As far as I understand it, that was the position. Since the firm was awarded the contract, it has talked to local practices about support services for the work, but the point is that there should be a requirement that competing firms have people on the ground to deliver the service. There should also be a contribution back to the Northern Ireland economy.

1735. That is one example. I have heard of other potential examples, but our point is not that we want to stop international expertise from coming in; it is that we want to make sure that there is a mechanism to disseminate that expertise to the profession so that we all learn from it. Furthermore, the cost of that service, or at least part of it, should be spent in Northern Ireland as opposed to disappearing off, out of Northern Ireland. That one example is a warning that local involvement should be a requirement of tendering for public sector work.

1736. Mr O'Loan: Should it be written into the specification?

1737. Mr Stelfox: Yes.

1738. Mr O'Loan: Do you not think that that is adequately protected, given the outcome that you described? Was the creation of those partnerships not inevitable?

1739. Mr Stelfox: I do not claim to have any kind of inside knowledge. My understanding is that, at the time of submission, the company did not have a liaison with a local practice. In fact, it declined such an arrangement. The company won the job without that liaison. For pure practicality reasons, it needed someone to help it to deliver, but that person or firm would have a minor, supporting role.

1740. For large public sector works, there should be a mechanism to ensure that there is local delivery. An example of that is the new library at Queen's University, which was a partnership between an American firm of architects and a local firm. The local firm of architects did a substantial amount of the on-site work, so such an arrangement can work and can be done. However, there must be a mechanism to make sure that that is part of the assessment process.

1741. Mr McNarry: Apologies for being late. I read your submission, and I am sorry that I did not hear what you had to say earlier. I know that we are talking about procurement. I am a member of the Committee for Culture, Arts and Leisure, and I must declare an interest in the sense that I look up to your profession for specific deliveries for communities and for Northern Ireland; therefore, I hold you in high esteem. Having said that, I hope that you will not knock all of it back on me.

1742. Are you in a position, or is it your role, to promote opportunities that people are not grasping or the Government are not acting on? That will have an effect on procurement down the line. I am aware that people come to the RSUA stating that they have a budget and

wondering what they can do with that. I am also interested in what visionary aspects you can bring; whether you can tell Government or politicians that one project was wrong but, for example, there is a bit of land that could be used or a project that could be put right. Is that in your remit? Would that help to develop the width of procurement by generating more work and expanding on what can be done?

1743. Mr Stelfox: That is a big question. To deal with the procurement aspect, the use of competitions is a very good way of demonstrating the talent, vision and imagination that exists and showing how the right solution can unlock a site's potential. Frank has run quite a number of competitions. We sponsor competitions and regularly speak to Departments about them; Frank is working on one at the moment. The very purpose of competitions is to do what you are outlining; it is for people with talent, if given the right brief, to go beyond what is presented immediately — the mundane aspects that are easily seen — and come up with something exceptional.

1744. The RSUA lobbied the CPD very heavily two or three years ago to have the new Metropolitan Arts Centre in Belfast procured through competition rather than a framework agreement, which is what they were intending. We were successful in that case. That contract was won by a small firm of local architects that have since go on to win the Young Architect of the Year Award in the UK. They would not have had the opportunity to bid for that work if it had gone through a framework; the opportunity came through competition.

1745. Clients, particularly in Government, are scared of competitions at times, partly because there is a cost of running them, and partly because the judges might pick a design that is too expensive or that the Government does not like. Clients seem to be very nervous of competitions. Frank has run many.

1746. Mr McCloskey: I have run different types of competitions. Many clients, including public sector clients, equate competitions with a design that is inappropriate or too way-out, but we always have more client judges on the panel than we do architects, so that problem can be taken care of.

1747. Mr Mc Narry: Can it be argued that being competitive can be cost-effective?

1748. Mr McCloskey: Yes, very much so.

1749. Mr McNarry: I think that some people do not see that.

1750. Mr Stelfox: The quality of the brief is important. Through Frank, the role that the RSUA plays is to offer clients — including Departments and many district councils around Northern Ireland — the expertise of developing the brief and running the competition to make sure that all aspects of the building are judged. We ensure that is not a pretty-drawing competition; it is about how the building will function, what it will cost, and how it will be procured.

1751. Mr Markwell: In January or February 2009, we offered assistance to the Planning Service at the time of the change between PPS 14 and PPS 21. We liaised with them and suggested how they could run a competition for the design of a rural project. We offered our expertise and assistance to them. We also offered our assistance with the design guide that it is talking about publishing.

1752. Mr McNarry: What was the result of that?

1753. Mr Stelfox: The Planning Service has taken up our offer of assistance but has not yet availed itself of it.

1754. Mr McNarry: The design guide is extremely important. Will you let us know what happens, because nobody else will?

1755. Mr Stelfox: How do I put this delicately? The delay is due to a change of personnel in the Planning Service. It recently contacted us again about getting our help with commissioning the design guide and running a competition. The competition will probably have two aspects; it will look at the single-house design and the new social housing clusters.

1756. Mr McLaughlin: So it was just the goalkeeper who had moved.

1757. Mr Stelfox: Yes, it was.

1758. The Deputy Chairperson: On that positive note, I thank you all for your evidence, including your submission. The value of your evidence is underlined by the fact that we have run over time due to the interest that it generated. Your submission, along with those of all other witnesses, will form the basis of our report. Thank you for your valuable contribution.

1759. I refer members to the response from the Department of Finance and Personnel to the issues that were raised during the Committee's evidence session with the Royal Institute of Chartered Surveyors. That is just for noting at present, unless members have any queries.

1760. The members' pack also contains a request from the ministerial advisory group for architecture and the built environment for Northern Ireland — whose slightly snappier title is MAG — to give oral evidence to the Committee as part of our public procurement inquiry. The role of procurement in improving design quality may be tangential to the main focus of the Committee's inquiry, which is removing barriers of access to SMEs. I suggest that we write to MAG providing the terms of the inquiry and request a written response that addresses the specific issues of the opportunities of greater access to procurement. Are members content with that?

Members indicated assent.

1761. The Deputy Chairperson: The members' pack also includes previous correspondence, including figures on SME involvement in public contracts. Assembly Research Services have considered that response and have identified a number of areas on which they think it would be helpful to seek further clarification from the CPD. Those include information from the CPD and other COPEs on the number of contracts that were awarded to SMEs over a number of years to assess performance and progress over time. Perhaps we could also query why there are so many acronyms in the sector. We also need clarification on the evaluation of the effectiveness of Constructionline and the eSourcing NI portal. We also need further information on contracts awarded to SEEs by the CPD and the use of social contracts in procurement contracts. I suggest that we request that further information from DFP officials in advance of the stakeholder conference, because it could be useful.

1762. Ms Purvis: Can I ask for a further request to be made to the CPD? The Department's brief to the Committee refers to EU regulations and when they apply and states:

"If the works were not the main objective of the contract, but were incidental to another objective, the Regulations would not apply."

recently, Birmingham City Council. My interest in the economics of procurement relationships between the public sector and the private sector informed my work as director of contract innovation at the Office of Government Commerce (OGC) between 2002 and 2004, and my PhD, which I completed in 2004.

1770. CIPS is aware that small and medium-sized enterprises (SMEs) can play a significant role in the supply chain, and we are aware of some barriers to their participation. Those barriers have included economies of scale, standardisation drives, and the importance of security of supply. There are also perceived barriers, including bureaucracy, lack of understanding of SMEs and complexity of processes. We recognise the importance of the EU rules on public procurement and that those rules can make for a process that may seem daunting to the newcomer.

1771. In total, EU countries command a public-expenditure spend of €175 billion. That is a vast market, much of which is available to many SMEs once they have mastered the EU rules. By contrast, the Northern Ireland public-sector spend is in the order of €2.2 billion. CIPS supports initiatives that enable SMEs to contract with the public sector. Through training and influencing, CIPS encourages its members to facilitate SME participation in public procurement. We consider it essential that trained professional personnel exercise the procurement role in public-sector organisations.

1772. CIPS makes seven key points to its members and others on the topic of contracting with SMEs. Our first point is that contracting information should be made available and accessible to SMEs, especially for all contracts that fall below the EU limit, including through portals such as 'supply2.gov.uk' and the similar one that has been developed here by the Central Procurement Directorate (CPD). Our second point is to encourage prime, or first-tier, suppliers to work with SMEs, as BT, HP Enterprise Services and other big suppliers to central government are doing. SMEs should be encouraged to collaborate on public-sector contracting.

1773. Thirdly, guidance should be kept clear and easy to find. It is often difficult to make information easy to find, but it is crucial to do so. Unnecessary jargon and acronyms should be avoided. Fourthly, the training of local SMEs should be supported so that they can bid under EU rules, not only for local contracts but for opportunities across Europe. Fifthly, it should be ensured that all contract requirements that are set out are genuinely necessary to the delivery of the contract. Sixthly, effective communication must take place with all would-be bidders, and subsequently bidders, throughout the procurement process. Last, but by no means least important; open, constructive and educational feedback should be given to unsuccessful bidders.

1774. The institute recognises the complexity of public-sector procurement, which seeks to achieve three sets of objectives. I often think of it as a circle with arrows pointing in three different directions, rather like the Mercedes symbol. First, there is the importance of getting best value for taxpayers' money. Secondly, there is meeting the requirements for transparency and regulatory compliance, including EU rules. Thirdly, there are policy requirements, including the SME agenda and other economic, social and environmental requirements. Those three aspects do not point in the same direction for all procurements. It is a difficult and challenging task to achieve the best possible outcome.

1775. Sometimes, private-sector procurement is more straightforward. We like to think, and, indeed, I believe, that CIPS professional training helps our members to relish the challenges of public-sector procurement and meeting those three sets of objectives. Public-sector procurement is a different task compared to procurement in many private-sector organisations. Colleagues who move from one area to the other are often taken aback by just how challenging it is; and, of course, how interesting.

1776. The Chairperson: Thank you. A number of members have indicated that they have questions.

1777. Mr O'Loan: Thank you for coming. Thank you, too, for your submission, which was sent in advance, and for your opening remarks. It might be useful if you were to give us copies of those afterwards.

1778. I want to talk about framework agreements. The Committee has heard evidence that SMEs can be ruled out of procurements at the pre-qualification stage over issues such as insurance, turnover and the exact type of past turnover. There is also the argument that frameworks offer value for money and economies of scale. What was your experience of frameworks in England? Do the same lessons apply to other regions; in particular to this region, which is distinctive in its characteristics?

1779. Dr Davies: Frameworks do not have to rule out SMEs. If one is dealing with a series of smallish contracts — and I have often been involved with such frameworks — one sets up a framework in order to avoid running big procurement exercises for relatively small contracts, and doing so repeatedly. In such a framework, it is possible, even likely, that the requirements to get through the first stage, the so-called pre-qualification questionnaire (PQQ) stage, are no tougher than for those smaller procurements that would have happened one at a time at great administrative cost to the public purse. There does not have to be a difference.

1780. However, some frameworks are intentionally larger. In those cases more insurance is required. One needs to know that the company will be in existence for the four years that the framework may run, and so on. Therefore, it is very much case by case. It is not possible to say that frameworks are good or bad for SMEs; it depends how they are organised. There is an argument that it costs an SME or private-sector organisation a great deal of money every time it bids in a major competition. Frameworks can also save money for bidders, because they submit their bid at the beginning, and are then included in the framework. After that, bidding is through mini competitions, the administration of which is cheaper for them as well as for the buying organisation.

1781. Mr O'Loan: What about economies of scale in this region compared with other regions? One argument is that if frameworks are used here, one will end up with a small number of big bargains, and that can end up excluding companies and can often lead to litigation, because the stakes are too high.

1782. Dr Davies: I confess that I have read the Hansard reports of previous meetings, so I have come across the arguments that other witnesses have made. I am not aware that it is a problem in Birmingham or Brighton, but it is a while since I sat in the OGC. However, at that point, we were not aware that it was a problem. It is about how markets operate. For example, Birmingham has an annual spend of well over £1 billion. The social care budget is difficult to estimate, so the total Birmingham spend could be £1.5 billion. However, for sake of argument, I will say that it is more than £1 billion. As members know, Birmingham is in the west Midlands, and, therefore, there is a lot going on around it. Any framework that Birmingham sets up does not exclude people who work in Wolverhampton or Coventry. On the other hand, I am aware that OGC Buying Solutions, when thinking about the whole of England, do consider the matter carefully and, as a result, set up the frameworks carefully.

1783. Mr McNarry: You are very welcome, and thank you for reading the Hansard reports. That is quite a compliment. Not many people read Hansard reports about certain things; so, you have done your homework. Your submission states that buyers perceive that SMEs can pose more of a risk than large organisations. What is your assessment of that negative perception of risk? How could it be overcome?

1784. Dr Davies: It is about appropriateness, and I must be careful not to tell incredibly local anecdotes that will not help the Committee. However, I am aware that when one is considering a contract and thinking about how to procure help to make the project progress, it is advisable to consider the size of the project and the size of the company. I am sorry; I will have to tell a local anecdote.

1785. Mr McNarry: You are bursting to do that.

1786. Dr Davies: The chap who put the roof on my house was concerned that he could not get work from the council. Later, I worked for the same council as head of procurement. Although I had sympathised with the chap two years earlier, my job in the council made me realise that, given the roofing work that the council required, there was no way that he, his father and his brother could have bid for the work. They did small roofs, and they did them very well. Indeed, I recommend him if members ever need a roofer in Brighton.

1787. Mr McNarry: Gordon Brown needs a roofer in Brighton at the moment.[Laughter.]

1788. Mr McLaughlin: He will need a roof soon.[Laughter.]

1789. Dr Davies: That roofer did not have the capacity to roof three or four schools.

1790. Mr McNarry: Did he tell you that or did you make that assumption?

1791. Dr Davies: I did not just make the assumption; our roof took a while to complete. By the time it was finished, I knew him and his business quite well. However, I am straying from the point.

1792. If someone wants a small job done locally — for example, craftwork — that person should use a small, local supplier. A lot of flint work is carried out where I come from, and I imagine the situation is similar here, with thatching and so on. However, if someone wants major work done, such as building a mass transit system, that person needs the backing of a big organisation. There is a very good place on big projects for smaller suppliers in the supply chain. The OGC has produced a very interesting document about how their suppliers use smaller suppliers. That works very well for everyone. For smaller pieces of work, one can use smaller suppliers.

1793. Mr McNarry: In your submission you say:

"Contracting authorities should also request feedback from suppliers on the tendering process in order to make adjustments for next time."

1794. How important is that feedback? It seems to me to be a valid point. Is there a gap, in that people do not have time to give feedback? What should happen with feedback when it is received?

1795. Dr Davies: Feedback is always important; it is the only way we learn. On many occasions throughout my career in procurement, I have given feedback to unsuccessful suppliers, and I have been thanked by them later for teaching them how to bid. I told them what was right and what was wrong in their bids. Similarly, supplier feedback on contracting processes can be very useful to the procuring organisation.

1796. However, one has to be careful to distinguish between helpful and unhelpful feedback. Bidders who have not won contracts are rarely happy, and they will sometimes give feedback that is not helpful. One should not acknowledge that with them: it is better to thank them for

their feedback even if most of it could not be printed in a Hansard report. Of course, they also give helpful feedback; perhaps they have found a particular passage in the documentation easy to read while others were more difficult. One has to think about those things and improve them.

1797. Mr McNarry: Would you recommend that that should be encouraged more actively than it is now?

1798. Dr Davies: Our members generally get feedback. One should not encourage too much feedback, because it would be difficult to deal with if every supplier sent a 20-page document. I encourage procuring organisations to simply talk to suppliers afterwards to determine what they thought. We already encourage that, and I am aware that public-sector procurers generally do so. It is not an innovation.

1799. Mr McNarry: I do not think that it is practiced to that extent. From what I can gather, everyone seems in such a hurry, and perhaps lines of communication do not carry through.

1800. Dr Davies: I still hesitate to call it a recommendation for the future. It is something that I would continue to encourage.

1801. Mr McNarry: We might consider it as a recommendation.

1802. Dr Davies: Of course.

1803. Mr McNarry: Given the banking pressures that are being felt by everyone today, do you see evidence that SMEs are experiencing difficulties with their banks as regards credit facilities? Might that interfere with their ability to tender for and fulfil a contract?

1804. Dr Davies: I have read about that in the 'Financial Times' and heard about it from friends and colleagues, but I could not give you specific examples at the moment. I imagine that it is an issue.

1805. Mr McNarry: If we are both imagining the same thing; are there any easement practices that the Government might help with as an enabling process in those circumstances?

1806. Dr Davies: A proposal was made in the city of Birmingham some months ago that the council set up a Bank of Birmingham. When I handed over to my successor, work was still ongoing on that topic, and I do not know if it has got anywhere.

1807. The question is for finance people rather than procurement people. I understand that SMEs are having difficulties with banks. Cash flow is essential to small businesses, whether they have work or are tendering for it. Therefore, I think that the answers lie with the finance people rather than with my profession.

1808. Mr McNarry: Some companies in my constituency are experiencing cash flow problems, some of which are caused by the inability of the Government to pay them on time. From the procurement position, two things are happening; one is that there is a reluctance to tender, because the company may not be able to finance the work even though it has had a perfect record in the past; or the greater risk is that the company submits a tender and is successful, and the squeeze is put on it through the financial pressures that inhibit delivery.

1809. Another aspect is that gossip is very cheap in a small place such as Northern Ireland. I have no evidence for this, but I suspect that people in procurement positions are picking up on that gossip, and that that can therefore endanger the prospects of a company getting work. That

is the greater picture, and it is why I wonder whether procurement people could have a wider look and understanding of the difficulties. There is value in knowing whether something is being tendered for and is not being delivered because of money. Money should not be an obstacle.

1810. Dr Davies: The straightforward response to your first point about payment is that public-sector organisations should pay promptly. Every contract contains terms about when payment will be made, and those should be adhered to. In the current economic situation, public-sector procurement people have been asked to include different payment terms. In Birmingham, I was asked recently to include payment terms of 14 days or even seven days, rather than 28 days. It is possible to do that.

1811. Mr McNarry: We are trying to specify a period of 10 days.

1812. Dr Davies: Ten days is a tough target for the payment systems to meet, but it is doable. That is the sort of thing that helps SMEs; they can ask for that timescale, and public-sector buyers can organise it with public-sector payment colleagues. It is feasible. However, it can be difficult; the systems have to be very slick. It would not be a problem as long as it is part of the original contractual agreement, or it can be negotiated post hoc, normally in exchange for something, otherwise our Treasury colleagues may become concerned that we are offering public money for nothing.

1813. Your point about gossip is quite different. That is one area where the example of the three arrows representing the three aspects of the procurement process point in different directions. If, as a procurement professional in the public-sector, I were to award a significant contract to a company that went under shortly afterwards, I would be called before a Committee like this one, to be told off pretty severely.

Obviously, one would not want to do that, because it wastes taxpayers' money; but equally, one does not want to put companies out of business by refusing to consider them. It is a difficult balancing act, and I do not want to second-guess my colleagues in Northern Ireland who have that difficult job. I have done it elsewhere, and I can assure you that members of CIPS do their best to think of all the possible ways of dealing with a problem. But it is not an easy job.

1814. Mr O'Loan: I want to ask about the connections between central and local government. As you know, local government here is different; it has fewer functions and, it will be changing significantly in the immediate future. What is the relationship between central and local government in England with respect to public procurement policy, and what can you say about efficiencies with respect to collaboration?

1815. Dr Davies: How long have you got?

1816. Mr O'Loan: Not very long; we are looking for the short answer.

1817. Dr Davies: First, in England, with which I am familiar, central and local government have different political leaderships. Many local authorities are conservative controlled, and central government is Labour controlled, so central government is limited in the number of edicts that it can send out. I am sure that you are familiar with that situation here.

1818. In central government, the OGC sets policy, and Government Departments follow it. Setting policy is a consultative process; it is not a fiat from the top. However, once policy has been set, Government Departments are expected to follow it, and the OGC, with the assistance of others, produces procurement capacity reviews of all Government Departments that, basically, say how they are doing. The feedback from those reviews is taken very seriously.

1819. Mr O'Loan: How does that affect local government?

1820. Dr Davies: It does not affect local government. I am not saying that local government sets its own rules, but there is legislation about what local government can and cannot do. In addition, there have been a number of reports, such as the Byatt report, which is historical and has been completely implemented in most authorities. Local government sets its own requirements within the overall framework of local government legislation.

1821. Each authority takes a slightly different view on procurement, but, again, we must not forget the EU public procurement regulations, which sit over everything. Although the thresholds for public advertising are different for local and central government, the EU rules apply to everybody. For example, one will find different views on how authorities write specifications for environmentally-friendly procurement.

1822. In addition, some authorities club together. For example, Mid Sussex District Council shares its procurement lead with a neighbouring district authority. Similarly, Worthing Borough Council and Adur District Council share procurement and other functions.

1823. Mr McLaughlin: In your submission, you draw attention to the Government's 'CompeteFor' website, which matches companies with supply opportunities connected with the London Olympics. You also referred to the Sellafeld Ltd approach to a supplier ombudsman, which is an interesting idea. I presume that Sellafeld Ltd is a private-sector company?

1824. Dr Davies: Sellafeld Ltd?

1825. Mr McLaughlin: In your submission, under the heading "Collaboration", you describe its role. After a review by the company on rationalising its suppliers, presumably in its own interests as perhaps there were a number of suppliers with specialist skills that the company wanted to retain, it seems to have taken the initiative in encouraging those people to collaborate to be able to compete.

1826. I am interested in that idea. As I read it, that was a private-sector initiative, but is there any reason why the public sector could not follow through on that? For example, the CPD could take the same approach to proactively encourage SMEs to compete.

1827. Dr Davies: Do you mean to collaborate in competition?

1828. Mr McLaughlin: Absolutely.

1829. Dr Davies: It is always open to procuring organisations to present a procurement opportunity in a way that suits the local market. I must admit, my experience has been mostly of going to a first-tier supplier and encouraging it to engage with SMEs. However, collaboration between SMEs to bid for something as a consortium is perfectly feasible.

1830. Mr McLaughlin: More than 90% of our economy consists of companies that fall within the definition of SMEs. That is a very significant sector, and I think that that strongly supports the argument for a regional strategy which takes that into account. That may not apply to other regions in the European Union. Is there anything in EU legislation, or any other legislation, to prevent procurement authorities here from appointing such a person?

1831. Dr Davies: You have made an important point about the number of SMEs. As part of my homework, I have been reading 'Accelerating the SME economic engine: through transparent, simple and strategic procurement'. It was a report that was made to Westminster in November

2008, and I assume that you have seen it. Apparently, across the UK, it is the norm that well over 90% of companies are SMEs. I agree that every region has its own unique issues, but I am not sure that is a unique issue.

1832. You may need legal advice as to whether someone could be appointed. If I were running a tender, and I got to know the market, I might decide that big company A could do this, or, that little companies C, D and E could get together and do it. I might write the invitation to tender in such a way that made that opinion evident. Therefore, if companies C, D and E wished to talk to each other, there would be an understanding that a consortium bid would be welcome. It could be written into an invitation to tender that one is interested in consortia bids.

1833. Mr McLaughlin: I think that we have taken that step. The question is whether that is effectively encouraging SMEs to collaborate. Experience has created a considerable chill factor, and SMEs see it as a waste of time because the system is biased and very difficult to satisfy. Declan addressed that problem in his question earlier.

1834. We have a situation in which, as a result of difficulties in the past, there may be missed opportunities for local companies. I think that the system is prepared to address those difficulties if we can find the ways and means. If we have to follow that up with research and legal advice, that is what we will do. You are not in a position, through your own experience or expertise, to advise the Committee on this?

1835. Dr Davies: No; the Committee needs legal advice on whether those ways and means would form some kind of state aid, but I am not an expert on that.

1836. Mr McLaughlin: Your submission also addresses the question of publicising tender opportunities that fall under the EU thresholds. The Committee is particularly interested in that issue. Your submission states that public-sector organisations "should", which could be translated as "must", publish notices of such opportunities. What is the requirement on public bodies to publicise such opportunities?

1837. Dr Davies: That depends on the public body. Below the EU thresholds, each public body has its own rules. I can tell the Committee about Birmingham City Council's rules, but I am no longer in a position to outline the rules that apply in Brighton.

1838. Mr McLaughlin: I have just returned from Brighton, but I did not pick up any of that kind of information.

1839. Dr Davies: The information can be found on the website. Most large local authorities display the rules on their websites. An SME, therefore, knows that contracts over £10,000, £20,000 or £50,000 are supposed to be there. However, in most local authorities, that level of procurement is dispersed throughout the organisation, and it is difficult to get everyone to follow the rules. Every local authority has rules and, to a significant extent, follows them.

1840. Mr McLaughlin: The position here is that a legislative Assembly presides over the economy and, I suppose, a constituency that equates to some of the local authorities that you described. We are trying to determine, through our investigations, whether we have explored all the available opportunities of flexibility and wriggle room.

1841. Dr Davies: The Assembly's constituency is a bit larger than the local authorities that I described, even Birmingham.

1842. Mr McLaughlin: Our population is just over £1.5 million.

1843. I want to pursue the issue of flexibility: is there a case for splitting the larger contracts, or framework approach, into smaller lots to ensure that they remain below the European tendering thresholds?

1844. Dr Davies: To do that deliberately, in the way in which you describe, would be in contravention of the rules. I advise against that, because it would simply lead to litigation.

1845. At times, when one considers the three drivers for public procurement, one might feel that one will get better value for money by splitting a contract in two: for example, separating grounds maintenance from tree work may allow for a better arrangement and one might benefit from better expertise. If one were to take that decision, and both contracts fell below the EU threshold, that would be fair enough. However, if one were to decide to split a contract specifically in order to ensure that the two resultant contracts would fall below the EU threshold, then that would lead to a great deal of litigation and unpleasantness, so I recommend not doing that.

1846. Mr McLaughlin: I appreciate the dangers that you describe in proceeding on the basis of attempting to disaggregate or dismantle existing frameworks. However, if we were to adopt an approach of setting out a suite of contracts that would deliver the same end product, would we face the same jeopardy? Does European, or any other, legislation require us to take the framework approach?

1847. Dr Davies: Legislation does not require you to take the framework approach, but please ask a legal adviser to second-guess this piece of evidence. My understanding is that you do not have to take a framework approach. However, in considering how to undertake procurement throughout the year, or over a series of years, you must bear in mind the total amount that you will spend in a particular area of endeavour.

1848. In Birmingham, for example, millions of pounds worth of grounds maintenance work was required. We did not want it all to be taken forward in one contract, so the tendering approach resulted in several bidders winning aspects of the work. However, because the total value of the grounds maintenance work was well over the EU threshold, we were obliged, and were happy, to follow the full EU route. In order to stay on the right side of the law, it is essential that one considers all of the work in an area over the lifetime of a contract. That does not mean that there has to be one big contract. There could be many small contracts, but they would have to be advertised in the Official Journal of the European Union (OJEU).

1849. Mr McLaughlin: Is there a threshold under which there is no requirement to advertise in the European journal? I wonder how practical that is. My information is that the threshold is €130,000, which, as regards public work, is quite a small amount of money. Are you aware of the detail? Is that an accurate sum?

1850. Dr Davies: I will have to check. The threshold that I recall is £139,000, but it is much bigger for works.

1851. Mr McLaughlin: It is still small.

1852. Dr Davies: It is of that order. It is much bigger for works, so the threshold for goods and services is, I think, about £139,000. That is the local authority threshold, but the central government threshold is lower.

1853. Mr McLaughlin: My understanding is that the local government threshold is €200,000, which is not far away from what you are suggesting.

1854. Dr Davies: Yes, it is set every two years, on 1 January.

1855. Mr McLaughlin: We also understand that European procurement legislation permits a 20% local placement allowance, which means that 20% of any contract can be exempt from the European tendering process. In effect, it is ring-fenced for local expenditure. Do you have any experience or knowledge of that?

1856. Dr Davies: No. I am sorry.

1857. Mr McLaughlin: That indicates that you are not aware of that practice being applied in England, for example?

1858. Dr Davies: No, I am not. If I may, I will leave that issue for another witness.

1859. Mr McLaughlin: That is fine; I am just exploring your own experience. You have been very helpful to the Committee. I am finished, but I would make a particular note of the issues. There is the idea of having an ombudsman whose job description would be to encourage the SMEs to cluster and effectively position themselves to win contracts. That does not necessarily mean the second tier, but they could help one another if they developed sufficient critical mass.

1860. We have been told that the matter of the 20% local placement is common practice across Europe, but we do not seem to be using it. I am concerned that the orthodoxy is that members of the European Union must advertise work throughout the wider European community. Sometimes, I think that that disadvantages local indigenous enterprises.

1861. Mr McQuillan: Your submission states that the 'supply2.gov' website should be used more frequently, and should speed up the process and make it simpler. Is that not happening already?

1862. Dr Davies: The 'supply2.gov' website exists, but it is up to public-sector organisations, local authorities, the NHS and small businesses to use it. My recent experiences suggest that it is not being used as much as it could be by public-sector organisations. I know that the procurement directorate here has a portal; I do not whether that has been set up yet, but it is certainly on the horizon. It may be that that is an alternative. I also understand that there is also an inter-Ireland trade portal, and that will be a useful alternative, but supply2.gov is useful and could be used more.

1863. Mr McQuillan: In your submission, you state that:

"BERR have recently launched a 'Solutions for Business' which is a streamlined portfolio of publicly-funded business support products".

1864. Will you explain more about 'Solutions for Business'? Is there anything similar here?

1865. Dr Davies: I think that it is best if I say that I do not know whether there are similar initiatives here.

1866. Mr McQuillan: What approaches have been taken in England to maximise the social value from public procurement? To what extent have social clauses been used to effectively enforce procurement?

1867. Dr Davies: They have been used quite a lot, but I am aware of issues concerning them. I was in receipt of lobbying from companies in the west Midlands, which told me that the requirement upon them to engage long-term unemployed people or set up apprenticeships was

leading them to lose good, experienced staff. Therefore it was a double-edged sword. Following that lobbying, I am unsure about the usefulness of those clauses, because it seems as though companies are not doing much good if they are taking a person who has been long-term unemployed off the unemployment register and, in exchange, taking someone who is long-term employed out of employment. However, the social clauses are there.

1868. I suspect that the Committee will be particularly interested to know that SMEs are the organisations which dislike social clauses the most. They talk about bureaucracy and red tape, but when you sit down with them and analyse what they mean, they will tell you that social clauses, which are closest to the hearts of politicians and the people at the top of the organisation, are the red tape. Many SMEs are more used to dealing with the private sector and with not having to observe social clauses, such as equal opportunity and environmental clauses, for instance. It is an interesting dilemma.

1869. Mr McQuillan: Is there any training available to help small businesses come to terms with that? Social clauses are important, perhaps more so here than on the mainland.

1870. Dr Davies: Training is useful. The report, 'Accelerating the SME economic engine: through transparent, simple and strategic procurement', which was published in November 2008, found that SMEs were unwilling to be trained and unwilling to pay £49 for an electronic course that the OGC made available. SMEs did not think that it was worth the money or the time. If we can find ways of encouraging them to learn about public-sector procurement, there will be some hope of bridging the gap.

1871. The misunderstandings are not all on one side. It is not only a case of the public-sector procurement people not understanding the SMEs; SMEs do not always understand the three-way push of public-sector procurement and the need for regulatory, transparency and public-policy rules, though I am sure that some of them do. Training, or, at the very least, conversation, can help with that.

1872. The Chairperson: Adrian said that social clauses are important here. I accept your comments about the hesitancy of some SMEs, because if they employ somebody who has been long-term unemployed, they are, perhaps, making someone else unemployed. However, there are pockets of disadvantage and need, particularly in the social-economy sector, and those areas could benefit more from social clauses. Local people who experience disadvantage and need could be helped, perhaps through employment opportunities, if social clauses were included in procurement practice. I believe that Adrian has highlighted an important issue.

1873. Mr McNarry: This evidence session has been very useful and extremely helpful. I will read with interest the exchange between Dr Davies and Adrian when the Hansard report is published, because the issues raised are crucial locally. Does the Committee have a list of the Northern Ireland members of CIPS?

1874. Dr Davies: May I take that question with me? I am sure that such a list can be created: whether I can pass it to the Committee without violating data protection laws is another matter.

1875. Mr McNarry: That is fine. Hopefully, we can twist your arm because you are here on behalf of the institute, and I like to know who I am talking to and who they represent. It would be helpful to know how many people from Northern Ireland belong to the institute for which you are speaking.

1876. Dr Davies: That is fair comment. At the very least, I can find out how many members we have in Northern Ireland. I can —

1877. Mr McNarry: I would like to know not just the number but who they are.

1878. Dr Davies: You want names.

1879. Mr O'Loan: Is the institute's membership made up of individuals or does it include organisations?

1880. Dr Davies: They are individuals, and they must pass some pretty significant exams to obtain full membership. In Northern Ireland, we have a lot of members from the public and private sectors and, I believe, even some in the voluntary sector. In past years, it was alleged that most of our members were drawn from the private sector. However, recently, we have made significant inroads in attracting members from the public sector. Indeed, the OGC is keen that all key positions should be held by members of CIPS, which denotes a certain level of expertise and competence.

1881. Mr McNarry: I am not challenging the assertion that the institute has 50,000 members in 150 countries.

1882. Dr Davies: You are asking how many there are in Northern Ireland.

1883. Mr McNarry: Yes, and who they are. There is a genuine reason for knowing this, which is to see — notwithstanding what you have been doing today — whether contact with one or some of those members might be useful in the Committee's daily work.

1884. Dr Davies: We have a number of members who work in CPD, as one would expect.

1885. Mr McNarry: We are quite used to spooks and all sorts of people in Northern Ireland, but I am told that we are moving on.

1886. Mr McLaughlin: Some of us are.[Laughter.]

1887. The Chairperson: I have another question about the social and economic benefits of public procurement practice. Listening to witnesses to the inquiry and other people outside the inquiry, it almost seems like the focus is on the value-for-money element of procurement and not on the wider social and economic benefits to the local community. What is your view on that?

1888. Dr Davies: Every public-sector organisation has to take its own strategic decisions on that. My profession's job is to inform politicians about the choices, what is legal and not legal, and to set out the financial implications of the various choices. The choice made is based on a political decision.

1889. It is crucial that choices are made at the right point. If a choice is made at the point of specification, it is legal. I have dealt with contracts involving very strong environmental considerations at the point of writing the specification.

Similarly, social specifications can be made at that point. One can have a contract to deliver certain social outcomes; for instance, Sure Start would not have been legally feasible otherwise. It is always possible to put things into the specification.

1890. However, we must be careful not to discriminate across Europe; that is why the long-term unemployed clause comes in. One can write into a specification that the long-term unemployed should be taken on. However, if one says that one wants the long-term unemployed of east Brighton to be taken on, then there would be trouble. When one sets up a project in a place and

talks about the long-term unemployed, they do tend to come from that place; they rarely come from elsewhere. However, there is the fundamental principle of non-discrimination.

1891. It is a matter of us, as a profession, setting out the choices for you, as politicians, and then doing what you ask of us, but pointing you in the direction of the legal advisers as to what is and is not going to lead to litigation. Litigation is very expensive: as a profession, we seek to avoid it where we can, and I am sure that politicians do likewise.

1892. The Chairperson: Thank you, for your presentation. I am sure that Members will agree that it was very thorough.

1893. Dr Davies: Thank you.

14 October 2009

Members present for all or part of the proceedings:

Ms Jennifer McCann (Chairperson)
Mr Simon Hamilton
Mr Fra McCann
Mr Mitchel McLaughlin
Mr Declan O'Loan
Ms Dawn Purvis

Witnesses:

Mr Derek
Alcorn
Ms Anne
Graham Social Economy Network
Ms Marie
Marin
Mr John
McMullan
Sir Nigel
Hamilton Bryson Charitable Group
Mr Brian
McGinn

1894. The Chairperson (Ms J McCann): I welcome Anne Graham, the director of the Social Economy Network; Derek Alcorn, the chief executive of Citizens Advice, and Marie Marin, the director of Employers For Childcare. I remind everyone that this evidence session is being reported by Hansard. Please make a short presentation, after which members will ask questions.

1895. Ms Anne Graham (Social Economy Network): We intend to focus our presentation on three aspects of the Committee's inquiry: the extent to which Government contracts provide for social clauses; the scope for increasing the capacity of social enterprises to compete for public contracts; and the barriers faced by social enterprises in public procurement processes and procedures. I will provide an overview of the issues that we wish to highlight. Marie and Derek will draw on their experiences to illustrate how those issues impact on the social economy sector.

1896. Many social economy enterprises are experienced in delivering high-quality public services through service level agreements and contracts with Government Departments, their second steps agencies and local councils. We believe that the introduction of the competitive tendering process for such services puts social enterprises at a disadvantage and jeopardises the quality of service provision, because the people who are responsible for drawing up tender specifications often have little or no understanding of what is required beyond the specified expected outputs and monetary aspects of the service or of social enterprises as potential suppliers. The result of that are tender specifications that take no account of expected outcomes, social value or community benefits. If those aspects are not included in the tender specifications, there is no mechanism for scoring them in the assessment process.

1897. We believe that policy direction is needed to clarify which services should or need to go to competitive tendering. The purchasing method should be proportionate to the services, commodities and works required, and the method, and the determination of the method, of purchasing should be made clear to all parties. The Chartered Institute of Public Finance and Accountancy believes that positive steps to create a market can be taken if commissioners are convinced that using the third sector is the best way to deliver some public services and that social enterprises, or voluntary organisations, are able to deliver added value linked to their particular qualities.

1898. Where it is deemed appropriate to purchase services through the public procurement process, all aspects, impacts, costs and benefits of what is required in respect of service delivery should be considered at the initial stage of the process. Purchasers should consult with stakeholders — interest groups, customers or users — to help them understand what is needed before the tender specifications are drawn up. All costs and benefits should be valued in monetary terms where possible. If doing that is impractical or not cost-effective, then the non-monetary costs and benefits should still be taken into account. The 'Northern Ireland Practical Guide to the Green Book' allows for the consideration of non-monetary impacts, and it impresses the point that they may be crucial to the decisions that are being made. In practice, that does not happen: the emphasis tends to focus narrowly on the specific outputs and monetary aspects of the services required.

1899. Despite the Programme for Government's recognition of the valuable role that public procurement can have in reducing inequalities and promoting social inclusion, social clauses still do not feature in public procurement contracts. The lack of progress in including social clauses is one of the most significant problems facing the development of social enterprises in Northern Ireland. Social enterprises operate in a marketplace that does not recognise or take account of the added value that they create, which puts them at a disadvantage when competing for public sector contracts. According to a Social Economy Scotland briefing:

"The Scottish Government has produced guidance on including social issues in public procurement, including the ability to 'purchase' wider social benefit as part of a procurement. The guidance concludes that it is entirely possible to recognise wider social issues within a procurement process, as long as these are part of the primary purpose of the contract and they are included in the specification."

1900. Pressure on public bodies to secure efficiencies by aggregating contracts discriminates against small businesses, including many social enterprises. Little cognisance is given to the expertise and ability of social enterprises with local knowledge and understanding of needs to best to address those needs in order to deliver services effectively.

1901. It should not always be assumed that larger suppliers offer better value for money. There are many advantages in using smaller enterprises, not least their flexibility and responsiveness to changing needs and their ability to tailor goods and services. In circumstances in which single,

large contracts are the preferred option, commissioners should consider asking contractors to open up a percentage of the contract sum to small businesses for subcontracts and to package it in such a way that small businesses can compete for it. That practice is lawful.

1902. Additional barriers or difficulties faced by social enterprises include the emphasis on financial capacity in the pre-qualification process; the use of the same purchasing method or process for a small contract as would be required for multi-million pound contracts; limited use of special contracts; limited use of reservation of contracts for organisations providing supported employment opportunities to people with a disability where appropriate; and inconsistencies in public procurement practice across councils.

1903. If the goal is, as it should be, to improve and increase the capacity of social enterprises to access the £2 billion public procurement marketplace, it is essential to address the barriers that they face when competing for public contracts. This will be achieved through raising awareness of the social economy sector among public procurement practitioners in central and local government; the inclusion of social clauses in tender specifications as part of the primary purpose of the contract; investment in developing the tendering skills of social enterprises, including the establishment of a public procurement brokerage service for social enterprises; the ongoing collection of data on the number of social enterprises competing for and securing public sector contracts, so that we can see year on year whether the situation is improving; and, to address the inconsistency across councils, a commissioning framework should be developed for adoption by the new councils, as there will be an increased potential for services to be contracted out and an increased opportunity for social enterprises and small and medium-sized enterprises to access that marketplace.

1904. Mr Derek Alcorn (Social Economy Network): Thank you for the opportunity to speak to the Committee. I have brought a full copy of our documentation, which I will not read verbatim but will leave with the Committee Clerk.

1905. I will say a few things in general. Citizens Advice is a very traditional voluntary organisation in many respects, but we have been pushing a social economy model internally as a way of increasing the value and efficiency of what we do. We consider that we are trying to achieve social outcomes through business processes. We have welcomed service level agreements, and so on, from councils. We run about five different contracts from different Government agencies, some of which are based in London, and we set up a trading company to help with that. I see it as a way of trying to modernise the organisation.

1906. The example that I want to give the Committee is our experience of contracting with DETI for money advice between 2006 and 2009. In 2006, DETI advertised a face-to-face tender for money advice, which we were successful in winning. We delivered that service successfully. It was evaluated by KPMG, which was independently commissioned by DETI, and we came out of it very positively. We were awarded a second contract for what is called face-to-face debt advice between 2008 and 2011, and we are delivering that at the moment. In April or May this year, DETI advertised for a telephone tender for debt advice. In the end, the competition came down to us and a private sector company from England called Action for Employment (A4e). The tender was awarded to A4e because of the criteria that DETI had written into the contract.

1907. First, there was no requirement on the successful supplier to have any experience of giving debt advice in the legal jurisdiction of Northern Ireland. Therefore, a company with absolutely no experience of giving debt advice in Northern Ireland, which has a different legal structure, was awarded the contract and is proceeding to deliver it through its Northern Ireland subsidiary A4e Northern Ireland, which also had no previous experience.

1908. It then emerged that A4e was under investigation for fraud by DWP at the time the contract was awarded, and it remains under investigation. Indeed, there are questions in the Assembly about that. The DETI Minister is recorded as saying in the House that the Department has had no discussions with DWP about that and has taken no action on it. Had there been due diligence by the panel or a pre-qualification questionnaire, A4e would not have been awarded the tender.

1909. About three weeks after the tender was awarded, representatives from the company turned up in my office and asked whether we could help it to deliver the contract. We said no and told them that they were the people with £200,000 in their back pocket and that we would take a subcontract from them. I have not heard from them since.

1910. A4e then promptly recruited one of our staff as a senior manager of the contract, which is an issue of displacement. DETI paid for us to recruit and train that person. It then paid for A4e to recruit the same person and will now pay for us to recruit a replacement.

1911. There is also an issue of business design regarding the contract. In the middle of a recession, the tender document estimated that the telephone debt service would receive 35 calls a week, which is hilarious. The advice sector takes more than 1 million telephone calls a year. Therefore, the business design was totally askew. When we asked where they got the figure from — because one can ask questions in the run up to the submission date — they said that they based it on two organisations in England, neither of which is based here or advertises here.

1912. Understandably, some people can be helped over the phone, but others who have received a big wad of papers or a letter telling them that their homes are about to be repossessed will need to talk to someone in person. The telephone tender was deliberately designed to separate those two services. Therefore, the business design missed the opportunity of joined-up Government and integrated services.

1913. We believe that business design, the lack of due diligence, changing the commissioning criteria from one tender to the other, audit issues, and the separation of telephone and face-to-face advice prevented DETI from making best use of the public money already being expended. It also failed to optimise the economies of scale and synergies with existing providers by opening up two separate cost centres in Northern Ireland. I mentioned the issue of displacement earlier.

1914. We also have concerns about the panel's marking system. I will not go into those concerns now, but I have detailed them in our document. On some occasions, we got negative comments for allegedly failing to provide information that we had provided. On other occasions, we got negative comments for not providing information that was not asked for. The panel also made comments that were contradicted in other parts of the marking sheet.

1915. In conclusion, because of that and a more recent experience with DETI, against which we have taken out an injunction, we are left without much confidence in the system. Suppliers are entitled to expect Government Departments to exercise due diligence and consistency in their approach to commissioning from one exercise to the next. They are also entitled to expect that panel members are competent in the area for which they are commissioning a service, that they have been trained in commissioning, and that the marks and accompanying remarks should be consistent.

1916. To sum up, we make seven recommendations. There should be a pre-qualification questionnaire and the right of appeal. Panel members should carry out a debriefing session within a pre-determined time, because we are still trying to get a debrief on the telephone tender. CPD should adhere to the 12 procurement principles listed in its website. Training in the commissioning process should be mandatory for all panel members and should be a requirement

for membership of a panel. Finally, the issue of CPD commissioning organisations from outside Northern Ireland that have absolutely no experience in Northern Ireland or in the legal framework of Northern Ireland should be taken forward for much further discussion.

1917. The Chairperson: Marie, do you wish to add anything?

1918. Ms Marie Marin (Social Economy Network): I wish to give an example of the experience of Employers for Childcare. Our organisation was developed from a community project 10 years ago. Our aim is to make it easier for parents with dependent children to be able to get into work and stay at work in Northern Ireland. We address childcare as a labour market issue as well as an economic issue. We strive to put childcare on the boardroom agenda and ensure that employers recognise that it should also be their agenda.

1919. Our organisation comprises two separate companies; a campaigning charity and a trading company. One hundred per cent of the profit from the trading company is ploughed into charitable activities to support working parents throughout Northern Ireland. We have a range of services including a free-phone helpline and community outreach. The charitable activities include services that are funded by the Government in England, such as the childcare information service. That is an enormous operation, and it operates throughout the whole of Great Britain. However, there is no equivalent in Northern Ireland, and, therefore, an essential service that helps parents to contribute to Northern Ireland's local economy is provided by a local charity.

1920. I will give members an idea of the scale of that service. We received £2 million over six years from European funds and from the Department for Employment and Learning (DEL). In the past 12 months alone, we helped employers and parents in Northern Ireland to save £4 million. That represents a substantial economic benefit. The social enterprise is the trading company. It has 40 large private sector competitors, all of which are based in England.

1921. There are detailed and specific differences in childcare between Northern Ireland and the rest of the UK. I assert that no English company is interested in knowing about those differences. Therefore, no English company is suitably qualified, or has enough experience, to provide a service that takes those differences into account.

1922. I will relate our experiences with a local university that purports to support the social economy. When it went to tender for services, we had to apply on a level playing field. We were asked to deliver a presentation on what made us different from the competition, so we based our presentation on the fact that we are the only social enterprise group in the UK and the only one in Northern Ireland. We gave details about what we put back into the community and about the work experience that we provide for the university's students, but we were not even shortlisted. We did not get the contract, which was given to an English company with no experience of Northern Ireland.

1923. Although we won a contract with the Health Service in Northern Ireland, there was a great deal of confusion as to whether the contract was for one hospital trust or another. Also, councils do not act collectively and are able to make decisions on a whim. Even though we had been working with them for many years to provide services for their employees who were parents, the councils decided to go with an English company.

1924. In conclusion, we are not asking for favours because we are a local company. We are asking for recognition that there is local experience available that makes a contribution to the local economy and that that should be written into the social clauses. If private sector companies can demonstrate that they have local experience, that is fair enough; but the decision to use

their services must be weighted. That has to be the case, not because we happen to be here, but because we are delivering an effective service for local people.

1925. The Chairperson: Thank you. That was a very good presentation. I invite members to ask questions.

1926. Ms Purvis: I am concerned about some of the issues that have been raised; particularly those raised by Derek Alcorn. The Committee must consider how to take some of those issues forward.

1927. I would like to start with Anne Graham's paper, if I may. She talked about a public procurement brokerage service. We received some evidence from the Ulster Community Investment Trust (UCIT) on its proposal for a brokerage service. How do you see a brokerage service working in the interests of the social economy sector?

1928. Ms Graham: On 13 May 2009, UCIT made a proposal to the Committee for Finance and Personnel for a brokerage service. We are working with UCIT, the School for Social Entrepreneurs in Ireland and the Charity Bank to explore the development of a brokerage service that could build the capacity of social enterprises so that they are assisted through the process and can secure successful contracts.

1929. Ms Purvis: Would such a brokerage service focus on the ability of social economy enterprises to secure public contracts for themselves? Another aspect of such a brokerage service might allow social economy enterprises to work in partnership with larger contractors to deliver, for instance, the social clause aspects of any future procurement contracts.

1930. Ms Graham: We are in the early stages of discussions about how the initiative would work. Clearly, the goal is for social enterprises to secure public contracts, but not just for the social aspects of such contracts. There is potential for social enterprises to secure subcontracts from larger contractors.

1931. The door is wide open with regard to the potential for social enterprises. It is about building their capacity to secure large contracts, where possible, and subcontracts.

1932. Ms Purvis: There has been an aversion to including social clauses in public procurement contracts. Hopefully, the value that such clauses bring will be drawn out through our inquiry. If that does happen, will more emphasis be placed on social economy enterprises to deliver social clauses through contracts? Will the private sector seek to build relationships with, for instance, community and voluntary organisations to deliver social clauses in contracts? Alternatively, will it be an opportunity for social economy enterprises and the community and voluntary sector to bid for contracts in their own right?

1933. Ms Graham: Social clauses should not be seen as being separate from any main public procurement contract. As stated in the presentation, social clauses should be built in at the outset, and there should be an equal focus on economic and social outcomes. We are not looking for preferential treatment for social enterprises with regard to public procurement; we are looking for a level playing field. If social clauses are included at the outset, social enterprises will be able to compete against private sector organisations, enter into partnerships with them, or come together with other social enterprises and voluntary organisations to make the best possible bids for contracts.

1934. The Chairperson: As part of the inquiry so far, a lot of our talk about social clauses has centred round the benefit that they will have for the regeneration of local communities and the employment of local people. Ms Marin touched on local experience and expertise. Should those

be included as part of the social clauses? Social clauses are about not only the regeneration of a local community; they are about looking at the best delivery mechanism that is available for expertise and experience.

1935. Ms Graham: Departments, or councils, who are looking to purchase services should consult with users, clients and organisations with experience of delivering such services, particularly if they have been evaluated and have proved to be effective. Such was the case in the example that Mr Alcorn highlighted. Why ignore that expertise and experience and merely go for something else?

1936. Mr McLaughlin: I am concerned about the significant development that there has been in the social economy sector over the past number of years. Enormous "social capital", as I call it, has been built up. However, we are in a situation in which, in particular, European peace moneys have started to dry up. I prefer to use the expression "social capital" because it seems to command the attention of those who are spending money and who value money more than the idea of social value. There is probably a challenge on the social economy sector to help CPD and the system understand the enormous resource that has been developed here in the past number of years. There is huge experience, and if one took the time to calculate what it would cost to substitute it, one would see that it would cost a fantastic amount of money.

1937. We have to find some way of helping the people who are administrating the capital investment programme to recognise that they have a quite remarkable resource on their doorstep. I think that they need help to do that. We can complain about this, but in the meantime the sector will shrink and it will begin to lose people. For understandable economic reasons, people with such skills will eventually take them to the marketplace. That would be detrimental. Does the network accept that?

1938. The Committee has heard very convincing evidence for the development of social clauses. I lean in that direction, and have done so for some considerable time. However, an opportunity is being missed to educate the system in working with this. I do not think the view that importing, hiring in or aggregating contracts is the best way of delivering value for money stacks up, particularly when one asks a challenging question about social value and social capital. We have to find a way of presenting this issue in those terms. We also have to be critical of CPD for its failure to recognise what is happening elsewhere. It is not as though this is a brand new argument. Other economies are already further down this road.

1939. Having said that, we must take due account of the resistance to change. There is a considerable amount of change, and I think that the system is at times under significant pressure, so there may be a need for the sector to take responsibility for changing the paradigm. I think that it can and should. I will ask a question to develop that. Can you enhance the information you are collecting through the directory to reflect people's experience of the procurement process? Can it include the successes and, particularly, the failures, and the reasons for those?

1940. Ms Marin: Of the tendering?

1941. Mr McLaughlin: Yes.

1942. Ms Graham: You are quite right: the sector does have a responsibility to do an awful lot more. We have been engaging with CPD, although progress has been very slow. We could be a bit more innovative in educating the system about social capital. It is extremely important now, in advance of the establishment of the new councils, for us to begin to engage with those councils. That is a huge opportunity that we do not want to miss.

1943. Furthering and developing the information collected through the directory is something that we could consider. There is little enough intelligence on the social economy sector in Northern Ireland. We have already raised the issue with DETI. To strengthen our case, we need to build on that intelligence, so any initiatives that will pull that information together to strengthen the case will be seen as positive.

1944. Mr McLaughlin: Do the special contract arrangements apply to SMEs as well as SEEs?

1945. Ms Graham: The special contract arrangement that I referred to was the offer-back system, whereby if a bid by a supported business falls only on price, the purchaser can ask the business to resubmit its bid without having to indicate the price submitted by the other competitor. That particular clause is very rarely used.

1946. Mr McLaughlin: I appreciate that. I do not know enough about it, and I will seek more information. In your experience, is it possible to argue for a separate criterion reflecting the social inclusion approach of weighting of the social capital that a particular bid would represent?

1947. Ms Graham: In all honesty, I do not know at this stage. That is something that we could look into.

1948. Mr McLaughlin: Will you reflect on that? The Committee will get some information on how the special contract arrangements are designed to work to see if there is anything that it can do. Thank you very much; I have found that very useful.

1949. Mr Alcorn: We have been told that although Departments may want to include weighting for SEEs, it is very difficult to do so under European procurement rules. We have not gone into it very deeply, but although Ministers recognise that SEEs will put the money back into the enterprise, and not take it out as profit, it is actually very difficult to reflect that in the tender document, because of European procurement rules.

1950. The Chairperson: To be fair, we have had some sessions on that matter, and that does not seem to be the case.

1951. Mr McLaughlin: I agree. We are not convinced that that is the case.

1952. The Chairperson: We have been trying to get to the bottom of that, and it is not the case. That is being used as an argument.

1953. Mr McLaughlin: It is orthodoxy rather than requirement.

1954. Mr Alcorn: The other moot point is that if CPD and officials from several Government Departments are preparing a tender, and the lead Department is, for example, DETI, it requires people aside from those in CPD to have some cognisance of the issues. It is a very moot point in that I assume that the commissioning Department has a big, almost unspoken, influence on the tender, weighting and marking. It is not just a question of educating CPD, it is one of educating Government Departments.

1955. That is what happened to Citizens Advice as regards the telephone contract: we went back to the Department and asked whether we had lost the plot. We assumed that we were on a 20-year project to build up the social infrastructure in Northern Ireland. Possibly, from a Civil Service point of view, it looks good, or is trendy, to have more than one supplier — I do not know. Our assumption was that we were on a long-term project to build up the social

infrastructure — and that was blown away. It is about getting everyone into that perspective; not just CPD.

1956. Mr McLaughlin: CPD is the gatekeeper. We have to try and exert influence where it will have the most effect.

1957. Ms Marin: In our experience, there does not appear to be any resistance to doing that per se, but there is lack of knowledge and consistency across the different organisations that are putting together the bids and tenders. They would be willing to look at that if they were educated about it and were informed about the social capital, as you referred to.

1958. Mr McLaughlin: The main issue to be addressed is that, if one were to approach the matter on the basis of policy, one would immediately run up against European labour and competition laws. The way to address it is through the construction of the contract and inserting the clauses at contract level.

1959. The Chairperson: CPD recently stated that most of the social clauses that it felt would be necessary would be in the construction industry. When CPD is talking about social clauses, it is talking about the employment of long-term unemployed apprentices as part of a contract. We are talking about SEEs, SMEs and more service-delivery based organisations. That indicates the need for an opening of minds to take in the broader issues.

1960. Mr O'Loan: Thank you very much for your presentations, which were very good and very useful. You presented a very good case that I share concerning social value and the wider social benefit.

1961. You said that non-monetary costs and benefits should be taken into account. Can you be more specific about the actual process through which that might be done?

1962. Ms Graham: A number of mechanisms around social auditing, social accounting and social return on investment are in use in the voluntary and social economy sectors. In Northern Ireland, NOW has recently set up a new social enterprise called Gauge. It aims to deliver training on the application of social return on investment, which should assist social enterprises to measure the social impact of their activities in financial terms.

1963. Mr O'Loan: Would that have to be recognised by the commissioners?

1964. Ms Graham: Yes; it has gained recognition in England. In fact, the Cabinet Office has invested in a roll out of the delivery of training on social return on investment with a view to it being accepted or, certainly, taken into account in the public procurement process.

1965. Mr O'Loan: From my experience of the social economy sector, I know that there are many things that it can do very well and can compete on in any marketplace. We are in Bryson House today, and we know about its experience in waste recycling. The Bryson Charitable Group has also won half of the contract for the warm homes scheme across Northern Ireland. Citizens Advice has proved its place in the wider advice network. There is also a lot of work being done in domiciliary health care.

1966. What does the social economy sector do better? Where is it best-placed? You made reference to a phrase in the Scottish guidance about being within the purpose of the contract, which relates to my question. Are there certain contracts that you regard as being better suited to the social economy sector, and could that be written effectively into the purpose of the contract?

1967. Ms Graham: The social economy sector is very diverse, and the business activities in which it is engaged are equally diverse. In Northern Ireland, quite a number of social enterprises are engaged in specific localities, or communities, and deliver, for example, health and social care services in those communities. Similarly, in rural communities, there are examples of social enterprises addressing some of the social issues faced by those communities. However, it is difficult to specify one particular area over another.

1968. Mr Alcorn: I always think that the social economy sector occupies the same space as the Post Office: possibly a bit boring but very trusted and everybody wants one near them. It is an area of the sort in which people come for a service that is essential to them but is not run on a commercial basis — a profit is not being made from them. If a health Minister were to decide that a hospice was needed, he or she would know instinctively that it could not be run by the Civil Service and that the private sector would not generate the range of people in volunteering, the level of donations and so on that the hospice sector generates. That is the space in which the social economy sector sits; it examines some social problems that others do not want to consider.

1969. Through volunteering, and other such leverage mechanisms, the sector can provide much of the face-to-face time that socially vulnerable people require. That is the contribution that it can make. The sector can also make much more hard-headed economic sense if it were to go into the area of economic development, because it can provide labour-intensive services that the private sector would never consider providing. That is particularly relevant in the areas of assisting pensioners and others in their own homes. Indeed, much of the social research that has been undertaken with respect to the provision of care for elderly or disabled people indicates that the informal care provided by neighbours and families far outweighs the formal care provided by social services. That is well established social research.

1970. Mr O'Loan: I was very interested in the example that you provided with respect to the telephone advice contract. Through your analysis of that example, and the recommendations that you have made you have given the Committee much food for thought. If the sector could provide the Committee with other such examples, that would be very telling. Why did you not legally challenge the loss of the contract or challenge it through the ombudsman?

1971. Mr Alcorn: We were stunned by the loss of that contract, and three weeks ago Citizens Advice took out an injunction against DETI on the basis of similar action that that Department took on another money advice contract. We were not sure of the processes, and I am still trying to get a debrief from the panel.

1972. Mr O'Loan: I find that extraordinary.

1973. Mr Alcorn: I fully intend to go through CPD's complaints procedure and take the case to the ombudsman if necessary. The problem was that there was no system for challenging the decision to award the contract to another company, because it was a part B contract. Those contracts are generally very soft on procurement, making it very difficult to challenge them in the court. Furthermore, there is no appeal mechanism in CPD, so we had nowhere to go.

1974. Mr O'Loan: That might, in itself, be grounds for a complaint.

1975. Mr Alcorn: Indeed. As a result of another court case, CPD now does not allow a contract out for one week after it has been awarded. That allows it to ascertain whether a justifiable challenge can be made from any of the other suppliers who bid for the contract. With the other contract, we used that week to bring the matter to our lawyers.

1976. Mr O'Loan: Is the sector a little uncomfortable with the cold wind of competition?

1977. Mr Alcorn: I do not believe that the social economy sector should be awarded all contracts, and I do not believe that there should be no competition. If that were the case, Citizens Advice would not have set up a trading company to bid for contracts. However, we had delivered a contract and had been assessed very positively by an external evaluator. Furthermore, a great deal of hard work and time was involved in carrying out that contract.

1978. Had due diligence been undertaken by the panel, it would have found out that the company that was awarded the contract was under investigation for fraud. Furthermore, DETI changed the commissioning criteria so that a company with absolutely no experience of giving debt advice in Northern Ireland was allowed to take that contract.

1979. Debt advice can become technical when people in debt end up in court and are facing repossessions and Individual Voluntary Arrangements (IVAs). Therefore, I cannot understand what DETI was thinking about when it awarded that contract to a company with no knowledge of those matters and which then proceeded to recruit our staff. I can only think that DETI perhaps wanted another supplier or felt that Citizens Advice had won enough contracts, and I can see that argument. However, contracts cannot be awarded on that basis. They must be awarded on the basis of whether the chosen suppliers provide the best value and the best service to the community. Was it another supplier's turn or was there a need for a diverse range of suppliers for a given contract? I do not know, because I have not been able to speak to officials from the Department.

1980. Mr O'Loan: Perhaps that procurement process and specification were not well managed?

1981. We live in a small, inward-looking world in Northern Ireland, and the idea of opening ourselves up is challenging. We have seen that in the business world, where sometimes companies are forced to partner with others and in that partnership they win business elsewhere. The basic idea of opening ourselves to operators from the South of Ireland and elsewhere is potentially healthy.

1982. You spoke of an incomer poaching one of your members of staff. I am inclined to say that that is the real world and that it happens in the private sector all over the world. To me, that is not really a ground for complaint. There may well be valid justifications for criticism across a whole range of things, but I applaud the basic idea of opening up contracts to others. However, it has to be done on a sound basis.

1983. Mr Alcorn: It takes us back to whether we want a mixed provision in the economy regarding social issues and the social economy from the private and voluntary sector. If someone would state that clearly, it would be fine; but no one has done that, and we made the assumption that we were on a long-term project to build up the social infrastructure. There is a lack of any clear commissioning framework.

1984. The commissioning framework for the new councils now comes into focus as being extremely important, and it requires to be considered carefully. At one of our meetings, a speaker from the DOE said he thought that there was merit in shared services and that the 11 councils could undertake to commission as a single unit, rather than doing it 11 times. I do not know whether that will happen.

1985. However, I have no confidence now in the integrity of CPD's procedures. That has come from the marking comments, the changes in the criteria and the failure to ensure due diligence. If laxity spills into councils' procedures, it could wipe out the voluntary sector, or, people will give contracts to bodies just because they are new and for no other reason. The whole district council commissioning framework after RPA comes into focus as a very important area.

1986. Mr F McCann: Much of what I was going to ask about has been dealt with already. However, I want to ask two questions and make some comments. Mitchell touched on the shrinkage in the social economy within the broader community. That has begun and it poses difficulties.

1987. The value of the social economy sector has never been examined to any significant extent. Many Government Departments look on the sector as an old faithful that will always be there. One morning, they may wake up and find that most of has gone. Only then will they realise the cost of putting it back together.

1988. In most meetings with CPD, we have asked about social clauses and how they are dealt with. Is the Department afraid to push the boat out with respect to how social clauses in contracts are delivered? Are there any Government agencies or councils that stand out in how they promote social clauses in their tenders or contracts?

1989. Ms Marin: As regards the first question, I am not sure. However, as regards the second, our experience is that added value was written into the tender that the Civil Service issued. That specifically allowed organisations that competed for the tender to justify the added value that they were offering. Although it was not called a social clause; in effect, that is what it was. From feedback, I know that that is what swung the tender for us. Other public sector organisations followed suit. It enabled us to show the difference between a local social enterprise here and a private sector company in England. Is that helpful in answering your second question? Anne might be able to answer the first one.

1990. Ms Graham: The evidence suggests that CPD is reluctant to go down that road. I do not know why that is the case. Perhaps it is a fear of further litigation from private companies or just a lack of understanding about the broadness of social clauses and the best and most effective way to include them in tender specifications.

1991. Mr F McCann: I asked the question because several times I have raised the issue in Committee of design and build contracts being stopped here because of a case in Europe. We were told that there are strict guidelines on design and build contracts here and that they cannot go ahead. However, I have heard recently that some housing authorities in England have tested the waters by using design and build contracts. Departments here are putting up serious resistance to moving ahead with design and build contracts, and a substantial sector of the construction industry is being hampered because of that attitude.

1992. Ms Marin: My experience since the mid-2005 and 2006 is that there has been a lack of consistency and a general misunderstanding among not just DFP but different Departments, public sector organisations, and those who write the tenders as to what exactly they are able to include.

1993. You commented earlier on the capital available in the community and voluntary sector. We are very aware that given the depletion of European funding, community and voluntary sector organisations, which are at the grass roots of the community, as Derek said, now have to submit competitive bids for service level agreement tenders, despite the fact that they might not be as well versed in that as their private sector competitors. Therefore, there is an onus on us as a sector to ensure that we are as professional as the private sector companies that are applying for those types of tenders.

1994. Mr F McCann: I do not think that councils and Departments view what has been set up in the broad social economy as a threat. However, I think that they are concerned about the revenue trail that it may leave after European money disappears.

1995. The Chairperson: You said that social economy enterprises on their own may be weak with respect to their ability to bid for contracts. Last year, Capita Group, which I think is located just around the corner from here, told the Committee that it and the Ashton centre, which is a social enterprise in north Belfast, had submitted a joint bid. I know that the profits generated by the social economy go back into regenerating the local community. Would partnering with the private sector dilute your ethos? Do you foresee problems in going down that line in trying to secure Government contracts? If Employers for Childcare were to enter into a partnership with a private childcare firm, would there be any problems?

1996. Ms Marin: It would depend on how each organisation's constitution is written, and what is in their memorandums and articles of association. It would not be possible for Employers for Childcare to do so because of our constitution: one hundred per cent of our profit must go to charitable activities.

1997. It would be an individual matter for the legal constitution of each company.

1998. Mr Alcorn: It is quite possible.

1999. Mr F McCann: I have raised this point previously, and I do not know where it fits in with what Derek has said. I am concerned that major companies seem to have the capacity and wherewithal to apply for tenders, but then subcontract, top-slicing the profit. Is there any evidence that that has taken place?

2000. Mr Alcorn: I think that that is A4e's business model. Looking at its website, one will see that it is a very big enterprise. It is now taking contracts in Europe and Australia. A4e top-slices and subcontracts. It did so in Derry and the decision was reversed. To pick up the point that Declan made; if A4e has to recruit from our organisation, then I do not think that it had the skills to deliver the contract in the first place. It is a chicken-and-egg situation. That is certainly the model that A4e uses.

2001. Mr F McCann: It survives on the 15% or 20% that it takes off the contract.

2002. Mr S Hamilton: The discussion has been very useful. I will pick up on a point that Derek made about local council procurement. Although I understand the point, I am struggling to have any sympathy with it. We have sympathy with the general points about encouraging the social economy; we see the benefit that that has for local companies. However, as a Committee with a scrutiny role over a Department that has a tightening budget and is facing increasingly challenging economic times, we are charged with the whole idea of smarter and cheaper procurement.

2003. RPA, and local government reform in particular, appear to suggest that savings through council amalgamations will be minimal and that the real savings will be made through the centralisation of services; one aspect of which is procurement. The strong argument is that it is daft that 26 councils are not smartly procuring everything from IT to plant and machinery. There are huge economies to be made that will be passed on to ratepayers; the ordinary people in Northern Ireland.

2004. If local government carries out central procurement, and this is seen in central government when contracts are bundled or if they are huge; it is very difficult for small SEEs to get involved. Surely, there is still scope within that type of procurement for SEEs to become involved. Is there scope, and if so, how could it be broadened? Could it be done through some of the measures that you have mentioned; for instance, contracts including certain clauses? Is that the way to ensure that, even if the model of procurement is changing and getting bigger, there is still scope for the social economy to benefit?

2005. Mr Alcorn: My point about the procurement process for councils is that, whether there is one procurement exercise or 11, the process has to have integrity and people have to exercise due diligence. As far as we are concerned, all of those elements are missing at the moment.

2006. The broader point is that we have spent 35 years building up the infrastructure of Citizens Advice. We give advice free at the point of use. In Hull, we have lost £600,000 to A4e on a legal service contract. There is a philosophical point also. Should that type of service be delivered by a company with a private sector profit motive or should it be delivered on a social-economy, social-value basis? There are philosophical differences.

2007. I emphasised the commissioning framework for councils because if that framework is adopted and the process does not have integrity, we will disappear; and we have done a lot of work to get ourselves ready. I gave the example of an occasion when we delivered a contract that was very positively and independently evaluated; but for reasons unknown to us we did not get another contract. We have done a lot of work to get ourselves ready for contracts, but the danger is that the whole voluntary sector infrastructure, or large parts of it, could disappear if procurement is taken forward in the wrong way. The private sector may do the job for a while and then disappear. That is the conundrum. The framework must have pre-qualification questionnaires, integrity and proper training, and it must be very clear about what it is trying to buy.

2008. Mr Hamilton: Are you highlighting a problem with process rather than with the principle of sharing procurement across councils? Perhaps you can see it from our perspective; it is very difficult for us to say to the ordinary citizen that we have to increase their rates by a certain percentage in order to procure 11 different contracts, when we could have made a substantial saving by procuring one. That is the conundrum. I understand your point, but there is a flipside, in that we could procure in a better and more efficient way, not for Government, but for the people who pay for government.

2009. Mr Alcorn: We do not have a problem with having one procurement exercise across Northern Ireland. We feel that the process needs to be looked at.

2010. Mr Hamilton: That is fine.

2011. Mr Alcorn: The level of understanding of such things among staff of district councils is minimal. Council staff do not think in business terms. Even the service level agreements that we have with councils vary widely, and sometimes we are asked for examples from other councils. Council officers do not necessarily have business heads.

2012. Mr Hamilton: That is an argument for having one procurement exercise with a sound process and including those sorts of principles. I do not think there is a critical mass across 26 councils, or 11, to do what you are talking about in the right and proper way.

2013. Mr Alcorn: All I said was that a DOE official posed that possibility, and it was of interest to us. However, the whole commissioning framework is a matter for the Assembly and is extremely important for councils.

2014. Mr Hamilton: Thank you; that was useful.

2015. The Chairperson: That concludes the questions. Thank you for your presentation: you have given us a lot to think about. Hopefully, some of you may attend the conference next week; I look forward to seeing you there.

2016. I now welcome Sir Nigel Hamilton, the chairman of the Bryson Charitable Group, John McMullan, the chief executive, and Brian McGinn, the director of finance and corporate services. You are all very welcome. I thank John and his staff, and in particular Chris Anderson, for hosting the Committee today and for making the necessary arrangements. I invite you to make some opening remarks and give a short presentation, and then members will ask questions.

2017. Sir Nigel Hamilton (Bryson Charitable Group): Thank you very much indeed. It is a great pleasure for us in Bryson to welcome you, the members and officials today. I understand that this is the third time that the Committee has met outside of the Assembly but the first time it has met in the premises of a voluntary sector organisation; so we are delighted that you chose to come to Bryson House. The group is quite a famous organisation with an interesting history, which the chief executive will speak more about over lunch. May I also say that it is a fascinating flipside for me, having spent so much of my previous incarnation encouraging devolution, to see democratic accountability in action. I commend you for coming here to take evidence.

2018. Mr S Hamilton: Hopefully, you will be able to say that at the end of the session, and when you have seen the outcome.[Laughter.]

2019. Sir Nigel Hamilton: It is fascinating to see it happening. The voluntary sector has been a whole new experience for me.

2020. Mr McLaughlin: Hopefully, we will see it at some stage, too.[Laughter.]

2021. Sir Nigel Hamilton: I want to make a few general points before I hand over to my colleagues. The Bryson Charitable Group has existed for 103 years. The reason that we are delighted to give evidence is because, during the previous financial year, we were able to report that we employ more than 600 staff. That number is now 625. Last year, we had a turnover of over £20 million. In two years' time, turnover will be £30 million. The most impressive part is that 89% of our expenditure comes as a result of procurement with other bodies — third-sector procurement. We believe that we can contribute to that in our four areas of work.

2022. On Bryson Recycling, we have a contract with Arc21, which represents 11 councils, and I was interested in the comments that were made a few moments ago. On energy, we have procurement contracts with DSD through the Housing Executive. On social care, we have contracts with a number of healthcare trusts. On training, we have contracts with DEL. Therefore, we come to the table with experience that we believe will be of interest and value to the Committee.

2023. We also regard ourselves as a leading social enterprise. The organisation puts 95p in every pound directly into programme and service delivery. Our business model is very much one of contracts and service delivery. We believe that we bring to the table that social value that you mentioned earlier, as well as considerable reinvestment back into the charitable group of any profits that our trading organisations make. We are happy to develop that further.

2024. I wanted to make those introductory comments. John McMullan, the chief executive, and Brian McGinn, the director of corporate services, have much more direct experience of the procurement exercise. Therefore, I shall hand over to them.

2025. Mr John McMullan (Bryson Charitable Group): We have provided the Committee with a copy of our presentation. I believe that the Committee Clerk has a copy as well. I will push through the presentation because I am conscious of time. It is important that members are able to ask questions.

2026. I will begin my evidence by echoing our chairman's welcome to the Committee. As he said, the Committee's willingness to meet offsite and hear evidence is a clear signal of members' interest and intention to improve public procurement and maximise the benefits to the economy, the taxpayer and Northern Ireland society in general.

2027. Bryson, like other organisations, wants to draw the Committee's attention to the importance of social enterprise to the local economy and the significant potential for it to provide greater value for money and, indeed, best value in the delivery of a broad range of public services.

2028. It is frequently assumed that social enterprise is a recent phenomenon, which is only now coming to Government's attention. That is far from the case. Enterprise with a social purpose or objectives has been around longer than Bryson, which was founded, as the chairman said, in 1906. Much of what we now consider to be commonplace in society — hospitals, schools, a many other institutions — were developed from enterprising social action.

2029. For example, in Belfast, the delivery of clean drinking water to the city was a result of Belfast Charitable Society raising public funds for its installation. Volunteerism and, indeed, enterprising volunteerism has been at the heart of social change on the island, and throughout these islands, for hundreds of years.

2030. If you look at Bryson's pedigree during the past 100 years, you will see that it is littered with enterprise that is designed to support and encourage Government to evolve policy and service provision that best meets the needs of society, particularly for people who suffer the greatest levels of deprivation.

2031. For example, during the 1920s and 1930s, Bryson, using donated funds, built model homes in Belfast in order to demonstrate to the Belfast Corporation, which was then responsible for social housing provision, what quality housing should have: electric lighting; hot running water; inside toilets; and front and back gardens in order to encourage people to grow vegetables, which are all commonplace in modern housing stock.

2032. Those homes were rented to tenants, with rents being set based on tenants' ability to pay. That was a modern concept, which was well ahead of its time. The rent revenues contributed to the upkeep of those properties, with profits funding the charity's work. That is social enterprise.

2033. Bryson's rich heritage is littered with similar examples. In the 1930s, it piloted the development of the poor man's lawyer scheme, a precursor to free legal aid and advice; in the 1940s, it developed and privately funded the citizens advice bureau network in Northern Ireland. It was good to have Derek Alcorn here; the beginnings of his organisation are in Bedford Street. In the 1960s, Bryson developed adventure playgrounds and community development support programmes. It was ahead of its time. In the 1970s and 1980s, it developed the first programmes to address fuel poverty in Northern Ireland; and, more recently, such organisations as Home Start, Extra Care and Victim Support are products of the enterprise that sits within this social-goal-focused organisation.

2034. I do not mention those to suggest that Bryson is different or better; only that the sector, which comprises many other examples, has social enterprise at its heart. It is important that public procurement should create the conditions which support the development of the social economy when, for practical reasons, that can provide better added value than either the public or private sectors.

2035. We explained in our written evidence that we have moved from our initial view that the green book assessment process was an impediment to a view that it provides the opportunity to

encourage the development of social enterprise, because the green book process can register and assess a range of benefits delivered, if the need for those benefits is recognised within it. If those who use the process, and those who write specifications for bids that will be assessed by it, are better trained and required to extract maximum value across a fuller range of social priorities, it will be good not only for the economy, but for social enterprise.

2036. It is understandable that there should be purchasing rules and a common purchasing system for Departments in order to ensure that their purchasing is consistent, delivers value for money and treats all prospective suppliers fairly. However, it is our experience that, in practice, other issues can sometimes have a debilitating effect and, in fact, stunt the process; for instance, the desire of people who make purchasing decisions to minimise the risk of being criticised for their actions or decisions. It is our view that the procurement process is designed to procure what can be defended, rather than what is best value.

2037. We all understand the need for probity in procurement and the need to make correct decisions. However, making decisions correctly is not the same as making correct decisions. If that sounds complicated, I apologise. The problem is not the green book assessment process, because all procurement processes should begin with the need to define the objects and constraints — that is point 3 in the green book's 10 key steps. That is at the heart of the public procurement problem. Rather than recognising objects, which are aims, and constraints, which are why people want something, what is wanted is rigidly specified in order to exclude ambiguity and defend eventual decisions. As a result, the opportunity to get best value from the process is missed.

2038. In general, a product or service is bought, not in order to have that product or service, but for the benefits that having it will provide. People do not buy a drill merely to have one, but to be able to put a hole in a wall. If the product or service being purchased is tightly specified, it makes it easy to see whether what is being offered meets that specification. However, it might also mean that an alternative offer, which does not meet the tight specification but which might nevertheless deliver the underlying objective and provide additional benefit, will be rejected.

2039. I will leave it to my colleague Brian McGinn to explain our experiences in procurement, in which we use variant bids to encourage innovative thinking; but I am reminded of one example which, I think, highlights the point well. In 1935, the army and the air force had a common problem — detecting enemy aircraft at a greater distance than the existing searchlights or sound rangers could achieve. Each sought to procure a solution from the scientific establishment, but each viewed the problem in a different way. The army specified searchlights that could be trained on aircraft 10,000 feet higher than was available and sound rangers that could detect aircraft 10 miles further than the current limit. In due course, they got what they asked for — stronger searchlights and better sound rangers. In contrast, the air force defined its objective less tightly, but more accurately. It wanted to detect and track aircraft from as great a distance as possible: the air force got radar.

2040. The point is clear; it does not need to be laboured. We need intelligent procurement processes to secure best value for taxpayers and, within that, a consideration to meet broader ranges of Government objectives through the inclusion of social clauses.

2041. It is understood that Departments purchase goods and services to enable them to achieve their aims and objectives. However, what if, as well as meeting the prime objective, those goods or services could help the Government achieve other objectives, either for the same Department, another Department, or all Departments. The essence of intelligent procurement is that tenderers should look for the widest possible community/social benefits to be taken into consideration, if it can be clearly shown that those benefits assist the Government in meeting

one or more of their aims, even if those aims are not the primary subject of the contract in question.

2042. For example, when it comes to spending on infrastructure, we think of roads, schools, hospitals, sewerage works etc. More recently, there has been talk about a green new deal for Northern Ireland. If such a programme were procured by DETI or DSD, it would address the improvement of energy efficiency of homes; embed generation and fit smarter metering and energy and water saving devices in homes. It would also create substantial local employment, sourcing potential employees from those who are on the unemployment register and contract installers through small local firms, given the nature of the work. It would reduce carbon emissions, enhance security of supply and diminish dependence on fossil fuels while contributing towards eradicating fuel poverty. The challenge that needs to be addressed is the development of a modern, intelligent public procurement process, which seeks to maximise the socio-economic benefits to Northern Ireland.

2043. My final point, before I hand over to Brian, is concerned with procurement being an important tool for stimulating the Northern Ireland economy. Our written submission includes the suggestion that as RPA is designed to deliver leaner government, it must put in place a presumption on Departments and, particularly, on local councils to outsource for service development and provision, using their purchasing power to provide opportunities for all sectors of the economy but, in particular, social enterprise.

2044. We are concerned that the new social economy enterprise strategy, which is under consultation, suggests a substantive role for councils in the development of social enterprise. Our experience suggests that councils are gearing up towards enlarging their staff complement to provide support for the development of social enterprise. Having more staff, more advice and business plan producers misses the point. We are not convinced that councils have the skills or expertise to develop social enterprise. However, they do have spending power. The thrust of the draft strategy should be on the procurement role and procurement skills in local authorities that will enable them to use their spend to create opportunity. That would advantage not only social enterprises but private enterprises and, as such, hold closer to the intention of RPA; having a leaner government looking towards the added value it gets from its spend as a commissioner rather than as a deliverer of services.

2045. In recent years, Bryson has been successful in winning high value contracts through Government procurement processes: for example, DEL's prime contractor award; the warm homes scheme management award, and a significant number of recycling contracts with individual councils and council waste management consortia. Although we have been successful, it has not been easy. Brian will take the Committee through some of the key issues, resulting from our engagement in those procurement processes, which we believe that we should draw to members' attention.

2046. Mr Brian McGinn (Bryson Charitable Group): Thank you, John.

2047. Bryson has purposefully sought to increase its contractual income to allow it to gain independence; build reserve balance sheet strength; provide for reinvestment in the charity; and allow for long-term planning. To that extent, as our chairman pointed out, approximately 89% of our total income is now contractual, with the remaining 11% coming from grants and donations. 10 years ago, only approximately 40% of our income was from contracts. We have contract periods of one to eight years. Our longer term contracts have been secured through our training company, North City Training, with volumes of approximately £2 million per annum, and through Bryson Recycling, with contract values of around £5.6 million and a further £3.6 million in shared sales. Unfortunately, health trusts, with contract value of approximately £2.7 million, continue to offer contracts of only one year's duration, but we believe and hope that that will soon change.

2048. In the coming year, we expect our contractual income to rise to 95% of total income, as we have been successful in winning the warm homes tender procured by DSD and the Housing Executive. That is a five-year long, £10 million-a-year, contract.

2049. All of the contracts that we have are with some form of government; councils, health trusts, or other governmental Departments. Many have been secured through European journal tender, and it is worth pointing out that we have no fear of that process. We believe that we can work closely in partnership with government bodies while maintaining the contractor relationship to which John has referred.

2050. The best example of that relationship working in practice is the materials recycling facility contract that we won with Arc21. The original tender asked for a price for treatment of mixed waste only, with tonnage volumes from 13 million to 15 million tonnes a year, for a period of either eight or 15 years. Bryson offered the compliant cost bid for each term, as well as four other options along with a 20-year model. That meant that for two bid prices requested, Bryson submitted 20 options. Our variant options introduced a source-separated waste collection into the bid, as well as the option to share risk and profit with the material sales price values.

2051. The successful bid was for eight years, with a potential seven year extension, and included the material sales price share option. That allows the value of material sales to be split 50:50 between Bryson and Arc21, together with our ability to provide high quality output materials and secure long-term price deals from which Bryson and Arc21 have profited immensely in the past three years.

2052. We continue to work in partnership with Arc21, and have recently allowed the contract to expand to include source separated materials, which Arc21 had originally precluded, as well as reducing fines to councils for delivery of contaminated stock. We have similar material sales price share deals in place with councils independently for the collection of materials.

2053. A question was asked by the Chairperson earlier, and it referred to whether social enterprises would partner with other independent and private organisations. To win and raise balance-sheet strength for the recycling contracts, we partnered and created a joint venture with a company from London called Ealing Community Transport, which, at that time, provided recycling and waste management contracts throughout England, Scotland and Wales. It had a turnover approaching £45 million a year, and employed approximately 1,200 staff. The joint venture was created around four years ago; and last year, we bought the 50% share of Bryson Recycling from ECT. That means that Bryson Recycling is now a fully-owned subsidiary of the Bryson Group.

2054. A further example of a partnership that we created that was unfortunately unsuccessful in its bid was a partnership with a company called Morgan Sindall, which again originated in England.

It had a £2.5 billion turnover last year, with £62 million pre-tax profit. We created a special purpose vehicle to tender for the in-vessel contract for waste recycling with Arc21. Unfortunately, we went for an extremely advanced technology with a large capital input, but which had the benefits of providing an energy surplus to the grid. We also considered the option of bringing in the surplus landfill burn-off from the current site in the docks area of Belfast.

2055. Government grants were available for the technology that we were looking at, but those were excluded from the bid evaluation. As I said earlier, despite pre-qualifying and getting to the final stages of the bid, we were not successful.

2056. It is also worth noting that although grants have an important role to play, survival on grants does not allow profits, and, therefore, growth of reserves with associated balance-sheet strength. Although Bryson has been able to grow, with turnover soon to reach more than £30 million and reserves of more than £7 million, others may not be in the same position and may be precluded from bidding for tenders due to size or lack of balance sheet strength. It is important that the Government recognise the contribution that can be made by social enterprises such as Bryson and the added value that can be obtained for local society.

2057. Mr O'Loan: I noted what you said earlier about the green book. Can you compete in an open market?

2058. Mr McMullan: Yes; however whether the whole sector will be able to compete when the system does not measure added value is another matter. Our chairman said clearly that we lock in all our profits. Procurement does not value that: why not? We are better placed to spend your pound, because 95p in every pound goes directly in-service and all our profits go back into developing our work of social value. The Government should take that into account. The private sector can do that if it wants, while continuing to hold its profits, and there is nothing wrong with that. We think that added value should be taken into account.

2059. Brian McGinn made the point that when we pitched for the recycling contracts, we told the procurers that they were[inaudible due to mobile phone interference.] We told them that they were doing it the wrong way, that they did not want more bin lorries or wheelie bins and that they needed people to change their behaviour. They did not heed that in their specification. We sold that idea to some councils, and the point that we were making became clear to them, because we knew more about recycling than the procurers.

2060. We showed that source separation provides better quality materials, higher volume and higher participation rates. We said that at the beginning, and it took us a while to show it. That is why we are happy to compete, but we want a level playing field, and we want the process to measure the added value that we bring, because it does not do that at present.

2061. Mr O'Loan: You may have already answered my second question.[Laughter.] If you could make one change to the procurement system, what would it be?

2062. Mr McMullan: We need more intelligence in the procurement process. I made the point that from our experience, what is procured is what can be defended but not is necessarily what is best. Procurement professionals need to be pushed to identify how they can amend the programme or use it better. They must train their professionals and the council professionals, because we find that there are significant impediments in talking to procurers at council level, where the process is even less sophisticated. That is interesting, given our view that the CPD process is not all that sophisticated either. There must be improvements in procurement training and development.

2063. Mr McGinn: There is no doubt that CPD has expertise in what it does, but I know that it will bring in consultants to help determine what is needed. Quite often, the people who are already doing the work and carrying out research may be best placed to offer the best solution. We have been made aware by CPD that we may continue to offer a variant bid in tenders, but it will only be judged if the compliant bid actually wins.

2064. Mr McMullan: That is silly.

2065. Mr McGinn: That seems to preclude what could be the best option.

2066. Mr McLaughlin: Thank you very much. It was a very interesting presentation, and has the credibility that arises from the record of Bryson, so it was quite authoritative. I am interested in social clauses, in relation to which you discussed the need for robust academic research. Will you briefly explain that? I understand and support what you are looking for, but will you explain what you have done so far. Have you discussed it with academics or the Department?

2067. Mr McMullan: The Bryson Charitable Group has applied, through the University of Ulster, for what is called the knowledge transfer partnership. For those who may not be aware of it, that involves a university bringing its academic expertise, across the range, to help an organisation become better. When we have spoken to procurement professionals, they have told us that we need to have robust numbers in relation to the added value that a social enterprise can bring. This will help us, and help the procurement specialists when scoring a particular bid, because all procurement comes down to how many points are awarded for the presentation of a proposal.

2068. We have asked the university to engage in a knowledge transfer partnership with Bryson and measure what we are doing. We can put the university in contact with other social enterprises through the network so that it can test the measurements across the range in order to determine metrics that can be used by procurers when scoring tender bids from organisations such as ours. That application is about to go through. We would like to see the Government stepping up to make a contribution to that knowledge transfer partnership. The charity might be prepared to make a contribution, but Government should be paying for that, because it will benefit government, as well as whatever benefits accrue to the university.

2069. Mr McLaughlin: Have you asked the Department?

2070. Mr McMullan: We asked DETI officials about that possibility, but they seemed somewhat reluctant. We will wait until we have an offer and then suggest that the Government should make a contribution, because the information provided will improve procurement and ensure that the full value of social enterprise is realised.

2071. Mr McLaughlin: Do you have a costed proposition that you could bring to the Department and Committee, or is it too early?

2072. Mr McMullan: We do, and would be happy to share that.

2073. Sir Nigel Hamilton: One of the things that we said earlier is that some of the profits that we make can be reinvested. We are very keen to work in partnership. There is nothing unique or particularly secretive about our proposition: we think it is a very good piece of work that we would happily share with the Committee and with Government. We are happy to put some of our own charitable money in to do it, but we think it would benefit the whole sector, and perhaps some of your consideration, if we could form a productive partnership.

2074. Mr McLaughlin: I strongly encourage that. I think you would find significant levels of support among the parties as regards the inputs they can make, both by influencing the ministerial tier through their party structures and at Committee level. I have a related question about the development investment idea, which is mentioned in your submission. Has that been discussed, and is it a costed proposition?

2075. Mr McMullan: It is not a costed proposition, but the idea of accessing investment funds that are specific to social enterprise is very attractive.

2076. Mr McLaughlin: The idea of accreditation, etc, enhances the business threshold.

2077. Mr McMullan: We are very clear in that we do not want to be measured as equal to the other players; we want to be better than them. We think that we are better than them. We think that we provide a more rounded and better service.

2078. I do not want to criticise the private sector; it is very good at what it does. Its role in life is to mine for profits and to provide maximum returns for shareholders. However, one characteristic of social enterprise that is not offered by the private sector is focusing on the issue. If the procurement is wrong, we work hard to get it changed to provide a better service and to evolve the service. In organisations, such as Bryson Charitable Group, continuous improvement and excellence is a challenge.

2079. Mr McLaughlin: I do not need to be convinced; I want to know why it is not a costed proposition. It needs to take shape and form, and it needs to pressurise the Department to respond.

2080. Sir Nigel Hamilton: We have been driving forward a number of the issues. I have been on the board for one year, since retirement, and I have been impressed with the activities that Bryson has been undertaking and by the fact that it leads the sector. We are happy to intensify that work.

2081. We are also happy to be benchmarked against other organisations, because we think that that is important for the social enterprise sector. We are not making any claim about who is better, but we have carried out external benchmarking in our staffing, with such initiatives as European Foundation for Quality Management (EFQM) and Investors in People. We are happy to do that as part of a wider procurement exercise with regard to an assessment of our strength. Mr McGinn referred to the strength of the balance sheet, which is important. It is not as though we are talking about an organisation that is here today, gone tomorrow. The other side is our professionalism and expertise in procurement and being compared with other people.

2082. Mr McMullan: We are showing you where the sector can go, if the right conditions are in place. We are more fortunate than some organisations that might come to the table: we have been around a long time; and we have built up a strong balance sheet, which helps us push our way through. Declan O'Loan said that we procured 50% of the warm homes scheme recently. Part of the pre-qualification requirements to be allowed to bid for that was a turnover of £10 million, because the programme was managing £10 million. Why is that required? What you need to be able to show is that your organisation can manage a programme that is worth £10 million.

2083. Other organisations in our sector had the competence to bid for the warm homes scheme. We were approached by one organisation that was excluded, because its turnover was not £10 million, and its competency was not tested, because it did not get that far. The root of solving the situation is to change procurement. That is what the Committee should focus on. It is not a case of merely encouraging the professionals; tell them to find ways to do it and challenge them to do it. That is democracy in action. The competence can be there. It is easy to hide behind a position that one believes to be safe. If procurement is challenged and forced to look at the situation and bring forward proposals for change, that will happen, and some of the clauses that exist to protect the decision, rather than get best value, can be driven out.

2084. The Chairperson: You said that the green book did not need to be amended because you believe that it already allows for non-monetary impacts, such as environmental and social benefits. You went on to mention training and raising awareness among commissioners. I understand why that is important, but how can it be taken forward? Training people and raising awareness are fine, but how will the required outcomes and outputs be achieved if the rules are not amended?

2085. Mr McMullan: We do not think that the rules need to be amended; we think that they need to be clarified and applied. In response to Mr McLaughlin's question, we said that if we give the procurement specialists metrics to score against a source, they might even weight some of them and discover that they are better than the price. That means that when you procure you are getting those services. If I produce a range of social values, it will receive a one, two, three, four or five. At the moment, the box gets ticked but receives no weight or score. If it receives no weight or score then it does not have any impact on the assessment. I do not know whether that is clear.

2086. The Chairperson: Therefore you are talking about scoring. You want the scoring mechanism to be changed.

2087. Sir Nigel Hamilton: Yes. There is a broad phrase to be used here, and it is "corporate social responsibility". I am involved with another organisation, which, when involved with the procurement of physical contracts, encounters a box that has to be ticked and which asks whether the organisation is involved in corporate social responsibility. It is a box-ticking exercise. We are saying that this is a very important area and that if we could produce metrics to score it, through indicative actions and so on, it should be part of the assessment process.

2088. Ms Purvis: As an aside, has Bryson made a submission to the consultation on dormant bank accounts as regards the development investment in SEEs?

2089. Mr McMullan: We have not done so specifically, but the Social Enterprise Network mentioned a working group that was put in place to create a fund and a brokerage system, which is part of a pitch to that consultation to which we have lent our support. We thought it better to support their submission than say that we wanted it for something that we were going to do. If those resources were available to fund more organisations to help them learn what we have learned — and we are very prepared to share that knowledge — it would help them to come through and grow the network of social enterprises.

2090. The Chairperson: No other members have indicated that they have any further questions, so thank you very much for your presentation and for hosting the meeting.

2091. Sir Nigel Hamilton: We wish you well with your deliberations.

2092. The Chairperson: Hopefully we will see you at the conference next week.

25 November 2009

Members present for all or part of the proceedings:

Mr Mitchel McLaughlin (Acting Chairperson)
Mr Simon Hamilton
Mr Fra McCann
Mr David McNarry
Mr Declan O'Loan
Mr Ian Paisley Jnr
Ms Dawn Purvis

Witnesses:

Mr Des
Armstrong
Ms Aileen Department of
Edmund Finance and Personnel
Mr Stewart
Heaney

2093. The Acting Chairperson (Mr McLaughlin): The Committee will now take evidence from the Central Procurement Directorate (CPD). I welcome Des Armstrong, the director of CPD, Aileen Edmund of CPD, and Stewart Heaney the divisional director of construction and advisory division of CPD. You are all very welcome and I am sorry that there was a slight delay. I think you have all been here before. We are glad to see you, and I remind everyone that there will be a Hansard report of this session and that all electronic devices must be switched off completely.

2094. You have been provided with an indication of the broad areas likely to be discussed today and which have arisen from our inquiry to date. Unless there is something that you wish to say now, we will move directly to questions from members.

2095. Mr Des Armstrong (Department of Finance and Personnel): I have a brief opening remark. CPD welcomes the interest that has been shown in the inquiry and the submissions that have been made. Some views expressed and the perceptions they reveal have been useful to us, and we welcome that.

2096. The Acting Chairperson: That is good. We welcome that bit of collaboration to start with.

2097. Mr F McCann: A key theme that arose at the stakeholder conference was how the procurement process, and in particular, those assessing tenders, accommodate applications from consortia. What progress has been made on consortia by the construction industry working group?

2098. Mr D Armstrong: Stewart Heaney has been doing some work with the Construction Industry Group through the Construction Industry Forum for Northern Ireland (CIFNI) task group. He will be able to give the Committee a quick update.

2099. Mr Stewart Heaney (Department of Finance and Personnel): We have had very positive engagement with the Construction Industry Group following the procurement task group report. A number of recommendations were made in that report identifying issues that needed further work and engagement, one of which was consortia. We now have an agreement with the Construction Industry Group that structuring procurement opportunities should be structured in such a way that allows smaller firms to come together as consortia.

2100. We have agreed that, when a consortium submits a pre-qualification questionnaire (PQQ) to enter into a procurement process, a common set of questions will apply. One submission will represent the consortium for those areas relating to experience. Therefore, all members of the consortium may draw on the collective experience. Some issues, such as health and safety policy and financial standing, will still be assessed on an individual basis. The industry is comfortable with that and the Construction Industry Group has confirmed that it is content with that approach.

2101. Another key area in the task group report regarding SMEs was financial standing. We have agreed with the construction industry that we will ask contractors who are bidding for construction projects to have a Constructionline category value that is at least equal to the annual spend on the job. By way of background; Constructionline is the national database of

firms that have pre-qualified to work for the public sector. In calculating the category value, Constructionline looks at aspects such as the company's assets, its turnover and track record, through the use of references. For example, for a £20 million project, with an annual spend over two years of £10 million per year; we would be looking for a firm with a Constructionline category value of £10 million. That relates back to consortia, and the agreement is that, in such a case, each consortium member should be worth at least 40% of the project value. Therefore, if a project is worth £20 million and equates to £10 million per annum, each member of the consortium must be worth 40% of that sum. To bid for that project, a company must have a category value of £4 million. That is a significant step forward for us. The industry is comfortable with it and has accepted it as a reasonable way forward.

2102. The other key aspect is bringing together all those points into a standard PQQ, and we are at an advanced stage in completing the second draft of the PQQ to do just that. We hope to consult with the industry on that next week, with a view to completing it by the end of December.

2103. Mr F McCann: Recently, a group of housing associations came together as a consortium to operate a procurement programme. Should we keep an eye on that and how it is being implemented?

2104. Mr Heaney: Procurement by the housing associations is being handled by the Housing Executive, which is the centre of procurement expertise (COPE).

2105. Mr F McCann: It was brought in by the Department for Social Development (DSD) initially. Is that not correct?

2106. Mr Heaney: Yes. That is correct. CPD has a number of staff who give advice to DSD, but the procurement of the contract for the housing associations is a matter for the Housing Executive, which is the centre of procurement expertise in that area.

2107. Mr O'Loan: Good morning. Thank you for coming to speak to us. In weighting public and private experience, you previously told us that CPD does not value experience gained in the public sector higher than that gained in the private sector, and that the overarching requirement is best value for money. I understand that a CIFNI working group is considering how experience of work of a similar nature, scope and complexity should be used to evaluate the technical and professional ability of enterprises to be shortlisted for tender. Will you update us on the progress that has been made to give more equitable weighting to experience gained in the private and social economy sectors?

2108. Mr Heaney: CPD has never weighted public sector experience higher than private sector experience, but that issue was discussed with the industry. As part of the process of standardising the PQQ, we will be asking for relevant experience in a similar project. For example, if the requirement is to build a school, a contractor will not have had to build a school before. However, he will have to have constructed a building of similar size, scope and complexity, which could be a large commercial building. There will be nothing to state that the contractor has to have constructed a building of exactly the same nature as the one required. That has been agreed with the industry. Bidders will have to demonstrate capacity and capability.

2109. Mr O'Loan: The CIFNI working group felt that it had a job to do; therefore, it must have felt that the previous outcome was not balancing that weighting equitably.

2110. Mr Heaney: The industry has agreed to our proposals. The key requirement was that there would not be a barrier to a particular market sector, in that its members would have to have

constructed a building of that type for the public sector before. We are clear that that will not be a requirement. As long as contractors have relevant experience, that experience will be considered by the assessment team.

2111. Mr O'Loan: Are there specific issues regarding health projects, for example?

2112. Mr Heaney: I am not aware of any particular issues.

2113. Mr O'Loan: I am aware of one instance in which a criterion for health projects was part of the tender requirements.

2114. Mr Heaney: Going forward, the work that we have done with the Construction Industry Group means that there will not be any requirement for specific experience. It will be up to a firm to sell itself through its quality submission and demonstrate its experience compared to that of other bidders.

2115. Mr O'Loan: In that one instance, it struck me that unnecessary barriers were being created for companies that had the capacity to do the job and had some experience in delivering a project in the private health environment but were not getting recognition for that and would not have pre-qualified.

2116. Mr Heaney: The industry has not raised that issue with the group.

2117. Mr O'Loan: Will you comment on any advances in the development of the PQQ used by government construction clients?

2118. Mr D Armstrong: I will make a quick point. From the feedback that we have received through the inquiry process we have learned that we need to look at having a greater degree of standardisation on the construction side and in supply and services. We have the platform and the vehicle for that in e-sourcing NI, which is the tool that we are using to bring procurement through the COPEs and out to the market. That has been a useful catalyst to allow us to standardise our documentation.

2119. There has not been any reluctance in the past to use standardised documentation, as long as it has been particular COPEs' documentation. That type of process requires re-working of what the documentation looks like and training for staff as to how they might use it. We now have the opportunity to standardise, and I have not experienced any reluctance from the COPEs to use that process.

2120. Mr O'Loan: At your level, are you monitoring whether that is happening?

2121. Mr D Armstrong: The procurement practitioners group, which comprises the heads of procurement from all the COPEs, meets regularly. The commitments coming forward from that forum will, if appropriate, be included in CPD guidance notes.

2122. The Acting Chairperson: PQQs are a source of frustration for companies that wish to explore the possibility of submitting bids. Indeed, I have spoken to people who have had to fill in 15 PQQs. Could the forms not be pre-populated with data that has already been captured, with a box to allow the applicant to indicate whether the information is still relevant? An applicant would then only have to make appropriate amendments. Having to fill in the same information repeatedly seems like an awful waste of time and an inefficient way to go about things.

2123. Mr D Armstrong: That is a drawback of having paper-based tender submissions.

2124. The Acting Chairperson: Are we moving towards eliminating the need for such behaviour?

2125. Mr D Armstrong: Standard information that is given at the tenderer's discretion will be logged in the system, but we will still need to gather information that is specific to each procurement process. Nevertheless, the need to repeatedly request the same information from suppliers will reduce. Initially, information will be requested in the same format, but, subsequently, we will be able to condense what is required.

2126. Mr Heaney: For the Construction Industry Group, a key element of the standard PQQ is a firm's health and safety policy, which does not change every day; so we have agreed with the other centres of procurement expertise that health and safety will be assessed annually. Once that has been assessed, the contractor will be issued with a certificate. As long as nothing changes in the ensuing 12 months, contractors will not have to submit a health and safety policy with their PQQs. Likewise, details from contractors' accounts, which are used to conduct financial standing assessments, will be held in Constructionline's database. Therefore, when a contractor bids for a particular project, he will only need to quote his Constructionline registration number. Working with the industry on those two key elements of the standard PQQ has been very important in taking it forward.

2127. The Acting Chairperson: That is progress. As you can imagine, for people who interface with the system, having to repeat the same information on PQQs can appear to be, at best, an inefficient approach.

2128. As you are aware, another key issue that came up at the conference was the minimum thresholds that companies must establish in relation to the tenders for which they apply. The requirements seemed disproportionate, irrational and arbitrary, and had the effect, whether intended or not, of knocking companies out of competitions that, given the opportunity, they would have been perfectly capable of delivering on.

2129. Mr D Armstrong: Working with the Construction Industry Group has been useful, because we have been able to hear directly from the industry about the problems that requirements that we put into contracts cause contractors. The group has tried to come up with a sensible and rational approach that secures value for money for the public purse without overburdening or presenting unnecessary barriers to the supply side.

2130. The Acting Chairperson: When will changes emerge that people can see? The requirements must be rational, proportional and prudent and must not knock people out of competitions because they are set too high.

2131. Mr D Armstrong: We are committed to completing work on the construction side by Christmas, and we are on target to do so. Our proposals are with the construction industry. On the supplies and services side, we realise that we do not have the same sort of interface with that market to deal with things at a strategic level; so we are thinking about how we might engage better with that sector. We plan to interface in a similar way to our approach on the construction side. We plan to deal with the market sectors using that a similar approach and obtain direct feedback for policy makers.

2132. The Acting Chairperson: With respect to proportionality, I am sure that you recognised immediately that that would also facilitate other businesses forming consortia. If thresholds are set too high, some firms may conclude that it is not worth considering an amalgamation, a joint venture, or forming a consortium. I think that that runs counter to what we are trying to do here, which is to provide as much access as is prudent to support local industry.

2133. Mr D Armstrong: I agree.

2134. The Acting Chairperson: This is not a major issue, but it emerged at the conference: respondents to the inquiry reported inconsistencies in the approach to tendering and feedback between CPD and the COPEs. They indicated that requests for statistical information during the course of the inquiry highlighted the lack of standardised data across CPD and the COPEs. Will you talk a bit about governance and the relationship between CPD and the various COPEs? Are we heading towards a standardised format that applies at all levels and sectors?

2135. Ms Aileen Edmund (Department of Finance and Personnel): CPD is the lead procurement body, and it therefore takes the lead in developing policies. It consults, shares, and develops best practice with the COPEs on a consensus basis as much as possible. CPD reports its progress and that of the COPEs against departmental and PSA targets.

2136. The Acting Chairperson: In your work, are you aware of variations or inconsistencies in approach? Are you indicating that the voluntary nature of this makes those variations and inconsistencies difficult to resolve?

2137. Ms Edmund: CPD produces guidance notes on different aspects of procurement. For example, we have a guidance note on disclosure of information. Guidance notes are agreed with the various COPEs. However, each has its own portfolio and has a feel for what suits its market best. Guidance notes will reflect what the COPEs are required to do in respect of best practice and the procurement regulations. However, they can choose to vary how they provide feedback to bidders. The regulations set out certain requirements with which COPEs must comply, such as the need to provide specific information to tenderers once a competition award is made. Whether COPEs give face-to-face or written debriefs is a matter for them, and each might take a slightly different approach. By and large, they follow the regulated process.

2138. The Acting Chairperson: The Committee, during its inquiry, has recognised that there are inconsistencies. You agree, but you are saying that there is an explanation. In fairness to the organisations, one can see how such a situation may arise, and the Committee's report might make a recommendation on the issue. For a region as compact as this, we should be able to devise a consistent approach for bidders.

2139. Mr D Armstrong: That is a reasonable statement. The supply side has certainly said that standardisation of approach is important.

2140. The Acting Chairperson: I shall develop the point. Given the proposals to reduce the number of local councils; what discussions have there been about the potential for additional efficiencies in procurement through greater collaboration between central and local government?

2141. Ms Edmund: Councils operate separately to central government and have their own legislative framework. In the past year, seven councils have come on board with e-sourcing NI. That, in itself, brings greater opportunities for collaboration and consistency.

2142. The Acting Chairperson: Is that seven councils out of the 26 councils?

2143. Ms Edmund: Yes, seven of the current councils have come on board, including some of the bigger ones. Beyond that, I am not aware of any additional collaboration.

2144. The Acting Chairperson: Are you promoting the idea of collaboration, or is it organic?

2145. Mr D Armstrong: The review of public procurement recognised that councils had a different status and could take the policy on board on a voluntary basis. Our information is in the form of guidance notes and is available on a webpage. Occasionally, councils phone us to

discuss different points that they might take forward with respect to procurement. However, CPD is ready to talk to councils if an approach were made. We have spoken to the Department of the Environment on that matter.

2146. The Acting Chairperson: The 11 councils will have greater powers than those of the 26-council model, and that will have an obvious impact on procurement. Therefore, I imagine that CPD will need to be anticipating those pressures and changes.

2147. Ms Edmund: CPD has spoken to the Department of the Environment and has a representative on the panel that is looking after the RPA procurement work stream. However, no concrete proposals have come from that group as yet. Nevertheless, CPD is part of that group: it is in the loop and it is talking to the Department of the Environment.

2148. The Acting Chairperson: Simon Hamilton is next. Simon, I congratulate you being the best up-and-coming MLA at the Slugger O'Toole awards last night. While I am at it, Dawn Purvis got the award for the best MLA. Commiserations to the rest of us. Well done to the pair of you. One can see what a powerful Committee this is.

2149. Mr Hamilton: Thank you. You were very wise to mention this while Peter Weir is out of the room. I will not tell him.

2150. I have two sets of questions; one relates to training and capacity building and the other relates to evaluating complaints and feedback. As regards capacity building, one commentator at the conference talked about a collegiate approach in which procurement professionals could come together for joint events such as training. Has that been looked at, or can it be done through existing structures?

2151. Mr D Armstrong: We have developed a career path framework, which is available for COPEs. It was designed to upskill those who might be involved in the procurement process. As part of the accreditation process for the COPEs that has just been completed, they were tested as to how they had taken on board that career path framework and worked with it. Some positive comments came back from that assessment suggesting that it was in place.

2152. As regards training, there has been a pretty good focus on pre-contract needs. The industry is telling us that there appears to be a weakness in commercial skills and contract management. So, we are focusing on the common approach that we take to contract management and on the commercial skills that are needed. Sometimes, the management of the procurement process will be given back to Departments once a contract is awarded. Therefore, we need to look at the skills that exist within Departments.

2153. Mr Hamilton: Another idea that came forward was the use of a licensing system for procurement professionals, and there could be different scales depending on the size of a contract. Have you any thoughts on such an approach?

2154. Mr D Armstrong: The COPEs get their licence from the Procurement Board, with respect to having an external assessment and a subsequent accreditation process. That has just been completed for the COPEs. From CPD's perspective, all branches within CPD are required to have someone with a professional procurement qualification.

2155. On the construction side, there is a mix of disciplines involved, because of the variants in that area, but, in the supply and services area, all of our people are qualified at least to the standard of Chartered Institute of Purchasing and Supply (CIPS) membership. There is an ongoing staff development programme in association with the University of Ulster. In the past day or so, I have talked to the university about commercial skills on the construction side.

Although we are in the early stages, we are looking at some input into an MSc course on commercial skills in construction.

2156. Mr Hamilton: I will move on to appeals and mediation. People who are disgruntled with a procurement process can get feedback by talking to you and seeing where they were marked down and went wrong. If they believe that there is something much more fundamentally wrong with the process, they have to jump into litigation, which, in some cases, could be like using a sledgehammer to crack a nut. However, people may feel the need to pursue the matter. Obviously, it is bad for you and the public purse to have to jump from an informal feedback process into the courts.

2157. It has been suggested that an ombudsman-type figure is needed. Evidence to the Committee indicated that people who lost out on contracts did not necessarily want to go to court and face the cost, etc. However, they felt that if something were wrong with the process, they wanted some acknowledgement of that and that things could be rectified through a slightly less formal process. Have you any views on that? Is it something that could fit into the process or be workable?

2158. Mr D Armstrong: The COPEs are required to have a complaints procedure in place. CPD has been looking at its complaints procedure in light of some of the legal action that has occurred to see whether we can have a system in which there is a greater sense of transparency in CPD's decision making, rather than litigation being the first route taken.

2159. We operate a two-stage process. The first stage is usually an assessment by the relevant divisional director, after which there is a process of referral to the director of CPD. I have been in discussion with the Office of Government Commerce (OGC), which currently has in place a supplier feedback service. That allows the OGC to go into areas outside its responsibility, such as councils in England, to look at their procurement processes and decide whether they are compliant. That route is available, provided that there is not ongoing litigation. The OGC is prepared to allow us to modify our complaints procedure to allow for that type of reference. Therefore, the OGC could be asked to look at a complaint that is made to the director of CPD, and the award of contract could be suspended until a report comes back.

2160. Hopefully, that should reassure the market that there is a degree of external scrutiny, because the OGC will not come back with a report unless it can stand by the information that it has provided already. The OGC has agreed to do this, but I have not discussed whether it could be pushed out to the COPEs. I want to see how it operates first, and I want to have further discussions with the OGC; but we will shortly change our complaints procedure to allow for referrals to the OGC supplier feedback service.

2161. Mr Hamilton: Is the principle of doing something beyond the current system, short of litigation, something that you are considering?

2162. Mr D Armstrong: Suppliers need to raise their concerns as soon as possible if the process is to work really effectively. Once the award decision stage is reached and if the contract is over the European threshold, triggering the Alcatel mandatory standstill period, complaints start to move towards possible litigation.

2163. If suppliers have issues, I would prefer that they raise them as soon as they get the documentation, and those issues could then be clarified by clarification notes. If suppliers have a problem with the process at any time, they should put the flag down. CPD has seen the outcome of litigation and the surrounding issues, and we want to ensure that suppliers are reassured that the system is robust, reasonable, fair and transparent.

2164. Ms Edmund: If a supplier is not happy after the second-stage complaint, he or she is at liberty to go to our ombudsman, who has the authority to investigate the Department's processes. The ombudsman does not have the authority to say whether a decision was the right one, but he can certainly investigate our processes. That mechanism is in place. If the complaint is about the award decision, the courts are the only place to go, because that is a very different issue.

2165. Mr O'Loan: I am interested in what you say, but I am not at all convinced that the model of piggy-backing on the OGC system is nimble enough or quick enough on its feet to address the issue. You refer to the ombudsman as another model, but that would make me start to tear out whatever hair I have left, because I know that that model is not nimble enough.

2166. It is not a question of wanting a pushy model. What are required are a conciliatory approach and an independent view. People are seeking a process that is lean, that can be invoked quickly, and that operates quickly. I am not convinced that invoking the OGC is the answer.

2167. Mr D Armstrong: We need to be able to get answers to questions quickly. If matters are raised after the award of contract, disappointment is with the unsuccessful tender, and the client desires to get the contract into place because it is there to help them to deliver public services.

2168. I am committed to ensuring that our processes are transparent the whole way through and that the supplier knows that they can raise issues at any time and that that will not affect the result of that competition or any involvement that they had in previous competitions. A good way to start the process moving forward would be to get the message to suppliers that they should raise concerns at the earliest opportunity.

2169. Post-award decision is a different matter, particularly if it is above regulations, because suppliers will have the opportunity to take legal action under the regulations. We are giving them another option of independent scrutiny of the decision. We need to consider whether we would give advice to a client to rush to contract when an issue is being raised.

2170. Ms Edmund: We record all complaints and their substance, and they go to the procurement board for review. One of the main reasons for that is to see whether we are doing, or have done, something wrong. There have been occasions when we have halted and re-run competitions because a complaint made at an early stage has given us pause for thought. We always reflect on the processes, but there have been occasions when a complaint has changed things at the right time and before the contract went any further.

2171. The Acting Chairperson: It is good to hear that an early complaint can result in such a response. However, I assume that there have also been occasions when an issue was flagged up early but was not accepted at the time, and the process was subsequently successfully challenged. Is that experience informing the more proactive approach that Aileen has just described? It is encouraging to hear people say that the process is not set in stone or that they have started so they will finish.

2172. Ms Edmund: We learn lessons.

2173. Mr D Armstrong: Even the case law suggests that, where a mistake is identified in the process, we need to move back to when the mistake was made and take a solution forward. That is the most sensible approach. We need to be committed to putting compliant contracts in place. If an issue is raised, it must be carefully considered before action is taken to go forward. We should move forward only when we receive advice that it is robust. We should not push

things forward into unlawful contracts; that would be totally against what the COPEs have been set up to do.

2174. Mr Hamilton: Some contributors suggested the creation of a one-stop shop for guidance, capacity building and supply-chain management. Have you thought about that?

2175. Mr D Armstrong: As regards guidance, at the moment, we are considering our web page, which is probably a bit dated and is not necessarily easy to find information on. Aileen is leading a project to put that in place before Christmas. Is that right?

2176. Ms Edmund: No; we are aiming for the end of the financial year.

2177. Mr D Armstrong: The feedback highlighted two things. It showed whether the procurement process presents barriers and the way in which people understand it. Moreover, it highlighted the issue of people's capacity to tender. How can an organisation that has not tendered for government work before be in a position to tender against the new PQOs that we are developing? That perhaps does not involve the CPD. We need to consider whether another organisation can provide the skills.

2178. When we talk about SMEs in the procurement sense, we mean SMEs from any part of Europe; it is an open market. From a procurement point of view, we are bound to treat people from Lisburn and Lisbon with the same degree of help and assistance. There are other agencies that could help to upskill local suppliers and local tenderers, not only to tender in Northern Ireland but to tender in the all-island market, in the UK, and in Europe. It is a big market.

2179. Ms Purvis: Has any consideration been given to a definition of social value for all procurement contracts that would go beyond employment and section 75 matters?

2180. Mr D Armstrong: I do not think that we have a definition.

2181. Ms Edmund: It would be up to the Department that is formulating programmes or projects to the procurement phase to consider what it wants to get from those. CPD is more concerned with building in community benefit clauses, such as opportunities for employment, apprenticeships or training for the long-term unemployed. The community benefit clause is where we fit in, rather than the measurement of the social value.

2182. Mr D Armstrong: Some social, environmental and economic measures sit within the scope of public procurement, although its definition is best value for money. CPD, along with the COPEs and the construction industry, tried to guess a set of proposals that could be facilitated by construction. However, Departments need to decide whether that is right or wrong or whether they should be doing something else. Now that those benefits are in place and in contracts, we see that the market can respond.

2183. It is early days for the construction side, but Stewart told me that 12 apprentices and four previously unemployed people are coming through on contracts that are now being let and are coming on stream. To be fair, CPD and the construction industry guessed what the Departments might want. We are also looking at annual procurement plans with Departments. In that process, we are suggesting that Departments need to think about what social or community benefit they need.

2184. Ms Purvis: The one thing that came out of the conference was the need to have clarity on the definition of social value. If that were clarified, Departments would possibly find it easier to define what they want in their contracts. Perhaps CPD should consider that when issuing

guidance to Departments, because it may be thinking about the works, the goods and the services, as opposed to the social benefit that can come out of a contract.

2185. Ms Edmund: We produced the equality and sustainable development guidance, which was launched last year, and it is supported by a dear accounting officer letter. It gives detailed guidance on how Departments should approach the matter. There are also some case studies in it. Therefore, there is guidance to support social value, but case studies and good examples are required to inspire other Departments. It is relatively early in the process, but we are at the stage where we are trying to get the momentum going and getting good examples so that people can see what can be done.

2186. Ms Purvis: You are right; examples are a good way of showing how it can work. The integration of equality and sustainable development priorities is an identified target in the Programme for Government. Do you have arrangements in place to monitor and report on compliance with that guidance?

2187. Ms Edmund: Twice a year, we go to the procurement board with a report on how Departments say they are embedding the guidance. Departments and COPEs have been taking steps to get that guidance to where it needs to be. The procurement board is committed to a formal review of the effectiveness of the guidance after three years. The board decided to leave it for that length of time because it recognised that it was going to take a while for people to get used to thinking in that way, because it is a step change in the way in which Departments approach procurement and how procurement approaches procurement, so it does take a while to bed in. Therefore, there will be a formal review after three years.

2188. Ms Purvis: How will you measure that?

2189. Ms Edmund: We will measure the number of clauses in contracts, how many unemployed people are getting off the unemployment register and how many apprenticeships there are. That is the sort of thing that we will endeavour to count. As we go along, we will keep tabs on it.

2190. Ms Purvis: You talked about the action plans to deliver sustainable development priorities. How many COPEs have actually provided action plans? According to one PSA target, they had to provide them by December 2008. Have they all provided them? How many Departments have produced annual procurement plans setting out how procurement will assist delivery?

2191. Ms Edmund: They have all produced them.

2192. Ms Purvis: Can we have sight of those plans?

2193. Ms Edmund: Yes.

2194. Ms Purvis: More generally, the Programme for Government indicated that the COPEs would work with Departments to identify ways in which procurement could assist in the delivery of Programme for Government commitments and provide outcomes for 2008-2011. What progress has been made on that target?

2195. Ms Edmund: In CPD, each Department has key account managers who meet formally with the departmental finance directors to discuss how procurement can help them to deliver their Programme for Government commitments and discuss their procurement plans, again building in equality and sustainable development. Those are the sorts of things that we engage in dialogue with Departments about. Most COPEs have historic links with Departments, so they have very strong links with them. In many ways, that relationship already exists in respect of delivering the

Departments' commitments, especially if one looks at Roads Service, Water Service and Translink. Those are key areas of the Department for Regional Development's responsibilities.

2196. Mr Heaney: The key account managers are approaching the matter from a higher level in the Department, whereas CPD staff, advisers and project managers engage on individual projects with client Departments. Our staff are well versed on the proposals that were agreed with the construction industry to deliver sustainability in projects, and they are very proactive in engaging with those clients. Even if a client is not familiar with those requirements, the CPD advisers would certainly put them on the agenda and encourage Departments to consider them. It is really a matter of coming at the issue in two ways, and the client adviser role in individual projects has proven quite effective.

2197. Ms Purvis: Does that include the delivery of what contributes to the most economically advantageous outcomes?

2198. Mr Heaney: Yes. All of our contracts are awarded on the basis of the most economically advantageous tender — MEAT, as we know it — not on the basis of the lowest price.

2199. The Acting Chairperson: The Audit Office and the Public Accounts Committee have looked at performance against the PSAs, and this Committee has been talking to its Department. I was interested in what you were saying, Aileen. Are you saying that CPD did not contribute to the Department's review of its performance against the PSAs because it is taking a three-year cycle approach to review?

2200. Ms Edmund: No; we contribute to all Departments' PSA targets, but the procurement board has a specific target in its strategy to formally review the effectiveness of the guidance after three years. We ask Departments and COPEs twice a year about their progress on embedding the guidance.

2201. The Acting Chairperson: Do you comment on the feedback that you get as to whether they are meeting those PSA timeline targets? I know that you have to allow a bit of time to see the overall achievement, but do you comment on those?

2202. Ms Edmund: Yes. We provide reports to OFMDFM and the Department on both of the PSAs that we contribute to.

2203. The Acting Chairperson: There are one or two other areas that we will write to you about, setting out some issues of concern, and perhaps you will be content to write back to us. I am conscious that we have kept you longer than we intended, and there are other people waiting to speak to the Committee. We will follow up on those issues. Thank you.

Appendix 3

Written Submissions

**Western Innovations Network
Kevin Taylor**

Western
Innovations Network

Kevin Taylor

01/15/09

Subject: Inquiry into public procurement

To the members off the committee for finance and personnel

Can I firstly thank you for allowing me to input into your inquiry and take the next few lines to tell you about myself and my group

I am a forty nine year old epileptic with severe muscular arthritis and sadly soon into the benefits trap by the government and lack off proper training I want to work and I believe that the social economy is the way forward I have a vast knowledge off the following sustainable renewable energy health care services building sustainable communities and waste management

WESTERN INNOVATIONS NETWORK

I am in the process off setting up a network off groups within the community to encourage the take up off government contracts which it is believed can be provided to a higher quality and dare I say cheaper than the traditional procurement route bringing true employment into areas off the province and sustainable jobs However there are a few things the government need to put in place before this becomes a reality

CONTRACTS

If you read the European journal new community enterprises are put at a disadvantage by the rules off the contract in that they have to provide three years accounts before being allowed to tender For new start ups this need to be waived and an alternative mechanism put in Large contracts should also be split up and it would be wildly welcomed if consortiums were allowed to tender for contracts

GOVERNMENT ASSISTANCE AND ENCOURAGEMENT TO SET UP THE COMMUNITY BUSINESS

Sadly it has been my experience that there is no help from Department of Enterprise Trade and Investment either in kind
A hand up not a hand out

or financial to encourage community business start ups in fact the opposite is true There is a great reluctance to actually provide any information on the community business and I have had to get information from England where community businesses are the norm for local councils and in receipt off millions off pounds off money from councils Sadly such innovative procurement does not yet exist within N.I.

FUNDING THE START UP OFF COMMUNITY ENTERPRISE

A community bank already exists to help with loans for development off premises and other services it is the Ulster Community Investment Trust better known as U.C.I.T. Can I state that I do plan to speak for this group However it might be worth your while to speak to Phelan Shervin from this organization to determine the funding needs

While under this title can I say that Invest N.I. And its council partner Omagh Enterprise Company have an abysmal record off setting up the community business as I have tried to get help and failed Perhaps a slimmer more focused organization is what is needed .

SUB CONTRACTING FOR QUALITY

The community business has the unique opportunity off knowing the local market and being able to sub tender procurement off the products needed to be successful within the given remit

I know I am stepping outside the terms off reference here but I believe an example can give a greater balance to what I am saying

Local health trust decides to out source meals on wheels

Community business tenders

Community business draws up business plan for U.C.I.T. And receives funding

Community business identifies suitable community owned premises

Community business uses funding to employ local SME to bring kitchen up to hotel standard

Community business employs chefs from local area

Community business sub tenders for raw product to local S.M.E.s farmers butchers greengrocer etc etc

Community business can decide off course to offer these services to a greater population when the original contract is fulfilled and any profits are reinvested back into the business

HOW CAN D.E.P. HELP PROMOTE SMES AND SOCIAL ECONOMIC BUSINESS,S

One issue that I detest is targets as sometimes they get in the way off quality services but perhaps the D.E.P. Committee could suggest a target for the take up off community enterprise however right away I can see a problem as all services need to be tendered on the open market

More help from D.E.T.I. Would certainly go a long way to encourage the setting up off the social enterprise as instead in my case total opposition

A hand up not a hand out

More information perhaps to a e-mail database or the employment of someone with time to gather the information together and to discuss the ideas as I have laid down

SOCIAL CLAUSES FOR THE COMMUNITY BUSINESS s

The introduction of social clauses into a S.M.E may not be relevant however as it is planned by myself and other sto look at the community business model a number of social clauses are already built in

Profit making but not profit taking means that only those working for the organization get any pay a number of benefits accrue for the managers however no large pay outs nor use of profits For all management the following is paid (traveling allowance for meetings subsistence allowance for meal while traveling on business of group

Profits are retained as capital reserves on a yearly base allowing large flexibility within the system . Alternatively any profits can be split two ways and half put into a community fund this however must be fully enshrined in the constitution of any community enterprise

EMPLOYMENT WITHIN A COMMUNITY BUSINESS

It is believed that the marginalized people now on benefits like myself can be employed with the community business structure and should be a social clause again within the constitution of the group As I explained in my introduction I am multiply disabled and in severe pain I also need tablets which slow down the mental process and a forty hour week is impossible due to extreme tiredness early on in the afternoon As you can understand no one will employ me however job sharing with others is easier managed within the group and I believe this is vitally important to the community business

SPENDING MONEY ON BEHALF OF THE COMMUNITY

As touched on earlier let me explain in greater detail now monies accrued by the community enterprise could be spent the Government agencies could avail of such funding to provide a greater number of services however it must be stressed that this funding is totally complimentary to any Government funding for example as well as not instead of

Assume we have £100,000 pounds in the innovators fund and that a service could be provided given £50,000 was available sadly no monies are available from government sources The service provider can with a business plan approach the community business and funding can be made available A commitment to longer term funding from government sources would of course be a prerequisite

CHARITABLE DONATIONS FROM PROFITS

There is also a mechanism available to the community business to guarantee a fixed amount to a charitable organization every financial year with the rest going to capital reserves this can be as little as 10% or as high as 100% or any amount within the two

A hand up not a hand out

EMPOWERMENT IS A STRONG DRUG

By this time you are probably wondering what is he on about?

Can I just say that the empowerment of people to help themselves is a great opportunity to involve those now marginalized by society - disabled, poorly educated. Sadly there are no mechanisms for ensuring anyone is heard. There is a strong belief that as the D.F.P. is the paymaster of the Departments they should be able to encourage all Ministers and civil servants to avail of all expertise.

PROGRAMME FOR GOVERNMENT

How do these suggestions fit in with the program for government?

I believe there are two strands of thinking within this subject as a keen follower of the plenary session of N.I.A. I remember the former Min of D.F.P. Mr Peter Robinson M.L.A. saying at the dispatch box when the clarion calls were coming left, right and center for more money - and I quote:

Government Ministers will have to realize that they will have to do more with what they have got or perhaps maybe less. In the program for government and budget documents it was also said on the very last page:

CONCLUSIONS

Government can only do so much; it is up to every business person, community group and most importantly, for me individual, to do his or her bit to help the government make N.I. a better place for all.

Can I say that sadly this message has not got through to the Ministers nor the policy makers as I know from bitter experience.

Let me again take this opportunity of thanking all members of the committee for allowing me to submit my thoughts and I hope you find them thought provoking and of some use in your deliberations. I hope to be working on some issues with the Western Health Trust shortly and perhaps within a year or so the N.I.A. As well, you may wonder what the small sentence is at the bottom of every page; this is my strap line: Give me a hand up, not a hand out.

Sincerely,

Kevin Taylor

A hand up, not a hand out.

Committee for Employment and Learning



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Mr Mitchel McLaughlin MLA
Chairperson
Finance and Personnel Committee
Room 428
Parliament Buildings
Stormont
Belfast
BT4 3XX

21 January 2009

Dear Mitchel,

Re: Scrutiny of Public Procurement Practice in Northern Ireland

As you are aware through the informal discussions that we have had, the Committee for Employment and Learning holds considerable concerns about the public procurement process and its practice here. It is on that basis that the Committee welcomes your scrutiny of public procurement policy and practice.

In the last session, as you are aware, the Committee undertook an inquiry into Training for Success, which replaced Jobskills as the Department for Employment and Learning's primary professional and technical training programme in September 2007. Early on in the Inquiry, the Committee became aware of problems surrounding the procurement exercise for the programme. These problems surfaced in the evidence of a number of witnesses from whom the Committee had sought views. The Committee realised that there was a significant problem with the procurement exercise.

The Committee had a particular concern that local providers, often from the community and voluntary sectors, which have a proven record of working successfully with departments are not being awarded contracts as the lead provider. In many cases they are having work sub-contracted to them by an external organisation with more experience in bidding for high-level contracts. This leaves the local Small and Medium Enterprises (SMEs) and Social Economy Enterprises (SEEs), doing the bulk of the work entailed by the contract, but for much less than the full payment awarded for it. The Committee is anxious that the Finance and Personnel Committee's scrutiny of public procurement should highlight the need for the capacity of SMEs and SEEs to bid for these contracts to be greatly enhanced and supported by government. Assisting local SMEs and SEEs to build capacity and understanding in relation to public procurement tenders, would give them a more realistic chance of winning sizeable public contracts on the basis of open competition, and would keep work within the local economy with organisations whose activities are well-known to government. This, in turn, might help prevent

the problems surrounding the awarding of contracts such as that to Carter and Carter under the Training for Success programme. I will not rehearse the background to that issue here, as the Central Procurement Directorate (CPD) in the Department of Finance and Personnel (DFP) will be able to supply your Committee with all the details.

The Employment and Learning Committee understands that much of the public procurement process is subject to European Union Directives and legislation; however, it is clear that a great deal can be done by CPD to build greater understanding of the tendering process by local SMEs and SEEs without having to break any rules.

As a result of its concerns surrounding the Training for Success procurement exercise, the Committee made six recommendations to the Department for Employment and Learning, in conjunction with CPD. However, the recommendations, while made in respect of the Training for Success procurement, are generally applicable to any procurement exercise:

- Put in place mechanisms to ensure that stated agreements in contract bids are supported with formal written documentation clearly demonstrating the willingness of third-parties to be considered as part of the substantive bid (and which provide details of the level of resources agreed to be provided) and that these bids are subject to rigorous qualitative assessments;
- Provision of a programme of support to local prospective training suppliers aimed at improving their understanding of the tendering process particularly the tender requirements when competing at a pan-European level;
- Ensuring that, in the assessment of single contracts which cover the whole of Northern Ireland, that consideration is given to the geographic dispersity of the proposed locations for the contract delivery;
- Consideration of methods of streamlining contract awards to ensure they are appropriate and meaningful to both suppliers and trainees [users] geographically and across training levels [or the equivalent of any contract where provision is split];
- Review the current scope and criteria for select tendering procedures; and
- Utilise Sectoral experience within the tendering process.

The Committee is content to make the Training for Success Inquiry report and all the evidence gathered for it available to your inquiry through our respective Clerks.

More recently, the Committee has had concerns about the procurement exercise for the Department for Employment and Learning's Steps to Work programme. This programme rolled out in September 2008 with area contracts; however, in some localities there were issues with tenders and there were delays in the tender being awarded. The Committee is unsure as to how the tenders were finally awarded in these areas and understands that legal action resulted. As part of your inquiry, the Committee would urge your Committee to examine the process around the tendering and awarding of contracts for this programme. Again, the Committee is concerned that local providers may not have had the support they should when bidding for contracts and we are aware of issues around the ability to provide the infrastructure required by the contract on the part of some of the providers. The Committee generally feels that the fact that an organisation can bid for contracts in areas where it has no proven infrastructure or record of provision is worrying. We understand that EU competition rules create this issue; however, it is our hope that your inquiry may find ways of ameliorating this situation. Again, any information that we have can be shared by our respective Clerks.

The Committee is aware that the Scottish Executive has had some success with the use of Social Inclusion Clauses in public procurement exercises and we would recommend that your inquiry

investigates these successes with a view to their application to our own process. The inclusion of such clauses in public procurement exercises would allow us to achieve certain social aims outlined in the Programme for Government and may also have the added benefit of giving a boost to some of our local community and voluntary groups.

You are also probably aware that the Committee has made representations on a number of fronts for a quota of apprentices to be included in the award of any contract through the public procurement process. The Committee is concerned that in the current economic downturn considerable numbers of apprentices are being made redundant, with limited hope for finding a foster employer and in some cases being unable to complete NVQ assessments because they do not have a work placement. In the interests of creating a greater skills base for our economy we must be able to guarantee good quality and reliable workplace training. One of the best ways that this can be achieved is by having a well regulated and extensive system of apprenticeships. Public procurement has its part to play in this. The Committee has written to the Finance Minister on this issue and we understand that in the case of publicly procured construction contracts there are aspirational targets for the number of apprentices involved, although these would seem to be voluntary. The Committee would press for more concrete quotas for apprentices involved in public contracts and would see such quotas extending beyond contracts for construction projects.

Contained in PSA 2 (Skills for Prosperity) and PSA 3 (Increasing Employment) of the Programme for Government (PfG) are a number of aspirations involving increasing our skills base and increasing employment levels and reducing economic activity. The Committee believes that targets can be achieved in these areas through the public procurement process. In addition, a good public procurement process can deliver on other PfG aims surrounding social inclusion and the development of the social economy.

The Committee stands ready to assist in any way that it can with your inquiry. As I said previously, our respective Clerks can liaise to ensure that your inquiry is in possession of all the papers that we might hold that might prove useful to you.

Yours sincerely,



Sue Ramsey MLA

Chairperson

Drilling & Pumping Supplies Ltd

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Dear Sir / Madam

I am the Managing Director of a pump supply and installation company in Northern Ireland. We are based in Newtownards and employ 22 people and we are involved in public tendering to

both the private and public sectors. The public sector tenders would be in the main to N.I. Water Service and District Councils with some private tenders to the main contractors involved in Water Service activities.

I have listed a number of points below which have effective our company for consideration:

(1) Water Service tender C241 – completion date 1st March 2008. This tender

was for the supply of waste water pumps and spares and was a very involved procedure to complete and now some 9 months later we still await the outcome.

(a) Part of the above was to have a design indemnity insurance policy in place to accompany the tender return which we had never required before but decided to fulfil the requirements at a cost of £3329.50 per annum which I feel is totally unjustified given the delay in the procedure, and now with only 3 months to run on the policy.

(2) Water Service tender C311 – completion date 10th March 2008. Framework for the supply of water pumps and associated equipment. We entered into a partnership with our main supplier KSB Pumps to participate in this tender. This was once again a very involved procedure. We received notification in September 2008 (that the procedure had been delayed due to a review of the results and it has been decided not to progress with it). That was all! No further information or explanation has been received.

As an employer trying to keep our work force and premises moving forward, this type of activity by a public body is not very helpful.

(3) Over a number of years we have had the opportunity to tender to main contractors involved in Water Service contracts. While we have been successful in some areas we have been unsuccessful in many others. This seems to be due to a perceived preference of our competition's equipment, regardless of the fact that our equipment was more economically advantageous to the client Water Service and in fact this became so prevalent that I contacted my MP Mrs Iris Robinson with my concerns and she was good enough to fight my case with Water Service and consequently with the assistance of Senior Water Service personnel we were able to turn a few decisions in our favour, but we still face the same prejudice to our equipment.

(4) In conclusion – While my experience with Water Service has been difficult it seems that when contracts etc. are awarded there is no further information available to the unsuccessful parties i.e. price comparison, reason for failure, etc. There would appear to be no transparency to the tendering system in N. Ireland which leaves a small business like ours with no procedure to seek any post tender information.

Independent Consultant Adviser Group in NI

To committee.finance&personnel@niassembly.gov.uk

February 23rd 2009

Re: Inquiry into Public Procurement Policy and Practice in Northern Ireland

To Whom It May Concern:

Thank you for your recent call for comments regarding the Central Procurement Directorate (CPD) on the end-user experience of Small and Medium Enterprises and Social Economy Enterprises in tendering for and delivering public contracts.

I write to offer the comments and opinions of the recently formed Independent Consultant Adviser Group in Northern Ireland (www.icagni.co.uk). ICAGNI is a group within Institute of Business Consulting focused on serving the needs of members that are independent consultants or work within small consultancy practices. ICAGNI already has almost 60 participants representing a broad experience of SME, not for profit and enterprise work.

The recommendations of ICAG NI are given against the following 3 headings:

1. Terms of reference and responses to invitations to tender
2. Format of outward and inward communications
3. Transparency of process and information

1.1 Terms of reference and responses to invitations to tender:

1.1.1 The terms of reference for projects must define the outcomes required as well as the specific skillset needed for projects. There should be a list of the minimum requirements / qualifications for certain consultancy roles e.g. for Business Mentoring, business experience could be sufficient or a specific qualification might be required e.g. SFEDI or other Business Advice certificates

1.1.2 The terms of reference shall also specify details regarding the timings of payments and the method of payment. End-loading of payments to successful service providers should be replaced with staged payments at agreed milestones in line with delivery and importantly prompt payment of approved invoices.

1.1.3 Responses to invitations to tender must specify the names and personal experience of individuals who are to work on the project and not the overall experience of the practice

1.1.4 Responses to invitations to tender shall map the specific personal experience as stated above to the skillset and outcomes defined in the terms of reference. Tenderers should submit references who can be contacted to comment on previous work by the tenderer. This feedback should play a part in the assessment process. There will also allow authentication of proposers' capability.

1.1.5 It shall no longer be a requirement to show public sector experience in order to be considered for invitations to tender. Instead relevant and demonstrably applicable transferrable experience will have equal value. Invitations to tender shall state this facility and the assessment process will attribute equal value to such experience. It is likely that a 'mapping' template will be needed to quantify this exchange process.

1.1.6 As smaller practices are often quite specialised, they are better able to compete for small tightly focused projects that might otherwise be rolled up with other work in a large project for which they could not expect to compete. Purchasers are therefore asked to identify specialised components of projects and consider tendering them separately where appropriate.

1.1.7 Framework 'panels' should have regular reviews (annual) which allow new applicants.

1.1.8 The assessment process shall be described in the terms of reference including the date for a decision, the format and date of communications to all respondents to the invitation to tender.

1.2 Format of outward and inward communications

1.2.1 Standardised invitations to tender will be freely available for download and review from a web-based portal like www.etenders.gov.ie but without the need for subscription or user name. CPD's existing e-Sourcing NI portal (<https://e-sourcingni.bravosolution.com>) would serve this need if it included all tenders in the NI Public Sector and if there was an alerts service.

1.2.2 Pre-qualification questionnaires will be limited to projects which are valued at over £50,000.

1.2.3 All respondent organisations or affiliations of individuals will be welcomed and considered, whether the participating individuals have worked together before or not.

1.2.4 All respondent organisations or affiliations of individuals will be welcomed and considered, whether the participating individuals have worked with the CPD before or not.

1.3 Transparency of process and information

1.3.1 The name or names of the successful contractor(s) / organisation(s) shall be published within 30 days of the selection being made using the same open subscription-free web-based portal as mentioned in item 1.2.1 above.

1.3.2 The evaluation and the assessment process of responses to tender shall be open to outside scrutiny and specific reasons will be recorded for each assessment point a respondent earns or loses during the assessment process.

1.3.3 The above confidential feedback on a respondent's own tender will be provided to that respondent if they ask for it.

1.3.4 General feedback shall be amalgamated and published on the general reasons why contract was awarded and also general reasons why unsuccessful responses failed. This is expected to feed into and inform future CPD's tendering masterclass / workshop content.

1.3.5 There is merit in publishing a regular (e.g. annual) 'Lessons Learned' on what made for successful tenders Vs unsuccessful tenders.

We thank you for the opportunity to present our observations and recommendations and look forward to reading your conclusions



Bill MacNeill MIBC, MCMI, MCIM, DipM
Chair - Independent Consultant Adviser Group NI

ICAG NI is a group within the Institute of Business Consultants focused on serving the needs of members that are independent consultants or work within small consultancy practices.

Committee on the Administration of Justice

Paula Sandford
Clerical Supervisor
Committee for Finance and Personnel
Room 419
Parliament Buildings
Stormont
BELFAST
BT4 3XX

16 February 2009

Dear Paula Sandford

RE: Public Procurement Inquiry

CAJ recently read the public notice about this inquiry and considered that it would be useful to provide you with some of our initial thoughts on this matter. Public procurement, and more specifically, the extent to which procurement policies generally can be linked to social objectives such as the promotion of equality is an issue around which CAJ has taken a long-standing interest. CAJ would be of the view for example that the requirement contained in the Equality Impact Assessment process (contained within Section 75 of the Northern Ireland Act) that public bodies consider "alternative measures which better promote equality of opportunity" provides the framework within which specific measures linking public procurement to social objectives should be located. Clearly however, there are a wide range of other issues relevant to ensuring an effective and efficient system of procurement for Northern Ireland such as impact on SMEs, openness, etc.

It would be our view however that these issues were largely and indeed adequately addressed by the fairly comprehensive Procurement Review, established by the DFP in 2001. CAJ, along with a number of other organizations made submissions to this review, and largely welcomed the findings of the review team. CAJ has also met with the Central Procurement Directorate to discuss the implementation of the Procurement Review, and sat on the advisory group that was subsequently established to assist with the production of the guidance on Equality of Opportunity and Sustainable Development in Public Sector Procurement issued in May 2008.

In fact, the CAJ position would be that certainly the key arguments in relation to wider discussions about the value of linkages between procurement and social objectives (particularly in relation to effectiveness, value for money, legality etc) have been adequately addressed and that the focus now should be one of moving towards implementation of the new Guidance. We would also wish for the Committee to exercise caution in order to prevent "reinventing the wheel" and ensure avoidance of ground that has in fact been well covered by others quite recently.

In order to seek to assist the Committee with their deliberations on these matters we have listed below a range of materials which we think shows the extensive workload that has been produced in relation to this area to date, and which you may find useful for your discussions. In particular, we would consider the evaluation of the pilot procurement projects for assisting with recruitment of the unemployed to be useful in that this relates to an assessment of actual projects which have already been carried out. Moreover, it is clear that the success of the pilot projects highlights the potential benefits of such an approach to public procurement being rolled out across the wider public sector more generally.

CAJ would of course be happy to meet with the Committee to provide any assistance possible for this important issue, or indeed to clarify any of the matters that arise here. We hope that you find this useful, and should you have any queries regarding any of these matters or wish to contact us further please do not hesitate to do so.

Yours sincerely,
Tim Cunningham
Equality Project Worker

Suggested Materials for the Public Procurement Inquiry by the Committee for Finance and Personnel

1. CAJ submission to the Procurement Review (May 2001) (Attached)
2. Equality of Opportunity and Sustainable Development in Public Sector Procurement: Guidance issued by the Equality Commission for Northern Ireland and the Central Procurement Directorate (May 2008) (Attached)
3. Evaluation of Pilot Project on Utilising the Unemployed in Public Contracts Case Study (Attached)
4. Pilot Project on Utilising the Unemployed in Public Contracts: Final Evaluation Report (September 2005), Professor Andrew Erridge et al, University of Ulster, (Attached)
5. Guardian news feature on success of procurement as tool for achieving social objectives in Scotland (Attached).
6. Buying Social Justice: Equality, Government Procurement, and Legal Change, Oxford University Press, (2007)
7. Regeneration and the Race Equality Duty: Report of a Formal Investigation in England, Scotland and Wales (September 2007) (Attached)
8. Equality and Diversity Strategy, Olympic Delivery Authority (July 2007), (Attached)

Northern Ireland Council for Voluntary Action

1.0 NICVA

1.1 As the umbrella representative organisation for the voluntary and community sector in Northern Ireland, the Northern Ireland Council for Voluntary Action (NICVA) has over 1,000 members. Full members, of which there are 945, are independent voluntary and community organisations. NICVA also has 78 subscribers to NICVA services. These include all District Councils in Northern Ireland and some statutory bodies which have an interest in or relationship with the voluntary and community sector

1.2 NICVA is an independent body with charitable status and is a company limited by guarantee. The organisation is owned by its members who elect the board of trustees or Executive Committee. NICVA offers comprehensive advice to member organisations on charity law, funding, finance, personnel and policy matters. With a dedicated communications team, NICVA

works to ensure the sector is represented at every level, and that the voice of the sector is facilitated through the media and into the corridors of power.

2.0 Summary

2.1 Voluntary and community organisations experience barriers in the pre-qualification process and the resources it requires. The one-size-fits-all approach means they are going through the same processes for a small contract as would be required for a multi-million pound contract.

2.2 The transaction costs of the bidding process are high and meeting them is difficult for organisations which may be penalised by other funders for maintaining suitable reserves. High transaction costs also raise issues of value for money.

2.3 The added value which a voluntary sector provider brings to a contract may not be continued when the service is re-tendered, but no part of the process seems to take account of this.

2.4 The public sector is not good at focusing on outcomes; rather it focuses on financial information and processes. This means that audit and monitoring during the delivery of a contract can be invasive and disproportionate, as if a grant were being accounted for, rather than service being purchased.

2.5 Social clauses appear to be underused in Northern Ireland. There is enormous potential for them to drive social and environmental benefits. We provide examples of this in other places, including the Olympic Delivery Authority, and recommend social outcomes being tightly specified as part of the core deliverables of a contract. These considerations should be treated as seriously as other factors in the procurement process and this importance must be stressed to both purchasers and partners.

2.6 There is a lack of knowledge on the part of those responsible for procurement in public bodies about what the voluntary and community sector is and what it does. The sector is seen as a higher risk, cheaper option. In other parts of the UK major investment has been put into informing public procurement officials about contracting with the voluntary and community sector; the same should happen in Northern Ireland.

2.7 There are capacity issues within the voluntary and community sector. Aside from the issue of undercapitalisation and reserves mentioned above, there has never been any investment in Northern Ireland in preparing voluntary and community organisations to bid for contracts.

2.8 Northern Ireland should learn from the work done in Great Britain, including the Office of Government Commerce document *Social Issues in Purchasing* and the *Think Smart – think voluntary sector* guidance for contracting authorities

3.0 Voluntary and community sector experiences of procurement

3.1 Many voluntary and community organisations can be viewed as SMEs since they are tendering for business, providing employment and providing services in the local economy. NICVA has consulted its members on their experiences of public procurement from the perspectives of both tendering and of delivery and has found many common themes.

3.2 Tendering

3.3 Pre-qualification can be a problem. Organisations without a sufficiently large turnover or without a suitable history will not be able to pre-qualify – this creates barriers to entering the field. Voluntary organisations often submit joint bids and need to find suitable partners who will also pre-qualify successfully.

3.4 Resources required for pre-qualification are disproportionate for those only bidding for small projects. Requirements such as the need to demonstrate environmental certification are irrelevant for small projects such as short-term community consultation contracts. The requirements for small contracts are the same as for multi-million pound contracts. A one-size-fits-all process places inappropriate burdens on smaller bidders and discourages diversity in bidders.

3.5 The introduction of the new Frameworks appears to be driving towards centralisation.

3.6 The status of CPD guidance is an issue – on one hand it is just guidance, but on the other auditors are likely to check if it has been followed and thus de facto it is mandatory.

3.7 The transaction costs of the contracting process are very high and this is a particular problem for not-for-profit organisations. Substantial resources must be put into even the earliest stages of a bidding process. This raises two issues – value for money and voluntary reserves.

3.8 Many voluntary and community organisations are undercapitalised.

This is because it is difficult to raise additional money to retain as reserves and grant funders will penalise an organisation for holding even minimal reserves. The Charity Commission for England and Wales recommends that each organisation have an appropriate reserves policy – this may be 6-9 months in most cases. It is difficult for a voluntary or community organisation with limited reserves to make the investment required in competitive tendering, putting them at a competitive disadvantage with regard to the private sector.

3.9 The issue of value for money in using competitive tendering for all services is not straightforward. Aside from the recognised high transaction costs of any competitive process, public bodies seem to be using competitive procurement more to 'cover' themselves in case of future audit, than to achieve value for money. In one example, a voluntary sector body brought a project proposal to a public body with an offer of 40% contribution to the funding. The public body was in favour of the proposal but insisted on putting it out to tender. Since the proposing organisation was the only one in a position to deliver for 60% of the cost, they were the successful bidder. This unnecessary process was clearly not a good use of public money.

3.10 The clarification process has been found to be helpful and organisations have benefitted from the feedback they have received. This should be continued.

3.11 Where voluntary and community organisations deliver contracts, often to or with specialised user groups, there may be issues of continuity when the contract passes to another organisation. This is not a straightforward matter when, for example, an organisation delivering a contract has been able to provide added value by using the service delivery as training for people with mental health problems.

3.12 Experience of procurement seems to vary widely across public bodies, with some staff very experienced and familiar with procedures and some less so. These latter need to rely heavily on CPD who are experts in the procurement process but not knowledgeable about the specific service or product being procured.

3.13 Voluntary organisations, having submitted a compliant bid, often find they can suggest additional options which the tendering body had not included but which would improve the service. This is important for organisations who are not entering into contracts purely to make profit, but who want to see exactly the right service to meet the needs of users. In this way they can bring expertise and added value to the process.

3.14 Organisations who have received feedback on unsuccessful bids have found this helpful. This should be continued to enable organisations to develop in the process of submitting bids.

3.15 Since little procurement is undertaken jointly by departments, there is no way of recognising the 'joined up' benefits that a contract with one department may deliver to another.

4.0 Delivery

4.1 The public sector is not good on the whole at focusing on outcomes. It is easier to concentrate on financial information and process. Some departments insist on a very invasive relationship even after a contract has been signed. Rather than simply vouching that the service being purchased is being delivered, they demand information on many process issues (which would not be the case for a private sector provider) and may audit the same project up to four times per year.

4.2 Monitoring and audit requirements during project delivery may be disproportionate to the value of the contract, causing staff to spend public money designing systems for recording information and maintaining records for monitoring purposes (one NICVA member recently calculated that these used over 30% of the resources of the project). This is not balancing accountability with value for money.

4.3 Audit appears to be focused on issues that departments feel they might later need to defend and not on what is being achieved by the contract.

4.4 Organisations report experiences of goal posts being moved after a contract has been signed, without additional resources being made available.

5.0 Social clauses

5.1 Social clauses do not seem to be a common feature of contracts, despite much discussion, particularly around investment in infrastructure. It might be more helpful to think of this issue in terms of clearly specifying social outcomes as part of the core deliverables of a contract, so that a contract outcome would specify, for example, involvement of users in design, planning and monitoring of a service.

5.2 NICVA would like to see procurement used to help deliver the sort of society we hope to create in Northern Ireland, for example, one that is more fair and equal; one with good relations; one which is free of paramilitary influence; one in which all people enjoy the benefits of economic growth and feel they have a stake; one in which people enjoy excellent public services; one in which public bodies are open and accountable to a local democratic government.

5.3 Government departments and their agencies have the power, as purchasers and contractors, to ensure that social and environmental considerations become an integral part of the procurement and delivery of any investment project.

5.4 Social and environmental considerations should be integrated into every step of the process and especially in the initial drafting of the specification or terms of reference. They should be

treated as seriously as other factors in the procurement process and this importance must be stressed to both purchasers and partners. In any case the social and environmental issues that a contract should be impacting on, such as long term unemployment, equality of opportunity and gender issues and creating shared spaces, will be issues that Government already identifies as important priorities and form part of their requirements under Section 75 and New TSN.

5.5 Procurement could be used as a delivery mechanism alongside Northern Ireland's Anti-Poverty Strategy Lifetime Opportunities.

5.6 We note useful examples from other places, such as Raploch Urban Regeneration Company in Stirling, Scotland, which insists that contractors use local people, including young unemployed people and older jobless people, to renew the estate with legally binding "community benefit" clauses in contracts with developers. In a 10-year programme costing £120m, the scheme includes providing 900 new homes and building new roads, public squares and parks. The company decided 10% of jobs must go to local people, creating 225 jobs over 10 years. That means contractors, each year, must provide five apprenticeships, 10 jobs for semi-skilled operatives and 10 training places through legally binding guarantees. This is possible within EU laws outlawing anti-competitive behaviour since a contract can specify that x% of jobs must go to the long-term unemployed, or new entrants to the labour market, or people needing vocational training. The project has been welcomed as tackling skills shortages in the construction sector.

5.7 Likewise, Argent, developer of the £3.5bn regeneration project behind King's Cross St Pancras in London, which is delivering a new business and residential district embracing a range of facilities, has a binding agreement with Camden Council. This specifies a minimum 15% of jobs on the construction project will go to people from what it calls the "wider impact area" - in other words, locals and those from greater London. But in certain skilled areas this will rise to 30%.

5.8 NICVA also notes the equality and diversity strategy of the Olympic Delivery Authority in London. The ODA requires its contractors to collaborate in actively promoting race equality, disability equality and gender equality and to operate in accordance with all legislation on equality in employment, including preventing discrimination on the grounds of age, faith and sexual orientation. It requires its contractors to demonstrate practical implementation of equalities duties and legislation through: the development of an equality action plan, with suitably qualified and experienced personnel to oversee it; the operation of effective policies and procedures in relation to equal opportunities, recruitment, workplace harassment, reasonable adjustments and flexible working; the operation of effective equality monitoring; and the development and implementation of diversity training plans. The ODA has developed a balanced scorecard for evaluating potential contractors. Equality and diversity forms one element of the evaluation, as it is a necessary part of effective delivery of the programme. This means that all potential and actual bidders for ODA contracts are encouraged to address equality in employment issues. All companies unsuccessful at pre-qualification stage receive feedback on each aspect of the balanced scorecard, including the equality and diversity component. This feedback includes signposting to sources of information and guidance on how to further develop their equal opportunities practices.

5.9 We would also refer the committee to the report funded by the Joseph Rowntree Foundation Achieving community benefits through contracts: Law, policy and practice.

6.0 Recommendations

6.1 There needs to be more clarity around the circumstances in which competitive tendering is being used. Public bodies fund voluntary and community organisations via a range of methods

including grants, grant in aid and contracting. However, within contracts there are competitive procurement processes, service level agreements and outcome agreements, all different in process.

6.2 As increased responsibilities pass to local authorities under RPA, voluntary and community organisations would like to encourage councils to continue to use them for service provision rather than move everything in-house.

6.3 There seems to be a lack of knowledge on the part of those responsible for procurement in public bodies about what the voluntary and community sector is and what it does. The sector is seen as a higher risk, cheaper option. In other parts of the UK major investment has been put into informing public procurement officials about contracting with the voluntary and community sector (for example, the work done by the Office of the Third Sector and Cabinet Office in England – see below) but nothing has happened in Northern Ireland. England also has a target for service delivery through voluntary and community organisations, but no such target exists here. This should be remedied.

6.4 The inability to account effectively for outcomes means that the public sector finds it difficult to recognise the added value being brought by voluntary and community organisations as the metrics simply do not exist to measure it. Investment should be made in developing suitable metrics to enable more intelligent procurement.

6.5 We are aware that for contracts below £100k, if two bids are the same on everything but price and one bidder is involving marginalised groups or individuals then that bidder can be given opportunity to reprice. There should be exploration of the scope to expand this within EU regulations, and to make it more widely known.

6.6 There are capacity issues within the voluntary and community sector. Aside from the issue of undercapitalisation and reserves mentioned above, there has never been any investment in Northern Ireland in preparing voluntary and community organisations to bid for contracts. This should now happen to create a level playing field.

6.7 We recommend consideration of the document Think Smart – think voluntary sector. This is guidance for contracting authorities issued by the Office of Government Commerce in 2004. It states: 'The myth that the EC Procurement regime is a barrier to effective procurement from the VCS must be dispelled. Firstly, most contracts with the VCS [Voluntary and Community Sector] are likely to be in the field of social services, health, education and other community services. Such contracts, although subject to the EC Treaty principles of transparency and non-discrimination, are not subject to the full application of the EC procurement Directives, but to a lighter regime.'

6.8 The document lists the advantages of contracting with the voluntary and community sector as:

- Established links with the community – VCOs (voluntary and community organisations), especially locally based ones, although not necessarily large national providers, are often deeply embedded in local communities with a thorough understanding of the political and social environment in which they operate. They can be especially skilled at drawing upon resources in the community and gaining local support for new projects.
- Understanding the needs of specific client groups and real passion, focus and commitment to action on a specific issue. Greater capacity to reach and earn the trust of excluded or disadvantaged groups. This is often facilitated by recruiting those with direct experience of the user perspective.

- Independence and freedom from institutional pressures – VCOs are generally not constrained by complex structures and rules. They are independent and driven by their charitable aims rather than the search for improved profit margins. This can make them enthusiastic, committed, and especially flexible and responsive to customers needs.
- Innovation – the VCS is well placed to offer fresh and innovative solutions. They may be less risk averse and have a stronger motivation, through their charitable aims and objectives, to identify better ways of doing things.
- Responsiveness – VCOs may be highly focused on particular services or sectors of the community making them alert and responsive to changes in those markets.
- Economies of scale – because some VCOs are often specialists in a particular field, they can provide services in a way which benefits from economies of scale.
- Niche markets – many VCOs survive by supplying highly specialist services which private sector suppliers find unattractive or outside their competence.

6.9 In terms of the barriers to involving the sector in procurement it lists many of the issues that NICVA members have identified including:

- Lack of early and effective consultation with the VCS in the development of policy, programmes and strategies, leading to poorly packaged or unattractive procurements.
- Failure to properly assess VCOs' capabilities and to consider them as serious contenders. Insufficient recognition given to their strengths and skills. Public sector procurers too risk averse and worried that VCOs lack the resources, organisation, and business skills to deliver.
- Difficulty in finding out about contract opportunities and who to approach about becoming a supplier. VCOs often lack knowledge and experience of Government procedures and have great difficulty in breaking into the market.
- Trend towards use of large scale contracts, such as national or regional frameworks, and rationalisation of the supplier base, rules out many VCOs. Difficulty in forging alliances with prime contractors prevents them from playing a support role in the supply chain.
- Complex and costly pre-qualification and tendering procedures with unrealistic timescales, prescriptive specifications and excessive contract terms. Means invitations to tender can be consigned to the 'too difficult' pile.
- Lack of a level playing field in procurement, particularly relating to the unwillingness of some procurers to accept full cost recovery, including management charges, in VCO tender prices.

6.10 In relation to the issue of pre-qualification the Think Smart document advises that "Pre-qualification criteria should be carefully chosen to avoid unnecessary ruling out at this stage of competent suppliers. Whilst it is important to select suppliers that are financially sound and capable of delivering the solution, this does not necessarily mean the largest suppliers with the most extensive track record."

6.11 Another Office of Government Commerce document Social Issues in Purchasing suggests that staff should be trained in/made aware of social issues "Eg if the user requirement was to build a hospital, a contracting authority's awareness of regional neighbourhood renewal issues might lead it to consider locations in certain deprived areas in order to facilitate their regeneration". Both guidance documents advocate making procurement opportunities widely known and ensuring they are accessible to small and medium business, social enterprises and the voluntary sector. "Encouraging increased competition through assisting these kinds of bodes should help deliver value for money benefits for contracting authorities and at their best these

kinds of organisations can provide innovative, responsive and cost effective solutions to the kinds of outcomes sought by public bodies through procurement. Bodies such as social enterprises and voluntary organisations may often be placed well the deliver certain types of contract eg services to deprived sections of the community".

6.12 Additionally in Great Britain, a National programme for Third Sector Commissioning has been established with funding from the Cabinet Office. It attempts to ensure that government bodies and councils follow the guidance in three main documents: the Compact Code of Good Practice for Funding and Procurement (Commission for the Compact, 2003), Small Business Friendly Concordat (Office of the Deputy Prime Minister, 2005), and the eight principles of good commissioning (Cabinet Office, 2006, paragraph 30). It works partly through training public sector commissioners and procurement professionals on the role of the voluntary and community sector. We recommend that the Committee consider this work and recommend similar training in Northern Ireland.

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Lestas Consulting



1.1 Introduction- This paper has been produced for the Committee by Lestas Consulting - a local Management Consultancy Company specialising in supporting SMEs and SEEs to procure to the public sector and supporting the public sector to examine good procurement practice. This paper aims to highlight a number of issues that SMEs experience when tendering to the public sector that have been raised in our ongoing work with SMEs and public bodies (Central and Local government and non departmental government bodies) in the area of public procurement.

1.2 The Context for Lestas Consulting Responding - Lestas Consulting is an indigenous Northern Ireland Management Consultancy Company with an international presence having offices in Northern Ireland and Cyprus. The company was established in 2000 and has been successfully operating as a partnership with 4 permanent staff and up to 15 associate consultants who are specialists in a variety of fields. We expanded our operations to Cyprus in 2007 and have successfully delivered on contracts to the private sector and with Central Government on the Island. Lestas Consulting specialises in management and strategic planning and corporate governance. We are currently on the Department of Finance Central Procurement Directorate Framework for the undertaking of contracts across the whole of the NI Civil Service in the following categories:

- Corporate Governance
- Strategic Management
- Performance Measurement
- Projects
- Feasibility Studies
- Organisational Development
- Evaluations

- Economic Appraisals

Our clients include the following types of organisations:

- Local Authorities
- Public/ Private Partnerships
- Central Government Departments
- Non- Government Departmental Bodies
- Private Sector Companies
- Social economy Businesses
- Private Sector Network Organisations
- Cross Border Institutions
- Statutory Bodies/Agencies
- The Voluntary & Community Sector

Lestas Consulting, has extensive experience in the provision of specialist procurement advice, developed and promoted over the past 5 years for both the public and the private sector. In the past number of years, Lestas Consulting has acted in an advisory role on public sector procurement and the implementation of the EU Directives and national law to Local Government, Central Government (both here and in the EU) and over 280 companies from the private sector. In this regard we are well positioned to provide comments on public sector procurement for SMEs in Northern Ireland.

1.3 Definition of an SME for Northern Ireland purposes - In the first instance it is important for the Committee to provide the definition of SME. Public Bodies in Northern Ireland consider that they have 100% submission from the SME sector in Northern Ireland to its tender notices and a 100% success rate of award of contracts to SMEs – given that the definition relates to all businesses employing up to 250. In Northern Ireland over 90% of our SMEs are micro enterprises employing less than 10 people. The current definition used by public bodies makes it difficult to make a case for the real barriers for the majority of our businesses.

1.4 The cost of Public sector tendering to SMEs – This has not been examined in detail yet. However initial indicators are that it is often a very expensive process, involving extensive input from senior staff and owner/managers. Estimates are that it can be up to 35% of annual turnover depending on the size of the company and its dependency on the public sector.

1.5 Public Body Frameworks – The documentation and process involved in the primary stage of frameworks is lengthy, cumbersome and expensive for small businesses. Experiences to date indicate that the primary process for frameworks does not in any way lessen the documentation required for the secondary process. SMEs still need to complete a tender response in the secondary process in the same way as any other open competitive tendering process. Frameworks at present mean double the tendering work for an SME.

1.6 Success Rate for SMEs in Government Frameworks – Central government needs to provide statistics on how successful small companies are on getting onto the framework but more importantly, how successful small companies are at securing contracts from the framework. Initial indicators are that the success rate for companies on the framework (and who have therefore proved their capacity and capability to deliver government contracts) to secure contracts is a very staggering figure and certainly below 20%. This paper calls on the Committee to investigate these figures as part of a detailed research report.

1.7 Contract Management Skills by Managers in the Civil Service - It seems that one of the biggest barriers to small companies securing contracts through the frameworks is the lack of belief by the project managers in the capacity and capability of the smaller businesses to deliver on a contract. This is in direct contrast to the fact that the company has been placed on the frameworks and has therefore proved their capacity and capability.

1.8 The use of the Accelerated process in an economic downturn – In order to assist the current economic crises for the business sector, the EU is calling on government bodies to increase the use of the accelerated process in the restricted process. This means that when procuring public contracts the response time is reduced to 10 days from issue of tender notice to tender submission dates. Although this is positive in one sense it also has the potential to create another barrier for a small company, The shorter response time is unlikely to allow small companies enough time to prepare their tender documents.

1.9 Contracts below the EU Thresholds – Most small companies in Northern Ireland procuring to the public sector are working on contracts below the EU thresholds. Most public bodies procuring contracts below the thresholds are not taking the care and direction of good and similar practice as set out in the EU Directives. The processes used for these contracts and the Terms of Reference documentation produced is often of poor quality, that does not adhere to an open, transparent and objective procurement process. For example, decisions are made on contract award without clear understanding of evaluation of award criteria. Award criteria and sub criteria are not published in terms of reference so SMEs are unclear of the emphasis required in their tender response or how the award decision is reached.

1.10 The Debriefing Process –There is a complete lack of consistency across public bodies on the debriefing process from central government through to local authorities. Small companies must be encouraged to use the debriefing process in its entirety as a business development tool and civil servants need to appreciate the importance of this process for SMEs. FSB members highlight the significant barriers to them receiving any useful information in the debriefing process. The OGC provide extensive guidelines to public bodies in the UK of which there is little reference by public bodies in Northern Ireland. Public bodies still do not take the debriefing process seriously even with all the guidelines highlighting the importance of this part of the procurement process. In a number of cases public bodies “hand over” the debriefing process to a junior member of staff who has not been involved in the procurement process. Importantly, this lack of consistency and priority of the debriefing process appears to be increasing the use of the FOI act by SMEs when a more structured debriefing process would have been satisfactory. Given the significant financial commitment that SMEs can invest in public tendering (as outlined in section 1.4) it is important that the breadth and depth of debrief information provided by public bodies also acknowledges this commitment.

1.11 Freedom of Information – There is a complete lack of consistency across public bodies on what information can be disclosed from a procurement process under the Act. Small companies highlight many instances where one public body does disclose information and another does not. Public bodies need to agree and have a consistent approach to enable SMEs to effectively use this process.

1.12 Recommendations – This paper concludes with a number of recommendations to ensure the procurement process from public bodies has a greater emphasis on supporting SMEs.

- It is important that the Committee clearly establishes and communicates a definition of SME for the remainder of this investigation into public sector procurement to ensure that it recognises that micro enterprises (employing less than 10 people) form almost 90% of our business population.

- There is a need for the Committee to fully investigate the current public body framework approach to ensure that any secondary process is minimal to reflect the current depth of information provided in the primary process.
- There is a need for the Committee to examine the success rate of direct contract award in the secondary process to the micro enterprises currently on the framework that have already proved their capacity and capability in a primary process.
- There is a need for an educational process for contact managers in public bodies on the opportunities provided by SMEs in delivering public contracts. It is important that civil servants are supported to award contracts directly to smaller companies that have proved their capacity and capability and change the current "comfort in a larger company" culture.
- There is a need for the Committee to ensure that public bodies engage in the accelerated procurement process with caution.
- There is a need for the Committee to ensure there is consistency in approach across public bodies when tendering under EU thresholds and to ensure an open, objective and transparent procurement process.
- The Committee needs to ensure that procurement managers across public bodies are properly trained in the tender debrief process and to standardise the information provided during this process when any public funds are involved in the contract either directly or indirectly through a third party such as a partnership.
- The Committee needs to ensure public bodies have a consistent approach to FOI requests from SMEs in relation to a public procurement process in which they are involved and to effectively use this process.

Signed Date 26 February 2009

Michelle Lestas, Partner
Bsc(Hons), MBA, MCIPS, MIIPMM

Royal Institution of Chartered Surveyors

Royal Institution of Chartered Surveyors



27 February 2009

Mr Mitchel McLaughlin MLA
Chairman
Northern Ireland Assembly Committee for Finance and Personnel
Room 419
Parliament Building
BELFAST
BT4 3XX

Dear Mr McLaughlin

Re: Inquiry into Public Procurement Policy and Practice in Northern Ireland

The Royal Institution of Chartered Surveyors (RICS) Northern Ireland is the principal body representing professionals employed in the land, property and construction sectors and represents some 3,000 members. Our members practice in land, property and construction markets and are employed in private practice, in central, regional and local government, in public agencies, in academic institutions, in business organisations and in non-governmental organisations.

As part of its Royal charter, the Institution has a commitment to provide advice to the Government of the day and, in doing so, has an obligation to bear in mind the public interest as well as the development of the profession.

In relation to private consultant and contracting firms, the RICS construction membership represents large multi-national organisations, local SMEs and sole practitioners working in the fields of quantity surveying, building surveying and project management. This broad representation allows RICS to provide a balanced opinion and impartial advice on the current status of the Northern Ireland construction industry.

RICS welcomes this opportunity to provide written evidence to the Committee for Finance and Personnel in relation to the public procurement policy and practice in Northern Ireland. We have responded to four of the key terms of reference under the following headings.

1. Examine the experience of SMEs and SEEs in tendering for and delivering public contracts

RICS members representing the interests of SMEs working within the Northern Ireland construction industry have experienced difficulties in tendering for public sector contracts that use a framework procurement strategy.

RICS recognises the benefits of using a framework procurement strategy, such as, reduced administration costs to clients and the industry, improved long term relations between client and supplier and greater long term efficiency savings. On the downside our members are also very aware that frameworks exclude unsuccessful firms from a particular area of work for up to four years, thus reducing the opportunity to improve wider skills and experience within industry. Frameworks also restrict the overall choice of suppliers and expertise and increase the risk of excluding smaller firms from the bidding process.

In Northern Ireland frameworks have come under scrutiny as they are perceived to unfairly disadvantage the mainly SME market. Many SMEs have delivered on similar schemes in the past and have the potential to deliver on frameworks, but are excluded due to excessively high selection criteria. For example, insurance and company turnover set at levels beyond the capacity of most SMEs and disproportionate to the size and nature of the anticipated workflow.

Two very large frameworks in Northern Ireland failed to get off the ground due to successful legal challenges. In contrast, some frameworks in Northern Ireland such as those managed by DHSSPS, Health Estates have operated successfully for many years. RICS believes it is the 'one size fits all' approach to frameworks that has failed in these instances and not frameworks as a potential procurement strategy.

To ensure the success of future frameworks that represent fairness, transparency, BVFM and promote competition, RICS recommends:

- Smaller frameworks (in value) to encourage a higher level of competition and experience within the market;
- Selection criteria such as insurance levels and company turnover should not discriminate against SMEs but be in proportion to the size and nature of the anticipated workflow;
- The number of teams should reflect the total value of work on the framework and the number and size of projects to be let;
- Criteria should accurately define the technical ability and experience required by bidders to distinguish successful bidding potential at an early stage. This will reduce costs to both industry and clients; and
- Where possible frameworks should be geographically based.

Frameworks appear to be the preferred procurement strategy by many government departments. However, it is important that government departments are aware that frameworks are not the only procurement strategy available to them.

Despite the current disorder of public procurement, the downturn of the construction industry, and the urgent need to get work to the market, RICS would under no circumstances wish to see a return to lowest cost tendering.

2. Consider the nature, extent and application of social clauses within public contracts.

The provision of social clauses is currently being incorporated into the procurement processes in some government departments such as the Department of Education. In principle, RICS Northern Ireland welcomes this; however, in the current economic climate with increasing redundancies it may become more difficult to comply.

Unemployment levels vary across Northern Ireland and as such RICS recommends that where permitting, social clauses reflect this regional variation on a project basis taking into consideration the location of a projects and local community need.

3. Identify issues to be addressed and which are within the remit of Department Finance and Personnel;

Workflow

In 2007 the Northern Ireland construction industry readied itself in anticipation of the Investment Strategy for Northern Ireland 2008 -2018. Since its publication the anticipated workflow has not been realised.

Findings from the RICS Construction Market Survey Q3, 2008, indicated that Northern Ireland had experienced the sharpest decline in workloads in the UK across all sectors and the lowest levels since the survey began in 1994. Expectations in workload, employment and profits also recorded the lowest levels since the survey question was first asked in 1998.

This is mainly due to delays in the publication of the second Investment Strategy for Northern Ireland (ISNI2) delivery strategies for education and health estates and the recent legal challenges to the Department of Education and Central Procurement Directorate frameworks. The impact of the economic recession on house building and other private sector construction projects is also having a major affect on the stability of the construction industry.

A steady flow of public sector construction projects has traditionally offset any decline in private sector work and provided certainty within the industry. As it stands the continuing uncertainty of public work makes it difficult for contractors and consultants to plan ahead and maintain staff levels.

Skills

Job losses amongst highly mobile construction professionals will have a significant impact on the availability of skills for future projects as they seek employment elsewhere. RICS has experienced difficulty in placing third year university students with consultants and contracting firms due to increased levels of redundancy within the industry. Construction apprenticeships have also been hit by the downturn in the market with few construction firms taking on new apprentices and many existing apprenticeships being ended early. In summary, the level of skills within the Northern Ireland construction market is reducing which may lead to skills shortages in the years ahead.

The construction industry remains ready and waiting for public sector work; however, projects appear to be tied up in process and bureaucracy. The Northern Ireland construction industry requires clear guidance from the Executive on when work will be released.

Communication with the industry

The Strategic Investment Board (SIB) announced at an RICS procurement workshop in November 2008 that they were committed to launching the Delivery Tracking System (DTS) in early 2009. This tool would provide greater certainty to the industry in understanding where projects are within the government system. However, more recently, RICS have been informed that the DTS is currently undergoing a number of tests and will not be ready for at least another few months.

RICS recommends that the Delivery Tracking System (DTS) goes live as a matter of urgency and has commitment by all Centres of Procurement Expertise (COPEs) to be updated with current and accurate data on a regular basis.

In the absence of the DTS the industry must be kept informed of the progress of new construction opportunities through the development of a clear communication strategy. A starting point would be the regular publication of the CIFNI Procurement Task Group Project List on the DFP website.

Future workloads

RICS welcomed the announcement by the Department of Finance and Personnel in December 2008 to bring forward construction projects worth £115million to proceed to tender on a project by project basis by March 2009. These projects were originally scheduled under the delayed Department of Education and Central Procurement Directorate (CPD) frameworks.

Despite the commitment from the Department the process of delivering these projects to the market is too slow and many will not be ready for tender by the end of the financial year. Once a project is put out to tender

it can take 3-4 months before it is awarded and becomes revenue earning; even longer for contractors where design development is applicable.

Our members are concerned that CPD does not have the necessary resources to deliver this work to the market in the timeframe proposed. They are also concerned that there is very little planned work coming out of the system in the twelve months ahead.

RICS recommends that CPD is provided with the necessary resources required to deliver these overdue projects.

The Northern Ireland Executive should re-examine the public works construction programme and bring forward future planned projects into years 2009 -2010 to ensure continued workflow.

The release of this new work must be managed in a timely and consistent manner.

It is essential that Government departments are efficient in their procurement activities. Where there is inaction and budgets are not being spent, funds should be transferred to departments that can use the resources to bring planned work forward to the market place.

Principles of procurement

RICS Northern Ireland supports the twelve guiding principles which govern the administration of public procurement and recommend that they be revisited by all COPEs to ensure they are understood and applied in what are increasingly complex circumstances.

Transparency and objectivity in procurement processes is of particular importance and necessary at this time to rebuild industry confidence.

Standardisation of procurement practice

RICS members have experienced inconsistency across all government departments in tender documentation, the application of evaluation and assessment criteria, and the value and effectiveness of debriefs.

RICS recommends the development of a unified procurement strategy that ensures the consistent application of evaluation and assessment criteria, tender documentation and constructive debriefs across all COPEs.

4. Make recommendations to DFP for improvements to public procurement policies and processes, aimed at increasing access to opportunities for SMEs and SEEs and maximising the economic and social benefits for the local community, whilst taking account of the principles governing government procurement.

In summary, outlined below are the recommendations highlighted under the previous headings:

1. To ensure the success of future frameworks that represent fairness, transparency, BVFM and promote competition, RICS recommends:

a. Smaller frameworks (in value) to encourage a higher level of competition and experience within the market;

b. Selection criteria such as insurance levels and company turnover should not discriminate against SMEs but be in proportion to the size and nature of the anticipated workflow;

c. The number of teams should reflect the total value of work on the framework and the number and size of projects to be let;

d. Criteria should accurately define the technical ability and experience required by bidders to distinguish successful bidding potential at an early stage. This will reduce costs to both industry and clients; and

e. Where possible frameworks should be geographically based.

2. RICS would under no circumstances wish to see a return to lowest cost tendering.

3. Unemployment levels vary across Northern Ireland and as such RICS recommends that where permitting, social clauses reflect this regional variation on a project basis taking into consideration the location of a project and local community need.

4. The Northern Ireland construction industry requires clear guidance from the Executive on when work will be released.

5. RICS recommends that the Delivery Tracking System (DTS) goes live as a matter of urgency and has commitment by all COPEs to be updated with current and accurate data on a regular basis.

6. In the absence of the DTS the industry must be kept informed of the progress of new construction opportunities through the development of a clear communication strategy. A starting point would be the regular publication of the CIFNI Procurement Task Group Project List on the DFP website.

7. RICS recommends that CPD is provided with the necessary resources required to deliver the £115million worth overdue projects.

8. The Northern Ireland Executive should re-examine the public works construction programme and bring forward future planned projects into years 2009 -2010 to ensure continued workflow.

9. The release of new work must be managed in a timely and consistent manner.

10. It is essential that Government departments are efficient in their procurement activities. Where there is inaction and budgets are not being spent, funds should be transferred to departments that can use the resources to bring planned work forward to the market place.

11. RICS Northern Ireland supports the twelve guiding principles which govern the administration of public procurement and recommend that they be revisited by all Centres of Procurement Expertise (COPEs) to ensure they are understood and applied in practice in what are increasingly complex circumstances.

12. Transparency and objectivity in procurement processes is of particular importance and necessary at this time to rebuild industry confidence.

RICS Northern Ireland looks forward with interest to the outcome of this inquiry and would welcome the opportunity to meet the Committee to discuss the issues raised in our response.

Yours sincerely

Ann Stewart
Public Policy Executive

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Unison Evidence to Committee for Finance and Personnel



Scrutiny of Public Procurement Practice in Northern Ireland

1. UNISON is responding to this call for evidence as the lead public sector union in the UK, and lead NIC-ICTU representative in recent partnership reviews of procurement practice involving DFP, the Equality Commission, the CBI Central Procurement Directorate and the Strategic Investment Board.

2. We attach a bibliography of relevant material which may be of interest to the Committee. The key text is;

Equality of opportunity and sustainable development in the public sector, Equality Commission for NI and the Central procurement Directorate, May 2008

 www.cpdni.gov.uk/equality_of_opportunity_and_sustainable_development_-_full_guidance.pdf

This has the specific endorsement of the Equality Commission, the Department of Finance and Personnel, and the previous Minister in his capacity as Chair of the Procurement Board. It is therefore policy arising from the work of social partners. It prescribes a range of social clauses, and cross-refers to all relevant policy in this area. It sets procurement standards for all public bodies.

3. To meet the objectives of your scrutiny exercise, we recommend that there be focus on the extent to which DFP is taking steps to mainstream this policy into procurement activities of all Departments and public bodies, and actions taken by DFP to communicate and if necessary ensure training in the policy. The Committee may also wish to ask DFP which recent contracts have been let in accordance with the policy.

4. The Committee is seeking to examine the capacity of SMEs and SEEs to compete for public contracts. UNISON considers that the public purpose should be paramount in the letting of

contracts, and that there should be no compromise to promote market entry on the protection of the public interest, service users, and workers. In addition, the processes (including pre-contract review and post-contract monitoring) set out in the May 2008 policy are fundamental to preserving the public interest and compliance with the full range of Executive policy.

5. As well as considering the benefits of market entry for SME's and SEE's, the Committee should also consider the risks. For example, the Guardian (18/02/08) reported on the risks faced by SEE's and the voluntary sector when asset bases had been neglected in the search for income from public sector service delivery contracts. UNISON has observed in the context of detailed involvement with PFI processes that this procurement route seems particularly hostile by its nature to the involvement of local SME's/SEE's.

6. We note your reference to 'undue delays in progressing procurement contracts', and the impact of delays in planned capital expenditure on the construction sector.

Contrary to myths and excuses promoted by the SIB, there are no inherent or practical delays in the May 2008 policy. Put simply, the infrastructure programme does not stand up, never stood up, was totally oversold to promote the PFI model, and led to the spiking of Departmental budgets on the assumption of PFI. In changed circumstances this is blocking the effective release of infrastructure funding.

A probing review by the Committee of these circumstances and the role played by DFP would be welcomed by all concerned for new infrastructure, better services, equality, social inclusion and sustainability, and the urgent need for countercyclical expenditure.

7. UNISON would be content to give verbal evidence to your Committee on the issues highlighted above, and the general remit of your scrutiny exercise. Our contact is Thomas Mahaffy (t.mahaffy@unison.co.uk) if you wish to take this forward.

Bibliography

Refinancing: profiteering from public services

UNISON

1 November 2008

Lots of PFI contractors are 'refinancing' their loans - changing the terms of their borrowings to increase profits by as much as 80%. Most public bodies making PFI deals have allowed contractors to keep all these windfall profits. The National Audit Office and the Public Accounts Committee have condemned these arrangements and said the benefits of refinancing should be shared between contractor and client.

 http://www.unison.org.uk/pfi/docs_list.asp

What is wrong with PFI in schools

UNISON

2 September 2008

As more PFI schools are built it becomes possible to judge their success. UNISON has members intimately involved in PFI. This report draws on their experience and rounds up the evidence to date.

 http://www.unison.org.uk/pfi/docs_list.asp

PFI: Against the Public Interest

UNISON

29 July 2008

The report analyses the failings of the government's private finance initiative and public private partnerships, highlighting high profile contracts which have failed and PFI companies, such as Ballast which went into receivership.

 http://www.unison.org.uk/pfi/docs_list.asp

Public risk for private gain? The public audit implications of risk transfer and private finance

UNISON

7 July 2008

A new UNISON report shows that the government has failed to evaluate its own claim that extra costs of PFI are justified, because risks are transferred to the private sector. There are now more than 500 PFI deals worth £36bn, but the true cost of these deals to the taxpayer is still unknown and private companies are reaping the benefits of this oversight, at the expense of the public purse. (NB: This is a 1.2MB download)

 http://www.unison.org.uk/pfi/docs_list.asp

Equality of opportunity and sustainable development in the public sector

Equality Commission for NI and the Central procurement Directorate

May 2008

 www.cpdni.gov.uk/equality_of_opportunity_and_sustainable_development_-_full_guidance.pdf

UNISON comments on new Treasury guidance for PFI

April 2004

UNISON

23 April 2008

UNISON welcomes the Treasury's review of PFI, in particular, the recognition that value for money should not be at the expense of the workforce and that soft services do not have to be included in PFI projects. We would like to see these policies incorporated into the methodology and translated into clear obligations on departments and contracting authorities.

 http://www.unison.org.uk/pfi/docs_list.asp

A Policy Built on Sand

UNISON

24 January 2008

Report released by UNISON proves that private finance initiative schemes do not out-perform public sector projects.

 http://www.unison.org.uk/pfi/docs_list.asp

At What Cost?

UNISON

8 October 2007

This UNISON report shows how using private firms to build and run schools and hospitals in Scotland is wasting billions of pounds

 http://www.unison.org.uk/pfi/docs_list.asp

Not So Great: Voices from the frontline at the Great Western PFI Hospital in Swindon

UNISON

1 January 2003

Staff working in nine PFI-funded hospitals speak directly of their experiences of the new system and revealed many of the problems and blunders concealed behind the glitzy exterior of the new buildings. This report, also researched for UNISON by John Lister, asks similar questions of staff at one of the most recently opened PFI hospitals, Swindon's £132 million Great Western Hospital.

 http://www.unison.org.uk/pfi/docs_list.asp

Review of opportunities for public private partnerships in Northern Ireland

A submission by UNISON

September 2002

 Contact Thomas Mahaffy – t.mahaffy@unison.co.uk

Response of the OFMDFM Committee to the Finance and Personnel Committee's Inquiry into Public Procurement Practice

Introduction

1. The Committee for the Office of the First Minister and deputy First Minister welcomes the inquiry into Public Procurement Practice initiated by the Committee for Finance and Personnel.

2. Having regard to the terms of reference of this inquiry, the OFMDFM Committee commissioned initial advice from Assembly Research and Library Service on the application of social clauses within public contracts.

3. A social clause is a requirement within a procurement contract or process which stipulates that the contract should provide added social value.

4. The Executive has committed to using Government procurement to further its social objectives in the Programme for Government.

The Role of OFMDFM

5. The Committee is aware that social clauses in public procurement could have a particularly positive impact at this time of global economic downturn.

6. The Committee noted that as the Department with responsibility for monitoring the Programme for Government and for the Strategic Investment Board, OFMDFM is in a position to influence procurement policy.

7. The Committee urges OFMDFM in the strongest of terms to build on existing best practice and develop expertise in employing social clauses in procurement.

8. The research commissioned by the Committee highlights cultural and technical difficulties experienced by procurement professionals in analysing and evaluating the wider social policy aspects of procurement exercises.

9. The Committee considers that the Department has a key role in overcoming such barriers.

10. The Committee further commissioned research to identify approaches in overcoming technical challenges and to highlight examples of successful use of social clauses.

11. The Committee is in no doubt that these best practice approaches and examples can be built on to achieve crucial social outcomes on agreed Government projects.

12. For instance, training, apprenticeship and employment imperatives in capital procurement exercises could maintain capacity in the construction industry and address fundamental problems such as growing unemployment in recession.

13. The Committee wishes to flag up in particular the Northern Ireland Unemployment Pilot Scheme, which promoted the employment of the "unemployed" in large construction contracts.

14. The benefits of this pilot were found to outweigh the costs on evaluation by CPD and the University of Ulster.

Conclusion

15. The Committee was emphatically in favour of raising the social value of every pound spent from the public purse, ie the ratio of investment to the value of the social outcome (social return on investment).

16. The Committee agreed that OFMDFM and the Strategic Investment Board were responsible for driving cultural change in procurement and prioritising social return on investment in Programme for Government targets.

17. For completeness, the Committee refers CFP and OFMDFM to this research.

Committee for Finance and Personnel
Room 419
Parliament Buildings
BELFAST
BT4 3XX

26th February 2009

Dear Sirs

Inquiry into Public Procurement Policy and Practice in Northern Ireland

Early Years- the organisation for young children welcomes the opportunity to comment as part of the Inquiry into Public Procurement Policy and Practice in Northern Ireland Public Consultation.

Our understanding of the Terms of Reference of the Inquiry is as follows:

As a result of its initial work, the Committee will undertake a focussed scrutiny of public procurement policy and practice in Northern Ireland which will:

- *Examine the experience of SMEs and SEEs in tendering for and delivering public contracts;*
- *Consider the nature, extent and application of social clauses within public contracts;*
- *Identify issues to be addressed and which are within the remit of the Department Finance Personnel (DFP);*
- *Assess progress by DFP in achieving associated objectives and targets, including those contained in the Programme for Government and related Public Service Agreements; and*
- *Make recommendations to DFP for improvements to public procurement policies and processes, aimed at increasing access to opportunities for SMEs and SEEs and maximising the economic and social benefits for the local community, whilst taking account of the principles governing public procurement.*



The experience of SMEs and SEEs in tendering for and delivering public contracts.

Early Years has not had direct experience of tendering for and delivering public services. However, the organisation does deliver a range of services under grant awards and under Service Level Agreements. We believe that there can be confusion in the language used within these contracting arrangements and believe that this should be clarified.

In talking to other voluntary organisations it is our understanding that their experiences of tendering under public procurement have been mixed. Some have felt that the process was very fair, whilst more have felt that there were a number of barriers that had to be overcome as part of the process.

In particular we are aware of some difficulties raised in respect of pre-qualification processes, including the need to demonstrate a sustainable and well-established organisation. We believe that Early Years can easily demonstrate these requirements, but are concerned that it may create a barrier for smaller organisations and potential partner organisations. We also believe that there may be competing priorities for some voluntary organisations- whilst procurement policy may set a criterion which requires higher reserve balances, some voluntary organisations may be cautious about growing reserves due to funder views and requirements. At Early Years we believe that a robust reserves policy is essential for the sustainability of our organisation and for the sector as a whole, but recognise that smaller voluntary organisations do not yet have these policies in place.

We also believe that the resources required for pre-qualification may be disproportionate. Whilst we recognise the need to ensure that procurement processes are robust and fair, we believe that such processes should be reflective of the size of the contract and should not unnecessarily re-direct much-needed monies and time from core service delivery. We do not believe that this offers value-for-money to our customers.

Consider the nature, extent and application of social clauses within public contracts.

We are aware that social clauses are not a common feature of contracts. We believe that the key deliverables of contracts should be based upon outcomes, rather than outputs, and this would more readily lend itself to the inclusion of social clauses. We believe that this would then give the voluntary sector an opportunity to demonstrate the added value that it brings to the table. We appreciate that this represents a very different approach for many voluntary and statutory organisations and would require new methodologies for targets and

measures, but believe that overall it would enhance the procurement process and more easily implement a joined up thinking approach.

Identify issues to be addressed and which are within the remit of the Department Finance Personnel (DFP).

It is our understanding that the feedback process in respect of unsuccessful bids is a robust, open and valuable process. We believe that this is a welcome part of any process, and demonstrates the need and desire of voluntary sector organisations to adapt and develop. We believe that this should be included as a formal part of the tendering process and should be a two-way process, in order that overall practice and understanding can be improved.

Assess progress by DFP in achieving associated objectives and targets, including those contained in the Programme for Government and related Public Service Agreements.

We have nothing to add specifically in relation to this area.

Make recommendations to DFP for improvements to public procurement policies and processes, aimed at increasing access to opportunities for SMEs and SEEs and maximising the economic and social benefits for the local community, whilst taking account of the principles governing public procurement.

We believe that it would be very useful if DFP could provide training and support for voluntary organisations to assist them in understanding and bidding for contracts. Many voluntary organisations do not have the capacity and experience to become involved in these processes, despite often having excellent delivery experience. Other organisations have ended up learning about procurement processes only through the completion of an unsuccessful bid.

We also believe that there can at times be a lack of understanding of the voluntary sector by those involved in the procurement processes, with the perception being that the voluntary sector is a higher risk, but cheaper, option. We believe that this could be resolved by training public procurement officers on the benefits of contracting with voluntary sector organisations and by setting targets on service delivery through the voluntary and community sector, as is currently being carried out in England.

Please do not hesitate to contact us should you require clarification on any of the above comments.

Yours faithfully

Siobhan Weiniger

Siobhan Weiniger
Director of Finance and Corporate Services

Page 4 of 4

Chartered Institute of Purchasing and Supply

THE
CHARTERED INSTITUTE OF
PURCHASING & SUPPLY®



Committee for Finance and Personnel
Northern Ireland Assembly

Committee Office, Room 419
Parliament Buildings
BELFAST
BT4 3XX

26 February 2009

To whom it may concern

Re: The Chartered Institute of Purchasing & Supply Northern Ireland Assembly consultation response on the use of SMEs

The Chartered Institute of Purchasing & Supply (CIPS) is an international professional membership organisation with 50,000 members in 150 countries. Dedicated to promoting good practice, CIPS provides a wide range of services for the benefit of members and the wider business community.

CIPS consulted its membership in order to form a response to the Northern Ireland Assembly report on Public Procurement and SMEs. A range of responses were received from members with EU Public Procurement experience of contracting with SMEs.

CIPS position on contracting with SMEs

Small and medium size (SME) businesses are a significant part of most economies, and an important factor in ensuring varied, competitive and innovative supply markets. Whilst SME suppliers offer many opportunities to larger organisations and vice versa, there are often barriers – both real and perceived – to doing business. There has never been a shortage of supportive words for SMEs, but there has often been a shortage of supportive action.

Whilst there is an increasing awareness in many sectors that SMEs have much to offer as suppliers, there is often a disconnect between SMEs and larger organisations, including the public sector, in their attempts to do business. Both parties need to understand what these barriers are, and to commit to overcoming them.

Understanding why SME's have been under utilised in the past

- A drive for organisations to consolidate spend and reduce their supply base
- Product and service standardisation projects
- Security of supply – in particular with an over-reliance on standards, certifications, complex quality standard systems and, in some cases, lengthy historical financial data.
- Complex processes with little guidance

However, it is worth noting that some of these barriers are often perception rather than reality. For example, buyers have a perception that SMEs can pose more of a risk than larger organisations, and SMEs often do not ask for help when completing their invitation to tender (ITT) because they do not think that they can, or that it will reflect badly on them. Some SMEs also anecdotally hear that it is difficult to win public sector contracts so they often eliminate them from their business plans automatically.

CIPS is supportive of initiatives that provide a level playing field for SMEs to contract with the public sector. We believe that areas for immediate action include:

Ease of access – Supplier portals are a successful way of making information more available and accessible to SMEs. The Olympic Delivery team has created a portal for buyers and suppliers to review bidding opportunities. The CompeteFor website is intended to match companies to opportunities in the London 2012 supply chain providing a level playing field for organisations of any size to compete for the £6bn of Olympic work. This model is being reviewed and could possibly become a model of excellence to be rolled out throughout the public sector. CIPS believes that the use of technology should be deployed where appropriate in order to simplify and speed up the process.

Collaboration – The CompeteFor website also allows suppliers to seek partners in order for them to compete for larger pieces of work. CIPS believes that this is a mechanism that will increase the opportunities for SMEs to contract with the public sector. Sellafield Ltd, set up a supplier ombudsman to, amongst other things, act as a facilitator to put similar small suppliers in touch with each other in order to collaborate and jointly tender for Sellafield contracts. This was set up after a large scale review to consolidate and reduce their supply base and acted as a way to keep some of those suppliers on board. CIPS suggests making awarded contracts more publicly available could allow SMEs access at the second tier supplier level.

Under the threshold notices – CIPS would encourage a wider publication of those notices that fall under the EU thresholds in order to attract SMEs at a lower level entry.

Guidance – Information on how the public sector procurement processes work is available from many sources. BERR have recently launched a "Solutions for Business" which is a streamlined portfolio of publicly-funded business support products that organisations can access through Business Link. The idea is to provide a single source of information to avoid confusion. CIPS is supportive of clear guidance written from the supplier's viewpoint in plain English. The use of jargon and acronyms should be avoided as much as possible and examples used wherever relevant. As well as a central, independent, source of information, contracting departments should signpost their suppliers to this available resource and provide an internal contact to answer any supplier queries.

Training – Guidance material is often laborious and difficult to understand. On some occasions training will be required. CIPS is in favour of buyers providing training to their suppliers on how to best compete for the work. This may be through 'Meet the buyer' events, workshops, on-line tutorials or by putting successful suppliers in touch with prospective ones (where there isn't a conflict of interest) to coach and share experiences.

Realistic requirements – Often SMEs are excluded, or feel excluded from public procurement contracts due to requirements being set too high. Careful consideration should be used when using standards, certification, length of financial history, company turnover etc so as not to exclude potential suppliers. Consideration should also be made to a supplier's business experience outside of the public sector, and alternative standards and accreditations at the evaluation stage. Requirements should reflect the contract value and be assessed on a case-by-case basis and specifications should be more outcome-based to encourage innovation.

Communication – Clear and transparent processes and requirements are essential, as is a point of contact for the suppliers to use, and encouraged to use. Often suppliers think they may be put at a disadvantage or even unaware that they can make contact with the buying organisation during this pre-contracting phase. Keep your suppliers regularly updated and provide a clear timetable of events.

Feedback – Assist both successful and unsuccessful suppliers with open and honest feedback; and also request feedback from your suppliers on the process in order to make adjustments for

next time. Consider completing a frequently asked questions document off the back of any feedback given and received in order to assist future ITT processes.

Trained Professionals – CIPS believes that professionally trained procurement people should be at the forefront of delivering these initiatives. Research shows that the majority of large organisations now have a Chief Procurement Officer (CPO) on the executive management team, and that there is a correlation between professional procurement and profitability. In the case of the public sector this translates into increased value for money.

The SME market has considerable value to bring to the public sector, through innovation, agility, speed to market to mention but a few examples. As mentioned before, much research has been carried out and recommendations made; the implementation of these initiatives is the biggest challenge. CIPS would recommend implementing regular reporting and monitoring of the progress of any initiative set, as well as regular contact with SMEs to constantly review and improve the process.

Please do not hesitate to get in touch with us if you wish to discuss these issues in more detail.

Regards



Roy Ayliffe
Director of Knowledge and Representation
The Chartered Institute of Purchasing & Supply

Committee for Enterprise, Trade & Investment

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Northern Ireland Assembly

To: Shane McAteer, Clerk to the Committee for Finance & Personnel
From: Jim McManus, Committee Clerk
Date: 26 February 2009
Subject: Scrutiny of Public Procurement Practice in Northern Ireland

1. On 13th November 2008, the Committee for Enterprise, Trade & Investment received oral briefing from DETI officials in relation to progress on the Department's Draft Social Economy Enterprise Strategy (2008-2011). Issues in the strategy relating to SEEs include:

- CPD formed a Social Economy Enterprise Working Group which brought together procurement practitioners and SEEs with direct experience of competitive tendering.
- Procurement Guide for SEEs launched by CPD in February 2005.
- CPD, in conjunction with DETI held a 'meet the buyer' event for SEEs in September 2007.

2. In order to provide support for business growth (Action 2.1):

- CPD will have appropriate systems in place to allow access by SMEs and SEEs to opportunities for doing business with CPD. CPD will also encourage other Central Government bodies to use this common platform.
- DETI and CPD will facilitate the Social Economy Enterprise Procurement Group

3. In order to build the business skills of SMEs (Action 2.2):

- CPD will deliver basic training in sustainable procurement to procurement practitioners, including the integration of equality and sustainable development into public sector procurement

4. In order to foster a social economy enterprise culture (Action 3.2):

- DETI and CPD will facilitate and support 'meet the buyer' events across NI to bring public sector procurement practitioners into contact with SMEs and SEEs.
- CPD will monitor and report on the success of SEEs competing for the delivery of public service contracts.
- CPD will provide information on their website about best practice examples of public sector contracts that have integrated sustainability, including social goals.
- CPD will promote awareness across Procurement Practitioners about equality and sustainability within public procurement.
- Departments will facilitate workshops/development of case studies of effective delivery of public services by SEEs e.g. in partnership with DHSSPS/Central Procurement /DETI.

5. On the same date, the Committee also received oral briefing from the Social Economy Network (SEN). Specific recommendations on the Social Economy Enterprise Strategy from the SEN, which relate to public procurement are:

- As the new super councils will have a key role in promoting and supporting enterprise it is imperative that local Councils are brought on board at the outset and are involved/represented on the Social Economy Enterprise Procurement Group throughout the implementation of this strategy. In this way, when responsibility for economic development and enterprise is transferred to Councils, the gains and successes achieved can be consolidated, continued and built on.
- The Network recommends that a social economy enterprise champion be identified within each government department to promote social economy enterprise as a viable business model and that it is taken account of in planning the delivery of services.
- SEN proposes adoption of a consistent approach to the measurement of social value which can be embedded in the practice and processes of public procurement.
- SEN recommends the inclusion of social clauses into public procurement specifications to ensure a more equal playing field.
- The strategy should explore innovative ways of increasing business opportunities for SEEs through public/social partnerships and private/social partnerships

6. The Committee has agreed that I write to the DETI and to the Social Economy Network to seek their permission to forward their briefing papers to the Committee for Finance & Personnel,

to assist in its scrutiny. SEN paper is attached and I will forward the DETI papers when this has been agreed.

Regards,

Jim McManus
Clerk, Enterprise, Trade & Investment Committee

CETI - Social Economy Network Briefing - Summary of Recommendations

Recommendations in the Social Economy Network Briefing Paper for the Draft Social Economy Enterprise Strategy

Members may wish to question SEN officials further on the recommendations they are making for changes to the Social Economy Enterprise Strategy

General comments on the draft Social Economy Enterprise Strategy (Page 3)

Recommendation (Page 4)

As the new super councils will have a key role in promoting and supporting enterprise it is imperative that local Councils are brought on board at the outset and are involved/represented on the S.E.P.G. throughout the implementation of this strategy. In this way, when responsibility for economic development and enterprise is transferred to Councils, the gains and successes achieved can be consolidated, continued and built on.

Objective one - Increasing awareness of the sector and establishing its value to the local economy (Page 5)

Recommendation (Page 6)

The Network recommends that a social economy enterprise champion be identified within each government department to promote social economy enterprise as a viable business model and that it is taken account of in planning the delivery of services.

Objective two - Developing the Sector and increasing its business strength; and

Objective three- Creating a supportive, enabling and environment. (Page 6)

Recommendation (Page 6)

The Network recommends a two pronged approach to develop the sector; this will involve encouraging the establishment of new SEEs while at the same time building the capacity of existing SEEs.

Training (Page 6)

Recommendations (Page 7)

SEN recommend that the Social Entrepreneurship Programme is available from the beginning of 2009 and that funding is secure for its continuance for the duration of this strategy.

SEN recommend that INVEST NORTHERN IRELAND sponsored business workshops are specifically promoted and targeted at the social economy sector to encourage uptake.

Management and Leadership development (Page 7)

Recommendations (Page 7)

All information on business support, training and management & leadership development programmes should be held centrally to facilitate access and promote uptake. As SEN provides a dedicated website for the social economy sector this issue could be addressed by ensuring that Departments and Agencies channel all relevant information to the Network.

All training and management & leadership development programmes should be evaluated to assess their relevance and impact and to inform decision making about future delivery.

Finance (Page 8)

Recommendations (Page 9)

The social economy sector in other parts of the U.K. has benefitted from and developed as a result of access to a fund such as Futurebuilders which helps build the capacity of companies. SEN recommends that DFP when developing a policy on the use of the unclaimed assets in dormant bank and building society accounts should consider:-

- Establishing a Future Builders fund for SSEs; and
- Channelling some of the funding into CDFIs for a social investment loan fund.

SEN proposes that consideration be given to the adoption of legislation in respect of credit unions which permits the inclusion of incorporated associations and corporate bodies as full members in credit unions so that small enterprises, community organisations and SEEs can access these services.

Procurement (Page 9)

Recommendations (Page 11)

SEN proposes adoption of a consistent approach to the measurement of social value which can be embedded in the practice and processes of public procurement.

SEN recommends the inclusion of social clauses into public procurement specifications to ensure a more equal playing field.

The strategy should explore innovative ways of increasing business opportunities for SEEs through public/social partnerships and private/social partnerships

The Social Economy Network (Northern Ireland) Ltd Briefing Paper for Enterprise, Trade and Investment Committee

Thursday 13th November 2008



1.0 Social Economy Network

The Social Economy Network is a membership based organisation comprising social enterprises throughout Northern Ireland. It was established in 2006 as a Company Ltd by guarantee, to represent the needs and interests of the social economy sector with key stakeholders. It is grant funded by the Department of Enterprise, Trade and Investment with £600,000 over four years up to 2011. The grant allocation is reduced year on year requiring the Network to generate its own income to achieve a level of sustainability.

The aims of the Network are:

- To provide a strong, united and representative voice for the Social Economy Sector of Northern Ireland;
- To promote the role of the Social Economy Sector and its contribution to socio-economic development;
- To represent the views of the Sector in engagement with Government and all key stakeholders;
- To provide a channel for Social Economy Sector input into policy development; and
- Increase the business strength of the Sector and create a supportive and enabling environment for Sector growth.

2.0 Introduction to the Sector

There is a long and rich history of social economy enterprises (SEEs) in Northern Ireland with agricultural co-operatives, credit unions and housing associations having been in existence for many decades. The social economy sector comprises SEEs operating in many sectors of the economy- agriculture; transport; property services; retail; hospitality; tourism; education and training; childcare and health and social care services.

SEEs operate as businesses with a focus on profit. They differ from conventional private businesses in that they have an equal focus on social goals and reinvest profits in the business

and for the benefit of the communities they serve. They have a strong "local multiplier" effect stimulating local economic activity.

The social economy sector is big business in the U.K. with at least 15,000 social enterprises contributing some £18 billion to the economy. While Northern Ireland has good baseline data for nearly 400 SEEs with a turnover of just over £355 million (DETI Survey 2007), information on the actual size of the sector is limited. While there are specific mature sub sectors of the social economy sector in particular Credit Unions, Housing Associations and Co-operatives and a number of sizeable successful SEEs in N. Ireland, the sector as a whole is not as well developed as in England and Scotland.

According to the U.K. Global Entrepreneurship Monitor Project (GEM) the Northern Ireland Total Entrepreneurial Activity (TEA) rate for 2006 was 3.7% - the lowest rate in the UK while the Social Entrepreneurial Activity (SEA) rate was 3.3% -the fifth highest out of 12 regions in the U.K. In terms of wealth generation, job creation and social impact social entrepreneurial activity is a phenomenon that policy makers need to take account of. Social entrepreneurship is a key driver of regeneration, neighbourhood renewal and employment in deprived areas and social reform. The network believes that with relevant and targeted support the social economy sector can build on this social entrepreneurial activity and make a significant impact on the Northern Ireland Economy.

In order to grow and develop the social economy sector needs focused support in the following areas –

- Promotion of social economy enterprise as a viable business model;
- Access to a broad range of business support training;
- Access to finance and funding; and
- Inclusion of social clauses into public procurement specifications to ensure a more equal playing field.

3.0 General comments on the draft Social Economy Enterprise Strategy

3.1 Location and Fit

The Network believes that it is useful to identify the location and fit of this draft strategy within the overall policy context. The Network welcomes the fact that the five strategic and interdependent priorities of the Programme for Government are outlined in this draft strategy as this is recognition that the economic and social agendas are interconnected. SEEs by their very nature do not operate in silos, rather they present models of good practice in relation to "joined up" thinking and activity. SEEs have an economic focus in terms of wealth generation and job creation while at the same time having an equal focus on social issues. SEEs are very well placed to assist government to deliver on all 5 priorities.

Some Local Examples

Orchardville bottling company at Knockbracken has secured a contract with Coca Cola. They are creating jobs, generating income and promoting inclusion and health and well being. 25% of the workforce has a learning disability.

Extern Recycle Ltd– A social enterprise based in Mallusk that provides cost effective and high quality recycling and refurbishment of IT equipment to organisations in the public, private and voluntary sectors, whilst supporting homeless and long-term unemployed people through providing work experience and training opportunities that enables independent living and employment creation.

Ardmonagh Family Centre/Colin Care – delivering high quality efficient health and social care services for the public sector. Providing training and employment for local people in disadvantaged communities. Promoting inclusion and health and well being. Taking people off benefits. Local businesses benefit from staff spending in the local community.

The Network believes that it is appropriate to cite having a growing dynamic innovative economy as the top priority. A thriving economy has the potential to benefit everyone in Northern Ireland but will only do so if policies and strategies are in place to support the economically inactive and disadvantaged. The social economy sector has a successful track record in creating innovative pathways into employment for those excluded or distant from the labour market.

3.2 Vision

The Network endorses the vision of the Social Economy Enterprise Strategy –

An enterprise environment which encourages greater social entrepreneurial activity and is supportive of those social economy enterprises that want to grow.

3.3 Stakeholders Buy In

With D.E.T.I. as the lead department, the Network agrees that achievement of the vision requires the co-operation and partnership of a wide range of stakeholders from local and central government, private, social economy and the voluntary and community sectors.

Recommendation

As the new super councils will have a key role in promoting and supporting enterprise it is imperative that local Councils are brought on board at the outset and are involved/represented on the S.E.P.G. throughout the implementation of this strategy. In this way, when responsibility for economic development and enterprise is transferred to Councils, the gains and successes achieved can be consolidated, continued and built on.

4.0 Objectives

The three original objectives of the first social economy strategy are still relevant and appropriate:

- Increasing awareness of the sector and establishing its value to the local economy;
- Developing the sector and increasing its business strength; and
- Creating a supportive and enabling and environment.

An independent evaluation of the first social economy strategy found that most progress had been made on the third objective followed closely by the first objective. The Network would agree with this finding and acknowledge that although most of the objectives/targets outlined in

the last strategy were met, and there has been progress made on the first two objectives, there is still much work to do.

4.1 Objective one - Increasing awareness of the sector and establishing its value to the local economy

There is evidence of an increased awareness and understanding of the social economy sector within the public sector, especially among some individual civil servants. However, our experience has been that this knowledge is not widespread throughout departments, and therefore, is either not taken into account into departmental policy and planning or remains a periphery consideration.

The actions identified in the draft strategy will go some way to increasing awareness of the sector, however they could be augmented by joint delivery of awareness raising sessions to departments by SEN and the SEB. This programme could include a number of "seeing is believing" tours of successful social enterprises operating in diverse areas across Northern Ireland. The Public Sector and other representative bodies also need to be made aware of developments in the sector in Scotland, Wales and England so that the future potential of social economy enterprises in Northern Ireland can be realised. Reference is made in the document (point 2.12) about maintaining an awareness of good practice in other parts of the U.K. We need to go further and ensure that relevant departmental officials and social enterprises have the opportunity to explore the feasibility of adopting similar practice in Northern Ireland.

The Department of Health in England has a specific social enterprise unit attached to it, as the social enterprise model is recognised as a key vehicle for the design and delivery of core services and user engagement. We are not suggesting that this is necessary here but believe that by identifying a champion for social enterprise in each government department that significant progress could be made on this objective.

Recommendation

The Network recommends that a social economy enterprise champion be identified within each government department to promote social economy enterprise as a viable business model and that it is taken account of in planning the delivery of services.

4.2 Objective two - Developing the Sector and increasing its business strength; and Objective three - Creating a supportive, enabling and environment.

This focus of Objectives 2 and 3 is on developing the business strength of existing SEEs to reach a scale and capability in which they can contribute to the overall viability and sustainability of the sector. The strategy states that a general policy supporting the volume growth of S.E.s is not needed. The Network would challenge this. The social economy enterprise movement across the globe is growing and there is widespread support for an increase in the number of businesses that trade with a social purpose. We have a relatively high S.E.A. rate (3.3%) in Northern Ireland which should be nurtured and encouraged. Many voluntary and community organisations are being encouraged by Government to explore ways of generating income to increase their sustainability. In addition there is evidence that existing social enterprises are involved in establishing and developing new social enterprises.

Recommendation

The Network recommends a two pronged approach to develop the sector; this will involve encouraging the establishment of new SEEs while at the same time building the capacity of existing SEEs.

The actions outlined under objective 2 concentrate on five broad areas of support for business growth –

- Training
- Management and Leadership development
- Procurement opportunities
- Finance
- Opportunities for the development and growth of SEE's in rural areas and tourism.

4.3 Training

It is necessary for organisations to qualify as an Invest NI client before they can access the full range of mainstream business support available from Invest NI. While a number of SEEs have qualified as Invest NI clients the vast majority will not be able to, as one of the qualifying criteria is ability or capacity to export.

One of the strengths of the Social Entrepreneurship Programme is that it is available across Northern Ireland and its open to both new and existing social enterprises and has four entry points. One weakness of the programme was problems of continuity of delivery due to funding uncertainty.

SEN welcomes and is encouraged by Invest NI's commitment to continue the programme. In view of the interest in and demand for the programme it is imperative that the tendering process is started in order to ensure that the programme will be available from the beginning of 2009 and that funding is in place to ensure that it will continue for the duration of this strategy.

Invest NI could further assist SEEs by ensuring that other services, such as one off workshops are promoted and targeted at the social economy sector. It has been the Network's experience that, on further investigation, workshops targeted at SME's have been open to SEEs. This is possibly because of a lack of awareness of the social economy sector and perhaps the failure to recognise social economy enterprise as being a viable business model. As well as the benefits of the learning and skills gained from the actual training workshops, there are additional benefits to be gained from bringing SMEs and SEEs together, for example from the cross fertilisation of ideas and increased awareness of the sector.

Recommendations

SEN recommend that the Social Entrepreneurship Programme is available from the beginning of 2009 and that funding is secure for its continuance for the duration of this strategy.

SEN recommend that INVEST NORTHERN IRELAND sponsored business workshops are specifically promoted and targeted at the social economy sector to encourage uptake.

4.4 Management and Leadership development

SEN welcomes the action by D.E.L aimed at providing financial assistance for skills development and organisational development in Investors in People. Some of the actions proposed by DEL lack detail. Further information on the proposals would ensure maximum impact can be made.

Recommendations

All information on business support, training and management & leadership development programmes should be held centrally to facilitate access and promote uptake. As SEN provides a dedicated website for the social economy sector this issue could be addressed by ensuring that Departments and Agencies channel all relevant information to the Network.

All training and management & leadership development programmes should be evaluated to assess their relevance and impact and to inform decision making about future delivery.

4.5 Finance

In the current economic climate SEEs are suffering as banks have become more cautious of lending to what could be perceived as being high risk enterprises. The need to support those who are most excluded from financial services and those SSEs and SMEs that support their communities has never been greater. Many SEEs are involved in the rental or leasing of business units to encourage business set up and job creation. They rely heavily on SMEs as tenants. In rural areas on the periphery of Northern Ireland, the impact of the economic downturn can be particularly devastating as it is here that there is a heavy reliance on SSEs and SMEs for jobs and wealth generation. Irvinestown, for example, has already witnessed the closure of two local firms, one of whom was an Irvinestown Trustee Enterprise Company (ITEC) tenant, another is a past tenant that had grown, expanded and purchased its own premises. Urgent government action is needed to support local economies and it is imperative that the role and needs of SSEs and SMEs should not be forgotten or sidelined in any actions/plans.

Like all businesses SEEs need to have access to suitable financial instruments to support their growth and development. Social enterprise lenders provide liquidity more effectively to where it is most needed than is the case with high street lenders. CDFI's and Credit Unions in particular are amongst the few who have increased their lending to those most in need.

UCIT has been identified as a source of loan funding for the sector and reference is also made to a new flexible Enterprise Fund (being designed by DETI, INVEST NORTHERN IRELAND and UCIT) for higher risk projects offering loan funding as an option alongside the Social Entrepreneurship Programme. UCIT has, at this stage, committed all of its available funds and yet continues to receive a growing number of applications for loan finance between £15,000 and £1,000,000 from social enterprises.

SEN is aware that current Credit Union legislation for Northern Ireland does not permit credit union engagement (in any meaningful way) in the social economy sector, despite such provision in Great Britain. SEN intends to work with representative bodies of the credit union movement in Northern Ireland to identify mutually agreed priority areas (e.g. in community enterprise, housing and/or investment) where financial or technical support from credit unions would have significant impact; to develop a few key pilot projects which would develop same; and to support the lobby from credit unions to have appropriate permissive legislation approved by the Northern Ireland Assembly so that such agreed pilot projects might be implemented promptly and effectively.

Recommendations

The social economy sector in other parts of the U.K. has benefitted from and developed as a result of access to a fund such as Futurebuilders which helps build the capacity of companies. SEN recommends that DFP when developing a policy on the use of the unclaimed assets in dormant bank and building society accounts should consider:-

- Establishing a Future Builders fund for SSEs; and
- Channelling some of the funding into CDFIs for a social investment loan fund.

SEN proposes that consideration be given to the adoption of legislation in respect of credit unions which permits the inclusion of incorporated associations and corporate bodies as full members in credit unions so that small enterprises, community organisations and SEEs can access these services.

4.6 Procurement

Opportunities exist for social economy enterprises to do business with the public sector. Many have successfully secured contracts for service delivery- Bryson Recycling with local councils; Ardmonagh Family Centre and Irvinestown Trustee Enterprise Company for the delivery of health & social care services through contracts with health trusts and a range of other social enterprises for the delivery of training services through contracts with DEL .There is evidence however that social enterprises – particularly small ones- are at a disadvantage compared with private sector businesses in this arena. There is a limited knowledge of the social economy sector and its potential as a provider of goods and services among public sector procurement personnel. A programme of awareness raising and training is required to ensure that social economy enterprises are equally considered with the private sector in procurement considerations.

Social enterprises with little or no experience of doing business with the public sector also need practical advice and training on procurement procedures and writing tenders so that they can acquire the necessary skills to enable them to take advantage of the opportunities presented.

SEN welcomes the actions proposed by CPD to provide information and advice sessions on the tendering process and to organise "Meet the Buyer" events to increase opportunities for SEEs to do business with the public sector.

However, one of the most significant problems facing the development of SEEs in Northern Ireland is the lack of progress on the inclusion of social clauses into the procurement process. SEEs operate their businesses in a market place which does not recognise or take account of the added value they create and this puts them at a disadvantage when competing for public sector business. This problem is not addressed by any of the C.P.D. actions listed under Objective 2 or Objective 3.

It is of concern that in a previous draft of the Strategy (Sept 08) one of the most positive actions relating to the SEEPG has been diluted from "to provide a more informed view on how to build and increase capacity and capability to tender within the sector and to identify how social aspects of the sector's work can be used to create more opportunities for the sector to compete successfully" to- "C.P.D. will help inform the group to increase awareness of the tendering process and break down barriers to procurement"

SEN recommends that this action be strengthened.

The measurement of social value is one of the difficulties cited in respect of including social clauses in procurement specifications. There are a number of management tools used by SEEs to measure social value and impact, for example, Social Return On Investment (SROI), and social

accounting. Social accounts are becoming an accepted reporting format for SEEs in England and Scotland. Understanding of social value and a consistent approach to the measurement of social value must be embedded in the practice and processes of public procurement.

According to a Social Economy Scotland Briefing – the Scottish Government has produced guidance on including social issues in public procurement, including the ability to purchase wider social benefit as part of procurement. The guidance concludes that it is entirely possible to recognise wider social issues within a procurement process, as long as these are part of the primary purpose of the contract and they are included in the specification.

The social economy sector is further disadvantaged by the emphasis in consideration of tenders, on financial capacity demonstrated by a build up of reserves in assessing the financial health of companies. This particularly affects those companies in the early stages of development who were prohibited from building up reserves while in receipt of grants. SEN argues that if there is to be equality of opportunity in accessing tenders then it must be acknowledged that existing means and criteria are exclusionary to SEEs and that amendments to criteria must be introduced to create a level playing field.

Some additional problems faced by SEEs who have successfully secured tenders for the delivery of services include the length of time the process takes; and the fact that the level of finance available for service delivery this year - in the health & social care field- is set at 3% less than the cost of delivering the same service last year. Departmental efficiency savings were not intended to affect front line services but clearly in such instances they will.

Pressure on public bodies to secure efficiencies by aggregating contracts will discriminate against small businesses, which includes many social enterprises. Little cognisance is given to the expertise and ability of social enterprises (with local knowledge and understanding of needs and how best to address them) to deliver services effectively. Social enterprises experienced in this field require support from the public sector to enable them to develop their capacity to grow and expand; to explore the feasibility of sub contracts and or public/social enterprise partnerships.

SEN argue that there should be scope within the strategy to explore innovative ways of increasing business opportunities for SEEs through public/social partnerships which represent a new mechanism for bringing together public bodies and SEEs to create well designed services that deliver additional community benefits. This should be extended also to private/social partnerships where private sector companies are encouraged as part of tender specifications to provide sub contracting opportunities for SEEs.

Recommendations

SEN proposes adoption of a consistent approach to the measurement of social value which can be embedded in the practice and processes of public procurement.

SEN recommends the inclusion of social clauses into public procurement specifications to ensure a more equal playing field.

The strategy should explore innovative ways of increasing business opportunities for SEEs through public/social partnerships and private/social partnerships

5.0 Conclusion

In conclusion, the Network welcomes a future Strategy to drive and shape the growth of the SE sector. The key supports needed for SEEs to develop and grow include:-

- Recognition and promotion of social enterprise as a viable business model;
- Access to a broad range of business support;
- Access to loan finance and funding;
- Social clauses embedded in the practice and processes of public procurement.

In order to facilitate the evaluation and measurement of the success of the strategy SEN recommends that explicit timescales, targets and outcomes be outlined for all actions. Buy in and ownership of actions through departmental Champions will also be key to a successful delivery.

Construction Industry Group Northern Ireland



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The Northern Ireland Assembly Committee for Finance and Personnel
Room 419
Parliament Buildings
BELFAST
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26 February 2009

Dear Sirs

INQUIRY INTO PUBLIC PROCUREMENT POLICY AND PRACTICE IN NORTHERN IRELAND

The Construction Industry Group for Northern Ireland (CIGNI) is a private sector body made up of 5 colleges namely, Professional Bodies; Contractors; Specialist Sub-Contractors; Suppliers and Clients. Its purpose is to ensure that the construction industry operates efficiently and effectively to meet the needs of modern society and it aims to achieve this by promoting excellence in all aspects of the work of the industry.

The Professional College consists of a number of bodies representing the interests of Construction Industry Professionals, including the Association of Building Engineers; Association for Consultancy and Engineering; Association of Project Management; Association for Project Safety; Chartered Institute of Architectural Technologists; Chartered Institute of Building Services Engineers; Chartered Institute of Building; Concrete Society; Institution of Civil Engineers; Institution of Structural Engineers; Landscape Institute; Royal Institution of Chartered Surveyors; and the Royal Society of Ulster Architects.

One of the objectives of the Professional College is to 'Promote best practice in procurement of professional services' and thus the Professional College welcomes the opportunity to respond to the committee on this important issue.

Based on the terms of reference we have examined the following:

- a. *examine the experience of SMEs and SEEs in tendering for and delivering public contracts:*
 - There are not enough tendering opportunities and 4 plus years frameworks lock too many SME's out of the system for too long.
 - The tendering process is too detailed, too protracted, and too expensive.
 - The tendering process is not uniform across government bodies.
- b. *consider the nature, extent and application of social clauses within public contracts:*
 - The application of social clauses has limited applicability to professional appointments.
 - Social clauses are difficult to implement within a framework as they are project specific.
- c. *identify issues to be addressed and which are within the remit of Department Finance Personnel (DFP):*
 - Local professional consultants who are not included in long term frameworks are unable to gain the necessary experience to compete for future frameworks.





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- Experience criteria are set so as to encourage consultants from overseas to be included, and consequently, the design work for Northern Ireland projects is undertaken outside of Northern Ireland and thus reduces the number of quality jobs and skill base within NI and the resulting revenue is removed from the Northern Ireland economy.
- d. *assess progress by DFP in achieving associated objectives and targets, including those contained in the Programme for Government and related Public Service Agreements; and*
- The Professional College would like to know what the objectives and targets are, and the extent to which they have been met.
- e. *make recommendations to DFP for improvements to public procurement policies and processes, aimed at increasing access to opportunities for SMEs and SLEs and maximizing the economic and social benefits for the local community, whilst taking account of the principles governing public procurement.*
- Maximise the opportunities for local consultants by increasing the number of professional consultants on frameworks.
- Consideration should be given to separate minor works frameworks.
- Minimise the risk of legal challenge by increasing the number of opportunities for local professional consultancies.
- Avoid long term exclusion.
- Consideration should also be given to quality versus fees to reduce the emphasis on lowest cost tendering.
- Consideration should be given to reducing the protracted Planning process in Northern Ireland as this adversely impacts on the delivering public contracts.
- Consider scale of turnover as selection criteria to be appropriate to local market. Future Procurement Strategies in Northern Ireland must have a Northern Ireland Scale and provide more opportunities for Local firms to tender.
- The use of long term exclusive framework agreements as a method of procurement within the NI market should be reviewed.

The Professional College would welcome the opportunity to meet with you to discuss the issues raised.

Yours faithfully

Lynda Martin
Chairman
CIGNI Professional College



Equality Commission for Northern Ireland

Introduction

1. The Equality Commission for Northern Ireland ("the Commission") is an independent public body established under the Northern Ireland Act 1998. The Commission is responsible for implementing the legislation on fair employment and treatment, sex discrimination and equal pay, race relations, sexual orientation and disability. The Commission's remit also includes

overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998 (s 75).

2. The Commission's general duties include:

- working towards the elimination of discrimination;
- promoting equality of opportunity and encouraging good practice;
- promoting positive / affirmative action;
- promoting good relations between people of different racial groups;
- overseeing the implementation and effectiveness of the statutory duty on relevant public authorities; and
- keeping the legislation under review.

Context

3 The Commission welcomes the opportunity to respond to the Committee for Finance and Personnel's scrutiny of public procurement in Northern Ireland. Public procurement is an important key in delivering the Programme for Government and in particular we note the Committee's commitment to maximising the economic and social benefits for the community within the agreed principles of public procurement.

4 The Commission has long had an interest in and concern for public procurement. We contributed to the review of public procurement which reported in 2002 and established the twelve principles of public procurement in Northern Ireland. Subsequently we were members of the PPP/PFI working group and of the Advisory Council on Infrastructure Investment which followed it. In this context we prepared, with the Central Procurement Directorate, guidance on Equality of Opportunity and Sustainable Development in Public Sector Procurement (attached). The guidance was published in 2008 and the Commission is working on a continuous programme of promulgation.

General Comments

5 We believe that the public procurement process is key to a healthy and equal society as it affords the openings to address equality of opportunity and good relations in the delivery of all our public services. Especially at a time of significant investment designed to create a prosperous shared and fair Northern Ireland proper practice of procurement has the potential for significant change in our society.

6 The Programme for Government and the associated Public Service Agreements (PSAs) set the bar for this, in the directly related economic goals, through the ambition for education, health and social care and housing provision and in those overarching plans such as PSA 7, to make people's lives better. In the context of procurement we believe that Government has the opportunity to promote Northern Ireland as an exemplar through delivering demonstrable best value for money.

7 This can be achieved through government departments and other public authorities fully implementing the requirements of s 75. In addressing the s 75 obligations throughout public procurement, public authorities have the means to use s 75 disciplines for more effective policy making. So the vision of s 75 may also be achieved through sound practice as government, which retains the responsibility for s 75, works in partnership with the private sector.

8 As mentioned above the Equality Commission and the Central Procurement Directorate have developed and published guidance, Equality of Opportunity and Sustainable Development in Public Sector Procurement. This guidance shows how political will and top level commitment, with the expertise of people working in public services and demonstrating the principles on which our public procurement is based, come together in a practical approach. This shows s 75 disciplines to be facilitative in supporting early planning and focusing decision making at all stages in order to promote equality of opportunity in procurement. It also offers practice examples and shows how its lessons are applicable to all procurement.

Specific points

9 The Commission notes the Committee's will to improve clarity around the procurement process and welcomes this focus. Public authorities and contractors alike have uncertainties about how to maximise the desired impact of projects. Greater clarity and knowledge and understanding will remove many of the concerns which cause caution beyond due care to develop on each side.

10 This clarity, we note, will extend to Government's position on social clauses. The Commission welcomes this and again would refer the Committee to the advice in the guidance which outlines how equality of opportunity and sustainable development can be considered at each stage and how important this consideration is at planning, specification and contract agreement and monitoring stages.

11 Greater comprehension of these issues can assist in seeking ways in which the capacity of small and medium enterprises and social economy enterprises to compete is enhanced. In this way their particular skills can be harnessed. This presents greater challenges at a time of economic recession but at such times the principles of equality for all are no less of vital importance to the health of our society.

12 Finally we note and share the Committee's concerns about undue delay in progressing contracts. Significant investment delivered well has the potential of transforming our society. We would urge government departments and other public authorities to use the mechanisms of s 75 in their commitment to develop Northern Ireland as a more equal place.

Process

13 We understand that this written stage is part of a substantial review by the Committee which plans to hear extensive oral evidence. We would welcome the opportunity to expand the points in this note and engage with the Committee in respect of them at an oral hearing.

14 In addition, we will be pleased further to advise the Committee or any member of your staff on the issues in the paper.

Equality Commission
26 February 2009

Martin and Hamilton Ltd



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Inquiry into Public Procurement Policy & Practice in Northern Ireland

Dear Sir,

I write as M.D. of Martin and Hamilton Ltd, a commercial builder to both private and public clients (e.g. schools; churches; health; heritage renovation) but not involved in commercial development of private housing, office or industrial buildings. The company is a second generation family firm based in Ballymena and working mainly within a 50 mile radius of our base. We have established a reputation for quality and integrity and retain a skilled and knowledge-based workforce in all aspects of construction. We employ 70 people, many of whom have long service. We train apprentices and have a policy of ongoing professional development for all our staff. Our turn-over last year was £13million. Traditionally, we secured work by winning on tender and providing quality work, to programme. However we are now unable to compete due to barriers in place which favour larger companies.

Firstly, the framework system is beyond our reach due to minimum turnover figures e.g. Education framework requiring an annual turnover of 35million. Taking a major area of public sector expenditure away from SME's and giving it to a small number of large corporations. Could this requirement be adjusted and the turnover figure required for admission to a list set in proportion to the cost of the contract?

In addition, the repeated preparation of quality submissions is an onerous expense for small and medium sized companies. The quality submissions requires extensive, detailed input of knowledge and expertise in a wide range of disciplines and is in essence more sales pitch than factual report. To complete the submission, a smaller firm which does not have all of this expertise in house, must engage consultants. This expense is additional to the submission and is unavoidable, regardless of the success or failure of the attempt. A polished, professional presentation is heavily weighted and crucial to a successful submission. Highly sophisticated software supplied by yet another specialist is undoubtedly impressive, but it may be argued that it is of limited relevance to the discipline of quality construction. Newer forms of contract where quality and cost submissions are marked on a weighting which favours 'quality' over 'cost' and thus gives the larger companies advantage and decreases the SME cost competitive advantage. All of the workload involved in newer tendering process has slowed the progress of projects. In this slowdown SME businesses are more vulnerable to the unpredictability of such delays and it makes business programming difficult.

Large firms have advantages in this system:

- They inevitably have a broader selection of types of past contracts on their books and so fulfil one of the core criteria for inclusion on most select lists.
- They can more readily support additional departments such as Marketing and build increasing expertise in the submission process.
- The longer the current system exists, the more advantage large firms accumulate and the gap between their capability and that of smaller firms widens. It also seems that once a firm achieves a winning formula for quality submission they can win consecutive bids. This is not beneficial for CPD or the economy.

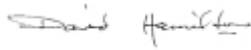
I would argue that the present system is not providing value for money because it excludes most competitive medium sized local companies and favours a limited number of large companies. Furthermore, it ignores the social, economic and environmental advantages of local contractors working in the community, employing a local workforce, supporting the local economy and building pride in the local environment.

Our recommendations are as follows:-

- A continuity of contracts scheduled throughout the year.
- A review of procurement marking schemes to ensure fairness regardless of company size.
- Establishment of a time schedule from inception to tender to completion.

Yours faithfully,

For Martin & Hamilton Ltd



David Hamilton
Managing Director

Royal Society of Ulster Architects



RSUA

Royal Society of Ulster Architects

27 February 2009

The NI Assembly Committee for Finance and Personnel
Room 419
Parliament Buildings
Belfast
BT4 3XX

Dear Sirs,

Re: DFP Inquiry Into Public Procurement Policy and Practice

The Royal Society of Ulster Architects welcomes your inquiry into Public Procurement and is pleased to be able to make its submission for your consideration.

If you plan to take verbal evidence or discuss any of the issues we have raised further we would be delighted to appear before the Committee if requested.

Thank you for your interest and involvement in this crucial issue at a time of serious crisis in the construction industry. The public sector can have a significant positive effect on securing expertise and capacity in Northern Ireland which will be essential for the future growth and development of society.

Yours sincerely

Dawson Stelfox
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27th February 2009

Introduction

The Royal Society of Ulster Architects (RSUA) is the professional body for architects in Northern Ireland and the regional representative of the Royal Institute of British Architects (RIBA). There are approx 870 chartered members and over 300 student members. The public sector employs a considerable number of architects but the majority are in private practices and companies, spread right round the country but with a concentration in the greater Belfast area.

There are 272 practices of which two thirds are of less than 10 employees with only 21 have more than 20. The pattern of practice size and location has evolved locally in this way to reflect traditional procurement practices.

The effect of the recession has been serious. In a recent survey, with returns from 120 practices right round Northern Ireland, 136 architects and 250 other staff have been made redundant, representing over 25% of those practices workforce.

Architecture is a regulated profession, with the independent Architects Registration Board (ARB) established by government to protect the public interest, in addition to the normal professional codes of conduct. This recognizes the fact that architects have unique and considerable responsibilities in the construction industry, certifying both the quality of work and payment for it.

Whilst the common perception of architects is that they simply design buildings, the reality is that the architect's role is central to the public's trust in the whole construction industry. The traditional role of the architect includes duties to arbitrate between client and contractor and to act in the broader public interest.

Experience of tendering for and delivering public contracts

Traditionally, private practices, of all sizes, have carried out works for a broad mix of public and private sector clients. With public sector works, architects were appointed by a client on an individual project basis taking into account their expertise, experience and price. This resulted in a significant spread of work across the profession.

In recent years, however, more and more public works have been packaged up into framework agreements and the nature of these has restricted appointments to a small number of practices. Whilst there was a private sector boom this did not seem to be that serious an issue – there was plenty of work for everyone – but with the rapid slowing of private , especially, residential development, many practices, in particular in rural areas, have found themselves in serious trouble, with no access to public sector work.

We recognize that the Construction Procurement Directorate (CPD) in their recent discussions with the professional bodies and the Construction Industry Group (CIG) have acknowledged this issue and have sought to broaden the scope of practices eligible to tender for their next consultant framework, but the RSUA remains unconvinced that large scale framework agreements are necessarily the most efficient and effective method for the public sector to procure all of their construction and design services

The move both towards framework agreements and the move away from so called 'traditional' contracts (where design team and constructing team are appointed separately, each reporting to the client) to Design and Build contracts came about under the Direct Rule administration following similar practices in England. This was based on research done, as far as we are aware, entirely in Great Britain and does not necessarily reflect the Northern Ireland experience. The UK government's belief is that these moves will result in a greater proportion of projects being delivered on time and within budget. This remains to be proven in the Northern Ireland context.

The RSUA recognizes there may be potential advantages of framework type arrangements to public sector clients in the cost effectiveness of group tendering and design teams being available at relatively short notice.

However, a number of significant concerns have been raised about some of the unintended consequences of what has become public procurement practice.

The recent legal challenges to the Design and Build frameworks (in particular the Dept of Education framework challenged by Henry Bros., determined by Lord Justice Coghlin) demonstrate the risks in scoring tenders on criteria which may not be actually relevant to the particular projects being undertaken through the framework. Whereas single project tenders will typically draw up very specific selection criteria (e.g. experience of listed buildings, courts or prisons etc.) it is not possible to do this for a framework where a very broad range of projects will come out. If too diverse a range of criteria are used then smaller, perhaps specialized, practices will be disadvantaged compared with large, perhaps multi-national, practices, despite the fact that the smaller practice could carry out at least some of the jobs procured through the framework.

For this reason, the RSUA believes that framework agreements should only be used where there is considerable synergy and similarity to all the projects that will be procured through it. Other, more individual, projects should be delivered by single project procurement tendering.

Issues

A particular issue has arisen for projects being developed by community groups, local enterprise bodies and NGO's. These projects are characterized by the client having little or no resources to develop the project through feasibility stages. A considerable amount of work is carried out, at minimal cost, usually by a local architect who shares the community's vision. It now seems to be the case that if these projects subsequently receive more than 50% government grants they come under the remit of CPD. In many cases the architect who has done all the preliminary work, often at a loss, may not even be eligible to tender for the work because they are not on a particular framework. This is highly unsatisfactory and the hard earned knowledge gained during the project development is lost. If this practice continues then it will not be viable for architects to do preliminary work at very little cost and good projects will not get off the ground.

The RSUA has also had recent discussions with DSD regarding the proposed consultants framework for Housing Associations and we have expressed the same concerns. If anything the issues around housing are even more serious. There can be distinct advantages in community understanding for Housing Associations to be able to use a diverse range of practices, picking the most suitable because of their local knowledge and community contacts. A very large proportion of practices, spread right around Northern Ireland, currently work on social housing projects and this local connection is threatened by a move to the Housing Associations having to procure all their services through a small number of practices on large scale frameworks. The undesirable practice of architects being required to carry out a substantial amount of work 'at risk' has crept in to Housing Associations and, in the long term, this is not conducive to the provision of proper professional services.

Frameworks are designed to cope with substantial packages of work over a 3-5 year period with high values of construction costs and consequent fees. This leads to an assumption that eligible practices need to have significant resources and financial backing to have the capacity to do the work, and therefore minimum criteria for staff numbers, turnover, etc. This may be reasonable for larger and complex projects but in many cases projects put out through frameworks are of a small and medium size, lumped together in a procurement package to minimize tender costs. In many cases, the selection criteria are set to a much higher level than is necessary or required for a particular job. In a similar vein, a turnover figure is not a reliable indicator of financial strength, nor numbers of staff employed a measure of available resources.

The longer term effect of frameworks will be to concentrate public sector projects into a small pool of consultancies. Even though each framework will be limited to 3 or 4 years duration, the selection criteria for subsequent frameworks will be based on experience of the building type and exclusion from that type of work for a 3 or 4 year period will lead to a vicious circle leading to long term exclusion, the demise of many indigenous practices and the social and economic consequences of that.

We are obviously concerned that the effect of the legal challenges has been to significantly delay public projects coming out to the market but this has not been the only factor. The considerable time taken to put together the tender documents for large scale frameworks does in itself have a significant impact on the programme for delivering public projects.

The consequences of these delays include:

- A reduced amount of work from what was planned by Government and anticipated by contractors
- Projects stalled at tender stage with no programme for construction
- Construction industry shedding jobs
- Programme for Government targets not met

There are of course other factors that have an effect on delivering public projects such as the continued delays in the Planning process, or the introduction of the new NEC suite of contracts, but these are perhaps outside the scope of this Inquiry

Recommendations

The RSUA recommends a detailed Review is carried out on the financial, programme and quality measures of public projects that have been commissioned through both single project appointments and through frameworks, and built through both traditional and D&B contracts. This is to ensure that decisions to move towards frameworks, D&B contracts etc., currently justified by GB experience, are based instead on verifiable, Northern Ireland, conditions.

If the case for frameworks is justified, then the RSUA believes that each COPE (Centre of Procurement Expertise) has a number of frameworks with bands of project size and consequent eligibility criteria, with a minimum threshold below which a much simpler procurement strategy is in place, and allowance also made for projects of special public interest. Our suggestion for this suite of arrangements is as follows

Minor Projects

Projects up to a construction value of less than £1m (or OJEU level) or a professional fee value of less than £150k (or OJEU level) should be procured by a simplified procedure. If this is a 'one off' by a COPE then it would be advertised in local press etc. If there is likely to be sufficient similar projects by a COPE then a Minor Works framework should be put in place. We would suggest that eligibility criteria are set to ensure smaller firms are not disadvantaged over larger firms in terms of turnover, staff numbers, etc, once the minimum level required is reached. This is particularly important for the Housing Association frameworks

Normal Projects

Projects which even on their own would require an OJEU notice should be procured through a OJEU notified framework which groups together projects of similar size and type, but not small projects that could be procured in a simpler manner. Eligibility criteria should be set at appropriate levels, with no disadvantage for partnership arrangements between two firms in the same discipline to pool resources and expertise. For the larger COPEs, with a wide range of size of projects, there should be banded frameworks with the aim of matching project size to practice size and projects of a similar type grouped together

Community projects

An increasing number of community initiated projects are now being delivered through CPD resulting in their original community appointed design teams (typically for feasibility studies) not being eligible to tender. We believe that community projects should be delivered by single project tenders to ensure locally relevant criteria for selection are included.

Special Projects

The RSUA believes that projects with a high level of public interest and architectural potential should be procured through open design competitions, run by the RSUA or at the minimum, single project tenders, outside of the frameworks, with specific and relevant criteria used for team selection

Achieving Quality in Public Sector Construction Projects

The challenge of ensuring design quality in public buildings is not new and affects both traditional and D&B procurement. However, we believe it is more likely that design quality will be watered down when there is pressure on budgets if the architect responsible for detailed design under a D&B contract does not have the same 'ownership' of a scheme and the original architects have a very limited role in advising the client. In these circumstances, external Design Reviews should be used

In D&B projects where the client sets a high architectural design standard as a key criteria, we would recommend the practice used in Scotland where the original design team takes the project through to detail design drawings (RIBA Stage D or E) before responsibility is handed over to the Contractor and his team. We also recognize there can be 'buildability' benefits from Early Contractor Involvement (ECI) and this can be accommodated through two stage tender processes in both traditional and D&B contracts

We welcome the use of Quality/Price ratios for scoring of tender submissions but there remains a challenge in measuring a practice's ability to provide design quality and in defining the architectural essence of any proposals as invariably this does not lend itself to a simple measurement which can be scored as part of a tender process. Unlike other elements of criteria, an assessment of design quality can be open to selective scoring. We do believe that serious, peer judged awards such as RIBA, RSUA and Civic Trust Awards represent an objective measure of design quality and should be used where the quality of the design of the building is seen as an important criteria, in particular the 'special projects' as defined above.

Quality scoring is increasingly based on written responses to specific questions. This has led to perceptions that the quality of 'essay writing' becomes more important than the real quality of the service being offered, with reports of companies securing the tender writing by external consultants. As expertise in these responses rises, quality differential becomes marginal and price becomes once again the deciding factor.

Although we are told that the use of the Quality/Price criteria has resulted in a number of tenders being awarded to other than the lowest price submission, we are nevertheless worried that, especially in times of recession, practices may feel under pressure to submit a tender for a price below which it is feasible to deliver a professional service. We would thus suggest that a minimum level of fees is set, or as with most Health Estates procurement, the fees are set at the level that long experience has shown to be required to fulfill the tasks properly, and the tender is based on quality alone. This approach would work best with frameworks where there is a high degree of similarity in projects. For general projects we suggest that a 80% quality, 20% price ratio is appropriate.

It should be recognized that design team fees represent only a small part of the overall capital cost and a tiny part of the life cycle costs of the building. Failure to meet properly set Design Quality Indicators can have a dramatic effect on whole life costs. As we move towards low carbon design and the primacy of whole life costs as a decision making tool for the public estate, there needs to be an accompanying recognition to invest the proper level of resources into the design process.

Finally, we are aware of the recent report by the Equality Commission and CPD on Equality of Opportunity and Sustainable Development in Public Sector Procurement and support the general aspiration of its contents. We are, however, concerned, that this level of radical reform is having an effect on the rate that public projects are coming out to the market.

Given the urgent need across the whole of the construction industry for public projects we would urge government to ensure that over bureaucratic procurement practices do not get in the way of delivery.

In summary we would suggest that the simplest form of single project procurement is used by all COPEs in the short term in order to release the maximum number of projects to the market and to relieve the current crisis in the construction industry.

In parallel to this, Government should commission a Review of the experience of design and construction procurement in Northern Ireland to establish, based on real projects and figures, the most efficient and effective procurement methodologies for local conditions, taking into account all economic, programming, sustainability and social equality factors.

Executive Summary

Experience of tendering for and delivering public contracts

The use of frameworks has restricted appointments to a small number of practices and many practices, in particular those outside the Greater Belfast area, have found themselves in serious trouble, with no access to public sector work.

The RSUA remains unconvinced that large scale framework agreements are necessarily the most efficient and effective method for the public sector to procure all construction and design services. There may be potential advantages of framework arrangements to public sector clients in the cost effectiveness in group tendering and design teams being available at relatively short notice. However, a number of significant concerns have been raised about some of the unintended consequences of what has become public procurement practice.

For this reason, the RSUA believes that framework agreements should only be used where there is considerable synergy and similarity to all the projects that will be procured through it. Other, more individual, projects should be delivered by single project procurement tendering.

Issues

The undesirable practice of architects being required to carry out a substantial amount of work 'at risk' has crept in to Housing Associations and some Community organisations and, in the long term, this is not conducive to the provision of proper professional services.

Frameworks are for substantial packages of work over a 3-5 year period with high values of construction costs and consequent fees. Projects put out through frameworks are often of a small and medium size, lumped together in a procurement package to minimize tender costs. In many cases, the selection criteria are set to a much higher level than is necessary or required for a particular job.

The longer term effect of frameworks will be to concentrate public sector projects into a small pool of consultancies. Even though each framework will be limited to 3 or 4 years duration, the selection criteria for subsequent frameworks will be based on experience of the building type and exclusion from that type of work for a 3 or 4 year period will create a vicious circle leading to long term exclusion.

The length of time it takes to bring large scale procurement framework projects to the market is of considerable interest and there is a greater chance that selection decisions in a large scale framework will be more liable to challenge, as the stakes will be so high.

Recommendations

The RSUA recommends a detailed Review is carried out on the financial, programme and quality measures of public projects designed through both single project appointments and through frameworks, and built through both traditional and D&B contracts. This is to ensure that decisions to move towards frameworks, D&B contracts etc., currently based on GB experience, are based instead on verifiable, Northern Ireland, conditions.

If the case for frameworks is justified, then the RSUA believes that each COPE (Centre of Procurement Expertise) has a number of frameworks with bands of project size and consequent eligibility criteria, with a minimum threshold below which a much simpler procurement strategy is in place, and allowance also made for open design or other competitions for projects of special public interest.

Achieving Quality in Public Sector Construction Projects

The challenge of ensuring design quality in public buildings is not new and affects both traditional and D&B procurement. External Design Reviews should be used. In D&B projects where the client sets a high architectural design standard as a key criteria, we would recommend that the original design team takes the project through to detail design stage drawings before responsibility is handed over to the Contractor and his team.

We welcome the use of Quality/Price ratios for scoring of tenders. We believe that serious, peer judged awards such as RIBA, RSUA and Civic Trust Awards represent an objective measure of design quality and should be used where the quality of the design of the building is seen as an important criteria, in particular the 'special projects' as defined above. Quality scoring is increasingly based on written responses to specific questions. This has led to perceptions that the quality of 'essay writing' becomes more important than the real quality of the service being offered, with reports of companies securing the tender writing by external consultants. For general projects we suggest that a 80% quality, 20% price ratio is appropriate.

Given the urgent need across the whole of the construction industry for public projects we would urge government to ensure that over bureaucratic procurement practices do not get in the way of delivery.

Confederation of British Industry

NI 09 09

CBI Submission to the Assembly Finance Committee: SME's and access to Public procurement, February 2009

Introduction

- 1 CBI Northern Ireland welcomes the scrutiny of public procurement policy and practice being undertaken by the Committee for Finance and Personnel. This is a matter that has been of interest to CBI Northern Ireland for some time.
- 2 During 2008, CBI Northern Ireland undertook a major survey of private sector attitudes and experiences of public procurement in Northern Ireland. Since then CBI NI has been engaging with the Central Procurement Directorate (CPD) and other agencies to assist in the continuing development of public procurement policies and practices with the objective of developing structures and processes that are 'world class' and deliver value for money to the taxpayer in an efficient and effective manner.
- 3 In analysing the CBI Northern Ireland survey results, a comparison was made of responses from SME's (identified as employing less than 50 people) and larger companies. Given the importance of the SME's to the economy of Northern Ireland and the emphasis given to the establishment and growth of SME's by a number of government agencies, further consideration of the matters concerning SME's is given here.
- 4 It will also be of interest to the Committee that the contribution of SME's to public procurement in Great Britain has also been the focus of a recent study. The Scorecard Working Party is a joint initiative between the British Private Equity and Venture Capital Association [BVCA], Federation of Small Businesses [FSB] and the CBI, with a report '*Evaluating SME experiences of government procurement*' published in October 2008.
- 5 This submission draws largely on the results of the CBI Northern Ireland survey, published in July 2008, but is also supplemented by evidence from the report of the Scorecard Working Party – there are many similarities in the issues identified.



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Key Points emerging from CBI Northern Ireland public procurement survey 2008

- 6 One hundred and fifty-seven suppliers completed the CBI Northern Ireland public procurement questionnaire in mid 2008. The key findings are highlighted below:
 - **61% of respondents do not think public procurement is resulting in value for money, compared with 16% who do. Some 64% of respondents feel that further fundamental changes are required**
 - **Over 66% of respondents have experienced slight or significant increases in bidding costs over the last five years – with 57% believing high bid costs are preventing greater competition**
 - **49% of respondents describe the commercial skills of public procurement professionals as poor or very poor, while only 12% describe them as good or very good**
 - **76% of respondents have experienced delays in the procurement process**
 - **46% of respondents find it difficult or very difficult to obtain information on forthcoming tenders – 92% of companies support the development of a web portal for all NI procurement**
 - **While only a third of respondents have experience of public procurement in Great Britain, very few felt the process was easier in NI while around a half felt it was more difficult**
- 7 The recommendations arising from these results, developed following discussions with CBI members, are designed to improve value for money, and cover three broad areas:
 - **A reduction in bidding costs** – with two thirds of respondents experiencing slight or significant increases in bidding costs over the last five years, there is a need to reduce information demands, ensure greater standardisation in approach across government departments and agencies, and a need to improve project specifications (identified as a key cause of high bid costs). High bidding costs deter competition and add to the overall costs of procurement.
 - **Government becoming a world class client** - most survey respondents believe procurement processes in Northern Ireland are average or good but experiences vary considerably, and typically 25-30% of suppliers describe their experiences as poor or very poor. Many suppliers remain concerned that there remains too great a focus on lowest cost rather than on value. A major issue identified for improvement is the need to improve the commercial skills of public procurement professionals ie those skills necessary to be able to make and complete deals - almost half of suppliers describing these skills as poor or very poor. Other recommendations include the need to consider some longer timescales for tendering and a reduction in procurement delays (experienced by 76% of respondents).

Suppliers in general have welcomed the move to more electronic procurement methods. However they also are seeking better feedback mechanisms, though many do not appear to be aware of the mechanisms which currently exist.

- **Improvements in information provision** – with just under half of respondents finding it difficult or very difficult to obtain information on forthcoming Northern Ireland tenders more effort needs to be put in to addressing this issue. Over 90% of respondents believe a web portal for all Northern Ireland procurement should be established as soon as possible.

With a UK public procurement market of over £120 billion and a multi-billion market in the Republic of Ireland and mainland Europe many companies would welcome assistance in addressing key barriers including the provision of information on public procurement opportunities, processes and market intelligence. In this respect we believe Invest Northern Ireland should develop a strategic approach to helping this 'sector' access external markets, building on their existing successful activities eg in highlighting opportunities relating to the 2012 Olympics. Some 72% of respondents would like to see the Northern Ireland web portal with links to other external public procurement markets

Addressing all three areas is likely to have a disproportionately positive impact on SMEs.

- 8 The CBI is keen to highlight that progress on a number of these issues is being made. CBI members have engaged with the CPD, and Centres of Procurement Expertise to discuss the findings and a series of actions have been agreed. Other initiatives have been under development are in the process of being run out:
- CPD are currently reviewing the scale and format of information required on company profiles and generic information, with the aim of standardising the requirements to reduce bureaucracy and bidding costs
 - CPD and Centres of Procurement Expertise are continuing to develop and rollout e-Sourcing to improve the visibility and accessibility of public procurement opportunities
 - CBI is assisting the procuring bodies in defining the attributes of a 'world class' client to enhance procurement standards and focus on 'value for money'
 - CPD, Centres of Procurement Expertise and the CBI have agreed to meet again in the near future to review progress and maintain the open and constructive dialogue for mutual benefit

General Remarks on SMEs and public procurement

- 9 The CBI supports an open, fair, transparent and competitive market for public procurement for firms of all sizes. The CBI believes the best way to increase SME involvement in public procurement is to continue to remove barriers to access, particularly looking at the disproportionate burden of bureaucracy and bid administration procedures (and costs) which weigh heavily on the SME community, as well as increasing awareness of opportunities of public contracts. With regards to SMEs involvement in public procurement we would make the following comments:

- The setting of a mandatory target for the level of SME involvement in public procurement risks distorting a competitive market and may not result in the desired outcome.
 - The key criteria for awarding contracts must always be best value, but public sector procurement practices should do more to increase competition and innovation, and seek to promote more sustainable development
 - More thought needs to be given at the outset, both in terms of the tender specifications and the criteria to be used to evaluate tenders, to ensure that these are not unduly onerous and acting as a barrier to SME participation in the tender process
 - Government should consider the impact on SME's of late payment by public purchasers and encourage all public purchasers to ensure they are paying on time, particularly in the current economic and financial climate. There has been a commitment to pay invoices within 10 days – what we need is evidence from across the public sector that this is being delivered
 - An assessment of the availability of finance to those SME's seeking to provide public contracts ought to be made. The current financial environment has reduced the borrowing capability of many SME's, with increasing concerns about access to working capital. While the UK government, and the Northern Ireland Executive, has been encouraging banks to lend to SME's, it is not clear what impact the current 'credit rationing' is having on SMEs involved in public procurement contracts.
 - For large projects we need to recognise that many SMES will become involved in public procurement through acting as sub-contractors
- 10 There is also an onus on SMEs themselves to ensure they are taking the necessary practical steps to improve their prospects of winning public sector contracts including:
- Investing time in identifying useful appropriate opportunities – they need to be selective
 - Being prepared, and ensuring the company is 'clued-up' on the requirements expected from tenderers
 - Engagement with target clients – developing relationships and knowledge of clients needs will help position the company for upcoming tenders
 - Make use of existing support schemes
 - Be diligent at meeting procurement specifications, ensuring they meet all the criteria and accurately reflect this in their proposal
 - Promote themselves as innovative, but also expert in their field, to ensure they are not perceived as too risky
 - Be prepared to act as subcontractor, or indeed develop partnerships with other organisations in the bidding process (good preparation and intelligence of market opportunities will assist here)
 - Deliver high quality services on existing contracts.

- 11 For large scale public sector infrastructure schemes (as exist under the Investment Strategy for Northern Ireland) it is essential that the taxpayer achieves maximum value for money. This is likely to be achieved by larger firms who have recruited, trained and invested in the necessary resources, though clearly SMEs must be given opportunities to develop their capabilities over time. Larger schemes should be awarded on the basis of selection of the contractor team that has demonstrated that it can add most value to the project. Frameworks (whereby a cluster of schemes of a similar nature/value are bid for by a small number of framework contractors) will maximise the benefits to the client, keep bid costs to a minimum and reward good performance by the contractor and his supply chain.

Responding to the specific issues raised in the Terms of Reference

- 12 The rest of our response is formatted to address the issues identified by the Committee in the terms of reference to their inquiry. Our comments, drawing from our evidence base, are restricted to SME's, as we have little knowledge of the issues facing social enterprises, though we expect many of these organisations will face similar challenges.

Examine the experience of SME's and SEE's in tendering for and delivering public contracts.

- 13 The results of the CBI NI survey may be distilled down to three core areas for improvement:
- a. Reducing bidding costs (excessive documentation and simplifying the process)
 - b. Enhancing skills of those involved in the procurement process
 - c. Improving information provision regarding tender opportunities
- 14 It is important that those engaged in spending public monies are seen to be doing so in an appropriate and fair manner. This requires that the supplier provide a level and detail of information to the procuring body to enable informed and accurate decisions to be taken. However, the level of information required should be proportionate to the scale of the procurement. With limited resources, SME's in particular face difficulties in completing lengthy, complex and duplicated procurement responses.
- 15 The limited resources of SME's also make it difficult to compile comprehensive tenders within a short period. A longer timeframe in which to compile tenders would be beneficial in enabling more SME's to make submissions and complete submissions to a higher standard. The CBI Northern Ireland survey revealed the top reasons (prioritised in order of importance) for high bidding costs as being:
- Too much information requested / duplicated (over half of respondents identify this issue as a cause of high bid costs)
 - Short timescales to submit tenders
 - Absence of a standardised approach

- Inadequate specifications (30% of respondents identify this issue a cause of high bid costs)

- 16 Setting targets, whether aspirational or mandatory, for small firms to win a set percentage of the total value of public spending has been suggested in some quarters. It is the CBI opinion that this risks distorting a competitive market and in some instances would contravene EU public procurement rules. However the first step may be an analysis of the size of companies completing tender applications as well as an assessment of the success of SMEs in winning tenders. The CBI believes the best way to increase SME involvement in public procurement is to increase awareness of opportunities and to continue to remove barriers to access. A reduction in procurement 'bureaucracy' leading to reduced bidding costs is a fairer and more deliverable way of increasing SME involvement than setting targets – indeed CBI evidence suggests that in Northern Ireland the 'bureaucracy' is higher than in GB. Targets are also difficult and costly to administer and monitor by already overstretched procurement staff.
- 17 Most respondents to our survey rated the procurement processes as average / good but there is a wide range of experience across all procuring agencies from very poor to very good. However, while the processes were generally rated average / good, the survey highlighted concerns with the procurement and commercial skills of some of those in the public sector engaged in the procurement process. Just under half of respondents (42% of small companies) described the commercial skills of public procurement professionals as poor or very poor, while only 12% describe them as good or very good. This is a key issue for the business sector as it often results in delays, changes and additional cost in the process. It does raise the issue about whether procurement expertise is being spread too thinly across a wide range of procuring bodies and if a more integrated and co-ordinated approach is needed. The CBI would also be keen to see more exchanges and secondments between the private and public sectors as means of improving procurement capabilities, and developing greater commercial awareness within public procurement agencies.
- 18 A core strength of many SME's is the ability to bring innovation solutions and flexibility to the market, yet many feel that this is not adequately recognised in the assessment of tenders. 49% of SME respondents felt that government is not doing anything to encourage innovation through the procurement process, with 40% perceiving only a little improvement, with many feeling that 'lowest cost' rather than 'best value' remains the baseline on which tenders are assessed. 64% of SME's feel public procurement does not result in good value for money for the taxpayer, against 55% of large companies
- 19 Despite a number of recent welcome improvements, 46% of SME's report it as difficult or very difficult to obtain information about procurement opportunities. Only 10% report it as easy or very easy. We acknowledge that Invest NI and others are providing education and support in this area but would recommend that further coordinated efforts be made to inform and encourage SME's in relation to procurement opportunities. Many companies appear to be unaware of what help and guidance is available to them. As stated elsewhere the development of a webportal for all Northern Ireland procurement would be welcomed by almost three-quarters of suppliers.

20 This is not an issue specific to Northern Ireland. The UK research completed for the Scorecard Working Party revealed the following responses from SMEs to the question "What are the main barriers preventing your organisation being fully aware of government procurement opportunities?":

- 77% identified lack of knowledge of information sources
- 66% stated lack of time to search for opportunities
- 61% stated they were not sure which source of information to use and
- 59% stated that documentation is confusing when they do get access to it

Consider the nature, extent and application of social clauses within public contracts.

21 The CBI supports the use of public procurement to meet wider environmental and social policy goals, but only where such criteria are directly relevant to the contract.

22 It is appropriate that the Northern Ireland Executive would wish to apply social and environmental policies through the procurement process, within EU legislation. The public sector needs to have processes that enable them accurately and fairly to discern, for example, whether those bidding for contracts are complying with equality, health and safety and environmental legislation. That said, a proportionate approach is needed, particularly in relation to SME's. The public procurement body needs assurance that the potential supplier is in compliance, but should avoid overburdening firms with requests for unnecessary information and irrelevant compliance standards.

23 The requirements attaching to large scale procurements might be expected to be different from those applied to small scale short term contracts. It is therefore important that procuring bodies set the procurement proposal at the correct level, for example, will a single large scale contract be more appropriate to achieving the policy and procurement objectives or would several small scale contracts provide better 'value for money'. Large projects may bring greater scope to introduce specific social related policy objectives.

24 We consider that there should never be a competitive advantage for a bid that kept costs unduly low by cutting corners through non-compliance with basic legislation but, on the other hand the standard set by the procuring body should be realistic and appropriate to the scale of the contract.

25 It is therefore of important that the process be transparent. Transparency is important, not just to ensure the fairness of the process and adherence to the principal of 'value for money', but to restrain attempts to achieve too many policy goals through the procurement process which could undermine value for money. Such an inclination can only unbalance the process with the danger that policy goals take over from procurement needs. Not every public policy can, or should, be taken into account in procurement.

26 As noted above, where social and environmental policies are taken into account, they must be appropriate to the scale of the contract and be clearly identified and understood at the outset of the contract. The CBI has welcomed the publication in 2008 by the Equality Commission and the Central Procurement Directorate of the

'Equality of Opportunity and Sustainable Development in Public Sector Procurement', setting out key principles and policies for integrating sustainable development issues into procurement policies across Northern Ireland departments and agencies – effective implementation of this guidance is essential.

Identify issues to be addressed and which are within the remit of the DFP.

27 The CBI Northern Ireland survey highlighted a number of issues which will help SMEs compete more effectively for public procurement contracts. These are briefly itemised here:

- Reduce information demands. These have been described as excessive, too detailed and requiring duplication.
- Ensure greater standardisation. Businesses applying for public work across a number of procurement bodies are faced with different requirements and formats, even for submitting the most basic company information, all of which adds to bidding costs.
- Allow additional time for submission of tenders. Additional time would allow greater scope for SME's with limited resources to submit tenders. Companies report that often the minimum possible response time becomes the norm for procurements. In practice this might mean providing an additional week for suppliers to respond to tenders
- Improve specifications. Inadequate, poorly defined and changing specifications are identified as a key cause of high bid costs and difficult relationships through the term of the contract.
- Improve skills of public procurement professionals. There is a need for enhanced commercial skills within the procurement bodies. Senior staff should be pro-active in monitoring staff performance in this area and providing professional development opportunities for staff. Procurement staff also need to develop their understanding of the market to enable a more efficient specification of procurement requirements.
- Improve access to information. Work is underway in this area, but there should be continuous engagement with business to ensure companies are aware of the changing electronic information environment and how to access it. However, the importance of personal contact should not be overlooked. The need for business in general and SME's in particular to come together to discuss issues with procuring bodies cannot be overstated.

The Minister of Finance and Personnel chairs the Procurement Board. Ensuring consistent policies and practices across all eight Centres of Procurement Expertise is essential.

Assess progress of DFP in achieving associated objectives and targets, including those contained in the Programme for Government and related PSAs

28 CBI Northern Ireland has not had an opportunity to assess the progress of DFP, nor indeed other government departments and agencies in improving public procurement processes against their PSA targets.

Key recommendations for improvements to public procurement policies and processes, aimed at increasing access to opportunities for SME's and SEE's

- 29 A number of recommendations have already been set out, drawing on the detailed survey, analysis, and discussions with CBI member companies in the course of last year. We believe it is important for the Committee to note that following the publication of the results of the survey, CBI Northern Ireland, CPD and others have been actively engaged in a process to bring further improvements to the public procurement processes, including discussions to address many of the issues raised here.
- 30 Discussions, begun in September 2008, resulted in agreement on a series of Action Points. Progress on these Action Points will be reviewed at the end of April 2009. Indeed as part of the need to raise awareness of the changing policies and opportunities for SMEs in the public procurement market in Northern Ireland and in external markets, the CBI is organising a major Procurement Conference on 5th March. This conference is designed to assist large and small companies understanding the procurement processes including recent changes in policies and practices in Northern Ireland, as well as provide extensive networking opportunities with representatives from the Centres of Procurement Expertise.
- 31 More widely the CBI believes there is a significant economic development opportunity in encouraging Northern Ireland based suppliers to access public procurement markets outside of Northern Ireland. Much progress has already been achieved - local companies can - and are - winning very worthwhile business particularly in Great Britain and the Republic of Ireland. In 2007, for instance, 55 Northern Ireland companies secured tenders for significant projects worth more than £264 million, assisted by Invest NI. We believe a more concerted and strategic approach to helping local companies win in these external markets will be worthwhile. The opportunities offered in external public procurement markets will also feature in one of the sessions at CBI's Public Procurement Conference on 5 March.
- 32 In conclusion, CBI Northern Ireland welcomes the focus being given to the issues of SME access to public procurement by the Finance Committee. Public procurement has a vital part to play in developing a sustainable economy while it is important that it provides value for money within an efficient, fair, standardised and robust framework.

References:

1. Public Procurement – delivering value for money. Findings from a CBI Northern Ireland Survey, July 2008.
2. Evaluating SME experiences of Government procurement. A report of the Scorecard Working Party, October 2008.

CBI Northern Ireland
25 February 2009

Northern Ireland Policy Unit Federation of Small Businesses



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27 February 2009

The Federation of Small Businesses is Northern Ireland's largest business organisation with 8000 members, drawn from across all sectors of industry, and over 210,000 members throughout the UK.

The Federation lobbies decision makers to create a better business environment and welcomes this opportunity to input into the Committee for Finance and Personnel's Inquiry into Public Procurement Policy and Practice in Northern Ireland

This submission includes feedback from FSB members in Northern Ireland who have engaged or attempted to engage with public procurement processes, as well as information from FSB's national research. Those members who spoke to us did so on the condition that they would remain anonymous. We are also grateful for expert input by FSB NI member Lestas Consulting, a local Management Consultancy company specialising in supporting SMEs and SEEs to procure to the public sector and supporting the public sector to examine good procurement practice.

Our work on gathering our members' experience of the public procurement process with a view to identifying good practice as well as barriers, in order to make practical and realistic recommendations, is ongoing and we would welcome a further opportunity to comment if the timescale of this inquiry permits.

We trust that you will find our comments helpful and that they will be taken into consideration. The FSB is willing for this submission to be placed in the public domain. We would appreciate being kept apprised of further developments.

Regards

Wilfred Mitchell OBE
Northern Ireland Policy Chairman

Executive Summary

The FSB was pleased to meet with the Committee in November 2008, and welcomes the Committee's decision to conduct an Inquiry with a view to increasing access to public procurement opportunities by small and medium-sized businesses and social economy enterprises.

The FSB welcomed the Programme for Government's emphasis on "growing a dynamic innovative economy". However, we noted that only one of the PSA objectives specifically mentions Small and Medium sized Enterprises, despite the recognition in the Programme for

Government of the essential contribution of this sector in the economy. PSA 11, Objective 4 includes the proposed action to "increase access to public sector procurement opportunities for SMEs and Social Economy Enterprises", with the target of having "appropriate systems in place by 30 September 2008 to allow SMEs and SEEs to opportunities for doing business with public sector organisations."

In these difficult economic conditions, it is clearer than ever that SMEs are the backbone of the economy in Northern Ireland, and if supported, will form the basis of the recovery in the future. It is essential to maintain the dynamism and innovation of our small businesses at this time.

Feedback from FSB members in Northern Ireland

This submission includes feedback from FSB members in Northern Ireland who have engaged or attempted to engage with public procurement processes, as well as information from FSB's national research. Those members who spoke to us did so on the condition that they would remain anonymous. We are also grateful for expert input by FSB NI member Lestas Consulting, a local Management Consultancy company specialising in supporting SMEs and SEEs to procure to the public sector and supporting the public sector to examine good procurement practice (Annex 1).

FSB Member Guidelines

The FSB provides guidance to its members on best practice for those seeking to explore business opportunities in the public procurement sector^[1] (Annex 2).

The FSB believes there are significant barriers to the procurement process for SMEs, and is conducting further and ongoing work to identify the specifics of these barriers and the measures that could best address them, building on the work that the FSB is carrying out in Great Britain.

Definition of SMEs

In Northern Ireland, 95% of businesses employ fewer than 10 people, while those with fewer than 50 employees constitute 98% of all business, and employ nearly 50% of those in employment (March 2005)^[2]. Less than 1% of the private sector consists of large companies (250+ employees).

It is therefore important that the Committee clarifies its definition of an SME. Public Bodies in Northern Ireland may consider that they have 100% submission from the SME sector to its tender notices, and a 100% success rate of award of contracts to SMEs – given that the standard definition of an SME relates to all businesses employing up to 250. This definition makes it difficult to make a case for the identification of real barriers for the majority of our typical businesses. This paper calls on the committee to define SME as a company employing up to 25 people. For the purposes of this paper this is the definition of SME that will be used.

Interdependence with other strategies and policies

It will, of course, be important to consider public procurement in conjunction with the current Independent Review of Economic Policy, the draft Enterprise Strategy and the long anticipated review of the Regional Economic Strategy.

In addition to reacting to the current economic climate, this is an opportunity to put measures in place to be introduced under the RPA.

Independent Review

Not wishing to delay any measures that the Committee might wish to recommend as a result of this Inquiry, we would welcome an independent review of the public procurement process in Northern Ireland, such as that conducted by Anne Glover in GB (and following the precedent of DEL's decision to review Employment Dispute Resolution procedures following the Gibbons Review in GB, taking a specifically Northern Ireland focus and taking account of our uniqueness as a small business economy.

Recommendations

- The FSB has recommended that the UK government should set a target of awarding 30% of low value public procurement contracts to micro businesses. The Department of Finance and Personnel should consider this as a target in Northern Ireland in order to stimulate the indigenous small business base and increase productivity.
- The FSB NI calls on the Committee to initiate a review into SME access to information on public procurement opportunities, including those provided by public bodies outside central government, such as local councils, and address weaknesses where they are found. Tender opportunities are advertised in a plethora of media, including the three main daily newspapers, trade journals, and websites. Small and micro-businesses do not have the human resources to identify and monitor all of these sources on a weekly basis.
- Small businesses should be actively encouraged to enter tendering process. In relation to lower value contracts for which it is not a requirement to advertise, every effort should be made to identify as wide as possible a pool of potential tenderers, and to ensure that all have the opportunity to tender.
- On a national basis, the FSB calls for the introduction of an universal pre-qualification questionnaire that could be used for low value contracts and would only have to be filled in once and then logged for future bids. The time it takes to resubmit a full pre-qualification questionnaire for each new bid uses time the small business does not have. Pre-qualification paperwork should be simplified and in Plain English. Requirements should be clear and relevant.
- The FSB recommends an examination of the feasibility, as part of wider package to boost small businesses during current difficulties, of breaking large contracts into smaller ones to enable smaller businesses to tender.
- If large contractors are used, they should in turn be required to advertise for their subcontractors, and to select from them on a Value-for-Money basis.
- The concept of Value for Money as a principle which requires consideration of much wider criteria than cost – embracing quality, project completion times, ease of communication and project flexibility – must be promoted and public service contract managers thoroughly trained. Such training should include the benefits of using smaller companies.
- Debriefing should be automatically offered to all unsuccessful bidders and should be delivered by someone who was actively involved with the award process. Feedback should be provided in the format requested by the bidders, whether face to face meetings, telephone or written advice and explanations.
- The number and value of contracts awarded to small businesses, by size of business, should be monitored and regularly reviewed. This information should be included in the DFP's Annual Report to the Procurement Board.

Introduction

Public procurement is an underused tool when it comes to supporting the indigenous small business sector. By using local suppliers, contractors can expect better value for money, better quality of service and a more innovative and punctual completion of the contract.

The public sector in Northern Ireland spends over £2bn a year on public procurement, nearly 25% of the Executive's budget, yet BERR estimates that only 16% of the total value of public contracts is awarded to SMEs, and only 33% of SMEs who bid every time they find an appropriate opportunity are successful in winning the contract. This is set against EU data which states that SMEs secured 42% of the value of contracts above the thresholds fixed by the EU directives on public procurement which is £140,000^[3].

Survey Results^[4]

Evidence from a recent survey of FSB members suggests that SMEs experience significant barriers in tendering for government contracts.^[5] Small businesses are not always given a fair chance to compete against larger businesses, and also are not always aware of ways in which they can maximise their chance of winning public sector contracts.

On average, SMEs find the private sector easier to sell to than the public sector – their rate of success in winning private sector contracts is double their rate of success in winning public sector contracts.

Over 50% of SMEs find it significantly more difficult to deliver to government agencies than the private sector, predominantly because of the additional requirements of public sector clients. This is largely due to a greater amount of formality, a lack of responsiveness and unrealistic timescales.

Three quarters of SMEs lack awareness of where to find information about public procurement opportunities.

Two thirds also lack the time required to look for opportunities.

Just under two thirds of SMEs are not sure of which information sources to use when looking for opportunities.

Over three quarters of SMEs feel they lack awareness of the government procurement opportunities available to them. The majority of these do not know where to look for opportunities, and believe it is too time consuming to try and find out about them.

Over half of SMEs find the tendering process too costly/time consuming and half of SMEs feel their lack of awareness of appropriate contracts prevents them from bidding.

Many SMEs do not bid because they feel they are unable to compete with larger suppliers. One in five SMEs believes they are unsuccessful in a bid because they are unable to offer better value for money than other suppliers.

SMEs believe that in general, public sector organisations require a greater number of formalities, can be indecisive and unresponsive.

Over half of SMEs feel the process of tendering for government contracts requires more time and resources than their business can allow.

There is a suggestion that further breakdown shows medium sized businesses tend to perform better than small and micro businesses.

Survey Comments

As part of this submission, the FSB contacted members to ascertain their views and experiences relating to public sector procurement in Northern Ireland.

A common thread amongst respondents was whilst they recognise and welcome the pro-active approach taken by the Northern Ireland Executive towards approving capital projects to help stimulate the economy; much of this positivity is endangered by a concern that due to current procurement procedures in place, how long will it take for these to get off the ground?

Snapshot comments are expressed below to illustrate the wider responses received;

Micro-businesses

I have no experience regarding public sector contracts. As a micro business I have shied away from the laborious and time consuming procedures involved in the application process.

Office of Government Commerce

Multi-national companies represented in Northern Ireland are getting contracts through the OGC (government buying solutions) whereas Northern Ireland based companies are placed at a disadvantage that unless they have cover the whole of the UK and have a certain turnover value they cannot get on the OGC...the OGC allows Northern Ireland government departments to issue contracts to those companies with OGC without tendering...the system seems to make ConstructionLine registration useless...most government departments use OGC as an easy way out so that they do not have to tender (thus saving cost of tender). If the Assembly had a similar system then the argument would be negated and more local companies would be getting work.

Public Liability Insurance

Many public sector contracts specify a minimum of £10million Public Liability Insurance, whereas in the private sector, my experience suggests that £2million is normally sufficient.

Tendering Notifications & Qualification

There is no efficient tendering notification system, even commercial fee based services do not seem to cover all tender opportunities, particularly those smaller ones often issued by local councils.

I understand that every project with a construction cost of over £30,000 is advertised. Then a detailed pre-qualification questionnaire is completed by each member of the team, including evidence of health and safety policies, accredited management systems and references for assessment to get on the shortlist. This is before a more detailed questionnaire is then to be completed.

Contractor/Sub-Contractor Payments

"My business is experiencing increasing difficulties due to the trend towards Measured Term Contracts (MTCs). Whilst the main contractors are receiving prompt payment from the public

sector contractor, the main contractor is not prompt in passing the payments down to its sub-contractors. The Government recently said it would 'stamp' on this practice but we see no evidence of this in reality, in fact the opposite is becoming the case"

Relationship Management

"In the past we would work directly to those who understood the issues but this is being replaced by centrally driven civil servants with no industry specialisms, we do our best to highlight the weaknesses in advance but this clearly not always taken on board. In fact we feel the current process often hinders procurement, rather than facilitate it"

"Administration has grown considerably in delivering public sector contracts as we have many more masters to serve...end user, auditors, various internal departments, purchasing team, etc etc. This has negative effect on cost and project delivery timescales"

Framework Agreements

There have been repeated concerns expressed in relation to the issue of Framework Agreements. Since these were introduced in Northern Ireland, there is a very strong perception amongst many business owners that the outcome has been to exclude the indigenous SME sector in favour of larger [inter]national competitors, the irony being that once the latter have been successful in winning the contract, much of the work is often then sub-contracted to indigenous SMEs.

The announcement by the Finance Minister, Nigel Dodds, in December 2008 that approximately £115 million of construction-related projects previously earmarked for delivery through the Framework process would now be released for tender instead, is a welcome move, albeit forced by other circumstances. This demonstrates that when required there can be flexibility in the system and the FSB would like to see this built upon to benefit indigenous small businesses, particularly during these difficult economic times. However, we urge caution in relation to the Accelerated procurement process, as this is likely to significantly disadvantage small businesses without the resources to devote to preparing complex bids very quickly.

Member Comment – Framework Agreements

"My organisation has, up until now, been appointed to a number of governmental projects. We are a highly experienced company and it is these projects that allow us [to get] on to shortlists for future project opportunities. If frameworks are designed to last for 4-5 years, we will be excluded from the next round of frameworks as we will not have experience of similar projects of a similar size (usually criteria is to look for the last 5 years experience of similar projects). This framework has created sufficient interest for the large UK/Irish consultancies to establish offices in Northern Ireland. Rather than create new job opportunities this has displaced jobs from local SMEs and concentrated the potential income generation to a few larger organisations".

Recommendations

- The FSB has recommended that the UK government should set a target of awarding 30% of low value public procurement contracts to micro businesses. The Department of Finance and Personnel should consider this as a target in Northern Ireland in order to stimulate the indigenous small business base and increase productivity.
- The FSB NI calls on the Committee to initiate a review into SME access to information on public procurement opportunities, including those provided by public bodies outside

central government, such as local councils, and address weaknesses where they are found. Tender opportunities are advertised in a plethora of media, including the three main daily newspapers, trade journals, and websites. Small and micro-businesses do not have the human resources to identify and monitor all of these sources on a weekly basis.

- Small businesses should be actively encouraged to enter tendering process. In relation to lower value contracts for which it is not a requirement to advertise, every effort should be made to identify as wide as possible a pool of potential tenderers, and to ensure that all have the opportunity to tender.
- On a national basis, the FSB calls for the introduction of an universal pre-qualification questionnaire that could be used for low value contracts and would only have to be filled in once and then logged for future bids. The time it takes to resubmit a full pre-qualification questionnaire for each new bid uses time the small business does not have. Pre-qualification paperwork should be simplified and in Plain English. Requirements should be clear and relevant.^[6]

All councils in Sussex have now agreed to adopt a standard self-assessment PQQ based on the OGC model, but reduced down to only 9 pages. This means that businesses in Sussex now only have to complete the same standard form for any non-EU tender. Questions will always be the same and in the same order, and they don't need to provide supporting documents.

- The FSB recommends an examination of the feasibility, as part of wider package to boost small businesses during current difficulties, of breaking large contracts into smaller ones to enable smaller businesses to tender.
- If large contractors are used, they should in turn be required to advertise for their subcontractors, and to select from them on a Value-for-Money basis.
- The concept of Value for Money as a principle which requires consideration of much wider criteria than cost – embracing quality, project completion times, ease of communication and project flexibility – must be promoted and public service contract managers thoroughly trained. Such training should include the benefits of using smaller companies.
- Debriefing should be automatically offered to all unsuccessful bidders and should be delivered by someone who was actively involved with the award process. Feedback should be provided in the format requested by the bidders, whether face to face meetings, telephone or written advice and explanations.
- The number and value of contracts awarded to small businesses, by size of business, should be monitored and regularly reviewed. This information should be included in the DFP's Annual Report to the Procurement Board.

Conclusions

Many small businesses have benefitted from public sector procurement in Northern Ireland over many years, but many believe it is becoming a more and more inaccessible marketplace.

There is recognition that value-for-money is a critical criteria, however this is also a feeling the process has become unnecessarily bureaucratic and unwieldy, which in itself deters many small businesses, who do not have the in-house expertise or manpower to make it commercially viable.

Nationally, the FSB has welcomed confirmation that the Government intends to adopt all eighteen recommendations made by the Glover Review. As part of this process, the FSB has

been invited by BERR/OGC to sit on the Glover Implementation Stakeholder Committee to feed into the implementation process.

It would be beneficial for those charged with delivering effective public procurement to closely monitor this Committee's work and adapt relevant good practice to Northern Ireland.

The FSB report – 'Evaluating SME Experiences of Government Procurement' is a comprehensive document which would be useful for reading as part of this inquiry. A copy has been attached as part of this submission.

Annex 1

The following points have been brought to our attention by an FSB NI member specialising in supporting SMEs and SEEs to procure to the public sector and in supporting the public sector to examine good procurement practice:

1.1 The cost of Public sector tendering to SMEs – This has not been examined in detail yet. However initial indicators are that it is often a very expensive process, involving extensive input from senior staff and owner/managers. Estimates are that it can be up to 35% of annual turnover depending on the size of the company and its dependency on the public sector.

1.2 Public Body Frameworks – The documentation and process involved in the primary stage of frameworks is lengthy, cumbersome and expensive for small businesses. Experiences to date indicate that the primary process for frameworks does not in any way lessen the documentation required for the secondary process. SMEs still need to complete a tender response in the secondary process in the same way as any other open competitive tendering process. Frameworks at present mean double the tendering work for an SME. This paper calls on the Committee to examine Frameworks.

1.3 Success Rate for SMEs in Government Frameworks – Central government needs to provide statistics on how successful small companies are on getting onto the framework but more importantly, how successful small companies are at securing contracts from the framework. Initial indicators are that the success rate for companies on the framework (and who have therefore proved their capacity and capability to deliver government contracts) to secure contracts is a very staggeringly low figure and certainly below 20%.

1.4 Contract Management Skills by Managers in the Civil Service - It seems that one of the biggest barriers to small companies securing contracts through the frameworks is the lack of belief by the project managers in the capacity and capability of the smaller businesses to deliver on a contract. This is in direct contrast to the fact that the company has been placed on the frameworks and has therefore proved their capacity and capability. This paper calls on the Committee to examine an educational process for contract managers into the potential advantages of using an SME for contract delivery.

1.5 The use of the Accelerated process in an economic downturn – In order to assist the current economic crises for the business sector, the EU is calling on government bodies to increase the use of the accelerated process in the restricted process. This means that when procuring public contracts, the response time is reduced to 10 days from issue of tender notice to tender submission dates. Although this is positive in one sense it also has the potential to create another barrier for a small company - the shorter response time is unlikely to allow small companies enough time to prepare their tender documents.

1.6 Contracts below the EU Thresholds – Most small companies in Northern Ireland procuring to the public sector are working on contracts below the EU thresholds. However, most public bodies procuring contracts below the thresholds are not taking the care and direction of good and similar practice as set out in the EU Directives. The processes used for these contracts and the Terms of Reference documentation produced is often of poor quality, that does not adhere to an open, transparent and objective procurement process. For example, decisions are made on contract award without clear understanding of evaluation of award criteria. Award criteria and sub criteria are not published in terms of reference so SMEs are unclear of the emphasis required in their tender response or how the award decision was reached.

1.7 The Debriefing Process –There is a complete lack of consistency across public bodies on the debriefing process from central government through to local authorities. Small companies must be encouraged to use the debriefing process in its entirety as a business development tool and civil servants need to appreciate the importance of this process for SMEs. FSB members highlight the significant barriers to them receiving any useful information in the debriefing process. The OGC provide extensive guidelines to public bodies in the UK of which there is little reference by public bodies in Northern Ireland. Public bodies still do not take the debriefing process seriously even with all the guidelines highlighting the importance of this part of the procurement process. In a number of cases public bodies “hand over” the debriefing process to a junior member of staff who has not been involved in the procurement process. Importantly, this lack of consistency and priority of the debriefing process appears to be increasing the use of the FOI act by SMEs when a more structured debriefing process would have been satisfactory.

1.8 Freedom of Information – There is a complete lack of consistency across public bodies on what information can be disclosed from a procurement process under the Act. Small companies highlight many instances where one public body does disclose information and another does not. Public bodies need to agree and have a consistent approach to enable SMEs to effectively use this process.

Annex 2

SMEs – A role to play

There are practical steps that SMEs themselves can take to increase their chances of winning government contracts. This guidance should form the basis of proposed official guidance;

- The first step to winning a public sector contract is to identify suitable opportunities for your business. Opportunity gateways are one of the more efficient ways of searching but it's important to make sure the proposed bidder is investing time wisely in identifying the most useful opportunity gateways.
- Once you're looking in the right place for public sector opportunities, it's important that you're selective about those opportunities you're investing time and resources into bidding for.
- Bidding for smaller contracts initially can help establish a foothold, gain valuable experience in delivering to public sector clients and can reassure procurement professionals of your business capability. It can also be easier to deliver smaller contracts, as they often have no, or much lower, tendering requirements.
- Developing personal relationships with suppliers will strengthen any bids you make, and may help you to become aware of opportunities before they are advertised. You should seek to actively develop relationships with targeted public organisations/offices through the use of mail shots, networking events, phone and email campaigns, etc. And ensure

that old clients are contacted on a regular basis to encourage re-purchasing and/or referral.

- An effective marketing campaign can help to raise the profile of the SME with both procurement teams and potential end-users.
- Consider working together with other SMEs to create an offer that it is competitive to attractive to public agencies. As well as considering consortiums, you may want to examine working as a subcontractor for a larger company.

[1] As part of the wider FSB Keep Trade Local campaign, the FSB has produced a 'Public Procurement – Helping Small Businesses Succeed' guide. This was published in October 2008, and focuses on member experiences throughout the United Kingdom.

[2] Small And Medium Enterprises In Northern Ireland, DETI, 4/12/06

[3] BERR

[4] The FSB in Northern Ireland conducted additional research to that used in the FSB/CBI/BVCA report in order to ensure sufficient qualitative local responses. On the basis of past survey work and consultation, the quantitative research can be satisfactorily related to a Northern Ireland perspective.

[5] The study was carried out by Fresh Minds Research for the Scorecard Working Party in the autumn of 2008. The Scorecard working party is made up of the BVCA, FSB and CBI.

[6] 'Evaluating SME Experiences of Government Procurement' was published in October 2008 jointly by the FSB, CBI and BVCA. It is a 66 page report, which details extensively the public procurement throughout the United Kingdom, including valid case studies.

Bryson Charitable Group

Background

Bryson Charitable Group formed in 1906 is one of N Ireland's oldest local charities. For over 100 years has been a 'leader in creating a just and sustainable society' in Northern Ireland. Bryson is the leading N Ireland social enterprise with a turnover last year in excess of £18M and currently employs just under 600 people. Bryson has a service development and delivery focus; it is committed to service excellence, with a Mission that commits it to identifying and developing sustainable responses to existing and emerging social needs. The modern Charity, with its headquarter building at 28 Bedford Street, Belfast, has a regional presence with service centres based across the Province, which include Enniskillen, L'Derry (Foyle and City side), Larne, Newtownards, Downpatrick, Banbridge, Mallusk and several in Belfast. It has developed and provides service in a wide range of social policy areas, which include; care and social services; sustainable energy use; sustainable waste management and training for people living with long term unemployment etc. Bryson now generates circa 90% of its revenue from contract income and has a long history of successfully tendering for services in competition with the Private Sector. This has provided Bryson with significant experience in the pre-qualification and successful tendering for a wide range of public procurement contracts, with durations which vary from 3 to 15 years. Bryson believes that it is uniquely placed based on experience, to comment on the opportunities for improving the public procurement process, to provide better value for tax payers and better and more flexible services for the Commissioner.

Both regional and local governments have a significant expenditure on procurement annually. It is Bryson's view that the application of what is currently referred to as "intelligent commissioning" principles to public procurement processes, would provide significant additional value to both tax payers and to commissioning organisations. It is not our intention to outline in this document the detail on those principles, but we would recommend to the Committee that it asks its officials to liaise directly with the UK Government's Cabinet Office, which includes the Office of the Third Sector and provide the Committee with a review of their range of publications on issues such as; intelligent procurement; social clauses; the advantages of working with the social enterprise sector and training procurement professionals how to engage with social enterprise. In addition they should also consult with N Ireland's Social Enterprise Network (SEN) and the UK based Social Enterprise Coalition as sectoral representative bodies.

Bryson is an organisation with significant experience in tendering, in particular for high value public procurement contracts and would like to record its willingness to provide oral evidence, in respect of its experience in contracting, to the Committee in due course and would also offer the Committee an opportunity to visit to see at first hand a range of social enterprise activities in operation.

Key Issues:

Green Book Assessment

Bryson has been working as part of a public procurement working group, supported by the Central Procurement Directorate at DFP and the Social Enterprise Unit at DETI and have been raising the issue that there does not appear to be a level playing field for social enterprises, particularly for high value, large volume, public procurement Tenders. While it was our initial view that an amendment would be required to the 'Green Book' to enable it to take a meaningful account of the particular qualities or added value brought by service delivery through social enterprise, we have come to the view that a change may not be necessary and what would be more appropriate, would be to ensure that the existing provision, within the assessment process, was used to acknowledge and give weight to the added value brought by social enterprise.

The N Ireland practical guide to the 'Green Book' (2003 addition), which is produced by DFP, provides an opportunity to score applications on the basis of non-monetary costs and benefits. For example it suggests an appraisal should follow 10 key steps (contained on page 14) which record in the 7th step the following:

"Weight up non-monetary costs and benefits including new TSN and equality;"

Later in the document (page 56) it describes these steps in more detail and in respect of the point above, it states as follows:

"Where possible, costs and benefits should be valued in monetary terms, using techniques such as those presented in Annex 2 of the 'Green Book'. However, it is not always cost effective or practical to value costs and benefits in monetary terms. In many assessments there are non-monetary impacts such as environmental, social or health effects that cannot be valued cost effectively. These non-monetary costs and benefits must be taken into account and should not be assumed to be any less important than monetary values. They may be crucial to the decisions needed."

It is therefore our view that there may not be a need to amend the "Green Book" as it does not appear to prevent recognition (scoring) being given to non-monetary and non-costed benefits, as both it and the N Ireland Practical Guide recognise that there can be benefits which cannot be

valued effectively using only cost. Our concern is that such benefits are not always taken properly into account by those evaluating tenders. We believe that this could be easily rectified if; work was undertaken to reinforce this aspect of the assessment process; if awareness was developed within Commissioners at both regional and local Government levels on the advantages of working with social enterprise; and if training was provided to Commissioners in using these aspects of the process to ensure best or better value for public spending.

To summarise, the facility exists within the process to take account of added values brought by social enterprise, but it is in the gift of the Commissioner to indicate a weighting or priority. Such could mitigate inequity and rebalance the current view by Commissioners that many social enterprises seem a higher risk, given for example; limited experience in the field; or a lack of reserves, which we believe often unfairly outweighs the advantage afforded by a social enterprise engagement. This would help create a level playing field for social enterprise bidding for the delivery of high value public services.

Pre-qualification/Assessment barriers

It is Bryson's view that frequently pre-qualification and indeed the assessment process, establish essential criteria that is at times, difficult for social enterprises, particularly newer organisations, to satisfy. These include turnover thresholds, weak balance sheets (few tangible assets and low levels of reserves), or lacking independent accreditation i.e. ISO, Charter Mark, or other. We are not suggesting setting these aside but unless there is some flexibility it becomes increasingly difficult for social enterprises to engage in tendering for high value public procurement contracts. Our suggestion is not that these should be ignored, but that lower thresholds be set or greater flexibility deployed to encourage social enterprises to participate.

Social Clauses

The inclusion of social clauses in tender specifications forms part of the concept of "intelligent commissioning" referred to above. A recent publication by the Cabinet Office (Social Clauses Project) contains on page 4 the following definition for a social clause:

"Social clauses describe relevant, legitimate and value for money aspects of a procurement life cycle, which fulfil a particular social aim. This may include social requirements within the technical specification and award criteria of a contract where they are relevant to the subject of the contract and compliant with Public Procurement Legislation, as well as the UK's Value for Money policy (or equivalent commitment)"

Bryson is of the view that the inclusion of appropriate social clauses will provide added value to public procurement, ensuring the provision of the specification while achieving other social objects e.g. creating employment for those living in disadvantage (unemployed, disability, etc) or locating in an area of high social deprivation, etc. Public Sector spending makes a significant impact on our local economy; one third of our workforce are employed in the Public Sector and a further third employed as a result of its spending; it is therefore all the more important that Public spending should provide for us, in addition to fit for purpose services, the best possible impact on our economy and society. In addition to the inclusion of social clauses Bryson believes that Government must invest in robust academic research to identify metrics, which will enable procurement professionals to identify and quantify the added value brought by social enterprise in achieving social outcomes when delivering Public services.

Growth Opportunities

It is Bryson's view that public spending, through formal procurement process, have a significant role in securing and growing the N Ireland local economy. The Review of Public Administration (RPA), if successful, will reorganise public services and seek to achieve cost efficiencies in respect of the delivery of those services. Bryson believes that Social Enterprises, as well as small and medium sized Private Sector enterprises, have a significant role to play in the delivery of high quality cost effective public services and would encourage the Committee to take the view on the importance of outsourcing for that service delivery. Such we believe would create a leaner Public Sector; controlling the services it wishes delivered and creating an opportunity for enterprise, social or otherwise. We would encourage the Committee to take this position and a particular interest in the development of the proposed new and enlarged Councils. Bryson believes it would be important for the Assembly to require local authorities, within their new context, to make the presumption that services, in particular new services as a result of their expanded powers, are outsourced rather than provided in-house. This will provide a stimulus to the local enterprise, keeping those new Councils lean and focused on the delivery of the service that they commission and provide much better value to the rate payer.

We would also encourage the Committee to consider and recommend that targets be set by the appropriate Department (DETI) to achieve growth in the social enterprise sector and in particular in the delivery of public services. This would require the Department to put in place development investment, much as they do for Private Sector enterprise, to enable social enterprise to develop tendering skills, important accreditation (ISO, Charter Mark, etc) and as such treat social enterprise as the important and vibrant part of the N Ireland economy that it could and should be.

John McMullan
Chief Executive
Bryson Charitable Group

February 2009

Business in the Community



Background

Business in the Community is a membership organisation for companies committed to responsible business practice. We help our members meet their responsibilities towards society. Established in 1982, Business in the Community operates across the UK and has a sister organisation in the Republic of Ireland. 2009 marks the 20th anniversary of Business in the Community in Northern Ireland.

There are more than 800 members of Business in the Community nationally, including 80% of the FTSE 100. In Northern Ireland, Business in the Community has over 230 member companies of all sizes, committed to making a positive difference to local communities, minimising their environmental impacts, investing in their workforce and putting something back into the future development of the local economy.

Business in the Community's purpose is:

To inspire, engage, support and challenge companies to continually improve the impact they have on society.

Business in the Community's engagement with small and medium enterprises (SMEs) and Social Economy Enterprises (SEEs)

Around two-thirds of the 230 members of Business in the Community in Northern Ireland fall into the Small and Medium Enterprise category, as outlined by the EU definition, ie less than 500 employees. Support from our organisation to stimulate growth splits broadly into two areas – Support for SMEs and Supporting Entrepreneurship in the Third Sector:

1. Supporting SMEs

SMEs have been supported through programmes like Think Big, delivered in five local council areas across NI. Predominantly aimed at start up businesses, 265 start-ups received support from more established firms to help find new markets, build capacity through mentoring and embed good practice into operations from an early stage. This support totalled over £100,000 of investment. Over 170 jobs were created in the process and a total increase in sales of 23 percent was recorded at the culmination of the three year programme.

To help SMEs with environmental action, including readiness to meet environmental clauses in tendering applications, the Green Dragon environmental standard was developed and already, around 40 businesses across Northern Ireland have benefitted from completing this process.

Costs have been reduced and tendering has been successful as a result of the Green Dragon Programme, delivered by Arena Network, the environmental arm of Business in the Community.

For the past 16 years, Business in the Community has supported established small firms with growth potential through a Business to Business Bridge Programme. Through this programme, over 2000 small firms have received practical assistance and mentoring support from larger, established companies across Northern Ireland.

2. Supporting Entrepreneurship in the Third Sector

Business in the Community has used various methods to support entrepreneurship in the third sector, including peer mentoring, resource provision, pro-bono assistance and partnered initiatives. One initiative includes the current Community Enterprise Development Programme, taking place in the Coleraine Borough and aimed at stimulating entrepreneurial and social enterprises in the north-coast area.

A special toolkit for social enterprises was published recently, in association with the Social Economy Network and an accompanying event provided a networking opportunity for social enterprises to get direct access to established business figures and experts in particular fields. Professionals in the areas of marketing, communications, governance, procurement and employment and selection provided advice and guidance on best practice for new businesses, particularly those rooted in their communities.

Draft Programme for Government Response 2008

In January 2008, Business in the Community lodged a response to the Draft Programme for Government with the Northern Ireland Executive. Responding to the section on Supporting Economic Growth and Development, we argued that there was little in the Programme around supporting new business start-ups or encouraging entrepreneurship, essential if the NI economy was to continue to grow. This has become an even more pressing concern as the global economy slows and inward investment reduces.

Business in the Community also petitioned the Executive in support of mentoring initiatives and best practice transfer from larger to smaller business. We asked the Executive to consider ways in which this process could be incentivised to support responsible entrepreneurship and keep companies engaged in existing initiatives. Similarly, we pointed out that there has been a dramatic increase in the amount of environmental legislation Northern Ireland businesses must comply with. This is especially challenging for the SME sector and has an impact on tendering and procurement. ARENA Network, the environmental arm of Business in the Community, is still very keen to engage with government on these issues, making it as simple as possible for small firms to reach the highest standards of environmental excellence.

Business in the Community position on social clauses in tenders

Business in the Community's position on social clauses in public tenders is one of general support for their inclusion. Often, these clauses can be used as a method of encouragement to help firms raise their own standards in terms of environmental protection, social inclusion, community impact or recruitment and retention.

While broadly supportive of the inclusion of social clauses, when it comes to small firms Business in the Community believes government must ensure that these clauses aren't overly rigid, or unworkable, resulting in the preclusion of small and medium enterprises from tendering at all. These clauses should be viewed as a method of encouragement and not a barrier to engagement. Business in the Community works with companies to improve their ability to withstand scrutiny in related areas.

Our organisation has encouraged this already within and even beyond legal frameworks, promoting best practice in every available aspect.

The Green Dragon Environmental Standard is designed specifically to help small and medium enterprises and with a graded approach to environmental action (through Levels 1-5). This allows a continuous level of development for small firms and has already proved to be a great help in private sector tendering for some companies across Northern Ireland. With the upcoming Review of Public Administration, Business in the Community has attempted, without much success, to engage with the council-wide group on procurement, operated by the Department of the Environment.

We feel an opportunity exists for best practice in procurement to be embedded in the planning stages of the amalgamation process. Unfortunately, the ad-hoc nature of this committee seems to have worked against us impacting at council wide level, which is a lost opportunity to discuss future engagement and benchmark best practice during the planning stages.

Key areas of concern for SMEs and SEEs

Many SME's and SEE's may feel the tendering process is unavailable or out of reach for them, for a variety of reasons. It is crucial that government ensures this dissonance is reduced or eliminated and that indigenous small and medium enterprises and social economy enterprises are actively encouraged and supported in engagement with government departments. It is often

felt that language used by government can be off-putting, overly technical or obscure and for small organisations, with limited resources, simply reading related documentation is time consuming and cumbersome. Another real concern for small firms is speed of payment from government departments for work that is carried out. It is absolutely vital that small firms are paid promptly by departments, ensuring liquidity and safeguarding against cash flow problems that could lead to downsizing, particularly if a supplier chain is in existence.

Business in the Community recommendations

Business in the Community has workable recommendations on how to maximise end-user experience for SME's:

- Workshops for small businesses hoping to tender for local government contracts, or form part of procurement processes, should be held at least once, if not twice a year. This would give representatives an opportunity to learn more about the operations of SMEs and SEEs, as well as guaranteeing transparency. Firms hoping to tender would get direct advice and guidance from departmental staff and could acquaint themselves with procedural norms for procurement and tendering. This would help reduce dissonance between government and small firms. These should also be regional and not always hosted in Belfast.
- A dedicated website should be developed to provide direct access to year round support for small firms. This website would include round-ups of latest news, up-coming opportunities, staff movement within the Central Procurement Directorate or related offices, Frequently Asked Questions, guidelines and general information and feedback avenues on working with government.
- Language used in tendering notices, applications or instructions should be in plain

English and where possible and should be devoid of unnecessary jargon, unexplained abbreviations or business-speak.

- An examination into the billing and payment arrangement for the tendering process should be conducted to ensure that the most cost-effective and timely methods are being used to get payments to small and medium enterprises quickly and efficiently. Liquidity for companies is a huge issue in the present downturn and this should be conducted immediately as part of the wider effort aimed at stabilising Northern Ireland's economic framework.

Further contacts:

For further information, please contact Martin Flynn at Business in the Community on 028 90 46 0606. Business in the Community is entirely happy to provide oral submission on these or related topics to relevant Northern Ireland Assembly committees at any time.

Appendix 1

Business in the Community NI Board members

Eileen Sowney	AIB Group (UK) Plc
Roy Adair	Belfast Harbour Commissioners
Michael J Ryan CBE	Bombardier Aerospace

Stephen Magorrian	Botanic Inns
Chris Clark	BT Ireland
Alan Lennon	Civil Service Commissioner
Ciaran Sheehan	Clarendon Executive
Aideen McGinley	Department for Employment and Learning
Terry McDaid	First Trust Bank
Mark Sweeny	FG Wilson
Nigel McIlwaine	Foyle Food Group
Brian Ambrose	George Best Belfast International Airport
Nigel Gray	Marks & Spencer plc
Ruth Laird	NI Transport Holding Company
Bro McFerran	Northbrook Technology of NI
Peter Dixon	Phoenix Natural Gas Ltd
Paul Rooney	PricewaterhouseCoopers
Gerry McCormac	Queen's University Belfast
John McCann	UTV plc

Appendix 2

Current Business in the Community membership list

A&L Goodbody	Gallaher Ltd	Northern Bank Ltd
Acheson & Glover	GEDA Construction	Northern Ireland Blood
Action Renewables	Genesis Breads	Transfusion Service
AES Kilroot	George Best Belfast City Airport	Northern Ireland Chamber
Airporter	Gilbert Ash	of Commerce & Industry
Airtricity	Goldblatt McGuigan	Northern Ireland Court Service
Alburn Investments	Grafton Recruitment	Northern Ireland Office
Alliance Boots	Grant Thornton UK LLP	Northern Ireland Water
Allianz Northern Ireland	GSL Ireland Ltd	Novsoco Limited
Allied Bakeries	Habinteg Housing Association	Odyssey Trust Company

Allstate Northern Ireland	Haldane Fisher	Old Bushmills Distillery
Almac Group Ltd	Hamilton Shipping	Parker Green
Amey Business Services	HBOS plc	Patton Group
Andor Technology	HCL BPO Services (NI) Ltd	Phoenix Natural Gas
Anglo Irish Bank Corporation Ltd	HEAT Ltd	Police Service of Northern Ireland
Arthur Cox Solicitors	Henry Denny & Sons Ltd	Ireland
Arts & Business	Hewlett Packard	Premier Power Ltd
Asidua	Hivolt Capacitators	PricewaterhouseCoopers
B9 Energy Services	Holiday Inn Hotel	Pritchitt
Bank of England	Hughes Christensen Co	Probation Board for NI
Bank of Ireland	Huhtamaki NI	Progressive Building Society
BBC	Hutchinson Homes	Queen's University of Belfast
BDO Stoy Hayward	IBM UK Ltd	resource™
Bedeck	ICS Computing	Richmond Centre
Belfast Harbour Commissioners	Identity & Passport Service	Royal & SunAlliance
Belfast Health & Social Care Trust	IEB Software	Royal Mail Group plc
Belfast Metropolitan College	IKEA	RPS Consulting Engineers
Belfast Telegraph	INVISTA Textiles (UK) Ltd	Rural Development Council
BIH Housing Association	Ipsos MORI	Sangers
BluePrint	Irish News Ltd	Sainsbury's
Bombardier Aerospace	ITS Ltd	SCA Packaging Ireland
	J P Corry Ltd	SDC Trailers Ltd

Botanic Inns	Jackson Graham Associates	Seagate Technology (Ireland)
B.P. McKeefry Ltd	John Graham	Ltd
BP Oil UK Ltd	John Henderson Ltd	Serco Ireland
BT Ireland	John McKee & Son Solicitors	Singularity
Canon	John Thompson & Sons	SITA
Carecall	Johnston Press Ltd	Smarts
Care Circle	Kilwaughter Chemical Co. Ltd	Social Security Agency
Carson McDowell Solicitors	KPMG	SODEXO LTD
Castlecourt Shopping Centre	Lafarge Cement	Southern Health and Social
Cavanagh Kelly Accountants	Lagan Holdings Ltd	Care Trust
Circe Ltd	Land Securities Trillium	South Eastern Health and Social
Citigroup	Larne Harbour Ltd	Care Trust
Clanmill Housing Association	Leckpatrick Foods	South Eastern Regional College
Clarehill Plastics	Linden Foods	SP McCaffrey & Co Accountants
Clarendon Executive	Lindsay Ford	Spengler Fox
Cleaver Fulton Rankin	Londonderry Port & Harbour	Steria
CMWorks	Commissioners	Stevenson Munn
Coca-Cola Bottlers (Ulster) Ltd	Lyle Bailie International	Stratagem
Compass Group	Lynergy	Strategic Investment Board
Connswater Shopping Centre	Marks & Spencer	Stream Ltd
Consarc Design Group Ltd	Marsh Ltd	Teletch UK Ltd

Consilium Technologies	McAvoy Group	Tesco Stores Ltd
Copelands	McCormick Property	TextHelp Systems Ltd
Council for the Curriculum, Examinations & Assessment (CCEA)	McGrigors Belfast	The Carvill Group
	McMullen Architectural Systems	The Grant Group
Crane Stockman Valve	Ltd	Tim Lewis Consultancy
Davy DCC Energy (NI) Ltd	Medicare Michelin Tyre plc	Titanic Quarter
Deloitte	Microsoft NI	TR Shipping Services Ltd
Delta Packaging	Mills Selig	Translink
Diageo Northern Ireland	Ministry of Defence	Triangle Housing Association
Dillon Bass Ltd	Mivan	Tughans Solicitors
Driver & Vehicle Licensing	Montupet (UK) Ltd	Ulster Bank Limited
Dunbia	Mott MacDonald Group	Ulster Carpets
DuPont UK Ltd	Moy Park Ltd	Ulster Stores
Energia	Multi Development	USEL
Enterprise Rent-A-Car	Munster Simms	United Dairy Farmers
ESB Independent Energy	Musgrave Retail Partners NI	University of Ulster
Evron Foods Ltd	NACCO Materials Handling Ltd	UTV plc
FG Wilson (Engineering) Ltd	Nationwide Building Society	Viridian Group plc
FGS McClure Waters	NHBC	Vodafone NI Ltd
Field Boxmore Ltd	NI Ambulance Service	W5
		Western Health and Social Care
		Trust

Firmus Energy	NI Co-ownership Housing	WH Stephens & Sons
First Trust Bank	Association	White Young Green
Firstsource	NI Housing Executive	Wrightbus Ltd
Fold Housing Association	NIjobs.com	Yell
Foyle Food Group	Nitec Solutions	
FPM Accountants LLP	Norfolkline	
Fujitsu Services	NORTEL Networks	
Funeral Services NI Ltd	Northgate Information Solutions	

Bold text denotes companies joined in the last year.

Data correct as if February 5 2009

Law Society of Northern Ireland



40 Linenhall Street
Belfast BT2 8BA
Tel: 02890 231614
Fax: 02890 232606

Email: info@lawsoc-ni.org
Website: www.lawsoc-ni.org

1.1 The Law Society is the professional body established by Royal Charter and invested with statutory functions in relation to solicitors (primarily under the Solicitors (NI) Order 1976, as amended). The functions of the Law Society are to regulate responsibly and in the public interest the solicitors' profession in Northern Ireland and to represent solicitors' interests.

1.2 The Law Society represents over 2,200 solicitors working in some 550 firms based in over 74 geographical locations throughout Northern Ireland. Members of the Society represent private

clients in legal matters. This makes the Society uniquely placed to comment on policy and law reform proposals.

1.3 The Society welcomes the opportunity to make a submission to the Assembly Committee for the Department of Finance and Personnel's inquiry into Public Procurement Practice in Northern Ireland. The Society has previously and continues to raise its concerns in relation to current Government practice in the procurement of legal skills with the Department and welcomes the opportunity to raise its concerns with the Committee.

Current Practice of Public Procurement in Relation to Legal Services

2.1 A solicitor's firm may be classified as a small or medium sized enterprise as defined by the European Union.^[1] The role of solicitors' firms in the economy is often underestimated, however the existence of a well skilled legal sector is a prerequisite to a vibrant economy. Solicitors' firms advise clients including businesses on legal matters ensuring legal certainty for business ventures and facilitating commerce.

2.2 A number of solicitors' firms have raised concerns with the Society in relation to their experience of the tendering process for the provision of legal services to Government in Northern Ireland. The Society fully understands the legal framework which governs the procurement process and EU provisions governing the free movement of goods and has had regard to these in drafting its submission.

Relevant Expertise and Personnel Expertise

2.3.1 The experience of solicitors' firms based in Northern Ireland suggests that in assessing relevant expertise and personnel expertise, including knowledge and skills an overemphasis is placed on experience of having provided legal services relating to large scale Government projects in other jurisdictions. Expertise gathered providing legal services on smaller scale Government projects and even large scale private client projects in this jurisdiction often is underestimated. This is particularly true of contracts for the procurement of legal services relating to Private Finance Initiative (PFI) and Public Private Partnership (PPP) projects.

2.3.2 This emphasis places Northern Irish firms at a competitive disadvantage to larger firms based in England and Wales who often have particular experience of providing services relating to large scale Government contracts of high value. This is despite the fact much of the expertise required to provide such services can be developed by providing services relating to smaller scale projects and to large scale private client projects. The Society's view is that the consideration of relevant expertise should place a greater emphasis on the legal issues advised on rather than simply the quantum of the relevant project. Whilst this factor may be of significant relevance in the assessment of other service providers, for legal services it is the legal issues advised upon which are of greater importance than the quantum of the specific project.

2.3.3 Current criteria further appear to fail to acknowledge expertise of local law and practice. Northern Irish based firms have an integral knowledge of local law and practice, having such expertise greatly enhances their ability to advise Government and ensures costs are kept to a minimum. Solicitor firms based in England and Wales when awarded a contract to provide a Government Department in Northern Ireland with legal services often rely on Northern Irish based firms to provide knowledge and expertise in the local law. Whilst collaborative initiatives such as these can bring benefits to all parties it is considered that local firms are well qualified to provide the full range of services required of Government, including those relating to PFI and PPP projects.

Cost

2.4.1 The current criteria, despite the emphasis placed on value for money, weigh costs at only 20% of the tender. The Society considers this weighting not to be in the public or taxpayer's interest. It places Northern Irish based firms who are able to offer better value for money than larger firms in England and Wales at an unfair disadvantage. The Society queries why current practice so greatly undervalues the costs savings offered by Northern Irish firms given their broad base of relevant skills and experiences.

Insurance

2.5.1 Legal firms providing legal services to Government are required to have a sufficient level of professional indemnity insurance cover to protect Government against any risk emerging in the provision of their services. This ensures protection of public funds and interests should any difficulties arise.

Final Comments

3.1 The Society considers the current criteria are set in such a way as to under value the benefits which local firms can bring to Government. Local firms have a well developed broad base of legal skills and have developed expertise through advising both private and public clients in complex legal matters. The Society considers the current criteria undervalue the expertise which local firms hold and fail to take account of the costs savings they may offer.

3.2 The current criteria prevent the growth of the legal sector in this jurisdiction in contradiction to the Northern Ireland Executive objective as outlined in its Programme for Government 2008 – 2011 of growing the private sector and the local economy.

[1] Companies classified as small and medium sized enterprises as defined officially by the EU as those with fewer than 250 employees and which are independent from larger companies.

Anderson Spratt Group

ASG and Anderson Spratt Group Holdings
Anderson House
Holywood Road
Belfast BT4 2GU

T: 028 9080 2000
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Dear Committee Members

We are responding to your recently published notice inviting comment on Public Procurement Practice in Northern Ireland, which we welcome.

Background

We, ASG, have contributed energetically and, we trust, constructively to consultation processes and studies attaching to Public Procurement in the very recent past. Our inputs have most obviously attached to:

NICS Campaign Advertising and Related Services Framework Agreement/Tender Ref; F1565007

This Framework is obviously sector specific and of particular consequence to ASG as a provider of Strategic Marketing & Communications services. We contributed thinking during the consultation window both unilaterally and via our industry representative body, The Institute of Practitioners in Advertising. Our principal point of reference during this consultation was the Executive Information Service.

Confederation of British Industry (NI)

Our corporate membership of CBI and inclusion within its Procurement Policy Working Group has further resulted in substantial dialogue with Central Procurement Directorate and associated COPEs in recent months, a dialogue which is ongoing and which will have very public expression at the NI Procurement Conference to be held on 5th March 2009. ASG is therefore an active contributor to the debate on the particularly important issue of Public Procurement.

Notwithstanding the weight of submission previously forwarded in response to both the Framework and CBI lobby referenced above, we would wish to forward the following comments, which we trust are appropriately timely and commensurate with the Terms of Reference attaching to this consultation. We also offer these comments in a context which is not restricted to our own area of professional practice but which should additionally reflect the experience of and challenges facing all SMEs.

Bidding Costs

An obvious challenge for potential respondents to Public Procurement invitations. These are largely dictated by the specific requirements of the tender in question and the timeframe being made available for completion of response. Experience suggests (notwithstanding Frameworks) that requirements tend to be unduly exhaustive and timeframes unduly punitive. Such considerations are of particular sensitivity in relation to SMEs.

The relationship between bid cost and potential commercial return (if successful) is often unattractive to the bidder and rarely, if ever, is a timeframe more generous than those formalised within Frameworks-and these are already hugely restrictive.

Language and Clarity of Tender Documentation

Much progress has been made in this area in recent times as a consequence of consultation and improving, regular dialogue. Having said, tender documentation often prompts a requirement for further questions and clarification from bidding parties; timeframes should adequately allow for such process and speed of response to clarification queries should be the subject of an agreed protocol. We would greatly encourage a continuing commitment to clarity of language and intention in the drafting of invitations to tender.

Previous Experience-Still an Ambiguous Position?

At time of writing, there appears to be an uncertainty (perhaps legal) as to the requirement for evidence of previous experience in secondary competitions if same has been demonstrated in a successful Framework bid. Such ambiguity is wholly unsatisfactory and is requiring of definitive clarification.

Experience of Assessment Panels

Professional Procurement requires resource-and said resource requires to be both experienced and intellectually imaginative. We would encourage a rigorous and ongoing assessment of the assessor in this context. We would further encourage an examination of appropriate third party expertise-perhaps a panel of qualified assessors in different disciplines-which might be drawn upon as necessary.

A Focus on Fitness for Purpose and 'World Class' Outcomes

The 'process' of Public Procurement is a demanding one for the procurer and there is a very substantial volume of work to be awarded in any one year. The sheer scale of this process might-and we stress might-result in a slipping of focus upon the primary intention of the procurement in the first place-and that is ultimately the provision of services to the citizen. And not just services, but services which are best in class.

A previous Northern Ireland Secretary of State, Peter Hain MP, said shortly before leaving office that if Northern Ireland is truly to become a 'world class society' then it must genuinely deliver 'world class public services'. This is a noble ambition and one which goes beyond the purely quantitative. We believe, as an SME endeavouring to reflect such sentiment and live up to such expectation in our work, that such a culture can only positively impact upon outcomes and delivery.

Thank you for your consideration of this commentary.

Peter Spratt
Group Managing Director

Northern Ireland Federation of Housing Associations



27 February 2009

Introduction

The Northern Ireland Federation of Housing Associations (NIFHA) represents 40 housing associations. This includes 33 of the associations registered and regulated by the Department for Social Development (DSD).

Collectively, these associations provide 30,000 good quality, affordable homes for renting or equity sharing. They also develop 1,000 – 1,500 new homes each year and, often working in partnership with more specialised voluntary organisations, provide housing support services to thousands of tenants.

Further information is available at www.nifha.org

Background

At one and the same time, housing associations are voluntary organisations, social enterprises and part of the small business sector.

Housing associations are perhaps unique in the voluntary sector because they have experience of public procurement from two contrasting perspectives:

- like many other voluntary organisations, housing associations may submit tenders for public contracts
- in addition, they invite tenders for multi-million pound contracts for the construction of social housing, aided by grants of approximately 65% from the public purse.

Our evidence considers each of these aspects in turn.

A. Experience Gained from Submitting Tenders for Public Contracts

A1. Public procurement policy is complex and more training is required to enable all the relevant stakeholders, including housing associations, to understand the relevant principles, rules, procedures and terminology.

A2. Housing associations have been awarded public contracts through a variety of methods. In the case of the Health and Social Care sector, for example, sometimes a housing association has been directly appointed on the strength of its track record while in other cases the appointment is made after expressions of interest, pre-qualification and the evaluation of tenders involving quality as well as price. The procurement rules for the local authorities seem to be different from those of central government and its agencies.

A3. We are unaware of any public procurement exercises in N Ireland that have included social or environmental clauses. This may be due to a lack of self-confidence on the part of the procuring authority.

A4. We understand that authorities procuring goods or services below £100,000 may legitimately allow social enterprises to re-tender if price is the only factor that differentiates their tender from another. Such a rule should be better publicized and used.

A5. We endorse the comments made by NICVA and the Social Economy Network that the pre-qualification criteria are often set in ways that effectively preclude smaller organisations.

B. Experience Gained from Inviting Tenders for Grant-Aided Contracts

B1. Housing associations registered by the Department for social Development (DSD) are eligible to receive capital grants of about 65% towards the construction of social rented housing. For many years housing associations have procured individual housing contracts by inviting competitive tenders from competent builders.

B2. In 2006 the DSD informed us that, because the grant is more than 50%, housing associations would be required to comply with public procurement policy when they undertake this activity. This was set out in the DSD's Strategy for Procurement of the Social Housing Development Programme, published in October 2008. It states that housing associations will only be allowed to develop grant-aided homes if they are members of one of four procurement consortia that establish frameworks and let building contracts after "mini competitions" between the contractors admitted to the relevant framework. The contractors in the frameworks can

therefore expect much more continuity of work than would otherwise be the case. Each framework is expected to last 3-5 years and the Strategy implicitly assumes that sufficient grant and private finance will be available throughout the life of the framework. The Strategy also envisages that, within a few years, commodities and services purchased by housing associations will also have to be procured through the procurement consortia and frameworks.

B3. The Federation's members have formed four consortia and are working constructively to make a success of the Strategy but feel that the implementation plan should be re-considered in the light of the following important factors:

(a) the assured grant budget for the next two financial years cannot support the scale of development programme envisaged when the Strategy was devised

(b) the building industry is severely depressed and contractors not admitted to frameworks may consider they have little to lose by mounting legal challenges to the selection process. This could cause serious delays and high costs

(c) in normal market conditions, it is difficult for half a dozen housing associations in a consortium to assemble enough housing projects at roughly the same time and in the same general area to confidently set up a framework.

B4. The Federation therefore believes it would be wise for the DSD to consider starting its procurement strategy with maintenance and improvement work, which obviously involves known property and is funded by associations themselves. In addition, other existing procurement initiatives involving housing associations and certain public bodies could be further developed in an organic manner.

B5. The DSD should also recognise the VAT, TUPE and other implications of its preference that procurement consortia should establish legally-constituted entities to undertake the procurement function.

B6. Associations should be permitted to set a fair price and appoint firms (e.g. for maintenance) on the basis of quality of service.

B7. For certain specialized work, only small firms may be able and willing to do it. The procurement system should make allowance for this factor.

Submitted on behalf of NIFHA by:

Christopher Williamson
Chief Executive

Fold Housing Association

27 February 2009
Committee for Finance and Personnel
Room 419
Parliament Buildings
BELFAST
BT4 3XX

Dear Sirs,

We welcome the Committee for Finance and Personnel's Consultation Paper on public procurement policy. In our response we aim to brief the Committee from the perspective of a developing housing association.

Fold Housing Association is a not-for-profit association with charitable status, set up in 1976. We are registered with and regulated by the Department for Social Development and governed under the Housing (NI) Order 2005 and the Industrial and Provident Societies Act (NI) 1969. Whilst the views below are those of Fold, we believe they are broadly representative of the housing association movement.

Our response has been developed in the context of the Government's Achieving Excellence policy and its application to social housing.

1.0 Social Housing Procurement Strategy

Most recently the Department for Social Development (DSD) embarked on a Procurement Strategy for Housing Associations with the main objectives:

- **To meet the programme target of 10,000 units;**
- **To achieve a noticeable increase in efficiency, with a minimum target of 10% cost efficiency over the period;**
- **To achieve targets for environmental performance in line with the Code for Sustainable Homes;**
- **To embrace construction procurement best practice.**

Housing Associations in conjunction with their representative body NIFHA supported the strategy and its objectives in that they had already benefitted from collaborative working which has produced tangible savings and service improvements. The strategy provided an opportunity to expand collaborative working further.

However we have had concerns about the requirements within the strategy for housing associations to follow the Government's Achieving Excellence initiative. We enclose an exert from the strategy which explains DSD's position on this policy.

'Government policy on construction procurement has also changed during this period and through the Achieving Excellence initiative Government now seeks to introduce changes arising from Sir Michael Latham's report 'Constructing the Team' and the Egan report 'Rethinking Construction.'

The Achieving Excellence in Construction initiative was developed in England and Wales to improve the performance of Government as a construction client. It was recommended that a Northern Ireland version of the Achieving Excellence in Construction initiative be prepared. The Government Construction Clients Group undertook this task and Achieving Excellence for Northern Ireland was launched in May 2002.

The Achieving Excellence in Construction initiative initially applied to direct construction procurement of Northern Ireland Government Departments. The subsequent decision that the principles should apply to grant aided organisations where grant exceeded 50% of total cost was taken in late 2005. As a result of this decision DSD must now require Housing Associations to comply. Housing Associations will now play an important role in delivering the efficiencies and skills required in undertaking the procurement role with Achieving Excellence'.

Our concerns in relation to this policy are based on its practical implementation and the potential effect it may have on our delivery partners in the construction industry. These are summarised as:

- (a) The disparate nature of the NI social housing programme
- (b) The constraints of in-year funding
- (c) The historical performance of delivery partners
- (d) Evidence of efficiencies
- (e) Complexity and added bureaucracy
- (f) Contesting of framework contracts

(a) The annual social housing development programme in Northern Ireland is made up of a large number of projects with a relatively small number of units. Only a small number of projects each year exceed 100 units. This reflects housing need. Projects have traditionally been delivered via a variety of means including traditional procurement, off-the-shelf and design and build. We understand the Achieving Excellence Policy requires that such projects will in future be delivered via integrated supply teams, appointed to framework agreements. Therefore each housing association will have to call off a framework and appoint an integrated supply team for specific housing developments. We understand this approach has been adopted successfully for large housing projects in GB and for major capital contracts in other sectors. However we are not convinced this model transfers to the social housing model in Northern Ireland and will bring added complexity, slow the delivery process and increase costs.

(b) We believe the ability to achieve efficiencies through partnering will not materialise whilst the social housing programme is funded in its current format. Housing associations are typically having to conclude negotiations with developers and contractors in the final quarter of a business year. At the same time the DSD is not able to make financial commitments outside of the current year. Housing associations need at least a 3-year funding commitment (as is the case in GB) in order for strategic partnerships to deliver any tangible efficiencies or long term benefits. We believe that housing associations deliver excellent value for money under current funding arrangements. However under the current arrangements with no longterm commitment to collaborative working, contractors and design partners will not be inclined to offer efficiencies or become involved in partnering.

(c) The contractors who currently service the development programme are generally in the small to medium category which reflects the structure of the construction industry of Northern Ireland. Fold has had no difficulty in compiling select lists of competent contractors willing to submit tenders (the lists are generally well over subscribed). The tenders returned demonstrate keen competition – all the lowest tenders we received for projects in 2006/07 were within the pre-tender estimates. Furthermore we experience very few problems on site with cost overruns or claims; work is completed within time and within the specified quality. The new policy will direct Fold and other housing associations towards larger contractors, who are probably already committed to other public sector framework contracts. We believe these commitments will lead to larger contractors having to engage the small to medium sized contractors under sub-contract arrangements. In effect we will have added an extra layer of cost and complicated the engagement process. We are not convinced such an arrangement will deliver efficiencies or provide an environment for introducing modern methods of construction.

(d) We believe that housing association construction costs when benchmarked with their GB counterparts confirm the current traditional procurement process is cost effective. We also believe that current tender prices are producing high levels of efficiencies. Efforts should be focussed at this time on maximising methods of procurement with streamlined tendering processes in order that best prices are achieved and jobs in the construction industry are protected.

(e) We believe the move towards strategic partnerships has taken place without adequate programmes of training for locally based delivery partners. Notwithstanding our concerns over the application of integrated supply teams within our sector (see a) above) it is clear that small to medium sized businesses have a limited understanding of the practicalities of such partnering arrangements. The Committee should consider additional provision for assisting contractors, consultants and customers with practical guidance of how such partnerships can be operated and efficiencies achieved. Our experience suggests there is limited appetite for engaging in practices such as 'open book' or 'profit sharing' arrangements.

(f) We have recently seen a rise in the number of contractors and consultants contesting tendering decisions. This is despite employing expert procurement advice. We have concerns that complex framework agreements will further be subject to mis-understanding and will themselves be contested. Procurement cycles will be extended and ultimately our ability to deliver on time, will be curtailed. Such frameworks should be set aside whilst efficiencies are currently being delivered through market forces until such time as robust processes have been developed for use by all bodies in receipt of public funds. We strongly recommend that a central body take on the responsibility for designing such a procurement process and that they liaise closely with representative bodies of the construction industry.

In summary we support the efforts of the DSD and the Minister for Social Development in their pursuit of the objectives laid out in the Procurement Strategy for Housing Associations. However we call upon the Committee for Finance and Personnel to review the points raised above in relation to the Achieving Excellence Policy. We are concerned the policy requires the application of a method of procurement which is overly complex for our development needs. We feel it excludes small and medium businesses who have helped provide almost 20,000 homes across the province and who much to offer in terms of expertise and local employment. We have concerns that the procurement process by virtue of its complexity and timeframe will prevent housing associations from achieving efficiencies in the current economic climate. We do believe that with a 3-year funding platform and a robust procurement process, Fold and fellow associations would be better able to achieve the objectives of our Procurement Strategy.

Yours sincerely,

JohnMcLean
Chief Executive
Fold Housing Association

Employers for Childcare

Organisational Background

Employers For Childcare is a registered charity set up in 2002. Our aim is to make it easier for parents with dependent children to get into work and to stay in work. We offer a range of support services for employers, employees and childcare providers.

In 2004 we set up a trading company to administer childcare vouchers, which are a government tax exemption on the cost of registered childcare.

100% of the profit made from administering childcare vouchers is gift-aided to the charity to fund its services. The voucher company is a social enterprise as it trades for a social purpose.

We have 16 staff and a voluntary Board of Directors. We are based in Lisburn. We are the only social enterprise in the UK which administers childcare vouchers. There are approximately 15 commercial competitors, all of which are based in England, many of which have hundreds of staff.

Experience of Tendering for and Delivering Public Contracts

Employers For Childcare Vouchers Ltd has applied for and been awarded all four main contracts to deliver childcare voucher schemes advertised by the public sector since 2006.

Health Service

Regional Supplies Service of the Central Services Agency on behalf of the Belfast Hospitals Trust advertised a tender which they stated could be used by other Health Trusts. Employers For Childcare Vouchers Ltd won the contract to deliver a childcare voucher scheme following a UK wide tendering process.

It was very unclear as to which other Health Trusts or associated agencies could or should avail of the contract and/or if they needed to advertise a separate tender. It was left up to individual Trusts which was very unsatisfactory as we were unclear as to the exact scope or limit of what we were entitled to deliver. The UK based competitors have continuously contacted each of the individual Health Trusts and associated organisations and no one was able to tell them clearly that the contract has already been awarded to us for a definitive period of time.

This has caused a great deal of confusion for everyone concerned and has wasted our time and the time of Human Resource Managers and Supplies Departments throughout the Health Service in Northern Ireland.

When we tried to get something in writing we were told that the person who was dealing with that tender has since moved on and no one else knew anything about it.

Northern Ireland Civil Service

We were awarded the contract in February 2007. Due to internal NICS delays the contract did not start until January 2009, 23 months later. This has a serious impact on our business as we had recruited additional staff to manage the expected increase at that time.

Councils

The local councils all work separately and individually and seem very confused about when they need to advertise a tender as opposed to a quote, or if they can just decide to pick a supplier because of their 'persistence'. Employers For Childcare has been in contact with one council for 3 years, has met with them and tried to encourage them to use our services. We called last week to be told they started a contract with an English commercial company 3 months ago, just because the commercial company had called them on a day when the council was thinking about starting to use childcare vouchers.

Nature, Extent and Application of Social Clauses within Public Contracts

To our knowledge and in our experience there is absolutely no recognition of 'social clauses' within any public contract. There are no public tenders which include a section on social benefit or return on social investment.

As a social enterprise which donates 100% profit to charity we have to compete with commercial companies. These commercial companies have huge staff numbers, very aggressive marketing campaigns, and no local knowledge or interest in the local community in Northern Ireland.

Despite this, the public sector in Northern Ireland gives no recognition to small charities or social enterprises which employ local people and contribute to local communities.

An example of how this works against us is that a leading Northern Ireland University which claims to have a strong interest in the development of the Social Economy Sector advertised a UK wide tender. Nine companies responded.

We were asked to deliver a presentation on what makes us different from the competition. We based our presentation on these facts:

- we are the only Social Enterprise in the UK which provides childcare vouchers
- we are the only childcare voucher provider which donates 100% profit to a charity
- we employ local people
- we have expert knowledge of childcare and work related issues in Northern Ireland which none of the competitors have as the legislation is different here to the rest of the UK
- we provide training placements for local women returning to the labour market, local school children on work experience and we provide work placements for students, including their students, as part of their career development
- we have been awarded the contract from the other leading Northern Ireland University
- we have been awarded each of the Northern Ireland public sector contracts advertised since 2006, because of our efficient professional service.

We were not even shortlisted. We have asked for feedback but the preliminary briefing has informed us the competitors offered a lower administration fee and this was a deciding factor for the assessment panel.

Recommendations

The fact that Employers For Childcare has won each of the Northern Ireland Public Sector tenders advertised since 2006, on a level playing field with no recognition of what we give back to the local community by the tenderers, indicates that we provide a quality service.

1. All public sector contracts should include a social clause which clearly states that recognition and reward will be given to those suppliers who bring added social value.
2. The measurement of the social value must be clear and easy to understand, and it must be applied consistently across all public sector contracts.

3. There must be clear guidance set out by all public procurement departments as to
- the limit and extent of contracts,
 - how they will be advertised,
 - why and when a quotation is acceptable rather than a tender and - which other department or associated organisation can or should come in under the terms of the contract as opposed to holding a separate contract specification.
4. There should be greater and clearer communication between tenderers and suppliers in relation to becoming a preferred supplier, how to get on the list etc.

Committee for Regional Development

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27 February 2009

Public Procurement Inquiry

Dear Mitchel,

The Committee for Regional Development noted your Committee's inquiry into public procurement and, at the meeting of 24 February 2009, made the following brief response.

The public sector in Northern Ireland makes a significant contribution to both GDP and employment in Northern Ireland. It is an important direct employer, and indirectly through public procurement, it contributes to the local economy, job creation and growth in local businesses and service providers.

The Northern Ireland Executive has an impressive programme of infrastructure investment, as set out in the capital budget for 2008-11 and the Investment Strategy for Northern Ireland. The Committee has expressed its continued support for the Department for Regional Development in delivering on the road, rail, and water elements of this programme.

The Committee is of a view that such a significant investment programme may provide opportunities to explore social policy initiatives, such as apprenticeships and local labour clauses, which could contribute to building, maintaining and enhancing the skills of the Northern Ireland labour force; a factor which will be critical in enhancing Northern Ireland's attractiveness to inward investment, and underpinning the ability of local firms and individuals to take advantage of the economic recovery when it comes.

The recent success by local construction and transport firms in competitive tendering demonstrates that companies in Northern Ireland can and are world leading. In this context, opportunities may also exist to support and develop the competitiveness of local enterprises, through the provision of advice and practical assistance in identifying, building and developing strategic partnerships and knowledge / skills sharing. Information and a clear forward programme of investment projects, as well as a steady deal flow are also essential if local firms are to invest the often considerable sums required to bid for large public investment contracts, and train or recruit the staff necessary to deliver on these bids.

At this challenging time for the global economy, and particularly for businesses in Northern Ireland, the Committee for Regional Development would encourage full, creative and joined-up consideration of ways in which public procurement could, without jeopardising important value for money considerations or compliance with EU procurement provisions, be harnessed to the widest possible benefit of the people of Northern Ireland.

Yours sincerely,

Fred Cobain, MLA
Chairperson of the Committee for Regional Development

Health Care Supplies Association (N.I. Branch)



The Health Care Supplies Association is an interest group established by procurement professionals working within the NHS in the 1970's. Since its establishment the HCSA has represented the interests of its members nationally through links with the Chartered Institute of Purchasing and Supply and provides training and professional development support to its members and their staff through Summer Schools, annual training initiatives and an annual conference. HCSA (N.I. Branch) sees the training and development support provided to members and other staff working in health care procurement in N.I. as a means to supplement hard-pressed budgets and raise the profile of health care procurement.

The HCSA is responding to the Northern Ireland Assembly Finance and Personnel Committee call for submissions on Public Procurement Policy and Practice in Northern Ireland to represent the interests of its members working in procurement within Health and Social Care N.I.

Background

Outline of Arrangements in Northern Ireland

Currently procurement of goods and services on behalf of Health and Social Care organisations in N.I is carried out by the Central Services Agency Regional Supplies Service (RSS). This body is an accredited Centre of Procurement Expertise under the N.I. Public Procurement Policy and must be re-accredited every 3 years to retain this status. This organisation has responsibility for both strategic and operational procurement of goods and services for all N.I. health and social care organisations and is unique in this position in the NHS. The procurement and logistics services provided by RSS are ISO 9000/2000 accredited and RSS holds a silver European Quality Award (EFQM Business Excellence Model). A Northern Ireland Best Practice Scheme Award 2005 - 2007 from the Office of the First Minister and Deputy First Minister is also held by RSS.

RSS works with procurement organisations in N.I. public sector and across the NHS and participates in and leads on a number of national contracts in the NHS as well as with other Centres of Procurement Expertise in N.I.

In 2004 RSS restructured its procurement services on a "Category Management" basis. Category Management is recognised as a best practice method to manage procurement which categorises products and services based on common features (markets, suppliers, commodities etc) and sees the procurements managed by dedicated teams specialising in those categories. In structuring their procurement directorate in this way RSS has reduced the points of contact for tender arrangements and has enabled those staff engaged in the tender process to develop a greater expertise in the goods or services being procured and develop a greater understanding of both the marketplace and those suppliers operating in that marketplace. These category teams, or Sourcing Teams as RSS describes them, are located at key health locations across Northern Ireland. At each of these key locations other RSS staff perform operational procurement services (ordering, expediting and relationship management) on behalf of the Trust within whose premises they are located this ensures that local requirements are met and enables a flexibility in the letting of contracts to consider geographical markets within N.I.

RSS underpins services to health care organisations with a warehousing and logistics service that delivers stocks of goods to health facilities throughout N.I. In 2008 this service was streamlined to maximise the storage capacity of its two warehouses located in Belfast and Campsie. These two warehouses now service standardised stock lines to Health and Social Care in N.I covering products as diverse as stationery and medical disposables. The warehouse operates strategic partnerships with a number of N.I Small Medium Enterprises who pick, pack and supply products on a daily basis to the RSS warehouse locations for onward distribution to Trust wards and departments by RSS. The RSS logistics service also developed an electronic materials management (EMM) solution for N.I. health and social care that received a Northern Ireland Best Practice Scheme Award from the Office of the First Minister and Deputy First Minister during 2005 to 2007.

Specialist arrangements have been developed by RSS for the procurement of goods for new build capital projects and diagnostic imaging equipment that ensures the needs of health and social care organisations are properly met when undertaking such complex and protracted procurements. The team responsible for this area has provided services and advice to Isle of Man (Nobles Hospital), Malta and Lebanon. These latter two were in support of projects sponsored by the European Union.

Outline of Arrangements for Other U.K. Jurisdictions

Arrangements vary across England, Scotland and Wales for the provision of procurement services and that is reflected in the number of organisations involved in delivering those services and the level at which they are delivered. As a result there are a large number of organisations involved in managing procurements and dealing with suppliers. This is best demonstrated in tabular form:

Level / Home Country	England	Scotland	Wales	Northern Ireland
National	Purchasing and Supply Agency (PASA) (1)	National Procurement Scotland	Welsh Health Supplies (1)	Regional Supplies Service
Regional	NHS Supply Chain (1) Collaborative Procurement Hubs (10)			Regional Supplies Service
Local	NHS Trusts (354 per PASA website)	NHS Health Boards (14)	NHS Trusts (10)	Regional Supplies Service

England

In England strategic and operational procurements are carried out at three levels by a range of organisations. There can be tensions between each of these levels and this can result in multiple layers of contracts for the same products or services

National

Purchasing and Supply Agency (PASA) - an arm of Department of Health, this organisation develops framework agreements for use by health care organisations across UK but most especially England. It also undertakes procurements associated with major NHS policy initiatives.

NHS Supply Chain (NHSSC) – this is the health procurement company set up by DHL Ltd under contract to the NHS to provide procurement and logistics services to the NHS in England. NHSSC operates on a profit making basis and provides procurement and logistics services to NHS Trusts. Contracts are let at a national level.

Regional

Collaborative Procurement Hubs (CPHs) – these are NHS bodies established to co-ordinate procurements on behalf of groups of NHS Trusts. By and large they do not have associated logistics services but focus on management of contracts rather than operational procurement services. Hubs let contracts solely for those Trusts they provide services to.

Local

Trust Procurement Departments – it is the norm in England for individual Trusts to employ their own procurement teams who let contracts in their own right, manage operational procurement services and liaise with Hubs, NHSSC and PASA.

Wales

Procurement and logistics arrangements for health in Wales operate on two levels national and Local.

National

Welsh Health Supplies (WHS) – this organisation manages a range of national contracts for the NHS in Wales and provides logistics services to all of NHS Wales from two warehouses. In the past 12 months WHS has become more involved in delivery of procurement services to individual Trusts in Wales through a migration of a purchasing consortium to the management control of WHS. WHS also has responsibility for collaboration with the wider Welsh public sector on joint contract initiatives.

Local

A number of the NHS Trusts in Wales employ their own procurement staff who let and manage contracts on behalf of and provide operational procurement services to the individual Trust.

Scotland

Similar to Wales arrangements in Scotland are on two levels national and local.

National

The national dimension to NHS Scotland procurement is a relatively recent one with the establishment of National Procurement Scotland (NPS). This organisation lets and manages a range of national contracts for Scotland and is in the process of rolling out logistics services to the NHS in Scotland following substantial investment in suitable facilities and technology.

Local

Individual NHS Trusts in Scotland employ their own procurement staff who let and manage a range of contracts on behalf of and provide operational procurement services to the Trust.

Constraints on Procurement

Public procurement is regulated by legislation founded in the EU Procurement Directives which dictates the procedures that apply to the procurement process, these procedures have been in place since 1995 and were updated in new legislation in 2006. This transparent process affords protection to both the supplier and the taxpayer. In addition controls are placed on health expenditure by DHSSPS that require HCSA members working in RSS to enter into competition for expenditure over £2k and to publicly advertise all tender opportunities above £30k. These latter arrangements have been a feature of health procurement since 1974 with value updates occurring regularly over the years. Such rigid value for money tests do not uniformly apply in other jurisdictions and subsequently SMEs or SEEs may never have the opportunity to bid for business below EU thresholds.

It is a continual challenge to our members to manage the proscribed procurement processes so as to minimise the burden on suppliers and buyers alike and yet maintain probity and value for money in health related procurement.

Improving Access to Contracts for SMEs and SEEs

Developing the SME/SEE to Bid

All procurements above £30k are tendered openly through RSS' e-tendering portal with competitive quotations being sought for all business in excess of £2k

RSS has supported initiatives across a number of industry sectors and our members have participated regularly in Meet the Buyer events run by development agencies, local councils and N.I. Chamber of Commerce. These events have taken many forms ranging from simple "speed-dating" type events bringing suppliers and buyers together on a one to one basis across a table to more extensive involvement including participating in supplier development workshops and formal presentations to participants. RSS has also participated in research projects bringing together local universities, suppliers and RSS to develop greater understanding of product lifecycles and explore potential development areas that may benefit health.

Through our members we understand that RSS tries to support at least one region-wide Meet the Buyer event annually as resources permit.

One of the most notable engagements that RSS was involved in as a partner was the EC funded RAFAEL Project. RSS' role in that project was to develop a procurement model that was fully compliant with public procurement regulations and supported sustainable procurement in the local rural economy. This project saw contracts let worth £1.5m over three years to local food suppliers who had not previously bid for public sector food business. Furthermore the project was "Highly Commended" at the Government Opportunities National Awards (Go Awards) in the Sustainable Development category. Subsequent to this project the model developed is being imbedded within the RSS food procurement team and has involved our members working for RSS pro-actively engaging the market to encourage companies to bid including seminars that removed much of the fear around public tendering. RSS has commenced working with DARD to develop further engagement with the market on a broad range of fresh food contracts.

RSS has also engaged with Social Economic Enterprises formally and informally which includes membership of the Public Procurement Social Economy Enterprise Group. This has involved site visits and introduction of a pilot project. RSS has also sought to raise the profile of SEE's through requiring tenderers in relevant contracts to provide details of their use of SEEs as part of their manufacturing processes.

Reduce information demands

RSS seeks only information that it requires to evaluate bids properly and in line with procurement regulations and public procurement policy. The information requested is relevant to the procurement being undertaken. In 2007 RSS took a decision to cease requesting copies of company accounts as part of tender returns and secured a budget to assess accounts using Dunn & Bradstreet Reports obtained by RSS under a contractual arrangement with Dunn & Bradstreet. Accounts are now only requested where no Dunn & Bradstreet listing is available.

In considering the optimum method to contract for goods and services RSS has sought to partner with CPD in utilising their framework agreements for ICT and Management Consultancy. In partnering in this way RSS believes it has reduced the cost of tendering for both suppliers and health organisations. This partnering removes the need for companies participating in the framework to submit comprehensive tender bids for each and every procurement undertaken in this category and enables them to focus on submitting proposals that are competitive and meet the clients needs. Additionally framework agreements greatly reduce bidding time and costs for all those suppliers on the framework as the terms and conditions of contract, and commercial arrangements are established at the primary stage of the competition in setting up the framework.

In selecting e-commerce solutions and partners in delivery of those solutions RSS has taken a conscious decision to pursue only solutions that are drawn from a "buy-side pay" model rather than a "supply-side pay" model. RSS has also sought to reduce bidding costs by automating the issue and return of tender documents introducing standard documents for completion that may

be downloaded and uploaded to remove the need for "hard copy" responses. This has meant that responses are largely paperless. Furthermore RSS does not restrict the documents that suppliers wish to return i.e. if a supplier feels additional information will enhance their bid they are at liberty to upload that as part of their response. In moving to electronic issue of tender documents in 2006 RSS removed charges for documents that had been in place since 1997.

Standardisation of approach

For the procurement of goods and services in Health the processes involved are standardised across all health and social care organisations in Northern Ireland this is not the case in any other UK health economy. The level of standardisation of process in Health Procurement in Northern Ireland is considerably higher than any other GB jurisdiction and as a result the bidding process is considerably less complex. To secure business let by RSS on behalf of Health and Social Care organisations requires dealing with considerably fewer procurement entities than England where procurement of goods and services is carried out at 3 levels by multiple organisations. RSS also works collaboratively with other Centres of Procurement Expertise (CPD and ELBs in particular) to establish a common procurement approach and shared contracts on a number of matters.

Since the introduction of the N.I. Public Procurement Policy RSS has been an active member of the CPD led Procurement Practitioners Group and its sub-groups on collaboration and its special interest groups on Information Disclosure, Value For Money and E-Commerce.

Improve specifications

All tenders let by RSS involve the end user in the development of the tender specification with guidance provided by RSS. The purpose of this is to ensure that the end user is able to communicate their requirements to bidders. Where it is appropriate to do so end users are supported by experts in functional areas, legal experts or financial experts. This is reflective of best practice.

RSS migrated procurement arrangements to a category management basis in 2005 in order to create a level of expertise in the diverse range of products procured by health. The staff engaged in category management are also involved in supporting the preparation of specifications in order to reflect what might offer a best value solution to our end users or to assist them in articulating their needs in commercial terms.

Needs to be a greater focus on value for money rather than lowest cost

Since RSS became responsible for the provision of procurement services to all health organisations in 1997 we have operated to the award criteria defined under the Public Contract Regulations as "most economically advantageous tender". This definition allows for the consideration of qualitative aspects of products and bids as well as financial aspects. Their approach has been reinforced by the decision taken by the Public Procurement Board to have all public procurement contracts let using this criteria. In adopting this approach the weighting of qualitative criteria relative to financial criteria is varied according to the nature of the product or service being procured. This is in line with guidance published by CPD in 2003. All procurements allow a weighting for qualitative aspects of the bid that weighting ranges from 30% of marks were the product or service is simple and quality is less important than price to 70% of available marks were the procurement is complex and the qualitative aspects of the bid are critical to successful delivery.

Professional Skill of HCSA Members

Within RSS staff are actively encouraged to attain the recognised professional qualification of their chosen area of work. In procurement this is membership of Chartered Institute of Purchasing and Supply (CIPS), which gives automatic membership of HCSA and in their logistics arm it is Chartered Institute of Logistics and Transport (CILT). Staff receive partial financial support along with day release arrangements to undertake this study and are expected to maintain their workload during their period of study. It is RSS' view that the shared approach to funding training between employer and employee recognises the mutual advantages gained by those two stakeholders. Terms and conditions of employment for staff in RSS do not allow successful completion of examinations to be rewarded.

Full membership of CIPS requires the study of a full range of commercial procurement modules and has introduced public procurement modules in the last two years. RSS' senior management team are all professionally qualified in their respective fields and more specifically of senior managers within their Procurement Directorate all but one are CIPS members and 73% hold Masters level qualifications in procurement, all are members of HCSA. In order to obtain promotion to head of department level within RSS Procurement Directorate candidates must have either full membership of CIPS or extensive experience of procurement over a period of years.

Quality Processes

RSS operates to accredited ISO9000/2000 procedures for all core services provided to its customers and has robust, audited governance arrangements set against Controls Assurance Standards that require engagement with customers as part of the tender process including their involvement pre-tender in developing specifications, their full involvement in the evaluation process and their agreement to the award of contract. All of these are managed and monitored through a series of oversight arrangements.

RSS has a complaints procedure that allows suppliers to complain directly to the Regional Director - Supplies and that complaint is then investigated by two independent senior officers. Where the complainant is not satisfied with the response the complaint may be elevated to the Chief Executive of the Central Services Agency to whom the Regional Director – Supplies reports. All senior staff to whom such complaints may initially be directed are aware of the complaints procedure.

Opportunities to Improve

More budget certainty

There is a considerable drive by the Assembly to introduce more effective and transparent plans for investment in capital developments in Northern Ireland and this reads across to Health and Social Care as funding is made available by the Minister of Health. However there are constraints on the budget availability particularly where capital expenditure is concerned. For example funds must be spent in the year in which they are allocated, there can be no carry forward of monies surplus from one year to the next. This position applies a pressure on Health and Social Care organisations to commit only funds that they are confident will be spent in year and this places a pressure on suppliers to deliver. Additionally the allocation of funds to HSC organisations is not always clear early in the financial year and this typically leads to a compression of spending into the last 6 months of a financial year. These are issues that are outside the control of procurement professionals but which have a direct impact on the procurement of goods and directly effect suppliers. Greater flexibility in such areas would improve opportunities for SMEs in

particular to bid effectively as there would be less pressure on them to hold stocks available therefore reducing their costs.

Investment in E-Commerce

The procurement systems in place in Health in Northern Ireland date back to the early eighties and in England, Scotland and Wales these systems have been replaced some considerable time ago.

Therefore Health procurement in Northern Ireland lags behind GB in this respect. Staff in Trusts should be able to enjoy the "online" shopping experience in their working lives as well as their private lives and whilst RSS has taken steps to offer such an experience it has not been supported by the necessary investments.

Current technologies support the integration of supplier systems with procurement systems through real-time exchange of order and acknowledgement, enable electronic invoicing and automated payment improving cash-flow for businesses which is particularly important for SMEs. Modern systems also help manage supplier performance and effectiveness and this is often where SMEs and SEEs offer an advantage over larger companies, a focus on this area should also enable SMEs to improve through feedback on their performance.

HCSA understands that work is underway to deliver modern e-commerce systems to Health and would encourage the Finance and Personnel Committee to lend its support to such investment.

Ownership of the Supply Chain

Ownership of the supply chain is not purely the preserve of the procurement organisation but all parties involved have a part to play. For goods to be properly procured once the deal is done the goods must be delivered in the right quantity to the right place. The person receiving the goods must take the necessary steps to ensure that the goods are properly receipted according to the needs of their organisation, failure to do this will delay payment to the supplier. Once delivery has been effected the supplier must ensure that their invoice matches the price agreed through the purchase order (this forms the basis of the contract and its terms must be met) otherwise a delay in payment will ensue. This ownership of the relevant parts of the supply chain can be found wanting. The Finance and Personnel Committee is asked to take account of the various roles played by parties outside the procurement organisation in ensuring that public procurement meets the needs of all stakeholders.

Consideration of a Common Supplier Appraisal System

Most public procurement organisations lack an effective supplier appraisal system. Good systems not only allow the buyer to assess supplier performance but provide a basis for feedback to suppliers, recognise supplier improvements and enable further business to be secured. Application of a common system across public procurement in N.I. would not only result in supplier improvement but will help procurement organisations learn from each other where suppliers score more highly with one organisation than another enabling performance improvement to take place for both suppliers and buying organisations. I

The Finance and Personnel Committee is asked to consider introduction of a common supplier appraisal system across Centres of Procurement Expertise.

Linda-Marie O'Neill
HCSA NI – Branch Secretary

Quarry Products Association Northern Ireland



Introduction

The Quarry Products Association Northern Ireland welcomes the opportunity to comment on the Committee for Finance and Personnel scrutiny of public procurement policy and practice.

Founded in Northern Ireland in 1998 the Quarry Products Association NI now represent over 95% of the quarry products industry. Our membership includes major, medium and smaller sized companies directly employing around 4000 people with an annual turnover of over ¾ billion pounds.

The Quarry Products sector is a key essential industry that contributes significantly to the quality of life of every man woman and child in Northern Ireland.

The quarry products industry has a long and proud history of

- 1. Providing secure, long term employment in rural areas designated by Government as targeting social need.**
- 2. Being a massive net contributor to the Northern Ireland Economy and a major investor in local communities.**
- 3. Not receiving hand-outs or benefiting from Invest NI assistance similar to that given to overseas companies who stay for a short period then leave.**
- 4. Having the majority of our companies, both large and small, family owned with their roots firmly established in Ireland.**
- 5. Fulfilling our Corporate and Social Responsibility by investing significantly in the Environment and in protecting the health and safety of all who work in and visit our sites.**

Our membership is made up of mainly of companies classified by Government as SMEs.

The Quarry Products Association NI is a member organisation of the Construction Industry Group for Northern Ireland (CIGNI). We liaise regularly with Government Construction Clients and the Centres of Procurement Expertise through the Construction Industry Forum for Northern Ireland (CIFNI). QPANI have found this forum extremely helpful in the past as matters over procurement issues have been discussed and resolved to mutual benefit. However things have sometimes never been ideal and there have been issues in the past that were not resolved and to this day still create problems.

QPANI comments and experience on public procurement policy in Northern Ireland.

1. QPANI believe that public procurement policy should deliver value for money and sustainable development for the Northern Ireland Economy.
2. In terms of the construction procurement policy it should be consistent, transparent, fair and create an environment that will ensure the development of a truly sustainable construction industry in Northern Ireland.
3. There is an excessive use of Consultants in the NI procurement process. This is taking much needed revenue away from front line services and increasing bureaucracy within the process.

QPANI wish to see a procurement policy that will

- Reduce bid costs – therefore improve value for money
- Minimise the risk of legal challenge
- Assess contractors on actual performance not just on sales pitch
- Recognise that not one size fits all
- Provide opportunity for a wider pool of local contractors to bid for work
- Avoid long term exclusion for proportionally large amounts of work
- Contend with ever changing work flow and uncertainty of work volumes
- Adopt common policy and practice across all public sector clients.
- Be flexible to adapt to changing economic circumstances

Over the last few years QPANI have been lobbying a number of Government Departments and local Councils to ensure that we move to common procurement policy, specifications and practices in the procurement of construction materials and services. Many companies have invested significantly in training, health and safety, third party accreditation for quality and environmental management. Unfortunately in some so called "Centres of Procurement Expertise" these quality systems count for nothing. It is our view if companies can demonstrate best practice through a third party accredited management system then the important aspect of assessment should be how they deliver and perform on the contract.

QPANI and CIG believe that the current method of procurement by Framework contracts does not deliver value for money for Northern Ireland and will ultimately not deliver a sustainable Northern Ireland Construction Industry. We are currently in discussions with the Central Procurement Directorate, through the procurement task group, to ensure the speedy delivery of delayed construction projects due to a number of legal challenges. It is our view that "Frameworks" should be developed to suit the needs of Northern Ireland, the local community and the local Construction Industry. The packaging of projects could be dependent on geography, value, type of work or other factors deemed relevant by the client. This flexibility in the method for putting packages together should make the model useable by the vast majority of clients. We firmly believe that the benefits that would flow from such a process would be

- Industry performance is improved by effective performance monitoring and the learning on one job benefits the next
- Improved ability to actually deliver on sustainability requirements

- Bid costs are reduced because there is no secondary competition and because the client appoints the design team
- The risk of legal challenge is minimised because unsuccessful bidders for one bundle know there will be another bundle to bid for in the near future
- Successful contractors can plan with a greater degree of certainty
- There will be opportunity for SMEs to grow through winning packages themselves or through joint ventures
- Widens opportunities for local contractors to bid for work
- Accommodates a changing programme of work

QPANI members have recently reported,

- Increased costs in bidding for contracts.
- Delays in the procurement process
- An unacceptable number of contracts priced then to be suspended or cancelled leaving contractors with significant bidding costs.
- Difficulty in getting information on forthcoming work.
- Government Departments advertising and circulating tenders to sectors whose work as set out in the contract is not their core business or area of expertise
- Government Clients seeking quality accreditations from their suppliers and contractors yet do not require it off their own direct labour force.

QPANI comments on the nature, extent and application of social issues within the public sector.

QPANI understand the objective of the Northern Ireland Executive to meet wider social and environmental goals through the delivery of the Investment Strategy and wider public procurement. Public procurement is the ideal vehicle to improve standards across the supply chain and ensure responsible sourcing becomes the normal practice. We need to have a public procurement process in place that will accurately and fairly confirm that those bidding for and winning contracts are complying with equality, health and safety and environmental legislation. QPANI believe that adoption and monitoring by Government of a recognised responsible sourcing scheme as developed by BRE and BSI may be one way to ensure this. Unfortunately experience in Northern Ireland has taught us that having recognised standards and accreditations in place does not count for much with some public sector organisations. It is vital that if Government are asking for such accreditations and proof of quality and competence it must enforce and implement a monitoring system to ensure that what a contractor says they are going to do, they actually deliver.

The Construction Industry should not be viewed as the easy option way out to address the failures of Government social policy. The work carried out through the Construction Industry Forum on initiatives such as the "Proposals for promoting equality and Sustainable Development by sustainable procurement in Construction" and the "NI Sustainable Procurement Action Plan" if implemented on the ground by all should deliver the worthy social objectives as set out by the Executive. .

In terms of ensuring environmental protection it is the QPANI view that Client bodies, whether Public or Private, should by law have to appoint an individual responsible for environmental issues, similar to the CDM safety advisor on construction projects. The appointment of such a

competent individual would ensure that environmental permits, waste licenses and exemptions, water discharges and site waste management plans are sought and approved prior to contractors arriving on site. This in our view would reduce delays, improve delivery of the project and most importantly protect the local environment.

Identify Issues to be addressed and which are within the remit of the DFP

There are a number of areas within the remit of DFP, and in particular the role of CPD, that could improve the procurement process for SMEs. QPANI and CIGNI have worked closely with the Central Procurement Directorate over the past number of years. It is our view that CPDs remit should be strengthened and become more of a "telling" role rather than an "asking" role. If we are to ensure commonality of the procurement process and specifications across the public sector then CPDs remit over the Government Construction Clients must be enhanced and even enlarged to include the local authorities. (This is an issue for the final agreement on RPA). Other areas for consideration and improvement are,

- The role and resources of the Performance Efficiency Delivery Unit should be expanded to ensure the delivery of value for money on every pound spent by the public sector.
- Government Departments should report to CPD, on a quarterly basis, their "on the ground" construction expenditure against initial targets.
- The resourcing, updating and general management of online systems is crucial to ensure that SMEs have access to accurate procurement and tender information.
- Regular training, in partnership with industry Trade Organisations such as CEF, ICE, RICS and QPANI, should take place to ensure that public procurement officials are aware of new construction product standards, quality, safety and environmental standards. There should also be opportunities for public sector officials to experience at first hand working in the private sector environment.

Assess progress of DFP in achieving associated objectives and targets, including those contained in the PPG and related PSAs

As an organisation who works closely with the Central Procurement Directorate we are satisfied with the co-operation, communication and relationship that together we have developed. As previously stated we believe that the remit and authority of CPD should be increased to ensure that commonality of procurement policy, effective communication and recognition of responsible sourcing becomes the norm.

Key recommendations for improvements to public procurement policies and processes, aimed at increasing access opportunities for SMEs and SEEs

QPANI view have been stated earlier in this document.

Conclusion

QPANI welcomes this valuable opportunity to comment on the enquiry and commends the Committee for Finance and Personnel for instigating it. We look forward to playing any other role or providing further information or clarification if required.

Gordon Best
Regional Director QPANI

Irish Congress of Trade Unions



The Committee Clerk
Committee for Finance and Personnel
Parliament Buildings
Belfast
BT4 3XX

6 March 2009

Dear Committee Clerk

Inquiry Into Public Procurement

The Northern Ireland Committee, Irish Congress of Trade Unions, is the central trade union body in Northern Ireland. As such it represents over 30 trades unions and in excess of 220,000 working people. The committee is pleased to have the opportunity to provide some views to the Inquiry.

a. SMEs and SEEs

All of the evidence to hand would point to the fact that the structure of the procurement process, including PPP/PFI, deters local small and medium sized enterprises from bidding for PPPs. The current process is designed to deter local companies from bidding and encourages the multi-national corporation approach. The practice of 'batching' individual projects will ensure that local SMEs will never be able to enter the market. The significant legal, financial and other related costs are a further block on encouraging local enterprises. Under the current procedures local firms, even the larger ones, continue to suffer a severe disadvantage. It is unlikely that this will change until such times as the Assembly introduces measures which will make finance available to local companies at favourable rates.

Clearly the continued use of PPP/PFI instead of conventional procurement methods will ensure that local employers will not benefit from public contracts.

b. Application of Social Clauses

The NIC would recommend the updating of public procurement procedures to take advantage of European Directives 17 and 18 of 2004. Among other things these directions allow public authorities in awarding contracts to further policies on social, employment, disability, equality, environmental and ethnic matters. Ensuring that indigenous manufacturing and construction companies are primed to avail of all procurement supply chain opportunities is another important element in ensuring that social clauses work effectively.

If Northern Ireland is to prepare itself for coming out of the current recession then it is important that we protect and enhance our skills base. One significant contribution towards this would be a requirement that in the awarding of any public procurement contract there should be an obligation on contractors to engage and train apprentices. DEL is currently committed to promoting apprenticeships and there is a natural synergy between the awarding of public procurement contracts and the aims of the Assembly as espoused by DEL. Such a measure would have the strong support of trade unions.

c. Department of Finance and Personnel

Central Procurement Directorate is on the record as saying:

'Maximising the opportunities for SMEs in public contracts is even more important than ever during the present difficulties being experienced by the construction industry and is high on the agenda for the Construction Industry Forum for Northern Ireland (CIFNI). Any actions, however, must be in compliance with procurement policies and regulations and not compromise fair competition.'

Clearly it is time to have a fundamental review of procurement policies, particularly in the current economic climate, if we are to protect and grow local companies. Some specific attention should be given to the significant legal, financial and technical advisory costs being faced by potential local bidders.

d. Progress in achieving objectives and targets regarding Programme for Government and Public Service Agreements

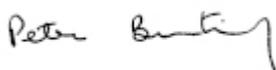
The NIC has in every submission on the Budget and Programme for Government called for transparent feedback on the progress made in achieving objectives and targets. To date no real progress has been made. The Department of Finance and Personnel Committee should consider ensuring that stakeholders are continually updated in this area. Reasons for not meeting objectives and targets should be made clear.

e. Improvements to Public Procurement Policies

The NIC has already commented on these issues in the above paragraphs. There is one final issue which would go further towards meeting the objective of enhancing the social benefits of the procurement process. The introduction of the code of practice being looked at by OFMDFM would be a significant measure to eliminate any two-tier workforce structure in PPP/PFI contracts although it should be added that NIC remains strongly opposed to any future use of PPP/PFI. The Trade Union Movement has been in discussions with OFMDFM for some time and would now wish to see the immediate implementation of the code.

NIC.ICTU would be pleased to give further oral evidence if requested.

Yours sincerely



Peter Bunting
Assistant General Secretary

Department of Finance & Personnel: Central Procurement Directorate

Assembly Section



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Mr Shane McAteer
Clerk
Committee for Finance and Personnel
Room 419
Parliament Buildings
Stormont

11 March 2009

Dear Shane

In response to the Committee for Finance and Personnel's request for written evidence from organisations involved in public procurement, please see the attached response from Central Procurement Directorate.

Yours sincerely,



NORMAN IRWIN

Introduction

Northern Ireland Public Procurement Policy was established in May 2002 following a major review of public procurement in Northern Ireland. It applies to all Central Government Departments, their Agencies, Non-Departmental Public Bodies and Public Corporations and has as its primary objective the achievement of "Best Value for Money". The policy goes on to identify 12 principles which, when satisfied to an acceptable level, result in the achievement of "Best Value for Money". The principles are set out as Annex A.

The policy defines "Best Value for Money" as the optimum combination of whole life cost and quality (or fitness for purpose) to meet the customer's requirement. So it doesn't mean awarding contracts on the basis of the lowest prices. Almost always public contracts are awarded on the basis of a combination of quality and price which identifies the most economically advantageous

tender. Best VFM also allows for the integration, individually or collectively as appropriate within the procurement process, of social, economic and environmental objectives, which are the three pillars of sustainable development. The EC Treaty, EU Public Procurement Directives and UK implementing legislation all recognise and allow for the integration of sustainable development considerations within the procurement process.

The development and overall governance of public procurement policy rests with the Procurement Board – a body chaired by the Minister for Finance and Personnel and made up of the Permanent Secretaries of the NI Departments, the Treasury Officer of Accounts, the Director of Central Procurement Directorate, two independent members and is attended by observers from the Northern Ireland Audit Office and the Strategic Investment Board.

The review recognised that procurement is a specialist activity – given the complexity of the European Treaty and Directives – and that it is important to ensure that it is done professionally. So the review recommended that public procurement is carried out through either the Central Procurement Directorate (CPD) or one of the 7 other Centres of Procurement Expertise (CoPEs).

The other CoPEs are responsible for procurement in the following sectors – Health, Education, Roads, Water, Housing and Transport. So, for example, when it comes to building hospitals the DHSSPS has its own procurement experts in its own CoPE concentrating entirely on that specialist activity. CoPEs are required to employ procurement professionals and are subject to independent accreditation to validate their expertise. CPD acts for those Departments which do not have their own CoPE.

While each Department is accountable for its own budget and how that budget is spent CPD and CoPEs work with Departments to assist them to obtain Best Value for Money and deliver on their Programme for Government commitments through the application of public procurement policy and best practice in procurement.

A cross-cutting theme of the Programme for Government is sustainable development. The Executive has approved guidance, prepared jointly by CPD and the Equality Commission on the Integration of Equality of Opportunity and Sustainable Development into Public Procurement.

A key target in taking forward this integration is the Sustainable Procurement Action Plan for Northern Ireland which CPD has produced and under which CoPEs have been tasked with the delivery of individual Action Plans to reflect the specific nature of their areas of responsibility.

Procurement will also play an important role in the delivery of efficiencies over the current Budget period as value for money (vfm) gains obtained through effective procurement will provide additional resource to improve the provision of public services in Northern Ireland. There will also be an important role for procurement in relation to the delivery of the Investment Strategy and the £6bn infrastructure projects with its inherent influence on the Northern Ireland economy in this period of recession.

CPD and the other CoPEs between them establish contracts for a diverse range of goods, services and works on behalf of Departments and other public bodies, from desks and computers for our office staff to new schools, hospitals and other capital infrastructure projects for our citizens. The procurement expenditure is approximately £2 billion per year and thus represents a significant share of the local economy. While the variety of systems used throughout the CoPEs cannot give a definitive position on the value of contracts awarded to SMEs in Northern Ireland anecdotal evidence gleaned from procurement practitioners in CPD and other CoPEs would indicate that the vast majority of their contracts, estimated to be in the high 90's%, are awarded to SMEs in Northern Ireland.

Programme for Government 2008-2011

The Programme for Government 2008-2011 places a focus on two cross-cutting themes of equality of opportunity and sustainability in the delivery of the Executive's priorities. PSA11 has an objective "To support the wider Public Sector in taking account of sustainable development principles when procuring works, supplies and services.", and a key target "To improve access by SMEs and SEEs to opportunities for doing business with public sector organisations".

Working under the auspices of the Procurement Board, CPD and the Equality Commission for Northern Ireland (ECNI) have drafted guidance - aimed at policy makers and procurement professionals - on how to more effectively integrate equality and sustainable development (economic, social and environmental) considerations into the procurement process. This guidance, which was approved by the Executive, underpins and reinforces the work already being undertaken to promote access for SMEs and SEEs to public sector contracts and supports delivery of the two cross-cutting themes of equality of opportunity and sustainability.

Training to embed this guidance has been provided to all procurement staff and Sustainable Procurement Action Plans have been developed by CoPEs to deliver sustainable development priorities, including social, economic and environmental targets.

Outreach Programme

The Inter Departmental Business Register (IDBR) - Edition Ten (30 June 2008) shows that of the 72550 SMEs in Northern Ireland 7870 businesses had more than 10 employees and of this figure 1240 employed more than 50 people, the remaining 64680 businesses were classed micro employing less than 10 people and 50% of all businesses in Northern Ireland are registered as "Sole Proprietors".

All procurement falls into one of three categories; construction works, supplies or services. Examples of work carried out in relation to the encouragement of SMEs and SEEs in each category is set out below;

Construction Works and Services

Much of the public sector requirement for construction is procured from integrated teams of contractors, consultants and their supply chains. Construction CoPEs, led by CPD, recognise the importance of SMEs in this field and encourage SMEs to join together to form teams by facilitating bids from consortia.

To assist SMEs to obtain opportunities within supply chains the Government Construction Clients Group has agreed with the construction industry to include a contract requirement that main contractors publish the opportunities available within their supply chain on their website and/or where appropriate in the local press in relation to new contracts with effect from December 2008. Construction contracts also require prompt payment to contractors and sub-contractors alike.

Supplies and Services

CPD has been working with a number of government and cross-border bodies to increase awareness with local SMEs and SEEs of the opportunities to compete for public sector contracts for supplies and services.

Examples are as follows: -

1. The Tender Support Programme

The Tender Support Programme has been divided into ten manageable programmes over the last 18 months and has involved 107 SME's and Social Economy Businesses. Approximately 20 of these SME's are from the ROI the rest from Northern Ireland. The programme is part-financed by the European Union through the Interreg IIIA Programme managed for the Special EU Programmes Body by the ICBAN Partnership and further supported by a variety of organisations including Enterprise Ireland and a number of local Councils.

2. The Go-2-Tender Programme

CPD has worked with InterTradeIreland since 2005 on the Go-2-Tender Programme the aim of which is to create cross-border business opportunities for SMEs in the all island Public Procurement market through the provision of carefully targeted regional workshops to enhance the skills, expertise and efficiency of those SME businesses that wish to target the public sector. Specifically, the Programme seeks to provide participating companies with the basic knowledge and practical support required to target and win contracts in the all island public procurement market.

The objectives of the Programme are to: -

- Increase awareness among suppliers, particularly regarding cross-border contracts and to create cross-border opportunities for SMEs in the all island public procurement market.
- Provide knowledge to SMEs regarding the public sector market throughout the island.
- Provide development of the skills required to win public sector work in both jurisdictions.
- Provide experienced one to one support in the process of bidding for work.

Between 2005 and 2008 CPD presented at 30 workshop events, which were attended by over 400 SME suppliers. Many of these suppliers have gone on to successfully compete for public sector contracts both on the island of Ireland and across Europe. Recent research by InterTradeIreland indicates that over the last two years the Go-2-Tender Programme had resulted in 234 companies being awarded public sector contracts to a value approaching £17 million.

CPD is currently assisting InterTradeIreland with its "All Island Public Procurement Competitiveness Study" designed to produce initiatives that will enhance the effectiveness and efficiency of public procurement spend on the Island of Ireland.

The objectives of this ongoing Study are:

1. To gain a fuller understanding of the dynamics of the public procurement market on the island.
2. To make recommendations for mutually beneficial cooperative actions in the following areas:
 - The provision of supports to build SME capacity and capability.
 - The identification and removal of the barriers that prevent the operation of an open all-island public procurement market.
 - The use of public procurement to drive innovation.

- The identification of ways to enhance local sustainable development.

CPD is also supporting the Department of Enterprise, Trade and Investment's work with the Social Economy Sector and the development of its draft Social Economy Enterprise Strategy. CPD will continue to provide support through interaction with the Social Economy Network, meet the buyer events and working closely with CoPEs and the Sector to contribute to the development of a successful social economy in Northern Ireland.

From a business perspective the Confederation of British Industry (CBI) Northern Ireland conducted a Procurement Survey in July 2008 among its members the findings of which were discussed at a workshop hosted by CPD and attended by Heads of Procurement (CoPEs), SME and CBI representatives. The workshop produced an agreed action plan to address the issues raised and arising from this is a jointly sponsored Procurement Conference to take place in Belfast in March the theme of which is "winning public procurement markets at home and away".

On the wider front the European Commission has recognised that SMEs are generally considered to be the backbone of the EU economy and in order to make the most of their potential for job creation, growth and innovation SMEs' access to public procurement markets should be facilitated. In pursuit of this the Commission has included in its "Small Business Act" for Europe at Principle V the recommendation that the EU and Member States should adapt public policy tools to SME needs. This has been further enhanced through the publication of a Code of Best Practice providing guidance to Contracting Authorities on how they may apply the EC public procurement framework in a way that facilitates SMEs' participation in public procurement procedures. The areas addressed in the Code include:

- Overcoming difficulties relating to the size of contracts
- Ensuring access to relevant information
- Improving quality and understanding of the information provided
- Setting proportionate qualification levels and financial requirements
- Alleviating the administrative burden
- Putting emphasis on value for money rather than on price
- Giving sufficient time to draw up tenders
- Ensuring payments on time.

In parallel in preparation for the 2008 Pre-Budget Report the UK Government commissioned and published the Glover Report on action to reduce the barriers SMEs face when competing for public sector contracts. This Report makes twelve key recommendations which aim to build on the existing initiatives by further improving SME participation in public procurement by;

- Making opportunities as open and transparent as possible
- Making the procurement process equitable and as simple as possible
- Managing procurement strategically to encourage –
- innovation;
- procurer capability; and
- ensuring a fair deal for SMEs that participate in a supply chain.

Guidance

In its leadership role within public procurement in Northern Ireland CPD has produced a comprehensive suite of Guidance Notes for both SME suppliers and procurement practitioners that addresses the majority of the recommendations contained in these initiatives. CPD is considering how best to address the remaining recommendations and will take the matter forward together with the outcome of the Committee's Inquiry.

The guidance for suppliers provides information for SMEs seeking to widen their customer base to include the Northern Ireland public sector. The companion guide for procurement practitioners examines the barriers SMEs might face in participating in public sector tender competitions and suggests measures that purchasers might take to reduce or eliminate these barriers. The guidance also addresses the achievement of best value for money through adherence to the 12 principles of procurement policy (Annex A) which ensures that public confidence is maintained in the procurement process and that mutual trust exists between contracting authorities and suppliers. This approach safeguards the role SMEs play in providing goods and services to government to enable it to provide effective public services.

CPD has also produced specific guidance aimed at Social Economy Enterprise's to help the sector to understand public procurement, how to prepare bids and address issues on the delivery of the contract.

Recommended actions for CoPEs contained within the guidance include, supporting 'meet the buyer' events and supplier workshops, offering debriefs to unsuccessful suppliers to assist them to compete more effectively for future opportunities and ensuring access to opportunities by SMEs and SEEs by advertising all contracts over £30,000.

Social Considerations

CPD and CoPEs have a key role to play in the drive towards the integration of social, economic and environmental considerations in the procurement process by assisting the Northern Ireland Public Sector to embed those sustainable development considerations into its spending and investment decisions.

Public sector procurement spend is expected to rise significantly in the coming years, largely as a result of the Investment Strategy for Northern Ireland which sets out a framework to deliver around £6bn over the period 2008 - 2011 and an overall total approaching £20bn in the period 2008 - 2018.

The leverage provided by this volume of spend provides significant opportunities to help deliver the Executive's overarching aim, set out in the Programme for Government, of building a peaceful, fair and prosperous society in Northern Ireland, with respect for the rule of law and where everyone can enjoy a better quality of life now and in years to come.

The Programme for Government 2008 - 2011 and Investment Strategy 2008 - 2018 reinforce the importance of achieving sustainable outcomes. They also provide the high-level context in which contracting authorities can identify specific sustainable goals to achieve from public procurement.

CPD and the Equality Commission have produced a joint Guide designed to support public authorities as they integrate equality and sustainable development in their procurement practice.

The early chapters of the Guide are directed at policy makers and decision takers and address how Public Bodies should approach integration through compliance with the Statutory Duties and

with obligations and commitments under the Northern Ireland Sustainable Development Strategy.

The remaining chapters are directed at Procurement Practitioners and provide advice and guidance on the integration of equality and sustainability and what steps can be taken at the various stages of the procurement process.

The Guide also has a range of case studies to help illustrate what is possible and has a summary flow chart as an aide memoire for policy makers and practitioners alike to determine what needs to be considered at the various stages of the procurement process.

Throughout the guidance the reader is reminded of the two cardinal rules, set out in the Procurement Directives and implementing UK legislation, which state that where sustainable development considerations are integrated into the procurement process they must be linked to the subject matter of the contract and/or to the performance of the contract. This effectively rules out of the tender evaluation process any consideration of a tenderer's general benefits to the community when such benefits are not directly connected with the specific contract being evaluated.

The Government Construction Clients Group (GCCG) and the construction industry, as represented by the Construction Industry Group for Northern Ireland (CIGNI), have jointly explored how sustainability issues could be incorporated into construction contracts. A Sustainability Task Group was established to develop proposals that could promote the economic, social and environmental elements of sustainable development through sustainable procurement in construction. The Group produced agreed contract requirements and further development through the CoPEs' Practitioner Group has extended the contract requirements to supplies and services contracts. A list of the contract requirements, which can be further refined to suit a particular contract, is attached as Annex B.

eSourcing

CPD and the CoPEs are also committed to making it easier for suppliers to access government opportunities and have a variety of websites and systems to accommodate suppliers interested in doing business with the public sector. CPD has however developed e-SourcingNI a platform which is free to SMEs and SEEs to register and gives access to business opportunities within the public sector. The system provides web-based technology allowing buyers and suppliers to manage all their interactions online, creating greater transparency, speed and efficiency throughout the tender process. In addition the system provides details of CPD's current tender opportunities and links to tender opportunities within the other NI Centres of Procurement Expertise.

The system has the ability to hold a supplier's corporate information (e.g annual accounts, insurance details, etc) thereby reducing the amount of information required from suppliers at the pre qualification stage in the procurement process. The Procurement Board has recommended that other CoPEs to use the e-SourcingNI platform thereby creating a single portal for all government procurement activity within Northern Ireland. A roll out programme has been established to achieve the single portal for Northern Ireland.

e-SourcingNI is part of a UK wide system commissioned by the Office of Government Commerce and available to public sector organisations throughout the UK. e-SourcingNI went live in May 2008 and at mid February 2009 the SMEs registered on the system total 3707 of which 2118 are SMEs in Northern Ireland. Through this system registered SMEs in Northern Ireland have access to tender opportunities published by all UK public sector organisations using the system.

Procurement Principles

The administration of public procurement is governed by the following principles:-

- i. **Accountability:** effective mechanisms must be in place in order to enable Departmental Accounting Officers and their equivalents in other public bodies to discharge their personal responsibility on issues of procurement risk and expenditure.
- ii. **Competitive Supply:** procurement should be carried out by competition unless there are convincing reasons to the contrary.
- iii. **Consistency:** suppliers should, all other things being equal, be able to expect the same general procurement policy across the public sector.
- iv. **Effectiveness:** public bodies should meet the commercial, regulatory and socio-economic goals of government in a balanced manner appropriate to the procurement requirement.
- v. **Efficiency:** procurement processes should be carried out as cost effectively as possible.
- vi. **Fair-dealing:** suppliers should be treated fairly and without unfair discrimination, including protection of commercial confidentiality where required. Public bodies should not impose unnecessary burdens or constraints on suppliers or potential suppliers.
- vii. **Integration:** in line with the Executive's policy on joined-up government, procurement policy should pay due regard to the Executive's other economic and social policies, rather than cut across them.
- viii. **Integrity:** there should be no corruption or collusion with suppliers or others.
- ix. **Informed decision-making:** public bodies need to base decisions on accurate information and to monitor requirements to ensure that they are being met.
- x. **Legality:** public bodies must conform to European Community and other legal requirements.
- xi. **Responsiveness:** public bodies should endeavour to meet the aspirations, expectations and needs of the community served by the procurement.
- xii. **Transparency:** public bodies should ensure that there is openness and clarity on procurement policy and its delivery.

Promoting Equality and Sustainable Development through Sustainable Procurement

General Requirements

It is anticipated that while the following requirements were developed for construction contracts, with minimal refinement /amendment a number of the requirements could also be incorporated

within contracts for the provision of goods and services and can be further refined to suit any particular contract. Where the proposals might be applicable for goods or services contracts as well as construction then this is denoted by the following legend in the right hand column.

(G) – Goods, (W) – Works, (S) – Services, (CS) – Construction related services/consultancy

ECONOMIC			
1	Objective:	Mandatory exclusion from procurement competitions due to fraud, corruption & money laundering	
	Contract Requirement:	<ul style="list-style-type: none"> ▪ Pre-qualification questionnaire and tender documents to include a declaration from the Main Contractor that none of their directors have any convictions relating to any of the offences listed under Regulation 23(1) of the Public Contract Regulations 2006. 	G W S
2	Objective:	To encourage the establishment of local partners	
	Contract Requirement:	<ul style="list-style-type: none"> ▪ Government Construction Clients to publish Main Contractor and supply chain details on ISNI project database. 	W
	Contract Requirement:	<ul style="list-style-type: none"> ▪ Main contracts to include a requirement that Main Contractors publish the opportunities available within their supply chain on their website and or where appropriate in the local press. 	G W S
3	Objective:	To encourage prompt payment to suppliers	
	Contract Requirement:	<ul style="list-style-type: none"> ▪ Main contracts to include a requirement that Government Construction Clients have access to contractors' accounts (as part of the open book process) to allow timeliness of payments to subcontractors to be verified. 	G W S
4	Objective:	To promote fair dealing	
	Contract Requirement:	<ul style="list-style-type: none"> ▪ Main contracts to include Government Construction Clients' right to approve subcontract terms and conditions for consistency with main contract terms, particularly in relation to fair dealing and open book accounting. 	G W S
	Contract Requirement:	<ul style="list-style-type: none"> ▪ Main contracts to include a requirement that the Main Contractor complies with the Code of Practice for Government Construction Clients and their Supply Chains. 	W
5	Objective:	To limit opportunities for criminal organisations to target construction procurement projects	
	Contract Requirement:	<ul style="list-style-type: none"> ▪ Main contracts to include a Construction Contractor Monitor (CCM) enabling condition of contract. CCM would then be deployed on contracts where intelligence indicates cause for concern or by way of random audit to ensure contractors are meeting their requirements under the contract. 	W

SOCIAL			
1	Objective:	To encourage the economically inactive back into the work place	
	Contract Requirement:	<ul style="list-style-type: none"> ▪ Main contracts to include a requirement that Main Contractors submit an employment plan setting out:- ▪ General policy on recruitment, training and retention of employees; ▪ Proposals for recruitment and retention of employees for project and monitoring system to be used to report to Government construction client. 	G W
		<ul style="list-style-type: none"> ▪ Main contracts to include a requirement that Main Contractors recruit one long-term unemployed person, either directly or through the supply chain, for each £5m of project value. 	G W S
2	Objective:	To encourage training and skills development to build a sustainable industry	
	Contract Requirement:	<ul style="list-style-type: none"> ▪ Main contracts to include requirement that the Main Contractors recruit one apprentice, either directly or through the supply chain, for each £2m of project value. 	W
		<ul style="list-style-type: none"> ▪ Government Construction Client to work the Construction Industry Group NI and the Department for Employment and Learning (DEL) to monitor apprentice progress and retention. 	W
3	Objective:	To promote equality in the workplace	
	Contract Requirement:	<ul style="list-style-type: none"> ▪ Main contracts to include a requirement that: ▪ Main Contractors comply with the application of fair employment, equality of treatment and anti-discrimination legislation; ▪ Main Contractors shall use their best endeavours to ensure that in their employment policies and practices and in the delivery of the services required under the contract they have due regard to the need to promote equality of treatment and opportunity. 	G W S
4	Objective:	To promote Respect for People	
	Contract Requirement:	<ul style="list-style-type: none"> ▪ Main contracts to include a requirement that Main Contractors and their supply chains comply with the requirements of the 'Respect for People (RfP) – Code of Good Working Health and Safety Practices' incorporating the 'Code of Practice for Industrial Relations and Health and Safety'. Compliance with this Code will include payment of operatives in accordance with the Working Rule Agreements. 	W
5	Objective:	To promote best practice in Health and safety	

	Contract Requirement:	<ul style="list-style-type: none"> Main contracts to include a requirement that: Main Contractors and their first tier subcontractors have or will obtain within a reasonable time period 3rd party accreditation of their documented health and safety management systems; 	W
		<ul style="list-style-type: none"> all site operatives and supervisors have attained set minimum standards in health and safety training; and 	W
		<ul style="list-style-type: none"> 'BuildHealth' to be a possible future requirement. 	W
		<ul style="list-style-type: none"> Main contracts to include a requirement to enable Government Construction Clients to discharge their monitoring duties under the CDM Regulations 2007 by assessing main contractors and their supply chains via office audits and site inspections. 	W
6	Objective:	To incorporate 'Fair trade' products within construction projects	
	Contract Requirement:	<ul style="list-style-type: none"> Main contracts to include a requirement that Main Contractors and their supply chain provide and maintain corporate Fair Trade policies. 	G W S
		<ul style="list-style-type: none"> Main contracts to include a requirement that Main Contractors and their supply chains embrace procurement of Fair Trade goods and services within construction projects in accordance with CPD Procurement Guidance note 02/06. 	G W S
7	Objective:	To promote development of Essential Skills	
		Main contracts to include a requirement that Main Contractors and their supply chain provide opportunities for all employees to develop essential skills through, for example, the promotion of the DEL Essentials Skills Programme.	G W S

ENVIRONMENTAL			
1	Objective:	To ensure compliance with the Northern Ireland Miscellaneous Provisions Act 2006	
	Contract Requirement:	<ul style="list-style-type: none"> Government Construction Clients to co-operate with other Government departments in discharging their statutory duty to act in a manner which they consider best contributes to sustainable development. This includes:- taking account of any DOE strategy or guidance on sustainable development including Departmental guidance. 	G W S
		<ul style="list-style-type: none"> Compliance with the 'Policy Framework for Construction Procurement' incorporating the 	W CS

		'Achieving Excellence in Construction' initiative, the Government Constructions Clients Group - Sustainability Action Plan and all guidance produced by the Procurement Practitioners Group - Sustainable Construction Task Group.	
2	Objective:	To promote Design Quality	
	Contract Requirement:	<ul style="list-style-type: none"> ▪ Main contracts to include a requirement that Main Contractors and their supply chains:- ▪ Develop designs that are consistent with Government policy on Architecture and the Built Environment for Northern Ireland; and 	W CS
		<ul style="list-style-type: none"> ▪ fully participate with other project stakeholders in design review process and workshops (eg Design Quality Indicator workshops) which seek to establish and enhance design quality. 	W CS
3	Objective:	To promote Environmental Management Systems	
	Contract Requirement:	<ul style="list-style-type: none"> ▪ Main contracts to include a requirement that Main Contractors have, or will attain within a reasonable time period, 3rd party accreditation of their Environmental Management System with appropriate scope to cover the services to be provided under the contract. 	G W S
4	Objective:	To minimise and manage waste	
	Contract Requirement:	<ul style="list-style-type: none"> ▪ Main contracts to include a requirement that Main Contractors and their supply chain prepare and submit a Site Waste Management Plan for consideration by the Government Construction Client prior to commencement of works. 	W
5	Objective:	To promote recycling and reuse of construction materials	
	Contract Requirement:	<ul style="list-style-type: none"> ▪ Main contracts to include requirement that: ▪ at least 10% of the material value of the project be derived from recycled/reuse content; and 	G W CS
		<ul style="list-style-type: none"> ▪ Main Contractors report on the recycled/reuse content achieved using suitable standard industry tools. 	G W
6	Objective:	To promote environmental assessment	
	Contract Requirement:	<ul style="list-style-type: none"> ▪ Main contracts to include a requirement that Main Contractors and their supply chains achieve a CEEQUAL or BREEAM rating of "Excellent" and "Very Good" ,or equivalent, for new build and refurbishment projects, respectively. 	W CS
7	Objective:	To promote the reduction in energy and water consumption and carbon emissions.	

	Contract Requirement:	<ul style="list-style-type: none"> Main contracts to include overarching design requirements for energy, water and low carbon design. 	G W CS
8	Objective:	To promote the use of legal & sustainable timber	
	Contract Requirement:	<ul style="list-style-type: none"> Main contracts to include a requirement that Main Contractors and their supply chain source timber from legal sources and provide an audit trail for chain of custody. 	G W CS
9	Objective:	To promote the Considerate Constructors Scheme	
	Contract Requirement:	<ul style="list-style-type: none"> Main contracts to include a requirement that Main Contractors register projects with the Considerate Constructors Scheme. 	W

Carson McDowell

Incorporating Social Considerations in Public Procurement

Introduction and Background

Recognising that sustainability is an important issue to both central and local government, public procurement must play its part and address social issues where possible. Regulation 30 of the Public Contracts Regulations 2006 (the Regulations) specifically mentions "environmental characteristics" as an element which may be relevant to assessing the most economically advantageous tender (MEAT). Environmental considerations can be reconciled with the evaluation of whole life cost and quality issues i.e. the basis upon which an award should be made. However, generally there is less scope to incorporate "social" criteria in the public procurement process as they can be more difficult to link to the subject-matter of the contract. Nonetheless, there is scope to do so, depending on the stage of the procurement process, and we have set out the legal position below following European Commission and OGC Guidance.

Executive Summary

There is scope to include social criteria in compliance with the Regulations depending on the stage of the procurement process. Key points are as follows:

- the social issues must be relevant to the subject of the contract;
- it is best to address social issues at the beginning of the procurement process as there is less scope to introduce social criteria at the selection and award stages;
- social issues must be compliant with the principles derived from the EC Treaty, for example, maintaining a level playing field for suppliers in the UK and other member states i.e. the principles of equal treatment and non-discrimination; and
- social issues to be included in procurement must be consistent with government's value-for-money policy and take account of whole-life costs.

The Legal Position

Recital 1 of the European Directive (2004/18/EC) (the Directive) states that the Directive is based on European Court of Justice case-law, in particular case-law on award criteria, and that it:

"...clarifies the possibilities for the contracting authorities to meet the needs of the public concerned, including the environmental and/or social area, provided that such criteria are linked to the subject-matter of the contract, do not confer an unrestricted freedom of choice on the contracting authority, are expressly mentioned..." and comply with the fundamental principles derived from the EC Treaty i.e. equal treatment, non-discrimination, transparency etc.

Further, Recital 46 of the Directive provides that:

"In order to guarantee equal treatment, the criteria for the award of the contract should enable tenders to be compared and assessed objectively. If these conditions are fulfilled... a contracting authority may use criteria aiming to meet social requirements, in response in particular to the needs- defined in the specifications of the contract- of particular disadvantaged groups of people to which those receiving/using the works, supplies or services which are the object of the contract belong".

Therefore, under the EC Treaty, it would be discriminatory to require "local" labour in the specifications and/or contract conditions. As issues also need to be relevant to the subject matter of the contract, to exclude, at the selection stage, a candidate for not being willing or able to meet the authority's own race, gender or disability policies (where those policies go beyond what is required to perform the contract) is unlikely to square with the EU rules. As stated above, the key principles are relevance and non-discrimination.

To a certain extent, social issues can be relevant to all stages. However, they should be addressed at the start i.e. in defining the requirement and drafting the specification, so that they become part of the subject of the contract. In addition, terms and conditions is another means by which social factors can be incorporated in contract performance. However, the selection and award stages provide less scope to introduce social issues. We have outlined below the potential for inclusion of social issues at the different stages of the procurement process.

Please note, social issues should not necessarily be included in every contract - procurers must still meet their value for money and EU obligations in awarding contracts.

Stages of the Procurement Process

1. Pre- Procurement

This is the point at which there is most scope to consider social issues- when the procuring entity is identifying the need and developing the business case. For example, an understanding of government social policy requirements is key to identifying which are relevant to a particular procurement e.g. cultural and equality issues.

When identifying the need, contracting authorities should also consult stakeholders such as customers and interest groups to help them understand what is needed i.e. conduct market sounding. However, this should not be done in a manner which treats certain candidates more favourably than others i.e. the principles of non-discrimination and equal treatment should be borne in mind.

In addition, ensuring that SMEs have equal access to public contracts is another example of how procuring entities can aim to meet the social agenda.

2. Specification Stage

It is possible for social considerations to be included in the specification as long as the requirement is central to the subject of the procurement and consistent with the Regulations and principles derived from the EC Treaty.

For example, in an ethnically diverse area, it is necessary to ensure information about the relevant services is available to all ethnic groups. Therefore it is legally permissible to include requirements for staff working on a helpdesk to be fluent in languages other than English. There is also a provision in the Regulations giving procuring entities the option to reserve contracts for organisations providing supported employment opportunities to disabled people.

Social conditions reflected at this stage should be transparent and non-discriminatory.

3. Selection Stage

This is the point at which candidates are selected, or not, to participate in the next stage of the procurement process i.e. selected to tender.

First, candidates can be excluded on certain grounds set out in the Regulations. These grounds include prior convictions for offences concerning professional misconduct, or a finding of grave professional misconduct and such grounds may relate to social matters e.g. breaches of employment legislation.

Second, in terms of selection, candidates can only be selected on the basis of economic and financial standing and technical capacity. The Regulations contain an exhaustive list of evidence that candidates can be required to provide in order to demonstrate their technical capability- the objective is to choose candidates most able to carry out the contract and therefore requirements must be directly relevant to the subject matter of the contract. Some of these can be of a social nature. For example, health and safety provision may impact on a contractor's capability to perform a contract.

Provided it is relevant in assessing technical capacity, contracting authorities can also examine candidates' track records for delivering similar contracts- if candidates have failed to fulfil social requirements of a previous contract, this can be taken into account at this stage.

4. Award Stage

The Regulations permit a contract to be awarded to the tenderer offering either the lowest price or the most economically advantageous tender. A number of examples of permissible award criteria are set out in the Regulations, including quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost effectiveness, after sales service, technical assistance, delivery date and delivery period and period of completion. These do not explicitly include social criteria, however could have a social dimension. Such social considerations may be included provided the following are met (as per the Directive):

- criteria must be relevant to the subject matter of the contract;
- criteria should be from the point of view of the contracting authority;
- criteria must comply with the principles derived from the EC Treaty; and
- be distinct from the earlier selection criteria.

5. Performance of the Contract

In accordance with Article 26 of the Directive:

"contracting authorities may lay down special conditions relation to the performance of a contract, provided that these are compatible with Community law and are indicated in the contract notice or specifications. The conditions governing the performance of a contract may, in particular, concern social and environmental considerations".

Recital 33 of the Directive also provides further guidance:

"Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory and are indicated in the contract notice or in the contract documents. They may, in particular, be intended to favour on-site vocational training, the employment of people ex experiencing particular difficulty in achieving integration, the fight against unemployment or the protection of the environment. For instance, mention may be made, amongst other things, of the requirements- applicable during performance of the contract- to recruit long-term job-seekers or to implement training measures for the unemployed or young persons, to comply in substance with the provisions of the International Labour Organisation (ILO) Conventions, assuming that such provisions have not been implemented in national law, and to recruit more handicapped persons than are required under national legislation."

For example, in a construction procurement, a contracting authority may consider including a targeted recruitment and training programme in the conditions of contract e.g. apprenticeships.

However, when including such conditions care must be taken to ensure that they do not discriminate either directly or indirectly against national or non-national tenderers and that they maintain value for money.

Advice NI

Advice NI is a membership organisation that exists to provide leadership, representation and support for independent advice organisations to facilitate the delivery of high quality, sustainable advice services. Advice NI exists to provide its members with the capacity and tools to ensure effective advice services delivery. This includes: advice and information management systems, funding and planning, quality assurance support, NVQs in advice and guidance, social policy co-ordination and ICT development.

Membership of Advice NI is normally for organisations that provide significant advice and information services to the public. Advice NI has over 70 member organisations operating throughout Northern Ireland and providing information and advocacy services to over 110,000 people each year dealing with over 213,000 enquiries on an extensive range of matters including: social security, housing, debt, consumer and employment issues. For further information, please visit www.adviceni.net.

Advice NI welcomes the opportunity to respond to this consultation, and our comments are focused on procurement and tendering insofar as it impacts on the advice sector. This response is informed by Advice NI's direct experience in procurement: Advice NI has responded to a number of tender opportunities and has seen the impact of both successful (SSA benefit uptake) and unsuccessful (DETI money advice) tenders.

Advice NI understands that there is undoubtedly a top-down drive to maximise the effectiveness of advice provision and use resources efficiently. 'Opening Doors' the DSD's Advice & Information strategy launched in September 2007 explicitly states:

"The consultation invoked considerable debate about the method of allocating future funding under the Area Hubs model. A number of proposals were submitted involving the use of competitive tendering, consortia approach and service level agreements. Recent Treasury guidance is clear that, where the third sector is involved in delivery of public services, a procurement process open to competition and leading to a conventional trading relationship under contract is the best option. It is envisaged that contracts will be awarded jointly by councils and the Department. This process will not preclude a collaborative approach between providers leading to joint bids."

Advice NI's position on tendering and procurement is clear: in our experience a competitive tendering approach to securing resources does not foster the collaborative approach advocated in the strategy. Our recent experience regarding the Department of Enterprise, Trade & Investment tender for money advice services highlighted that the tendering approach creates a 'winner-take-all' scenario; is exclusive rather than inclusive; and increases the likelihood of a two tier advice service developing in Northern Ireland.

Undoubtedly there is merit in promoting joined up working between advice providers in order to maximise the effectiveness of advice provision and use resources efficiently. Real partnership and joined up working would help to bring about a situation where service provision is tailored more closely to client need – for example staggered opening hours, referral mechanisms in place to balance workloads, sharing resources for example money advice specialisms. Partnership on this kind of agreed basis can have the buy-in of all involved, takes an inclusive approach and ultimately places service users at the centre of developments. We remain to be convinced that current procurement practices will have these outcomes.

In addition we would be concerned that sources of funding which are premised on tendering would see a continuation of short-term-ism and would amount to continuing uncertainty for the staff involved. This may not be the case where there was an agreed tender covering all providers (in essence a true partnership approach) but history shows us that this is unlikely to happen. And of course tendering also brings a risk of 'providing services on the cheap' and a risk of undermining the quality of the service (with the focus being on price). In actual fact we would argue that tendering does not encourage best practice – because it creates a monopoly in terms of funded service provision and thereby stifles diversity, innovation and creativity which are the essential components of driving change and improvement.

Advice NI would also point to three informative GB-based publications which shed light on this issue:

'Unintended consequences: How the efficiency agenda erodes local public services and a new public benefit model to restore them' (nef: the new economics foundation)

- Wider benefits to the community, be they social or environmental, are not considered in the current model, which only recognises cost and the achievement of narrowly defined targets. A radical rethink is needed, based on a new public benefit model.
- A Public Benefit model: In this framework the effectiveness of outcomes is assessed in terms of their benefit to users and the community; and service providers are encouraged to cooperate and innovate to maximise these benefits, rather than simply minimise costs. The result would be a model which:

- Creates a 'race to the top' by encouraging innovation and the maximisation of the social and environmental benefits that result from public service provision, both to those directly affected and to the wider public.
- Places people at centre stage with public services co-produced by commissioners, providers and service users, and with the latter seen as 'assets' in producing positive outcomes.
- Provides public sector actors with a more appropriate measure of efficiency when making purchasing decisions, which takes account of the vital role played by small voluntary and community organisations in local areas.
- Takes a 'social return on investment' (SROI) line, which builds the 'triple bottom line' approach into public service contracts, incentivising providers to maximise their wider impacts wherever possible, rather than focusing on solely cutting costs in the short term.

As the Treasury sets out its plans for public services for the next four years in the Comprehensive Spending Review, it is time to rebalance the role of efficiency in public service provision, moving to measure success in terms of outcomes for people rather than the 'false economy' of short-term cost savings to the Exchequer.

'It's the System, Stupid! Radically Rethinking Advice' (Advice UK)

- Advice organisations could make a huge contribution to improving public service delivery (and cutting costs) but the increasing practice of funding them solely for advice transactions means that opportunities for learning, for joint work to tackle waste and for service improvement are being missed.
- Funders' requirements and new contract conditions are actually introducing waste into advice agency systems.
- The project that has led to this report arose out of our concern that current government plans for improving legal and advice services will achieve nothing of the sort. We share the desire for improved services but, in our view, plans for advice to be provided by fewer larger contractors selected through competition, using funds that currently support many smaller outlets, will actually lead to worse services more focused on serving the 'top-down' interests of government than the 'bottom-up' interests of people seeking advice.

'A better return: setting the foundations for intelligent commissioning to achieve value for money' (nef: the new economics foundation)

- This report is for public service leaders, commissioners and all concerned with spending public money and delivering effective public services.
- Commissioning to deliver 'full' or 'best' value for communities and the public is a difficult and complex task, particularly in a time of financial constraint and when the institutional context presents barriers.
- A key objective of this report is to encourage public service leaders to develop an enabling institutional framework for intelligent commissioning. The report sets out to do this by:
- firstly, showing that better outcomes can be achieved for people, communities, the environment and public purse when the Government's own definition of value for money is put at the heart of intelligent commissioning frameworks.

- secondly, showing how the institutional and regulatory context can encourage intelligent commissioning that achieves value for money.
- thirdly, using case studies to explore new ways of measuring value that can help public service leaders and commissioners arrive at better approximations of value for money.

Advice NI would welcome the opportunity to further discuss the issues raised in this response.

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Social Economy Network



Inquiry into Public Procurement Policy and Practice in Northern Ireland. February 2009

Social Economy Network's submission to the Committee for Finance and Personnel

Inquiry into Public Procurement Policy and Practice in Northern Ireland. Feb 2009

The Social Economy Network (Northern Ireland) Ltd welcomes the opportunity to comment on public procurement practice in Northern Ireland.

The Social Economy Network is a membership organisation (current membership 103) drawing its members from social enterprise initiatives throughout Northern Ireland. The aims of the network are to

- Develop and strengthen the membership
- Foster, support and encourage exchange of experience, information and knowledge within the sector
- Provide a channel for social economy sector input into policy development
- Represent the views of the sector in engagement with government
- Promote the role of the social economy and its contribution to socio – economic growth and development

This submission was informed by input from members through a consultation session facilitated by SEN on 20th February 2009 and previous SEN consultation sessions which dealt with the issue of public procurement.

How public goods and services are procured.

1. How public goods and services are procured

Opportunities exist for social economy enterprises (SEEs) to do business with the public sector. Many have successfully secured contracts for service delivery- Bryson Recycling with local councils; Ardmonagh Family Centre and Irvinestown Trustee Enterprise Company for the delivery of health & social care services through contracts with health trusts and a range of other social economy enterprises for the delivery of training services through contracts with DEL.

Public bodies in Northern Ireland procure goods and services from the social economy and voluntary sectors in the following ways:-

- Grants for the delivery of services;
- Contracts/Service Level Agreements (SLAs); and
- Open Competitive Tendering.

Grants and contracts/SLAs have historically been used by Government Departments, their second step agencies and Local Councils for the delivery of local services including health & social care; health promotion; education and training; employment and supported housing services. In the past 20 years there has been a definite move away from grants to commissioning services through contracts/SLAs. More recently we have experienced the introduction of competitive tendering. There is a distinct difference between commissioning of services and public procurement through competitive tendering. Some Government Departments and second step agencies favour the commissioning model. One of the key problems identified with the commissioning model of services is duration of contracts. In some instances contracts must be bid for on an annual or bi-annual cycle which places undue pressure on staff time and costs to the organisation. Longer term contracts of 3-5 years would be more beneficial for organisational planning and sustainability. The fact that the level of finance available for service delivery this year - in the health & social care field- is set at 3% less than the cost of delivering the same service last year is also an issue. Departmental efficiency savings were not intended to affect front line services but clearly in such instances they will.

Many Social Economy Enterprises (SEEs) are very familiar with and experienced in the process of commissioning for the delivery of local public services through contracts and SLAs. Public procurement through open competitive tendering however is a process more familiar to the longer established and larger SEEs.

This experience is very similar to that of the private sector. The Small Business Service-Annual Survey of Small Businesses: UK-2005 found that:-

- 15% of SMEs had done some work for the public sector.
- The larger the firm the more likely they were to have done some work for the public sector. 34% of medium- sized businesses had done some work for the public sector, compared to 28% of small businesses and 20% of micro businesses.
- Businesses of four years and older were more likely than their younger counterparts to have done public sector work.

- Small businesses were more likely to have done work for local authorities as opposed to Central Government Departments.

Capacity and experience of organisations are clearly factors in terms of entering into public procurement and winning tenders.

There are currently no statistics on the numbers of SEEs who compete for public contracts nor for the numbers who successfully secure contracts. It would therefore be beneficial to collect such data to establish a baseline of information against which to compare the situation on an annual basis and assess progress.

The provision of feedback on tenders – successful and unsuccessful- was cited by SEEs as a positive aspect of the procurement process and a valuable learning experience

2. Barriers faced by SEEs in the public procurement process

- Lack of knowledge and understanding among the Social Economy Sector about the public procurement process. Many of the small and newly established SEEs expressed an interest in becoming a supplier of goods and services to the public sector but were unaware of how to go about it and had limited knowledge of the policies and procedures governing public procurement. SEEs with little or no experience of doing business with the public sector need practical advice and training on procurement policy & procedures; information on how and where to access information on tendering opportunities and writing tenders so that they can acquire the necessary skills to enable them to take advantage of the opportunities presented.
- Lack of knowledge and understanding among Public Procurement Practitioners about the Social Economy Sector- The experience of SEN members is that the level of awareness and understanding of the Social Economy Sector is low and that Public Procurement Practitioners are unaware of SEEs as potential suppliers of goods and services. While SEEs and the Social Economy Network accept responsibility for the need to promote and market themselves more effectively there is a requirement for Government Departments and DETI, as the lead Department for the Social Economy Enterprise Strategy, to do more to raise awareness of the sector within Central and Local Government. It is particularly important, post RPA, to ensure that Local Councils have a good understanding of the role of SEEs, accept the social economy as a viable business model and recognise SEEs as potential suppliers of goods and services.

The Social Economy Network (SEN) is willing to work with relevant Government Departments and Local Councils to raise awareness and increase understanding. SEN has developed a Social Economy Trade Directory which is currently being promoted as a resource to CPD and Local Councils. The Directory provides information on the goods and services provided by the SEN membership. If used as a resource by Public Procurement Practitioners it should go some way to addressing this problem but it needs to be positively promoted. Public Procurement practitioners also need to get to know and understand the broader environmental, social and economic benefits and efficiencies that can be derived from the varied approaches to how goods/services might be delivered

- Emphasis on financial capacity

The social economy sector is disadvantaged by the emphasis in consideration of tenders, on financial capacity demonstrated by a build up of reserves in assessing the financial health of companies. This particularly affects those in the early stages of development who were prohibited from building up reserves while in receipt of grants. SEN argues that if there is to be

equality of opportunity in accessing tenders then it must be acknowledged that existing means and criteria are exclusionary to SEEs and that amendments to criteria must be introduced to create a level playing field.

- Special contract Arrangements

In the experience of the social economy sector there has been little or no use made of Special Contract Arrangements (SCA) also known as the "offer back" system in public procurement tenders. Under SCA where a bid by a supported business falls only on price the contracting body can give a tendering supported business a chance to adjust its price. (The price tendered by the leading bidder must not be disclosed unless there is consent to do so)

- Aggregating contracts

Pressure on public bodies to secure efficiencies by aggregating contracts discriminates against small businesses, which includes many social enterprises. It should not be assumed that large suppliers offer better value for money. There are many advantages of using smaller enterprises which include: -lower overheads and management costs; and greater responsiveness to changing needs and ability to "tailor" goods and services. Little cognisance is given to the expertise and ability of SEEs (with local knowledge and understanding of needs and how best to address them) to deliver services effectively. Social enterprises experienced in this field require support from the public sector to enable them to develop their capacity to grow to take on the prime contractor role; and to explore the feasibility of sub contracts and or public/social enterprise partnerships.

- Public/Social Partnerships

Consideration should be given to exploration of innovative ways of increasing business opportunities for SEEs through public/social partnerships which represent a new mechanism for bringing together public bodies and SEEs to create well designed services that deliver additional community benefits. This should be extended also to private/social partnerships where private sector companies are encouraged as part of tender specifications to provide sub contracting opportunities for SEEs.

3. The nature, extent and application of social clauses within public contracts.

Despite the Programme for Government recognising the valuable role procurement can have in reducing inequalities and promoting social exclusion social clauses still do not feature in public procurement contracts. The subjects of social clauses, community benefits and sustainable procurement suffer from the lack of a shared vocabulary and understanding between the social economy sector and public procurement practitioners. The lack of progress on the inclusion of social clauses into the procurement process is one of the most significant problems facing the development of SEEs in Northern Ireland. SEEs operate their businesses in a market place which does not recognise or take account of the added value they create and this puts them at a disadvantage when competing for public sector business.

The measurement of social value is one of the difficulties cited in respect of including social clauses in procurement specifications. The public procurement process focus on measurement tends to be fiscal. This focus needs to be broadened to take account of outcomes. The problem with current measures of value and how taking account of social value in market economies can address inequalities in society is explored in the Cabinet Office, Office of the Third Sector publication titled "Why measuring and communicating social value can help social enterprise become more competitive" Nov 2007.

There are a number of management tools currently used by SEEs to measure social value and impact, for example, Social Return On Investment (SROI), social auditing and social accounting. Social accounts are becoming an accepted reporting format for SEEs in England and Scotland.

According to a Social Economy Scotland Briefing – the Scottish Government has produced guidance on including social issues in public procurement, including the ability to purchase wider social benefit as part of procurement. The guidance concludes that it is entirely possible to recognise wider social issues within a procurement process, as long as they are part of the primary purpose of the contract and they are incorporated into the specification.

A Cabinet Office, Office of the Third Sector publication titled “Why measuring and communicating social value can help social enterprise become more competitive” Nov 2007 explores the problems associated with measuring social value and identifies a number of solutions.

SEN Recommends that the understanding of social value be embedded in the practice and processes of public procurement and that the application of specific weighted criteria for social value be incorporated into specifications for tenders.

If the goal, as it should be, is to increase the capacity of SMEs and SEEs to submit and secure public sector contracts, it is essential to address the barriers they face in competing for public contracts. This will only be achieved through addressing the structural barriers inherent in the process, through the provision of awareness raising and training on the social economy sector for public procurement practitioners and the provision of appropriate information, training and effective support for SEEs to ensure transition to a level ‘playing field’.

Ulster Community Investment Trust
Social Enterprise & Public Service Delivery



Recommended Actions for the Committee for
Finance & Personnel

Introduction

- Ulster Community Investment Trust (UCIT) is a charity which provides flexible loan finance and business support to social enterprises in Northern Ireland.
- UCIT's mission is to assist social enterprises to become more financially viable and self-sufficient, and as a result encourage economic development and job creation in some of the most disadvantaged communities in Northern Ireland.
- Since 2001, UCIT has invested almost £22 million and supported over 150 social enterprises in Northern Ireland.
- A snapshot of UCIT's activities in Q1 2009, reveals that we are currently investing £12.7 million into 81 social enterprises, which provide employment for almost 700 people, have 1,300 volunteers and provide workspace for an estimated 600 SMEs that provide a further 2,450 jobs.

Social Enterprises are a Vital Part of the NI Economy

- There are an estimated 1,200 social enterprises, employing over 20,000 people in Northern Ireland. This represents 3% of an estimated 37,855 Small & Medium Sized Enterprise (SME) employers in the region.
- Social enterprises are businesses with a social, community or ethical purpose. This means that profits are reinvested for the benefit of the community rather than for shareholders or directors, making the social economy an excellent way to lock wealth into disadvantaged areas.
- In the first quarter of 2009, the Northern Ireland economy contracted at a faster rate than any other region in the UK, foreign direct investment continued to decline and unemployment reached 43,900, following large scale redundancies in manufacturing and construction. In contrast, UCIT's clients continue to perform well, retaining jobs and contributing to sustainable economic development in some of the most deprived areas in Northern Ireland.

Proposed Actions by UCIT to Support Social Enterprise Growth

UCIT aims to create a public procurement brokerage service that helps social enterprises successfully tender for public service contracts.

There are three reasons to help social enterprises win public service contracts

1. They make a vital contribution to the local economy, particularly in the provision of services such as health and social care, and environmental regeneration in areas that are often underserved by the private sector.
2. Social enterprises have a strong sense of community ownership, being managed by local people for local people, which makes them a highly effective way to deliver public services to vulnerable sections of society.
3. Better access to Northern Ireland's estimated £2 billion public procurement marketplace would support social enterprise growth, job creation and sustainable economic development.

A public procurement brokerage service would help like-minded social enterprises come together to win public service contracts. The key objectives would be to:

- Build the business capacity of social enterprises and their readiness for public procurement
- Facilitate business links and strategic alliances between social enterprises and with the private sector to help build the sectors' collective business strength and ability to tender for public service contracts

The brokerage service would be managed by a Committee made up of three organisations:

- UCIT – financing social enterprises and providing capital for administering the brokerage service
- Social Economy Network – facilitating business links and identifying new tender opportunities
- School for Social Entrepreneurs in Ireland – Building the sectors' business capacity and skills base

UCIT aims to increase the supply of finance into the social economy in Northern Ireland.

- Over the past 2 years to 31st December 2008, a quarter of all social enterprises approved for finance by UCIT have come from start-up enterprises unable to access credit from the banking sector, and more established enterprises unable to expand their operations because their existing bank is unwilling to offer them additional finance or more competitive terms.
- Without access to additional investment, start-up social enterprises will face greater barriers to market entry and existing enterprises may not be in a position to expand their operations, with the risk of job losses, closure of essential community services, and additional costs for public finances.

Recommended Actions for the Committee for Finance & Personnel

UCIT has identified two areas of intervention by the Committee for Finance and Personnel that will increase the supply of finance into the social economy and help the sector win public service contracts.

1. Ring-fence part of the unclaimed funds from Dormant Bank and Building Society Accounts for investment by UCIT into the social economy.

Unclaimed funds will be used by UCIT to establish a social investment loan fund that reinvests capital into an increasing number of social enterprises on a perpetual basis. A key part of this proposal would be to use a portion of the capital generated by interest repayments to finance a public procurement brokerage service on behalf of social enterprises in Northern Ireland at no additional cost to public finances.

Evidence of how unclaimed funds can be used to support social investment

In England, part of the unclaimed funds will be distributed by a 'social investment wholesaler' to develop the long-term sustainability of 'third sector organisations', including social enterprises (Dormant Bank and Building Societies Act, 2008).

The Irish Government has acknowledged that its experience of distributing unclaimed funds in the form of grants under the Dormant Accounts Act 2001 has raised questions about the sustainability of grant funding and highlighted support for using these funds to create a more sustainable social investment loan fund.

Evidence of Regional Support for Social Enterprise and Public Service Delivery

In England, the Government has invested £215m into Futurebuilders England Ltd. to provide a mixture of loans and grants to social enterprises seeking to deliver public services.

The Scottish Executive will invest £30m into social enterprise growth over the next 3 years (2008 – 2011) as part of its strategy to build the capacity of social enterprises to bid for public service contracts.

2. Lobby Central Government to extend FSA regulations and public guarantees to UCIT to be used to secure investment into the social economy from:

- The private sector, including banks and high-net-worth-individuals who view security as a key barrier to social investment – bringing new private investment into the sector

- The social economy, including housing associations and the credit union movement, which have already expressed an interest in using UCIT as a social investment vehicle, but view security as a key barrier – unlocking existing capital within the sector

Appendix 4

Memoranda and Papers from Department of Finance and Personnel

Central Procurement Directorate
Awareness Session

Assembly Section



Department of
**Finance and
Personnel**
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Mr Shane McAteer
Clerk
Committee for Finance and Personnel
Room 419
Parliament Buildings
Stormont

26 September 2008

Dear Shane

Please see attached briefing material for the Procurement Awareness Session with the Committee on 1 October 2008.

1. Procurement Board Strategic Plan 2008 – 2011
2. Procurement Practice in the new Northern Ireland

"Minimising the Risks

And

Maximising the Benefits"

I would be grateful if you could bring this material to the attention of Members in advance of next weeks meeting.

Yours sincerely,



Norman Irwin

Procurement Board
Strategic Plan 2008 - 2011

PROCUREMENT BOARD STRATEGIC PLAN – 2008-2011

Objective	Target	Actions
<p>1. Departments¹ to ensure that the procurement process plays an optimal role in achieving efficiency savings while continuing to base procurement on best value for money (i.e. taking quality and policy outcomes into account alongside cost).</p>	<p>Centres of Procurement Expertise (CoPEs) to work with Departments to identify how the procurement process can assist in the delivery of PfG commitments in a way that contributes to the most economically advantageous outcomes for the period 2008-2011.</p>	<p>By 31 March each year Departments to produce annual procurement plans, which will include:-</p> <p>an assessment of the best value for money gains derived from the procurement process, including cash and non-cash gains, and the contribution the gains will make to their overall Efficiency Delivery Plans;</p> <p>details of how the procurement process will be used to assist in the delivery of the most economically advantageous outcomes;</p> <p>procurement measures to assist in the delivery of PfG commitments; and</p> <p>proposals to achieve a collaborative approach for common procurement items and cross-departmental impact from relevant procurement projects/programmes.</p> <p>ii The Procurement Board will monitor the implementation of the plans.</p>

[1]

Objective

Target

Actions

		<p>DFP to take forward ;</p> <p>the approval and launch of the guidance,</p> <p>the issue of the guidance under cover of a DAO,</p>
<p>2. Departments to embed equality of opportunity and sustainable development in their procurement practice.</p>	<p>1. By March 2011 Departments to implement the Guidance on Equality of Opportunity and Sustainable Development in Public Sector Procurement.</p>	<p>ii. Departments to implement the guidance on integration of equality of opportunity and sustainable development into procurement processes.</p> <p>iii. Procurement Board to assess the effectiveness of the guidance in year three.</p> <p>By December 2008, CoPEs to produce Sustainable Procurement Action Plans to deliver sustainable development priorities within their unique portfolio of contracts.</p>
	<p>Departments to take account of sustainable development principles when procuring works, supplies and services.</p>	<p>ii. By December 2008 Departments to ensure that Sustainable Development principles are considered in capital investment decisions on all publicly funded building and infrastructure projects.</p> <p>iii. By 30 September 2008 CoPEs to have appropriate systems in place to allow access by SMEs and SEEs to opportunities for doing business with public sector organisations.</p> <p>iv. By March 2009 CoPEs to have provided basic training in sustainable procurement for all procurement staff.</p>
<p>3. Departments to maintain compliance with the Achieving Excellence initiative within the management of capital construction projects over the period 2008 - 2011.</p>	<p>1. By 31 March 2009, Departments to achieve a score of 90% maturity to act as best practice clients in accordance with Achieving Excellence (AE).</p>	<p>i. Departments to monitor and report on compliance with the AE initiative.</p> <p>ii. CPD to:</p>

<p>4. By 2011. at least 95% of all Departmental procurement spend, to be channelled through a Centre of Procurement Expertise (CoPE).</p>	<p>A minimum of 95% of the value of Departmental procurement spend should be undertaken or supported by a CoPE by 31 March 2009 and where this minimum is not met Departments must seek to reduce the level of spend not influenced by a CoPE by 25% year on year over the period 2008 – 2011.</p>	<p>coordinate and present Departmental reports twice yearly to the Procurement Board,</p> <p>maintain close links with the construction industry to promote and embed AE principles,</p> <p>maintain a network of AE Champions,</p> <p>Chair PPG Works & Services Sub-Group.</p>
<p>5. Contracts to be awarded on the basis of the most economically advantageous tender (MEAT). Any exceptions to this should be subject to formal approval by the Head of Procurement for the relevant Centre of Procurement Expertise.</p>	<p>1. By March 2009.</p>	<p>Where less than 95% of a Department's procurement spend is channelled through a CoPE that Department should agree actions to reduce this by 25% year on year over the period 2008 – 2011.</p> <p>CPD to monitor and report twice yearly to the Procurement Board on progress.</p> <p>Departments to work with CoPEs to meet this objective.</p> <p>ii. CPD to collate and report progress to the Procurement Board twice yearly.</p> <p>iii. Procurement Board to monitor progress against this target.</p>
<p>6. By 31 March 2010 each Centre of Procurement Expertise (CoPE) to achieve reaccreditation of CoPE status.</p>	<p>1. By 31 March 2009 CPD to initiate the process for reaccreditation of CoPEs capability and conclude reaccreditation by 31 March 2010.</p>	<p>CPD to appoint an independent assessor.</p> <p>CoPEs to agree a common methodology and scoring matrix with the Assessor.</p> <p>Each CoPE to be scored against the agreed methodology.</p> <p>CPD to report outcome to Procurement Board and seek its endorsement of continued CoPE status as appropriate.</p>

<p>Each Centre of Procurement Expertise (CoPE) to engage with key markets to secure capacity within the market place to deliver best value for money from procurement.</p>	<p>1. By April 2009 to develop awareness and commence implementation of a supplier development programme.</p>	<p>Undertake key contractor spend analysis and identify high sustainability impact contractors.</p> <p>Develop supplier awareness, on sustainability issues through a programme of early and continuous engagement on procurements and through sharing best practice.</p>
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[1] Throughout this strategy all references to Departments include their Agencies, NDPDs and Public Corporations

Department
of
Finance and Personnel

Central Procurement Directorate

Procurement Practice
in Northern Ireland -

Minimising the Risks
and
Maximising the Benefits



Printed on 100% recycled paper

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1 Introduction

As the Northern Ireland Assembly and Executive exercise their devolved responsibilities they will face many challenges. The procurement of public works, supplies and services presents both opportunities and challenges. If procurement is done correctly, the Assembly, through its Government Departments, will ensure best value for money in all its procurements – from hospitals to hinges, motorways to machines, buses to baby oil. And it will be able to ensure that equality and sustainable development principles are integrated into the procurement process. But if procurement is not properly handled, money which the Assembly and Government Departments wish to use to make Northern Ireland a better place to live in, may need to be diverted to pay costly legal expenses and damages.

2 Public Procurement in Northern Ireland

Public procurement on behalf of the Northern Ireland Executive covers devolved matters carried out by Northern Ireland Departments and their Agencies, Northern Ireland public corporations and Northern Ireland Non-Departmental Public Bodies (including Health and Social Services Boards, Education and Library Boards and Health Trusts). The current annual value of spend on public works, supplies and services by these bodies is £1.9 billion (07/08).

¹ www.opsi.gov.uk/si/si2006/ukSI_20060005_en.pdf.

Definition of Public Procurement

Public procurement means "the process of acquiring goods, services and works usually by means of a contractual arrangement after public competition". This definition covers both conventionally funded contracts and more innovative types of procurement such as PPP/PFI. The process spans the whole life cycle from conception and definition of need, to the end of the useful life of an asset or the end of a contract.

Definition of Best value for Money

Another key aspect of Northern Ireland Procurement Policy is the concept of "best value for money" defined as "the optimum combination of whole life cost and quality (or fitness for purpose) to meet the customer's requirements". While "best value for money" is the primary objective of procurement policy, this definition allows for the inclusion, as appropriate within the procurement process, of social, economic and environmental goals the three pillars of sustainable development.

Public Procurement Policy is governed by 12 guiding principles set out as Annex A, which Northern Ireland procurement professionals strive to meet. When these principles have been satisfied to an acceptable level then best value for money can be said to have been achieved.

Procurement Activity

In line with Northern Ireland Procurement Policy all NI Departments, their agencies, NDPBs and public corporations must carry out their procurement activities by means of a documented Service Level Agreement with CPD or a relevant Centre of Procurement Expertise (CoPE).

Analysis of the 2006-2007 procurement spend data indicates that 92% of the total spend was subject to CoPE influence and a current Public Service Agreement (PSA) target in the Programme for Government (PFG) is to increase the influence by CoPEs on procurement spend to a minimum of 95% by 31 March 2009.

3 Governance Structure

The governance structure for public procurement is made up of three elements:

A. The Procurement Board

The Procurement Board, established under the Northern Ireland Procurement Policy agreed by the Executive in 2002, is chaired by the Minister for Finance and Personnel. Membership of the Board comprises the Permanent Secretaries of the 11 Northern Ireland Departments, the Treasury Officer of Accounts, the Director of Central Procurement Directorate and 2 external experts. The Board has two observers representing NIAO and SIB respectively. The Board meets twice yearly.

The roles and responsibilities of the Procurement Board are attached at Annex B.

B. Central Procurement Directorate (CPD) & Centres of Procurement Expertise (CoPEs)

CPD was established in April 2002 to support the Procurement Board in the development and implementation of the new public procurement policy and to provide a centralised professional procurement service to the NI public sector.

In addition to CPD, seven other CoPEs exist to provide a more integrated procurement service to public bodies throughout the public sector and to contribute to the development of operable policies. Each CoPE has a focus on a particular specialised area and longstanding links with their operational arms. Their procurement activities are heavily interlinked with the unique areas of responsibility, which they support.

The seven CoPEs are:

- DRD Roads Service;
- Water NI Ltd;
- Central Services Agency - Regional Supplies Service;
- Northern Ireland Housing Executive;
- DHSSPS Health Estates;
- Education and Library Boards; and,
- Translink Ltd.

CoPE status is a recognition by the Procurement Board of the competency of each of these organisations to deliver an effective procurement service in relation to its unique procurement portfolio. The Procurement Board reviews the competency of each CoPE through independent assessment on a periodic basis (3-5 years).

C. Procurement Practitioners' Group

The Procurement Practitioners' Group comprises the Heads of the CoPEs across Northern Ireland. This group provides a strategic direction for CoPEs, ensuring the integration of the Procurement Board's priorities and monitoring progress on their delivery. This group meets twice a year between Procurement Board Meetings and is chaired by the Director of CPD.

The group is supported by two sub-groups of Supplies and Services; Construction, Works and Services each comprising of representation from CPD and the CoPEs. These groups meet 3 or 4 times a year and focus on the practical outworking of the policies, as well as co-operation and collaboration.

4 Programme for Government

Public Procurement will impact on many aspects of the Programme for Government and Investment Strategy Northern Ireland. The two cross-cutting themes of the Programme for Government are a shared and better future for all and sustainability and CPD and CoPEs have a key role to play in (a) the drive towards the integration of these themes in the procurement process and (b) assisting Public Sector bodies to embed equality of opportunity and sustainable development considerations into spending and investment decisions.

One of the objectives of the NI Sustainable Development Strategy is "to make the Northern Ireland Public Sector a UK regional leader in sustainable procurement". A key target in taking this objective forward is the production of a Sustainable Procurement Action Plan for Northern Ireland. CPD was tasked with finalising this Action Plan by 31 March 2008.

In addition CPD and the Equality Commission, on behalf of the Procurement Board, have jointly produced a comprehensive guide that will assist policy and decision makers and procurement practitioners embed equality of opportunity and sustainable development through the procurement process.

5 The EU Legal Framework for Public Procurement

The rules governing EU public procurement directly affect how public bodies can purchase goods, works and services. Such purchases by public bodies represent about 16% of the EU's total gross domestic product (GDP). There have been huge changes in the way that public procurement is regulated in the last fifteen years.

Where once governments could and did "buy national" with the short term aim of preserving employment, now governments must act in a totally different way.

They must conduct public purchasing according to three basic principles enshrined in the EC Treaty:

1. Openness and transparency of award procedures
2. Genuine competition in the award of contracts
3. No unlawful discrimination on the grounds of nationality

In the context of transparency public bodies are encouraged to reap the full benefits of the Internal Market and use competitive and transparent award methods to increase opportunities for business across the EU and attract a broader range of potential bidders and better value offers.

The benefits attached to conducting procurement in this way are huge. NI has seen significant value for money savings as a consequence of the professionalisation of the whole process by which procurement is conducted. That professionalisation has included an extensive process of education, which has resulted in Northern Ireland now having a high quality, professional procurement service. This has reduced dramatically the potential for mistakes and corrective action can now be taken early where it appears that unlawful action may have occurred.

Cases before the European Court of Justice shows that this is not the case in all countries. The consequences of non-compliance are that huge sums of money have been spent in litigation, fighting disputes which could and do last for years. That money has been lost to developmental projects. Compliance with procurement law can appear to be onerous and time consuming. Non-compliance can prove to be even more onerous, time consuming and expensive.

So what is procurement law about? Where do you find it? What does it require of you if you are involved in a procurement process or are responsible for that process?

There are three kinds of procurement:

1. Supplies procurement (goods: office supplies, vehicles, hospital equipment)
2. Services procurement (from ICT to full facilities management services)
3. Works procurement (construction & maintenance of roads, buildings etc)

European Directives have been passed and implemented into our law by UK Parliamentary Regulations (Public Contracts Regulations (2006)). There are also two laws giving remedies to particular aggrieved parties in all areas of public procurement.

6 The Legislation

The implementing legislation in the UK for the EU Directives on procurement takes the form of Regulations made under the European Communities Act 1972 (as amended). Since January 2006, public procurement has been governed by a new public sector procurement directive². The new Directive simplifies and consolidates three former Directives on public works, supplies and services into a single text. It reduces red tape and sets out how social and environmental criteria can be applied in awarding contracts. It also promotes the use of new technology to manage the tendering process, allowing authorities and bidders to save time and money.

The implementing legislation within Northern Ireland is the Public Contracts Regulations (Statutory Instrument 2006 No 5)³.

So what's new? Changes made under the new legislative regime

Consolidation – three Directives become one

Clarification of the rules on selection and contract award – a clearer statement of the law

Debriefing and the Alcatel case - contractors are also given a key window to challenge award decisions in the Regulations.

Frameworks – use of "mini-competitions" and stricter rules regulating the use of call-off arrangements

Competitive dialogue – new procedure for use in "particularly complex" contracts

E-procurement – the new rules aim to modernise procurement practice by placing more emphasis on e-procurement and the use of dynamic purchasing systems and electronic auctions.

² A full listing of the full EC public procurement legislative package can be found at:
http://ec.europa.eu/internal_market/publicprocurement/legislation_en.htm#package

³ <http://www.opsi.gov.uk/si/si2006/20060005.htm>

For the utilities sector, a new Directive co-ordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors also came into force in January 2006. The implementing legislation in Northern Ireland is the Utilities Contracts Regulations 2006 (SI 2006 No 6)*.

Who do the Regulations apply to?

They apply to all public sector bodies which are largely owned, managed or funded by public funds. This includes:

- All central government departments (including Executive Agencies)
- District councils
- Various Non-Government Organisations (NGOs)
- Housing associations
- Hospitals and health sector purchasers
- Education bodies including: Boards, Secondary, Further and Higher institutions
- Grant aided procurement (publicly funded over 50%)

* <http://www.opsi.gov.uk/si/si2006/20060006.htm>

What do Public Sector Bodies have to do under the legislation?

They must analyse their procurement plans and decide:

- Whether they have to provide to the Official Journal (OJ) of the European Communities advance information of intended procurement exercises (Periodic and Prior-Information Notices)
- Whether they have to advertise in the OJ a particular proposed procurement (the Invitation to Tender) (thresholds: £90.3k for goods and services - £3.4m for works)
- Which award procedure is most appropriate to a proposed procurement exercise
- How to prescribe specifications and standards in a non-discriminatory way
- What they can legitimately require in terms of information and previous experience of a would-be supplier, contractor or service provider
- What award criteria are appropriate to any proposed procurement exercise
- What information must be provided to the OJ in a Contract Award Notice
- What information needs to be made available for transmission to the European Community in respect of procurement within NI.

7 The Obligations of the NI Public Sector under European Law

The process of public procurement is very complex. It is a process which is regulated from the very first stages. Procedures are defined and must be adhered to. Under general European Law a Northern Ireland Public Sector body must:

- comply with its obligations not to discriminate on grounds of nationality
- apply all relevant law
- not act in a way which is inconsistent with European Law
- not do anything to hinder the application of European Law

Actions which may involve non-compliance include:

- Failing to advertise in the OJ a contract which should have been advertised
- Giving a contract to a local company without conducting the appropriate competition
- Excluding a bidder without due cause
- Writing contract specifications so as to favour a particular bidder
- Excluding a bid because the product is certified to a non-British standard
- Any other action which is unfairly designed to exclude or include a particular company in a procurement exercise.

8 What are the possible consequences of failure to comply with Procurement Law?

Failure to comply with these rules by any public sector buying authority, whether a school or a hospital, could have a number of possible results. These include legal action in the High Court both before & after award of contract; an injunction; judicial review; or remedies through the European Union. Some of these are explored below.

- Any dissatisfied tenderer has the right to take legal action against a Contracting Authority. Under the Public Procurement rules tenderers based in another EU country and who are not able to bid for a contract because it was let without public contract notice can challenge the contracting authority.
- In such circumstances where a contract is being let in breach of the law the Court could –
 - o Stop the award procedure
 - o Amend discriminatory contract documents
 - o Make an award of damages

There have been relatively few cases brought in the UK in comparison to other EU jurisdictions.

For example, over 100 cases have been brought in Sweden and over 50 each in Denmark and Austria.

Why is this? The High Court is a potentially very expensive route to go down, and most other EU countries prefer to use the tribunal route; the time limits imposed by the High Court of three months from the date of discovery of the breach may also be a reason for the scarcity of claims. This may all change due to two recent developments:

- The Freedom of Information Act, that enables complainants to request the disclosure of information held by a public authority
 - The decision of the ECJ in the regulations (the Alcatel case), which introduces a 'standstill period' into the procurement process (see below for more details).
-
- Where the contract has already been let the High Court could award damages to any dissatisfied tenderer who could prove their case. The damages might be calculated according to any loss of profit which they might have made on the contract.

The Harmon Case

One successful claim in the UK was brought by a non-UK company. Harmon CFEM Facades, a company from the United States, tendered for the roof contract of Portcullis House, the new office building for MPs at Westminster, in 1998. At £32 million, Harmon submitted the lowest bid, but was passed over in favour of another company, Seele Avis, which submitted a bid of £34 million. Harmon sued and although the company went into liquidation, it won the case, costing the House of Commons almost £10 million in compensation and damages.

The judge listed a series of stages at which the Commons authorities had broken the law. They had:

- failed to give an adequate statement of the criteria of the contract when it was offered;
- made "material changes" to the final scheme without giving Harmon an equal chance of winning on the new basis;
- accepted a bid which had been changed without any legal basis;
- shown bias against foreign companies.

The House of Commons authorities were guilty of "misfeasance" - they had awarded a contract to a company in the knowledge that they were breaching EU rules.

The Harmon case caused huge upheaval in the Commons, where the traditional way of administering public buildings was completely changed.

It also led to a major report by Sir John Bourn and an internal House of Commons investigation.

- Any such High Court action could involve a reference to the European Court of Justice. This would add about two years to the total period of litigation.
- In such cases costs are normally paid by the party which loses.

Case Note: Central Parking Systems (Ireland) Limited v Dublin City Council – High Court December 2005.

Challenging a contracting authority's decision to award a public works or services contract to another tenderer has always been a difficult decision for unsuccessful tenderers to make. Central Parking sought to challenge the decision by Dublin City Council to award the vehicle clamping contract for Dublin City to Park Rite Limited.

As part of the High Court proceedings Central Parking applied to the Master of the High Court seeking discovery from Dublin City Council of a broad range of documents relating to the tender process. The Master of the High Court did not grant the full extent of Central Parking's request but he did grant an Order for a more specific and focused category of documents which is still significant in its extent. The Court Ordered Dublin City Council to disclose the following categories of documents to Central Parking:

- Tender documents submitted by the successful tenderer.
- Minutes of meetings held with the successful tenderer after tenders had been submitted and any correspondence preceding or following any meetings.
- Costings for the service prepared by the Dublin City Council.
- All documents prepared by an expert engaged by Dublin City Council and presented to the Tender Evaluation Board.

- Documents considered by the Tender Evaluation Board and employed in any calculations of the "economic advantage" of either of the two principle tenders.
- Further specific documents relating to the dispute.

The categories of documents which the Court ordered the Council to provide are significant and discovery of these documents would provide a disappointed tenderer with a very clear picture of how their tender had been assessed, how it compared with the successful contractor's tender and whether or not the correct procedures were used in the analysis of tenders and the awarding of a contract.

In the Master's opinion the applicant should not have to provide initial evidence of a manifest error on the part of the contracting authority; the mere fact a business man would commence proceedings, with the fairly certain sanction of an adverse award of costs in the event of failure, is sufficient indication of a bona fide case.

The Master's decision shows a continued willingness of the Courts to allow unsuccessful tenderers the opportunity to challenge an award and ask the Court to check that all was above board, that the tenderer was fairly treated and that he hadn't wasted his money preparing the tender for the contract in the first place.

9 Shifting the Risk – Complaints to the European Commission from Tenderers

- A dissatisfied tenderer might decide not to risk the cost of litigation himself and simply complain about the contracting authority to the European Commission.
- The European Commission then has power to investigate and, if satisfied that a breach has occurred, may require the contracting authority to remedy that breach (this normally means starting the whole process again and settling the claim).

The European Commission has decided to refer Germany to the ECJ over the contract of four trade fair halls awarded by the City of Cologne to a private investment company without conducting a transparent and competitive procedure. The Commission considers that this is a public works contract which should have been awarded through a competitive procedure with European-wide call for tenders complying with the EU Directives on the award of public contracts.

- The European Commission's actions will always be against the Member State not the individual buying authority. In the UK's case the designated liaison department with the European Commission in all procurement matters is HM Treasury.
- If the Member State decides to fight the European Commission the result may be that the European Commission decides to take the Member State before the European Court of Justice.
- The European Court of Justice has power to set aside any awarded contract. This would mean that the buying authority would have to pay damages for breach of contract to the company to whom the contract has been let; would have to pay damages to the successful challenger and would be responsible for all costs.

The Alcatel Case

In 1998, the European Court of Justice issued a landmark ruling, known as the Alcatel case. It said that national courts in EU Member States must, in all cases, be able to review and set aside award decisions on procurement contracts subject to EU procurement Directives.

Following that decision, contracting authorities are now obliged to allow a standstill period of at least 10 calendar days between the date of notifying tenderers of their contract award decision (which must be in writing) and the date they propose to enter into the contract (in the case of contracts subject to the full regime).

If a tenderer makes a request for additional information as to why he was unsuccessful by the end of the second working day of the 10 day period, authorities must provide the tenderer with information as to the relative advice during the standstill period. In any event, there must be three working days between the provision of the information and the end of the standstill period. The purpose of this change is to allow aggrieved bidders a reasonable chance to consider their situation, and to bring an action before the contract is concluded if they think they have a case.

The Commission has now decided to issue reasoned opinions against Ireland and the UK owing to their failure to comply with the obligations of the Remedies Directive. In the Commission's view, neither UK nor Irish legislation currently complies in full with the requirements under Alcatel. Although the UK is proposing amendments to the remedies system, the Commission does not consider these to be sufficient to comply with the Alcatel judgment.

- If a contracting authority did not do as required by the European Court of Justice, it might be referred back to that Court which then has power to fine the Member State. Such a fine together with legal costs could be relatively large and in the case of NI would be payable out of the block vote.

Hitting where it hurts the most

The Commission proposed a number of measures including financial sanctions against states that failed to comply with judgements of the ECJ. National governments agreed on the need to render these judgements difficult (i.e. costly) to ignore. The outcome took the form of a Treaty-based procedure (under the modified art. 171/now art. 228) which entails the use of heavy fines against member states that ignore previous judgements condemning them for failure to implement EU policy.

Greek authorities found out in July 2000 that the political will exists in the EU to impose such fines in an effort to improve compliance with the judgements of the ECJ. In a landmark ruling of the ECJ, Greek authorities were ordered to pay EURO 20,000 a day as long as they didn't halt the discharge of toxic and dangerous waste into the Kouroupitos River in Crete despite previous judgements of the ECJ obliging them to take corrective action.

10 Possible long term risks

Loss of European Funding

- Very often public procurement will involve the use of European funding. Such funding is always contingent upon compliance with European Law. Breach of the law may result in the loss of such funding either temporarily or permanently.

Possible consequences for inward investment

- Companies contemplating inward investment will be attracted by a location which demonstrates fairness in all of its dealings. Compliance with the law in this context can only have very positive consequences.

11 Minimising the risks and Maximising the benefits: how can we do this?

Following the restructuring of public procurement in 2002 Northern Ireland has a highly professional and structured public procurement model. This model is being copied by other jurisdictions and is seen as best practice approach to public procurement.

The new structure has allowed practitioners to

- Gather data on central government spend across all departments.
- Develop and implement local procurement policies and best practices.
- Increase opportunities to aggregate and collaborate across CoPEs.

- Standardise skills required across CoPEs.
- Measure Value for Money Savings both cash releasing and efficiency.
- Work with key sectors that service the government to build capacity, capabilities and competition which will improve opportunities for these sectors both locally and across the EU.

Over the Comprehensive Spending Review (CSR) ending in March 2008 Centres of Procurement Expertise (CoPE) assisted departments to deliver £250 million cash and efficiency savings.

12 Conclusion

The law regulating public and utilities procurement is technical and complex. Modern procurement is a developing management science. The opportunities for Northern Ireland to source new and better products and services are real. The challenge for the Assembly is to ensure that Northern Ireland takes its place in the world as a competent, efficient and economic purchaser. The public procurement model now in place in Northern Ireland will help to ensure that the maximum value for money arrangements are put in place at the minimum risk as well as helping the public sector deliver better public services.

13 Useful Contacts and Web links

Central Procurement Directorate	www.cpdni.gov.uk
Regional Supplies Services	www.centraiservicesagency.n-i.nhs.uk
Office of Government Commerce	www.ogc.gov.uk
Irish Procurement Portal	www.procurement.ie
E-Procurement Europe	www.simap.eu.int
Irish Public Sector Procurement	www.go-source.com

Annex A

Principles Governing Public Procurement

The twelve principles governing public procurement are as follows:

- i. **Accountability:** effective mechanisms must be in place in order to enable Departmental Accounting Officers and their equivalents in other public bodies to discharge their personal responsibility on issues of procurement risk and expenditure.
- ii. **Competitive Supply:** procurement should be carried out by competition unless there are convincing reasons to the contrary.
- iii. **Consistency:** suppliers should, all other things being equal, be able to expect the same general procurement policy across the public sector.
- iv. **Effectiveness:** public bodies should meet the commercial, regulatory and socio-economic goals of government in a balanced manner appropriate to the procurement requirement.
- v. **Efficiency:** procurement processes should be carried out as cost effectively as possible.
- vi. **Fair-dealing:** suppliers should be treated fairly and without unfair discrimination, including protection of commercial confidentiality where required. Public bodies should not impose unnecessary burdens or constraints on suppliers or potential suppliers.
- vii. **Integration:** in line with the Executive's policy on joined-up government, procurement policy should pay due regard to the other economic and social policies, rather than cut across them.

- viii. **Integrity:** there should be no corruption or collusion with suppliers or others.
- ix. **Informed decision-making:** public bodies need to base decisions on accurate information and to monitor requirements to ensure that they are being met.
- x. **Legality:** public bodies must conform to European Community and other legal requirements.
- xi. **Responsiveness:** public bodies should endeavour to meet the aspirations, expectations and needs of the community served by the procurement.
- xii. **Transparency:** public bodies should ensure that there is openness and clarity on procurement policy and its delivery.

Annex B

The Roles and Responsibilities of the Procurement Board

- (i) further development of the overarching public procurement policy for Northern Ireland Departments, their agencies and relevant Public bodies;
- (ii) establishing the strategies and objectives for implementing the procurement policy, including PPP and PFI;
- (iii) directing matters of public procurement policy and strategy and making recommendations where appropriate to it;
- (iv) ensuring adherence to legal obligations (including the implications of the Human Rights Act 1998 for procurement) and future development of EC legislation as they relate to procurement in the wider public sector;
- (v) approving and monitoring the business plan and performance of Central Procurement Directorate;
- (vi) approving strategic targets for procurement performance, and monitoring progress against those targets, including the development of e-procurement;
- (vii) ensuring that procurement policy pays due regard to the requirements of wider policy commitments, including equality, New TSN and environmental standards;
- (viii) monitoring implementation of procurement policy; and
- (ix) liaison with OGC in accordance with the obligations mentioned in the Concordat on Co-ordination of EU, international and Policy Procurement.

Presentation of Slides

Department of Finance and Personnel
Central Procurement Directorate

**Procurement Practice in Northern Ireland
Minimising the Risks –
Maximising the Benefits**



1



Department of Finance and Personnel
Central Procurement Directorate

Presentation overview

- Overview of the Structure of Public Procurement
- The legislative Framework
- Potential Risks
- Potential Benefits

2

Department of Finance and Personnel
Central Procurement Directorate

Who are we?

- CPD is a Division within the Department of Finance and Personnel (formed on 1 April 2002), and responsible for:
 - Development of Public Procurement Policy, Best Practice and Performance
 - Support to the Procurement Board
- and
- Procuring Goods/Services/Works for Northern Ireland Departments, Agencies, NDPBs and Public Corporations

Estimated Total Central Government Spend on Goods/Services/Works £1.98

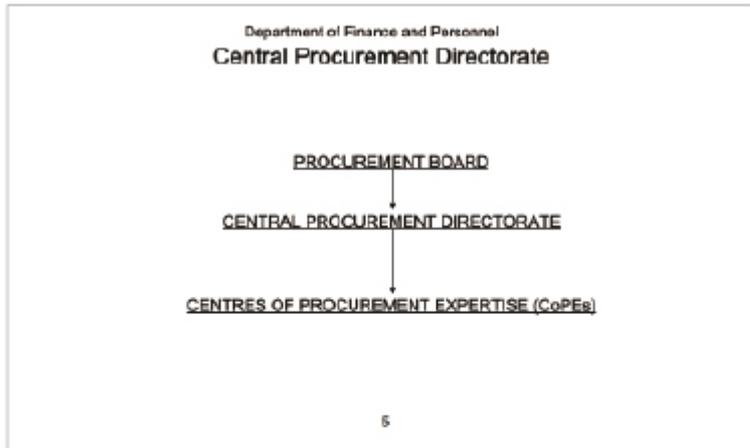
3

Department of Finance and Personnel
Central Procurement Directorate

Aims of Public Procurement Practice

- Compliance with Regulations
- Best Value for Money
- Open and Transparent Competitions
- Integration with wider Executive Policies
(e.g. Equality & Sustainable Development)

4



- Department of Finance and Personnel
Central Procurement Directorate
- Procurement Board**
- Minister for Finance and Personnel (*Chair*);
 - All Northern Ireland Permanent Secretaries;
 - Treasury Officer of Accounts;
 - Two External Appointees;
 - Director of CPD;
 - Representatives from NIAO & SIB (*observers*).
- 6

Department of Finance and Personnel
Central Procurement Directorate

Centres of Procurement Expertise (CoPEs)

- Central Procurement Directorate
- Health Estates
- Regional Supplies Services
- Education and Library Board
- NI Water
- Roads Service
- Northern Ireland Housing Executive
- Translink

7

Department of Finance and Personnel
Central Procurement Directorate

12 GUIDING PRINCIPLES

- Accountability
- Consistency
- Efficiency
- Integration
- Legality
- Informed Decision Making
- Competitive Supply
- Effectiveness
- Fair Dealing
- Integrity
- Responsiveness
- Transparency

8

Department of Finance and Personnel
Central Procurement Directorate

- Three types of regulated procurements : works, supplies, services (NB utilities and remedies)
- Regulated by European Directives (UK Regulations); revised 2006

So what's new?

- Consolidation
- Clarification on selection processes, e-procurement, framework competitions
- New rules on debriefing

11

Department of Finance and Personnel
Central Procurement Directorate

Who do the rules apply to?

- All public sector bodies (PSBs) which are largely owned, managed or funded by public funds

What do PSBs have to do?

- Give advance notice of contracts (OJEU)
- Advertise contracts (*£90.3K Goods/Services - £3.4M Construction*)
- Choose an appropriate award process
- Prescribe specifications, no discrimination
- Choose award criteria, provide info on award

12

Department of Finance and Personnel
Central Procurement Directorate

Obligations of Public Bodies

- Comply with all EU obligations, apply all relevant law

Non-Compliance?

- Failing to advertise contract, 'buying local' with no competition, excluding bidders with no due cause, writing specifications to favour particular bidders

Consequences?

- Legal action in the High Court before and after the award of contract, injunctions, judicial review, remedies via the European Commission

13

Department of Finance and Personnel
Central Procurement Directorate

High Court Action

- Any dissatisfied tenderer has the right to take legal action.
- Courts can stop the contract award, amend documents, award damages
- Not frequently utilised to date
- Harmon case (£10 million)
- Judicial Review
- FOI Act; disclosure of documentation (Central Parking Systems Ireland Ltd)

14

Department of Finance and Personnel
Central Procurement Directorate

Complaints to the European Commission

- Shifts the risk
- Action taken against the UK (liaison body – HM Treasury)
- May end up before the ECJ
- ECJ has power to 'set aside'; damages sought
- Fines substantial; costs would come out of NI block grant
- Landmark ruling in ECJ: Alcatel case, UK and Ireland now under investigation

16

Department of Finance and Personnel
Central Procurement Directorate

What are the main risks?

- Legal Action – Local/EU
- Loss of EU funding
- Delays in major projects
- Consequences for inward investment

16

Department of Finance and Personnel
Central Procurement Directorate

How can we maximise benefits?

- Benefits of centralised procurement in NI;
- Skilled procurement & professional staff;
- Benefits of true competition
- Develop key sectors - capacity & capabilities;
- Knock-on positive effects for local suppliers;
- Continue VFM gains & efficiency savings.

17

Department of Finance and Personnel
Central Procurement Directorate

Conclusion

- Technical and complex area of law
- Developing and evolving management science
- Opportunities to source new and better products
- *Three essential elements: openness and transparency, genuine competition, no unlawful discrimination*

18

Construction Industry Forum for Northern Ireland – Procurement Task Group

Summary Paper for DFP Committee Meeting on 29 April 2009

Background

1. In response to the economic downturn the Minister announced the formation of a Construction Industry Forum for Northern Ireland, Procurement Task Group in the Assembly on the 15 December 2008.

2. The Procurement Task Group (PTG) met on the 17 December 2008 and on five further occasions during the period January to March 2009.

Membership

3. The PTG is chaired by Des Armstrong, Director – Central Procurement Directorate and includes representation from the Government Construction Clients Group (GCCG) and the Construction Industry Group for Northern Ireland (CIGNI). GCCG is represented by those clients, which also act as Centres of Procurement Expertise (CoPEs) involved in construction procurement. CIGNI is represented by nominees from the Professional College, Contractors College and the Specialist Sub-contractors' College. (A full list of PTG members is included at Annex A.)

Terms of Reference

4. The PTG was constituted to develop practical principles to be applied to future construction procurement activity undertaken by all bodies governed by Northern Ireland Public Procurement Policy. In particular, PTG has considered how to:-

(i) further develop the partnership between Government and the construction industry;

(ii) facilitate the delivery of projects to the marketplace as quickly as possible;

(iii) deliver best value for money projects that meet the sustainability objectives set out in the Programme for Government; and

(iv) provide wider stakeholders with confidence that the procurement process is modern, robust and fair.

(The full Terms of Reference are included at Annex B.)

Progress to Date

5. The Task Group has made significant progress and an interim report was presented at a CIFNI meeting on 9 April, which was attended by the Minister. The interim report (attached at Annex C) includes seven key principles to be applied to future public sector construction procurement. The principles aim to:

(i) enhance the visibility of Government construction procurement opportunities to facilitate industry workload planning;

(ii) provide recurrent opportunities for enterprises of all sizes;

(iii) maximise the opportunities for enterprises to benefit from public sector construction contracts through participation in the supply chain;

(iv) reduce the cost and timescale of the pre-qualification process for the selection of tender short-lists;

(v) reduce tender bid costs;

(vi) deliver projects that represent best value for money; and

(vii) reduce the likelihood of a legal challenge.

6. In addition to the seven principles, the interim report includes some 25 actions with dates for implementation. Whilst some of these actions can be introduced with immediate effect, it is acknowledged that full implementation will require further detailed development work. It is therefore proposed that a number of CIFNI Working Groups be established to complete this further work and that the actions be introduced in an incremental manner and in full by December 2009.

7. In recognition of their importance to the local economy, a number of these actions are specifically targeted at SMEs, both as main contractors and as partners in the supply chain.

8. The Task Group also considered the most appropriate procurement and contract strategies that should be adopted by the public sector. They concluded that Framework Agreements have the potential to deliver better value for money than stand-alone contracts. Frameworks, both single-provider and multi-provider, have therefore been endorsed by the Task Group for the procurement of construction works and services.

completion of the final report

9. Since the CIFNI meeting on the 9 April detailed discussions have taken place among PTG members with a view to finalising the report for endorsement by the Procurement Board at its meeting on 7 May 2009.

(Two of the issues to be finally agreed are the number of contractors that should be included in tender lists and the number/value of projects to be included in a single provider framework.)

10. Subject to the approval of the Procurement Board, it is intended that the report will be signed by Des Armstrong and Colin McCarthy, Chairman of CIGNI, in recognition of CIGNI and GCCGs' commitment to implement the proposals and to work together in a spirit of mutual trust and co-operation.

Membership of Procurement Task Group

Central Procurement Directorate:

Chair Des Armstrong
 Gary McCandless
 Sid Fairfield
 Stewart Heaney

Construction Industry Group:

Professional Colin Shaw
College

 Colin McCarthy
 George Coulter

Specialist Sub- Alfie Watterson
Contractors College

 George Stewart
 or other deputy

Contractors College John Armstrong

Enda Brady

Daniel Dixon

Eugene McKenna

Mark Lowry

CIG Executive
Secretary

Ciarán Fox

Government Clients:

NIHE Trevor Neill

Eugene

DE Rooney/Stephen
Creagh

DRD Roads Bob Cairns

DHSSPS
Health Estates Eddie Brett

NI Water Trevor Haslett

Translink Clive Bradberry

Procurement Task Group - Terms of Reference

Background

The Minister for Finance and Personnel has requested that a Procurement Task Group be constituted to develop practical solutions that will:-

- further develop the partnership between Government and the construction industry;
- facilitate the delivery of projects to the market place as quickly as possible;
- deliver best value for money projects that meet the sustainability objectives set out in the Programme for Government; and
- provide wider stakeholders with confidence that the procurement process is modern, robust and fair.

Terms of Reference

The Task Group will consider the issues listed below and, where appropriate, make recommendations to CIFNI in April 2009:-

- Review and disseminate the list of public sector projects, provided by Government Construction Clients, that are scheduled to move forward to the market place over the next three months in order to build confidence in the construction sector that there will be a flow of work in the short term.
- Agree the principles to be applied to future construction procurement activity undertaken by all bodies governed by NI Public Procurement Policy. This process will take into account:-
 - recent legal judgements
 - value for money

- the needs of the local construction industry
- bid costs
- the transparency and degree of certainty of deal flow
- sustainability requirements/whole life costing
- Consider how to maximise the opportunities for small contracting firms to bid for, or benefit from, public sector construction contracts.
- Consider the introduction of an independent early warning system for procurement queries and an alternative dispute resolution procedure that would mitigate the need for legal action.
- Provide feedback on the project and programme monitoring process operating through the Online Tracking System.

Annex C

Interim Report for Discussion
at CIFNI on 9 April 2009

Procurement Task Group Report

x April 2009

The Government Construction Clients Group (GCCG) and the Construction Industry Group for Northern Ireland (CIGNI) have agreed that the following principles will be applied to future construction procurement activity undertaken by all bodies governed by Northern Ireland Public Procurement Policy^[1].

Principle 1 – Visibility of opportunities

Aim:

Provide the construction industry with up-to-date information on progress on construction works and services contracts that are in the process of coming to the marketplace. This will facilitate workload planning by providing the industry with visibility of forthcoming opportunities for consultants, main contractors, sub-contractors and supply sectors of the industry.

Actions:

Until the Investment Strategy for Northern Ireland (ISNI) information website is launched, Central Procurement Directorate will continue to provide the construction industry with a composite monthly update report, based on information provided by Government Construction Clients.

Target Date

Currently in place

Launch the ISNI information website and ensure that Departments update the data on a monthly basis to provide the construction industry with online access to Departments' approved investment plans. For each project, the website shall include details of the construction related contracts including their value, programme and procurement route.

Launch date to be announced

Principle 2 – Recurrent opportunities to bid

Aim:

Procurement and contract strategies to be structured in a way that provides recurrent opportunities for enterprises of all sizes to bid for construction related public sector contracts.

Actions:

Target
Date

Government Construction Clients will procure construction works, and where appropriate services, using one or more of the following contract strategies:

on an individual project basis;

as a bundle of projects to be completed as part of a single contract;

as a bundle of projects to be completed as part of a single-provider framework agreement;

Future
contracts

through a multi-provider framework agreement for projects of a dissimilar nature;

as part of a term contract (for minor works/maintenance projects).

An explanation of the key features of each of these contract strategies is set out in Appendix 1.

Joint Ventures – a CIFNI working group will consider how procurement processes currently accommodate applications from joint ventures. The group will seek to ensure that Government Construction Clients have processes in place that allow smaller enterprises to come together to genuinely compete against applications from a single entity.

30 June
2009

Financial Standing – a CIFNI working group will consider the current minimum standards for economic and financial standing for contracts of various values and complexity. The group will seek to ensure that the minimum standards set by Government Construction Clients do not exclude small and medium sized enterprises (SMEs) from being short-listed to tender for contracts that they are capable of completing.

30 June
2009

Develop SMEs – a CIFNI working group will consider how SMEs can be given further opportunities for growth through participation in public sector construction contracts. The group will seek to ensure that the minimum standards set by Government Construction Clients for technical and professional ability do not exclude SMEs from being short-listed to tender for contracts on the basis of them not having experience of identical work when they have other relevant experience.

30 June
2009

Principle 3 – Supply chain practice

Aim:

In recognising that not all enterprises will be in a position to contract directly with the public sector, Government Construction Clients will seek to maximise the opportunities for those enterprises to benefit from public sector contracts through participation within the supply chain.

Actions:

Target Date

Government Construction Clients to proactively manage contracts to ensure main contractors deliver on their commitments to:-

openly advertise supply chain opportunities;

administer subcontract tender processes in a fair and transparent manner that represents best value for money;

use subcontract conditions that are fair and reflect the terms and conditions of the main contract;

Future
contracts

adhere to the 'Code of Practice for Government Construction Clients and their Supply Chains' ; and

provide Government Construction Clients with open book access to supply chain accounts to allow payment progress through the supply chain to be periodically verified.

Fair Payment – a CIFNI working group will consider expanding the 'Code of Practice for Government Construction Clients and their Supply Chains' to include:-

a 'Fair Payment Charter'; and

a requirement that first tier subcontractors provide 360° feedback directly to the Government Construction Client on monthly payment progress from the main contractor through the supply chain.

31 Dec
2009

The group will seek to ensure that all subcontractors benefit from fair and transparent payment practices, which are essential to underpinning successful integrated working on construction projects.

Principle 4 – Effective and efficient pre-qualification process

Aim:

To reduce the costs for enterprises submitting Pre-Qualification Questionnaires (PQQ) by ensuring that PQQs are consistent, proportionate to the size and complexity of the contract and structured in a way that facilitates all enterprises which have the required capacity and capability.

Actions:

Target
Date

Efficient Pre-Qualification process – a CIFNI working group will consider if the resources required by enterprises to complete Pre-Qualification Questionnaires (PQQs) for numerous individual projects can be reduced. The group will seek to explore how Government Construction Clients could:-

Reduce the number of questions within the PQQ;

31 July
2009

Use a PQQ, or parts of a PQQ, for selection for more than one project; and

Reduce the time given to suppliers to submit PQQs and the time required for assessment in order to bring work to the marketplace more quickly.

Standardised Pre-Qualification Questionnaire (PQQ) – a CIFNI working group will consider those parts of a PQQ that could be common to all contracts. As far as practicable, the group will seek to develop a standardised PQQ template for use across all Government Construction Clients. 31 Dec 2009

Pre-Qualification Questionnaire (PQQ) Health and Safety section – a CIFNI working group will consider how Government Construction Clients' duties under the Construction (Design and Management) Regulations (Northern Ireland) 2007 could be fulfilled using a more streamlined health and safety section within the PQQ. The group will seek to reduce the number of health and safety related questions in the PQQ. 31 Dec 2009

Registration with Constructionline and e-sourcingNI – a CIFNI working group will:-

Review the role of Constructionline within public sector construction procurement processes; and 31 Oct 2009

Promote awareness of the roll-out of the e-sourcingNI, electronic tendering system, across all Centres of Procurement Expertise (CoPEs).

Principle 5 – Effective and efficient tender process

Aim:

Reduce the cost for contractors tendering for public sector construction contracts

Actions:

Target Date

Number of firms short-listed for invitation to tender – in order not to unnecessarily burden the construction industry, Government Construction Clients will short-list the minimum number of firms for invitation to tender sufficient to ensure adequate competition. Normally this will mean five, or up to a maximum of six, tenderers will be short-listed per contract. Future contracts

Government Construction Clients will, as far as practicable, avoid the use of single stage design and build contracts for projects where the cost of developing the design from feasibility stage would place a significant cost burden on tenderers. Future contracts

CIGNI recognises and supports the benefits of early contractor involvement. Where design and build is the preferred procurement route, Government Construction Clients will develop the project outline design (typically to RIBA stage C, D or E – dependent on the nature and complexity of the project) prior to the appointment of the design and build team in order to reduce tender bid costs. Future contracts

For other procurement methodologies Government Construction Clients will consider developing the design (typically to RIBA Stage D) in order to reduce tender bid costs. Future contracts

Principle 6 – Best value for money

Aim:

Construction Procurement must represent best value for money

Actions:

Target Date

Contracts should not be awarded solely on lowest price. Contract awards based on lowest price can incentivise tenderers to underbid to win work and rely on variations to make a profit. It can also result in a reduction in the quality of the finished product and undermine the additional social, environmental and economic benefits of the project. Contract awards based on lowest price also tend to lead to a fractious relationship between the Government Construction Client and the contractor. In support of best value for money, contracts should be awarded on the basis of the Most Economically Advantageous Tender (MEAT).

Future contracts

In determining MEAT, Government Construction Clients will undertake a comprehensive evaluation of tenders against predetermined quality and price criteria linked to the subject matter of the contract. The quality score will be evaluated on the merits of the tenderer's proposals and how they will add value to the project. The Contractor will be required, by the terms of the contract, to deliver on the proposals set out in its quality/price submission.

Currently included in contracts

Where a tender price is considered to be abnormally low, the Government Construction Client will take all reasonable steps to ensure that it is satisfied that all contractual requirements can be met for the tender price prior to award. Where a tenderer is concerned that a contract is to be awarded at an abnormally low price it will raise its concerns with the relevant CoPE, at Director level.

Future contracts

The construction industry will deliver high quality infrastructure projects on behalf of Government Construction Clients. In particular, contractors will commit to:

- delivering those CIFNI proposals for promoting equality and sustainable development included by Government Construction Clients as contractual requirements; and
- providing the Government Construction Client with a monthly progress report on the implementation of the CIFNI proposals on each contract.

Currently included in contracts

Principle 7 – Reduce likelihood of legal challenge

Aim:

Construction procurement should be structured in away that reduces the likelihood of a legal challenge

Actions:

Target Date

Compliance with best practice – where a procurement exercise is considered not to have followed:-

- the principles contained with the ' Code of Practice for Government Construction Clients and their Supply Chains' (set out in Appendix 2); and
- the principles set out in this report, then

Future contracts

CIGNI will raise this issue with the Director of the relevant CoPE. Where a Government Construction Client persistently fails to comply with these

principles, Central Procurement Directorate will work with them to share best practice and improve their processes.

Dispute Avoidance/Resolution – a CIFNI working group will develop an early warning system for potential disputes and an alternative dispute resolution procedure that will mitigate the need for legal action. The group will seek to ensure that the dispute resolution procedure developed is sufficiently robust to allow CIGNI to endorse and fully support the agreed process. 31 Oct 2009

Improving Processes – by standardising the pre-qualification process there should be less likelihood, across the wide range of Government Construction Clients, of an individual competition not following Government construction procurement policy.

Maximising opportunities – by providing recurrent opportunities for contractors of all sizes to bid for public sector contracts, the incentive to challenge a procurement process should be reduced. Future contracts

Conflict of interest – where a consultant is appointed directly, or as part of a team, by a Government Construction Client to progress a project to tender stage, the Government Construction Client shall exclude the consultant from forming part of the design and build team on the basis of the potential for a conflict of interest to arise. Future contracts

An explanation of the key features of each of the contract strategies set out in Principle 2(a).

2(a)(i) Procurement on an individual project basis

Larger projects will normally be procured as individual projects.

2(a)(ii) Procurement of a bundle of projects as part of a single contract.

Where two or three projects of a similar nature are to be procured simultaneously then these projects may be bundled together as a single contract.

2(a)(iii) Procurement of a bundle of projects as part of a single-provider framework agreement.

In those market sectors where projects of a similar nature reoccur, Government Construction Clients will, where appropriate, procure capital building works using single-provider framework agreements.

Each framework agreement could include up to five projects totalling any value up to a maximum of c£75m. The projects could be selected by geographic location, value, or other factors deemed relevant by the Government Construction Client.

Normally five or up to a maximum of six contractors would be short-listed to tender for the first project. The contractor providing the MEAT for the first project would be appointed to the framework agreement and would be awarded the first project. The contractor's performance would be monitored using Key Performance Indicators (KPIs), relevant and proportionate to the size and complexity of the project.

Provided its performance is satisfactory, the contractor would be awarded projects two to five without further competition on a project by project basis. Value for money would be assured through indexation and by building in efficiency savings.

Certainty of workflow for the individual contractor will allow effective investment and cost saving measures to be made.

Operation of a framework agreement on this basis would be dependent on the development of a robust pricing mechanism compliant with the Public Contracts Regulations 2006.

2(a)(iv) Procurement using a multi-provider framework agreement for projects of dissimilar nature

It is recognised that for some diverse market sectors, such as those where Central Procurement Directorate acts as the CoPE, there is limited recurring need for projects of a similar nature. A single provider framework agreement may not therefore be appropriate as the initial project may not reflect the nature and work content of projects two to five.

Government Construction Clients should consider establishing a number of multi-provider framework agreements of limited duration. The value of the framework agreement should normally be limited to c£50m per provider (ie c£250m for a framework agreement with five providers). This approach would mean that unsuccessful contractors would have further opportunities to bid for a larger number of smaller framework agreements as part of the regular (normally 2 to 3 year) framework agreement renewal process.

With multiple providers included in the framework agreement, value for money would be assured through secondary competitions, despite the varying nature of the work.

This form of framework agreement would provide considerable savings in cost and time by:-

- (i) removing the need for pre-qualification for each project;
- (ii) transferring learning from one project to another;
- (ii) improving working relationships;
- (iv) providing continuous workflow; and
- (v) speeding up the procurement process.

Operation of a framework agreement on this basis would be dependent on the development of a robust pricing mechanism compliant with the Public Contracts Regulations 2006.

2(a)(v) Procurement using a term contract (for minor works/maintenance projects).

Term contracts will be used to deliver maintenance and minor works where the delay and cost of continuous repetitive tendering would be prohibitive.

The 'Code of Practice for Government Construction Clients and their Supply Chains' requires Government Construction Clients to be consistent to the Code of Practice principles in their dealings with their supply chains.

Government Construction Clients will, in turn, expect their supply chains to apply the Code principles in the dealings between supply chain partners.

The Code encapsulates the twelve guiding principles that are the basis of Northern Ireland's public procurement policy and the three further principles suggested by the construction industry.

Code of Practice Principles

1. Transparency – to achieve openness in policy and its delivery.
2. Competitive Supply – to procure using competitions unless there are convincing reasons to the contrary.
3. Consistency – to ensure that supply chains can expect that procurement policy will be consistent across the public sector.
4. Effectiveness – to meet the commercial, regulatory and socio-economic goals of Government in a balanced manner appropriate to the procurement requirement.
5. Efficiency – to ensure that all procurement processes are carried out as cost effectively as possible.
6. Fair Dealing – to treat supply chains fairly, including protecting commercial confidentiality where required, and not to impose unnecessary burdens or constraints on suppliers or potential suppliers.
7. Integrity – to ensure that there is no corruption or collusion with supply chains or others.
8. Informed Decision-Making – to base decisions on accurate information and monitor requirements to ensure that they are met.
9. Legality – to conform to EU and other legal requirements.
10. Integration – to pay due regard to Government's other economic and social policies rather than cut across them.
11. Responsiveness – to endeavour to meet the aspirations, expectations and needs of the community serviced by the procurement.
12. Accountability – to ensure that effective mechanisms are in place to enable Accounting Officers and their equivalents in other bodies to discharge their responsibilities on issues of procurement risk and expenditure.
13. Plus three additional principles
14. Selection – to ensure that supply chains are selected on the basis of the optimum combination of whole life cost & quality (or fitness for purpose) to meet the customer's requirements.
15. Incentivise – to ensure that supply chains are remunerated in a way that encourages them to deliver good quality construction work on time and to budget.
16. Conditions of Contract – to ensure that the Conditions of Contract support teamwork and partnering.

In signing this report the Construction Industry Group for Northern Ireland and the Government Construction Clients Group commit to:-

(i) implement the principles in this report; and

(ii) work together in a spirit of mutual trust and co-operation, in order to deliver high quality public sector construction projects in Northern Ireland.

Colin McCarthy Chair Construction Industry Group for Northern Ireland	Des Armstrong Chair Government Construction Clients Group
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[1] Includes Departments, Agencies, Non-Departmental Public Bodies and other organisation that are financed mainly (ie by more than 50%) by the public sector - herein thereafter referred to as 'Government Construction Clients'.

Small and Medium Sized Enterprises Access to Public Procurement Opportunities

From: Norman Irwin

Date: 15 May 2009

Summary

Business Area: Central Procurement Directorate

Issue: This paper outlines the progress on measures aimed at making public procurement opportunities more accessible by SMEs

Restrictions: N/A

Action Required: To note

Background

A key objective of the Northern Ireland Sustainable Procurement Action Plan is to increase access to public sector procurement opportunities for SMEs and SEEs through the public tender process or participation in supply chains.

With Small and Medium sized Enterprises (SMEs) accounting for some 99.7% of all businesses in Northern Ireland, Central Procurement Directorate (CPD) and the Centres of Procurement Expertise (CoPEs) recognise their importance in the provision of goods, works and services to the public sector. CPD has been working with both SMEs and Social Economy Enterprises (SEEs) to break down any barriers to tendering and encourage more SMEs to compete for government contracts.

Current measures

Visibility of opportunity

Following the Review of Public Procurement, which reported in 2002, Departments, their Agencies and Non-Departmental Public Bodies, have in place Procurement Control Limits (PCLs) for the procurement of goods, works and services. The PCLs recommended the optimum level of market exposure required to ensure that the transaction cost of procurement procedures is efficient, whilst maintaining a sufficient level of supplier sourcing to achieve value for money through competition. The PCLs currently require all procurement opportunities estimated to exceed £30K^[1] to be publicly advertised. These limits apply to all public sector procurement covered by Procurement Policy^[2].

When selecting suppliers to be invited to submit a tender for construction related procurements below the £30k threshold, CoPEs agreed with the construction industry that Constructionline would be used to select the suppliers to be invited to tender. Background information on Constructionline is included at Annex A.

When selecting suppliers to be invited to submit a tender for procurements above £30k and below the EU threshold (currently £90k for goods & services and £3.5m for works) the procurement opportunity is placed on the website of the CoPE responsible for the procurement. (For construction related procurement, suppliers are also required to be registered with Constructionline or equivalent)

CPD also places a weekly advertisement in the Belfast Telegraph, Irish News and Newsletter highlighting all current procurement opportunities available and the need to visit CPD's website for more details. In addition, there are electronic links from CPD's website to all other CoPE's websites.

Where a contract is estimated to exceed the EU threshold, it is a requirement under the Public Contracts Regulations 2006 that the opportunity must be advertised in the Official Journal of the European Union (OJEU). All opportunities published in OJEU are accessible from the OJEU website. Once the opportunity has appeared in OJEU it is replicated on the relevant CoPE's website.

Joint venture and supply chain opportunities

CPD and the CoPEs encourage SMEs to join together as consortia to bid for contracts. To support SME participation, procurement opportunities are structured so that smaller enterprises can come together to compete against applications from a single entity.

It is also recognised that not all organisations will contract directly with the public sector and that some SMEs will look for opportunities within the supply chains that will be formed by successful tenderers. For this reason, CPD has included within the 'Contractors' quadrant of the Northern Ireland Sustainable Procurement Action Plan (SPAP) an action that requires main contractors to publish opportunities for sub-contracting within their supply chain on their website and/or, where appropriate, in the local Press.

A Sustainability Task Group, acting under the auspices of the Construction Industry Forum for Northern Ireland (CIFNI) has also developed 'Proposals for Promoting Equality and Sustainable Development by Sustainable Procurement in Construction'. These proposals, included in new public sector construction contracts from December 2008, require main contractors to sign up to a 'Code of Practice for Government Construction Clients and their Supply Chains'. This Code requires main contractors to deal fairly with their subcontractors and wider supply chain thereby encouraging SMEs to seek sub-contract opportunities.

Support and guidance

Central Procurement Directorate (CPD) provides support to both SMEs and SEEs and has regular engagement with representative and lead bodies from both groups. The purpose of this engagement is to help SMEs and SEEs by increasing their understanding of the procurement process through, for example, supporting 'meet the buyer' events.

CPD has also published a guidance document 'Public Procurement – a guide for small and medium sized enterprises' for SMEs and SEEs seeking to do business with the public sector. A companion guide has also been published for public sector purchasers ('Public Procurement – removing the barriers to SMEs') which outlines steps to help remove barriers faced by these suppliers. This guidance is available on CPD's website.

More recently CPD published guidance on the integration of 'Equality of Opportunity and Sustainable Development into Public Sector Procurement' which provides advice on how Contracting Authorities might achieve sustainable outcomes, including increased access for SMEs through procurement.

In addition, individual suppliers can request information and clarification on specific tenders from CPD and are routinely offered feedback on the quality of their tenders following the completion of tender competitions. The purpose of this feedback is to assist individual SMEs or SEEs to compete more effectively for future opportunities.

e-SourcingNI

CPD introduced an e-SourcingNI web portal in May 2008 to manage CPD's procurement opportunities. Up to March 2009, approximately 4,400 suppliers registered on the system of which over 60% have self-designated as SMEs. During that period, 564 procurement opportunities were managed using the system and 2045 tenders were submitted electronically.

The e-SourcingNI portal:-

- Provides a one stop shop for all CPD procurement opportunities;
- Is accessible 24hrs/7days per week; and
- Has on-line & telephone help lines.

SEEs who have registered on eSourcingNI, will have opportunities to compete for public sector contracts. Public sector buyers will also shortly be able to identify goods and services supplied by SEEs allowing, where appropriate, low value competitions to be directed to this sector.

Next steps

General procurement

The Procurement Board in December 2008 approved the use of e-SourcingNI as a single sourcing tool for all the existing CoPEs in Northern Ireland. All CoPEs should be using this common portal by early 2010.

CPD is planning to extend the functionality of the e-sourcingNI portal to include the facility to register, free of charge, company details and allow this data to be maintained for use on any tender documentation submitted via the portal [ie one-stop-shop for company details].

Construction - work load planning

The Strategic Investment Board (SIB) and CPD have developed a Delivery Tracking System (DTS) for major ISNI projects. The DTS provides a platform, to record delivery progress from pre-tender to completion.

The DTS was rolled out to all Departments and related public bodies in October 2008. This followed substantive completion of technical design of the system by SIB and initial training of public sector users.

Over 500 projects are currently logged on the DTS. A number of departments are currently reviewing and updating project/programme details on the system and implementing procedures to embed the DTS in their business planning processes.

In order to provide the construction industry with up-to-date information on the progress of construction works and services contracts that are in the process of coming to the marketplace an ISNI information portal has also been developed to provide the general public, and in particular the construction industry, with detailed, up to date information drawn from the DTS. Information held includes departmental ownership, the number and nature of projects, timeline for delivery and project costs. This information will facilitate SME workload planning by providing the industry with visibility of forthcoming opportunities for consultants, main contractors, sub-contractors, specialist contractors and the supply sectors.

OFMDFM have provisionally planned to launch the ISNI information portal on 11 June 2009, at a Construction Employers Federation procurement conference which is being supported by CPD and SIB.

Construction - Procurement Task Group report

In recognition of the importance of SMEs to the local economy the CIFNI Procurement Task Group (PTG) has also considered how to further maximise the opportunities for SMEs to bid for, or benefit from, public sector construction contracts, both as main contractors and as partners in the supply chain. The PTG Report includes a number of actions, to be taken forward by CIFNI working groups, specifically aimed at addressing issues relating to SMEs. The Actions are included as Annex B.

The PTG Report was approved by the Procurement Board at its meeting on 7 May 2009.

Annex A

Constructionline

Constructionline is the UK's register of local and national construction and construction-related suppliers who are pre-qualified to work for public and private sector buyers. It is owned by the Department for Business, Enterprise & Regulatory Reform and supported by the Office of Government Commerce and the Department of Communities and Local Government.

Its aim is to provide efficiency savings to public and private sector procurers and the construction industry as a whole by streamlining procurement procedures. Constructionline was established in response to recommendations in Sir Michael Latham's 1994 Report, 'Constructing the Team' and Sir John Egan's 1998 Report, 'Rethinking Construction'.

Its procedures follow Government's current understanding of EU public procurement legislation and it is managed in accordance with a strict interpretation of the legal framework applicable to pre-qualification, thereby reducing associated risks for procurers.

In March 2002, the Northern Ireland Executive agreed that Constructionline (or a body who carries out an equivalent certification function) should be used to pre-qualify contractors for all contracts above £30k and below the Public Contracts Regulations 2006 ("EU Regulations") threshold.

Benefits of Constructionline

The primary purpose of Constructionline is to remove the need for suppliers to submit to each client buyer, contract-by-contract, pre-qualification information and supporting documents, thus reducing the administrative burden of repeatedly filling in pre-qualification questionnaires.

When selecting suppliers to be invited to submit a tender for procurements below the £30k threshold, the Construction Industry Forum for Northern Ireland agreed, in June 2006, that Constructionline should also be used to generate automatically a transparent and auditable list of appropriate pre-qualified contractors to be invited to tender. This means that registration with Constructionline may also provide contractors with tender opportunities.

For works contracts above 30k and below the EU Regulations threshold the public sector does not require contractors to submit details that are available from Constructionline e.g. details of their financial standing, professional conduct, etc. This reduces the resources required by contractors to complete pre-qualification questionnaire forms for public sector procurement competitions. It also means that public sector procurement staff do not need to reassess this information, providing time and cost savings, and freeing up staff for other work.

Registration Process

To join Constructionline suppliers have to register once and then provide renewal information annually, freeing up valuable resources that can be used to deliver more efficient and effective services. This information is assessed to a common, transparent standard, and buyers should only need to request project-specific information on additional criteria where required.

Constructionline is completely free of charge for public sector buyers to use and for a supplier the cost of registering with Constructionline depends on yearly turnover, as set out in the table on the following page.

Yearly turnover	Annual Constructionline Fee (excluding VAT)
£0 to £249,999	£90
£250,000 to £999,999	£230
£1,000,000 to £1,999,999	£390
£2,000,000 to £4,999,999	£440
£5,000,000 to £19,999,999	£650
£20,000,000 to £49,999,999	£950
£50,000,000 and above	£1,380

Annex B

Examples of actions from the PTG Report that relate to SMEs

Action

Joint Ventures – a CIFNI working group will consider how procurement processes currently accommodate applications from joint ventures. The group (2a) will seek to ensure that Government Construction Clients have processes in place that allow smaller enterprises to come together to genuinely compete against applications from a single entity.

Financial Standing – a CIFNI working group will consider the current minimum standards for economic and financial standing for contracts of various values and complexity. The group will seek to ensure that the minimum standards set (2b) by Government Construction Clients do not remove the potential for small and medium sized enterprises (SMEs) to be short-listed to tender for contracts that they are capable of completing.

Develop SMEs – a CIFNI working group will consider how SMEs can be given further opportunities for growth through participation in public sector construction contracts. The group will seek to ensure that the minimum (2c) standards set by Government Construction Clients for technical and professional ability do not remove the potential for SMEs to be short-listed to tender for contracts on the basis of them not having experience of identical work when they have other relevant experience.

Fair Payment – a CIFNI working group will consider expanding the 'Code of Practice for Government Construction Clients and their Supply Chains' to include:-

(i) a 'Fair Payment Charter'; and

(3a) (ii) a requirement that first tier subcontractors provide 360° feedback directly to the Government Construction Client on monthly payment progress from the main contractor through the supply chain.

The group will seek to ensure that all contractors and subcontractors benefit from fair and transparent payment practices, which are essential to underpinning successful integrated working on construction projects.

Efficient Pre-Qualification process – a CIFNI working group will consider if the resources required by enterprises to complete Pre-Qualification Questionnaires (PQQs) for numerous individual projects can be reduced. The group will explore and make recommendations on how Government Construction Clients could:-

(4a) (i) Reduce the number of questions within the PQQ;

(ii) Use a PQQ, or parts of a PQQ, for selection for more than one project; and

(iii) Reduce the time given to suppliers to submit PQQs and the time required for assessment in order to bring work to the marketplace more quickly.

Standardised Pre-Qualification Questionnaire (PQQ) – a CIFNI working group (4b) will consider those parts of a PQQ that could be common to all contracts. As far as practicable, the group will seek to develop a standardised PQQ template for use across all Government Construction Clients.

Pre-Qualification Questionnaire (PQQ) Health and Safety section – a CIFNI (4c) working group will consider how Government Construction Clients' duties under the Construction (Design and Management) Regulations (Northern Ireland) 2007

could be fulfilled using a more streamlined health and safety section within the PQQ whilst ensuring that high standards of health and safety are maintained. Registration with Constructionline and e-sourcingNI – a CIFNI working group will:-

- (4d) (i) Review the role of Constructionline within public sector construction procurement processes; and
- (ii) Promote awareness of the roll-out of the e-sourcingNI, electronic tendering system, across all Centres of Procurement Expertise (CoPEs).

[1] In the case of construction related professional services procurement, CoPEs have agreed that all appointments estimated to exceed £5k in value would be publicly advertised. This policy exceeds the requirements set out in the PCLs and was agreed with the construction industry in Northern Ireland through the Construction Industry Forum for Northern Ireland (CIFNI)

[2] NI Procurement Policy applies to Departments, Agencies, NDPBs and Public Corporations. It does not apply to Local Authorities.

DFP - Procurement Issues -
Follow up Response

Assembly Section



Department of
**Finance and
Personnel**
www.dfpni.gov.uk

Craigantlet Buildings
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BT4 3SX
Tel No: 02890 529147
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Mr Shane McAteer
Clerk
Committee for Finance and Personnel
Room 419
Parliament Buildings
Stormont

5 June 2009

Dear Shane

Public Procurement Opportunities for SME's

Background

At its meeting on 20 May 2009, Committee members requested clarification on a number of issues which arose during the evidence session with officials from the Central Procurement Directorate. The clarification is set out below, in the order requested.

1. Copy of IntertradeIreland Report

The report entitled 'All Island Public Procurement Competitiveness Study' has not yet been published by IntertradeIreland. When published, a copy will be forwarded to the Committee.

2 Application of the Public Contract Regulations 2006 to the procurement of social housing

Public procurement in Northern Ireland is governed by the EU Treaty, EU Procurement Directives and the Public Contracts Regulations 2006 (the "Regulations") that implement the Directives in the UK.

The Regulations set out the legal framework for public procurement. They apply when public sector organisations seek to acquire supplies, services, or works. The Regulations also apply to subsidised contracts that are over 50% publicly funded. In such cases, the organisation receiving the funding is in fact deemed a Contracting Authority for the purpose of the application of the Regulations. For example, in the case where a Housing Association receives public funding to procure a social housing scheme, it is the Housing Association on whom the obligation to secure compliance with the Regulations is placed. However, in the event that the Housing Association does not comply with the Regulations, then the Regulations require the funding department to recover the funding provided.

The Regulations set out procedures that must be followed before awarding a contract when its value exceeds set thresholds, unless it qualifies for a specific exclusion e.g. if it is a contract solely for the acquisition of land. Even when a procurement competition is not subject to the Regulations, (for example because the estimated value of a contract falls below the relevant threshold), EU Treaty-based principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality apply.

The case law of the European Community has developed considerably of late, in particular through the Auroux decision of the European Court of Justice (ECJ). This requires that a Contracting Authority look at the main purpose of the transaction to determine whether or not it is a contract that is subject to the Regulations.

In the case of social housing, the transaction is to achieve the development of the site by construction of housing for the Housing Association. The predominant purpose is the construction of housing and not the acquisition of the land. The contract is therefore considered a works contract and the Regulations apply. If the works were not the main objective of the contract, but were incidental to another objective, the Regulations would not apply.

As a result of the Auroux decision, contracts that might have in the past been awarded by Housing Associations to developers to purchase land and design and build the schemes without competition, now appear to be in scope of the procurement rules.

The ECJ ruling is not concerned with the specific type of construction contract used, but rather, it highlights the fact that consideration needs to be given on a case by case basis as to whether the Regulations should be applied to procurement activity of this type. Irrespective of whether the contract is for the design and build of the houses, or relates to a more traditional approach where design and construction are procured separately, the Regulations are likely to apply.

The competition that may result from the application of the Regulations to a particular procurement will be open to all firms with the necessary capability either to tender directly or as part of the developers team, dependent on the procurement route being followed.

3. Number of Northern Ireland SMEs that have been successful in winning contracts procured by CPD

The number of works, supplies and services contracts awarded to Northern Ireland SMEs[1] during 2008/09 are set out in Table 1 below. The table includes all new contracts where CPD was responsible for the procurement, but excludes contracts awarded by other Centres of Procurement Expertise and individual orders issued under existing contracts. Where further breakdown information is available on whether the enterprise is micro (<10 employee), small (<50) or medium sized (<250) this information has been included. The information as to whether an enterprise is micro, small or medium sized has been collated from the self-designations entered by enterprises when registering with either the e-SourcingNI Portal or Constructionline.

Table 1

Contracts awarded by CPD 1 April 2008 – 31 March 2009	Number
Total number of Contracts Awarded Works and services contracts (construction related)	
Total number of contracts awarded	69
Number awarded to Northern Ireland micro businesses	3
Number awarded to Northern Ireland small businesses	6
Number awarded to Northern Ireland medium sized businesses	31
Number awarded to larger Northern Ireland enterprises that are not SMEs	4
Number of works contracts awarded to enterprises registered outside Northern Ireland	9
Number of service contracts awarded to enterprises registered outside Northern Ireland	16
Supplies and Services contracts (Non construction)	
Total number of contracts awarded	279
Number awarded to SMEs	192
Number awarded to larger enterprises that are not SMEs	87

4. Number of Northern Ireland SMEs that have submitted tenders for the CPD Integrated Consultant Team (ICT) framework agreement.

CPD commenced the procurement of a framework agreement for the provision of construction related professional services in March 2009. The competition invited tenders from multidiscipline teams to be returned by 15 May 2009. Each team comprises a team leader and a further seven team members of various disciplines. Preliminary analysis of the tenders has highlighted the statistics set out in Table 2 below.

Table 2

Total number of tenders received	29
Number of tenders submitted by joint ventures	1
Number of Northern Ireland SMEs that submitted tenders	8
Number of enterprises which although not a Northern Ireland SME, have a practice office in Northern Ireland	10
Total number of other individual enterprises included within the 29 multidiscipline teams	83
Total number of other individual enterprises included within the 29 multidiscipline teams that are Northern Ireland SMEs	47
Total number of other individual enterprises included within the 29 multidiscipline teams that are not Northern Ireland SMEs, but have a practice office in Northern Ireland	13

5. Number, value and type of contract awarded over the past 3 years to companies not registered in Northern Ireland.

The number and value of non-construction related supplies and services contracts awarded to companies registered/not registered in Northern Ireland in the three years from 1 April 2005 to March 2008 are set out in Table 3A below.

Table 3A[2]

Period - 1 April 2005 – 31 March 2008

Total number of contracts awarded to companies registered in Northern Ireland	1316
Value of these contracts	£666m
Total number of contracts awarded to companies registered outside Northern Ireland	326
Value of these contracts	£307m

The details of contracts awarded during this period to companies not registered in Northern Ireland are set out in Annex A.

The number and value of construction related works and services contracts awarded to companies registered/not registered in Northern Ireland in the three years from 1 April 2006 to March 2009 are set out in Table 3B below.

Table 3B

Period - 1 April 2006 – 31 March 2009

Total number of contracts awarded to companies registered in Northern Ireland	121
Total Value of contracts awarded	£130.9m
Total number of contracts awarded to companies registered outside Northern Ireland	37
Total Value of contracts awarded	£11.4m

The details of contracts awarded during this period to companies not registered in Northern Ireland are set out in Annex B.

Tables 3A & 3B and Annexes A & B include all new contracts where CPD has been responsible for the procurement, but excludes contracts awarded by other Centres of Procurement Expertise and individual orders issued under existing contracts.

6. Statistics on the use of Constructionline by Northern Ireland SMEs.

Constructionline is the UK's register of local and national construction and construction-related suppliers, pre-qualified to work for public and private sector buyers. The number of Northern Ireland SMEs registered with Constructionline is set out in Table 4 below.

Table 4

	Number
Northern Ireland enterprises registered with Constructionline	1639
Micro businesses	848
Small businesses	630
Medium sized businesses	147
Non SMEs	14

7. Output from the Construction Industry Forum for Northern Ireland (CIFNI) – Working Groups

The Procurement task Group report includes seven key principles and some 25 actions. Whilst some of these actions can be introduced with immediate effect, it is acknowledged that full implementation will require further detailed development work. A number of CIFNI working groups are being established to complete this work before the end of the year. CPD will keep the committee informed of the output of the working groups.

Yours sincerely,



NORMAN IRWIN

Contract Title	Contract Value	Supplier Name	Address	Postal Code
DOE EHS New Survey Grade GPs and Electronic Distance Measuring Equipment	£49,250.00	Leica Geosystems Ltd	Milton Keynes	MK5 8LB
Council Armagh District Photocopiers	£16,332.00	NRG Group Ltd	Birmingham, West Midlands	B7 4AP

DETI NITB Human Resource Management System (HRMS)	£35,000.00	Snowdrops Systems Limited	Oxon	OX28 6FF
Supply, Delivery, and Servicing of a High Output MFP for EHS	£390,000.00	Xerox (Uk) Limited	West Sussex	BN14 8RJ
DEL - Appointment of a CLAS Consultant	£1,740.00	LA International Computer Consultants Ltd	Stoke-On-Trent	ST1 5UB
DEL - IT Health Check Consultant	£5,000.00	Newell & Budge Ltd		EH4 3ER
DARD Liquid Media	£130,000.00	Becton Dickinson	Oxford	OX4 3LY
DFP OBD Provision of Accounting Support	£7,950.00	KPMG	Watford	WD1 1DA
DHSSPS Audit of Statutory Residential Homes for Older People	£85,000.00	KPMG	Watford	WD1 1DA
DHSSPS HPA Sexual Health & Drugs Information Campaigns	£79,927.00	Convenience Advertising	Ireland	
Provision of Advice, Metrics & Benchmarking Services for OBC NICS ICT Service Rationalisation	£90,000.00	Gartner	Dublin 4, Ireland	
SEUPB Consultants to Undertake Article 4 Checks (PEACE II)	£22,500.00	KPMG	Watford	WD1 1DA
DARD - Supply, Delivery and Installation of a Replacement Sonar for RV Corystes	£106,450.00	Simrad Limited	Banffshire	AB56 1UQ
NIAO Supply, Installation and Servicing of MFPs Feb 2005	£32,737.00	NRG Group Ltd	Birmingham, West Midlands	B7 4AP
NICS Government Library Service Library Management System	£136,450.00	Sirsi	Herts	EN6 3JW
OFMDFM NI e-Gov Unit ICT Strategy	£78,339.00	Gartner	Dublin 4, Ireland	
SEUPB Implementing Bodies for PEACE II Programme Extension	£4,168,770.00	Combat Poverty Agency	Islandbridge	Dublin 8
DETI - Events management for Geoparks Conference Sept 2006	£27,498.00	Ultimate Communications	Republic Of Ireland	ROI
DOE EHS LC/MC/MC System	£157,200.00	JVA Analytical Ltd	Dublin 2	ROI
Invest NI - International Image Research	£30,900.00	Promar International	Cheshire	CW1 6ZY

Del - Essential Skills Qualitative Research	£45,738.00	Frontline Consultants	Scotland	FK8 2NN
DETI Sample Preparation and Geochemical Analysis of Stream Sediments	£407,000.00	British Geological Survey	Nottingham	NG12 5GG
DFP BDS Consultancy Support for a Health Check on the PSN (R)	£48,000.00	Newell & Budge Ltd		EH4 3ER
DEL - Verification of Learner Signatures	£10,072.00	KPMG	Watford	WD1 1DA
DCAL Review & Consultation on Strategy for Sport in Northern Ireland	£46,300.00	Genesis	Dublin 2	ROI
DRD Ready Mixed Concrete	£300,000.00	Tarmac Precast Concrete	Clwyd	LL15 2UG
DOE EHS Laboratory Electronic Document & Record Control System	£28,582.00	Ideagen Software Ltd	Derbyshire	DE4 3EJ
Invest NI - Security Systems	£120,000.00	Newell & Budge Ltd		EH4 3ER
NITB - Regional Tourism Partnership for the western Region	£28,615.00	Business Tourism Solutions		EH6 5QG
Invest NI - Trade Advisory Service in Holland	£140,000.00	Kurtz International Marketing + Management B.V	The Netherlands	
DHSSPS IT Networks Health Check	£8,000.00	Newell & Budge Ltd		EH4 3ER
EHS - Scoping Study on Assessing The Condition of Invertebrates on ASSI's	£5,000.00	Dr Keith Alexander	Exeter, Devon	EX1 3AQ
OFMDFM - CLAS Consultancy Support for the NICS EDRM Implementation Project	£10,504.00	Soctim Consulting	Hankelow, Cheshire	CW3 0JA
DETI NITB - Delivery of the Masterclass Series for Tourism Business	£55,100.00	Stark Events	Glasgow	G12 8JJ
DETI NITB - Business Visitor Attitude Survey	£19,350.00	Tourism Development International	Co Dublin	ROI
DEL - CLAS Consultant for OITFET	£2,900.00	LA International Computer Consultants Ltd	Stoke-On-Trent	ST1 5UB
DEL - IT Health Check For OITFET	£4,000.00	Newell & Budge Ltd		EH4 3ER

DOE - The Management of Waste Fridges and Freezers	£600,000.00	M Baker Recycling Ltd	Exeter	EX1 1TL
DOE EHS - DNA Analysis of Irish Red Grouse Feathers	£22,954.00	Dept of Biological Sciences	Milton Keynes , UK	MK7 6AA
CCEA Class Assessment Record Folders and Associated Forms	£32,760.00	Williams Lee	Duncru Industrial Estate	Belfast
DFP - RCA IT Support to Achieve Security Accreditation on a Replacement Project	£20,000.00	Newell & Budge Ltd		EH4 3ER
DETI - CLAS Consultant	£7,500.00	Newell & Budge Ltd		EH4 3ER
NSMC Consultant to Provide Business Case/Economic Appraisal for Joint Secretariat Accommodation	£22,950.00	KPMG	Watford	WD1 1DA
DETI - Energy Legal Advisers	£270,000.00	Simmons & Simmons		EC2Y 9SS
DRD - Consultancy Support on Re-Design + Implementation of Sophus Anti-virus Infrastructure	£7,150.00	Newell & Budge Ltd		EH4 3ER
DCAL Arts Council Building Feasibility Study for Nothern Bank Site, Waring Street	£42,835.00	KPMG	Watford	WD1 1DA
DETI HSENI - Telephone Service	£6,000.00	National Interpreting Service	London	E1 6EP
DE - CESG Check-Based Assessment of De Network Infrastructure	£12,800.00	Newell & Budge Ltd		EH4 3ER
NISRA General Register Office (GRO) Consultant to Review Workload of District Registration Staffing	£40,000.00	KPMG	Watford	WD1 1DA
DCAL- PRONI- Appointment of a CLAS consultant to carry out a CRAMM review	£20,000.00	Newell & Budge Ltd		EH4 3ER
DoE Planning Service - Householder Retail Study for BNMAP 2015	£26,785.00	Roger Tym & Partners		WC2A 2EY
Patient Administration System - iSoft Licensing	£3,146,975.00	iSoft plc	Manchester	M1 6 LT

Invest NI - Benchmarking Tools for the Shared Services and IT Sector	£41,933.00	IBM Business Consulting Service	London	SE1 9PZ
DEL - CMS Health Check	£4,000.00	Newell & Budge Ltd		EH4 3ER
DCAL-Supply of Electrofishing Back Pack	£4,000.00	Electracatch International	Co Dublin	
DHSSPS Environmental Cleanliness Standards in HS Trust Facilities	£80,000.00	KPMG	Watford	WD1 1DA
DVTA - Supply & Delivey of Equipment/Solutions for Roadside Enforcement of Drivers Legislation	£62,350.00	Lisle Design	Fife	KY16 9DA
DFP BDS Training & Development to support delivery of a high Value Sustainable Consultancy Service	£115,100.00	Core Context Consulting	Cheltenham	GL50 3AW
DFP - Consultancy Support to Progress the NICS ICT Service Review Programme	£260,190.00	Mantix Limited		EC3N 2LRr
DFP - Security Health Check 2005	£3,900.00	Newell & Budge Ltd		EH4 3ER
DFP - RMADS Review 2005	£13,200.00	Newell & Budge Ltd		EH4 3ER
DETI - Energy Efficiency Consultancy	£19,915.00	The Association for the Conservation of Energy		N1 8PT
DRD Ports and Public Transport: Review of the Management of 'Public Service Obligation' for NIR	£21,950.00	KPMG	Watford	WD1 1DA
DARD Supply and Delivery of an In Situ Sterilizable Fermenter System	£27,298.00	Masons		EC1R 0ER
DHSSPS Comparison of UK Waiting Times Definitions	£20,950.00	System Concepts Ltd	London	WC2R 0EZ
DARD - Supply, Delivery, Installation and Commissioning of an LC-Triple Quadrupole Mass Spectrometer	£300,000.00	Water Technology Ltd		ROI
OFREG Completion of the Phoenix Gas Price Control Review	£249,999.00	Mazars LLP		EC3A 7NR
DoE EHS - N.I. Air Quality Archiving and Website	£95,000.00	AEA Technology	Oxfordshire	OX11 0RA

DEL - Investors in People - Practitioner Development	£100,000.00	David Hunter	Glasgow, Scotland	G62 7LG
Invest NI - Established Business Programme for Female Entrepreneurs	£74,907.00	Strategem Ltd	Manchester	M21 7AZ
DETI NITB - Appointment of Specialist Advisor for World Class Visitor Attractions	£17,500.00	Stevens & Associates	Swansea, Wales	SA4 6SD
DFP BDS CLAS CESG Review of Accreditation Document Set	£1,950.00	Newell & Budge Ltd		EH4 3ER
DARD AFBI - Provision of Wide Area Network for AFBI	£99,100.00	BT Business Communications	London	SE1 8BB
DARD Supply and Delivery of an 8.0m to 10.7m Steel Workboat	£174,841.00	Liverpool Water Witch Marine		L5 9UZ
DRD Water Service NI Customer Billing and Contract Computer System	£74,000,000.00	Xansa	Reading	
EHS: Support for Preparation & Implementation of IPPC for Existing Farms in the Intensive Agric. Sec	£74,375.00	SAC Analytical Services Department	Midlothian	EH26 0QE
DOE - EHS Provision of Sign Manufacture for Environment and Heritage Service	£65,000.00	Shelley Signs Ltd	Shropshire Rotherham, Sout	TF9 2BX
DARD Harvester and Forwarder	£250,000.00	Komatsu Forest	Cumbria	CA6 5TJ
DETI NITB - Supply of Signage for the Northern Ireland Tourist Board	£140,000.00	Dee-Organ Ltd	Renfrewshire	PA3 4HP
DETI - Assessment of Tourism Contribution to the NI Economy	£35,847.00	Cogent SI Ltd	Scotland	DG2 0RL
Invest NI - Study to determine NI International Vendor Capability	£28,500.00	Business Control Solutions	Peterborough	PE1 1TT
DRD Rural Transport Fund Review	£33,885.00	TAS Partnership Ltd (The)	Preston	PR1 8BU
DETI: Supply, Delivery and Support of MFPs	£135,655.00	Xerox (UK) Limited	West Sussex	BN14 8RJ
Purchase of a Ferry Vessel	£89,000.00	Redfinn Boats	Co Meath, Ireland	
DETI Exhibition and Interpretative Design for the Giant's Causeway Visitors Centre	£516,430.00	Land Design Studio Ltd	London	TW9 4BH

DARD Replacement Marine Cranes	£126,300.00	Thistle Group	Aberdeenshire	AB42 1TF
OFMDFM Provision of ICT Support Services	£77,000.00	BT Business Communications	London	SE1 8BB
DFP Workplace 2010 Intranet Site	£4,875.00	Hewlett-Packard Ltd	Berks	RG12 1BQ
DETI Provision of Article 4 Management Checks under Article 4 of Commission Regulation EC 438/2001	£23,750.00	KPMG	Watford	WD1 1DA
DARD - Genetic Analyser	£68,508.00	Applied Biosystems	Cheshire	WA3 7QH
DARD - Supply & Delivery of Protective Clothing	£150,000.00	James Boylan Safety (JBS)	Co Monaghan	ROI
DCAL Review of Belfast Central Library's Central Role	£12,900.00	Kentwood Associates	Reading	RG31 6DE
InterTradeIreland Provision of Joint Facilitator and Secretariat Services to NSRG	£29,233.00	D'Arcy Smyth & Associates	2	
DFP CPG Professional Skills for Government Seminars Awareness Training	£6,750.00	National School for Government	Ascot	SL5 0QE
	£88,865,004.00			
DARD Supply and Delivery of Grilles	£45,000.00	GH Engineering	Co Tyrone	
DETI Companies Registry On-line Project	£233,000.00	Enterprise Registry Solutions	Dublin	
DCAL Provision of Financial Services for Review and Evaluation of Irish FA/Linfield FAC Agreement	£42,900.00	KPMG	Watford	WD1 1DA
DETI- Provision of Sample Preparation and Organic Geochemical Analysis of Urban Soils	£91,386.00	Alcontrol Geochem	Manor Road, Hawarden, Chester	CH5 3US
Invest NI - Provision of Financial Services Consultant	£52,875.00	Terry McCaughey & associates	London	SW6 3SE
DARD: Suply, Delivery, Installation and Servicing of Photocopiers	£197,015.00	Ricoh UK Ltd	Feltham, Middlesex	TW13 7HG
DETI - FDI Research Project	£59,050.00	Experian Business Strategies		EH1 2BB

DETI - Wireless Broadband on Street Furniture in a City Centre Environment	£8,000.00	Mason Communications	Dublin 4 Ireland	ROI
DFP- Technical Consultancy Support to Broadband	£69,600.00	Mason Communications	Dublin 4 Ireland	ROI
DEL - Delivery of the Employment Support Programme	£3,000,000.00	Action Mental Health		ECIY ORT
NICS WP 2010 Provision of a CLAS consultant for IT Security Evaluation	£8,000.00	Evolve Business Consultancy Ltd	Farnham, Surrey	GU10 1DW
DOE Image Management System	£52,280.00	PIDCAR	St Albans	AL3 6PH
DCAL OSNI Flying Contract	£335,280.00	Woodgate Aviation Ltd	Ballasalla, Isle Of Man	IM99 6AB
DoE EHS Helicopter Hire Services	£45,000.00	PLM Dollar Group Ltd	Inverness	IV2 7XB
Ulster Scots Agency Photocopier for US Academy Implementation Group	£2,697.00	NRG Group Ltd	Birmingham, West Midlands	B7 4AP
DARD Provision of Facilities Services for CAFRE at 3 Colleges	£1,047,684.00	Eurest		
DoESupply, Installation and Commissioning of a Gas Chromatograph Mass Spectrometer Multi Quad System	£88,790.00	JVA Analytical Ltd	Dublin 2	ROI
OFMDFM Health Check on the Knowledge Network System	£8,800.00	Newell & Budge Ltd		EH4 3ER
DARD Supply and Delivery of Thick Lime Milk	£182,471.00	Clogrennane Lime Ltd	Co Carlow	
EHS Technical Audit / Review of Waste Management Plans	£86,003.00	Environmental Resource Management	London	W1M 0ER
DETI NITB Giants Causeway Visitors Survey 2006	£35,900.00	TNS Travel & Tourism		EH3 8HQ
DFP Review of Financial Monitoring and Budgeting in NI Departments	£109,896.00	PKF	London	EC1 3AP
DRD IT Support System for Decriminalised Parking Enforcement (DPE) in NI	£903,000.00	Spur Information Solutions Ltd	Havant	PO9 2NL
DRD Parking Enforcement Services for Decriminalised Parking Enforcement (DPE) in NI	£35,000,000.00	National Car Parks Ltd		W1A 4NH

DETI NITB Titanic Signature Project Research	£49,480.00	TNS Travel & Tourism		EH3 8HQ
Invest NI - Food Sector Key Accounts Management Workshop Series	£15,475.00	Levercliff Associates		LL13 7YP
InterTradeIreland Venture Capital Professional 2006	£274,428.00	Aventura Venture Partners	Dublin 1	
DoE EHS - Dive Survey Mapping of Maerl Beds @ Red Bay Potential Marine SAC	£44,695.00	Merc Consultants Ltd	Co Galway	
OFMDFM Social Accounting Matrices	£29,603.00	DTZ Piedad Consulting	Edinburgh	EH3 7RA
DFP - Supply, Delivery & Installation of Furniture for Clare House - Workstations	£283,853.00	Senator International Ltd	Althan, Accrington	BB5 5YE
DFP - Supply, Delivery & Installation of Furniture for Clare House - General Seating	£149,104.00	Senator International Ltd	Althan, Accrington	BB5 5YE
DFP - Supply, Delivery & Installation of furniture for Clare House - Restaurant, Support Furniture	£54,548.00	Senator International Ltd	Althan, Accrington	BB5 5YE
DFP - Supply, Delivery & Installation of Furniture for Clare House - Storage	£114,480.00	Senator International Ltd	Althan, Accrington	BB5 5YE
DHSSPS - Specialist Support for the Elective and Emergency Care Reform Programme	£247,500.00	New Model Health Limited		S1 1WR
DETI - NITB Gaints Causeway Competitive Positioning and Pricing Strategy Research	£16,500.00	Tourism Development International	Co Dublin	ROI
DFP DID-PABX Upgrade for 6 Buildings Audit Office, Calvert House, Fermanagh House, Forensic Science	£52,996.00	BT Business Communications	London	SE1 8BB
DFP VLA Contract Programmer	£40,000.00	BT Business Communications	London	SE1 8BB
DFP VLA CSR System Support Contract	£1,500,000.00	Logica	London	W1N 0DS
DHSSPS HPANI - Drug Information Campaign in Washrooms throughout NI	£90,883.00	Convenience Advertising	Ireland	
DARD Supply and Delivery of an All Terrain Vehicle	£94,600.00	Loglogic	Devon	Ex15 1RW

DARD Forest Service Supply & Delivery of a Mobile Compressed Air Foam System for Fighting Fires	£90,000.00	Clan Tools & Plant	Glasgow	G46 6QX
DETI - NITB - Supply and Delivery of Uniform for Staff in Network Tourist Information Centres	£50,000.00	Burlington Uniforms Ltd		EC1V 1JN
DARD Supply, Delivery, Installation and Servicing of 81 Photocopiers	£236,352.00	NRG Group Ltd	Birmingham, West Midlands	B7 4AP
InterTradeIreland Appointment of a Managing Agent for MicroTrade	£205,723.00	Dun Laoghaire Rathdown County Enterprise Board		
DETI - NITB - Usability Study of the NITB Website	£20,050.00	Flow Interactive Ltd		N5 1JT
Invest NI - Supply of a Wide Area Networking Solution for INI	£76,828.00	NTL		W1P 3HB
DE- SURVEY OF TEACHING VACANCIES IN NI SCHOOLS	£9,800.00	KPMG	Watford	WD1 1DA
OFMDFM - Health Check on Shared Electronic Workspace	£4,350.00	Echelon Consulting	Hants	GU51 3RJ
DSD Provision of Catering Services for the DSD Child Support Agency (NI)	£219,123.00	Eurest		
DHSSPS Consultancy to Review the flows of Fracture Patients within Trauma Services in N.I.	£20,075.00	Tribal Group	Wakefield	WF2 7AY
DHSSPS HSS Trust FM Performance Review	£65,000.00	KPMG	Watford	WD1 1DA
DETI-NITB - Provision of Legal Services for NITB	£20,000.00	LK Shields Solicitors		
DARD Agri-Environmental System	£49,750.00	Computa Centre	Edinburgh	E12 9DQ
DEL-NEW DEAL LEAVERS SURVEY	£96,970.00	KPMG	Watford	WD1 1DA
DoE EHS - Constructed Farm Wetlands Proposal for a Design Manual for Scotland & Northern Ireland	£22,125.00	Aila H. Carty	Cobh, Co. Cork	
DHSSPS Smoking Cessation Telephone Helpline Service	£293,130.00	The Essentia Group	Glasgow	G3 8ET

DOE Provision of Noise Maps for Northern Ireland	£475,000.00	iSoniq Ltd	Cloicester	GL1 1BZ
DE - CESG Check Based Assessment of DE Network Infrastructure	£11,470.00	Echelon Consulting	Hants	GU51 3RJ
DSD Replacement Kiosk Castle Place	£27,115.00	A S Group	Cannock Staffordshire	WS11 7FU
DETI - Post Project Evaluation of Action Renewables	£16,750.00	KPMG	Watford	WD1 1DA
DETI - Provision of Health Checks in the DETI IT Network and Infrastructure	£4,480.00	Newell & Budge Ltd		EH4 3ER
DEL Scoping Project - Homophobia in the Northern Ireland Further Education Sector	£8,000.00	KPMG	Watford	WD1 1DA
Invest NI - Provision of Certification Services for Multiple ISO Standards	£18,084.00	SGS United Kingdom	Oxford	OX2 0JX
DHSSPS External Evaluation of Volunteer Development Agency	£8,000.00	KPMG	Watford	WD1 1DA
DHSSPS External Evaluation of Family Care Society	£23,750.00	KPMG	Watford	WD1 1DA
DCAL NMNI The Collection and Disposal of Waste Materials for NMNI	£13,734.00	Allclear		NT35 6JW
OFMDFM Review of functions of ERINI	£21,750.00	KPMG	Watford	WD1 1DA
SEUPB Assessment of the Impact of the PEACE 2 Programme on the Protestant Community (Border Region)	£15,350.00	Paddy Logue Consulting	Co Donegal	
DARD AFBINI Supply & Instaltn of an Automated Thermal Desorption Gas Chromatograph Mass Spectrometer	£97,832.00	Agilent Technologies		SK8 3GR
DSD Provision of Operational Services- Lagan Weir	£400,000.00	Quay Marinas	Portishead North Somerset	BS20 7DF
DHSSPS - Audit of HPSS Compliance with Operational Requirements	£74,000.00	KPMG	Watford	WD1 1DA
OFREG - Provision of QA Process for FEMO 2007	£139,087.00	Gemserv Ltd	London	EC3R 8AJ

DARD - Call Off Contract for Replanting of Clear Felled Sites	£60,000.00	Kevin Harold Contracts Ltd	Co Donegal	
DARD Supply, Delivery and Installation of 28 Photocopiers	£31,990.00	NRG Group Ltd	Birmingham, West Midlands	B7 4AP
Invest NI - PR Services for GB Market	£110,000.00	Edelman Ltd		SW1Y 4SP
LMC Consultancy Support to develop a Strategy for the Red Meat Industry of N.Ireland	£750,000.00	McKinsey & Company		SW1 4UH
DEL-Provision of Audits in 5 Education and Library Boards	£19,725.00	KPMG	Watford	WD1 1DA
DRD Warrenpoint Harbour Authority- Supply, Delivery and Commission of a Mobile Harbour Crane	£1,683,500.00	Gottwald Port Technology	Oxon	OX16 1QZ
NITB-Interpretation & Advice for an Advice Centre in the Titanic Quarter	£10,000.00	Timothy Mason		SE27 9HN
Invest NI - Economic Appraisal for the establishment of a Proof of Concept Fund	£9,896.00	KPMG	Watford	WD1 1DA
DHSSPS - Provision of a smoke free compliance line	£20,000.00	The Essentia Group	Glasgow	G3 8ET
	£50,291,561.00			
InterTradeIreland - Freight Transport Report for the Island Economy 2020	£50,975.00	WSP Group		CB2 1LA
Invest NI - Provision of Marketing and Technical Consultants	£500,000.00	Roy Mortier	Swindon	SN6 7QA
DHSSPS Review of the NI Clinical & Social Care Governance Support Team	£24,400.00	Human Reliability Association Ltd	Wigan Lancs	WN8 7RP
DFP - Provision of an Identity and Access Management Consultant	£35,000.00	Hewlett-Packard Ltd	Berks	RG12 1BQ
DCAL Provision of Catering Services for PRONI	£140,000.00	Eurest		
DoE EHS Mourne National Park Working Party	£11,700.00	Tim Birley Consultancy	Edinburgh	EH4 1HR
DHSSPS Support for Procurement of combined Mobile Data & AVLS within NI Ambulance Service	£44,278.00	Mason Communications Ireland	Dublin 4	ROI

Invest NI Pilot Awareness Programme for the Social Economy in Renewing Communities' Areas	£93,848.00	Social Economy Belfast	Bt11 8bu	
NI Assembly Remote Access Gateway	£12,240.00	Computa Centre	Edinburgh	E12 9DQ
DEL Training for Success	£139,500,000.00	Carter & Carter Group	Nottingham	NG11 6JS
DETI - NIAER Provision of Legal Services	£1,350,000.00	Shepherd & Wedderburn	Edinburgh	EH1 2ET
INVEST NI - Evaluation of the Business Health Check	£27,138.00	Segal Quince Winstead (SQW)	Cambridge	CB4 9ZR
InterTradeIreland - Business Development Tool for InterTradeIreland Equity Network Initiative	£21,000.00	H-I Network	London	SW1Y 6DF
ECNI Conciliation Service for DDA1995 and Sendo 2005	£180,000.00	Mediation Works	Shropshire	TF1 1EH
DARD - Provision of Sheep PrP Genotyping Services	£500,000.00	Cellmark Dianostics	Oxon	OX14 1YX
EHS Wind Energy Lanscape Study	£69,735.00	Julie Martin Associates	Richmond, North Yorkshire	DL10 4LU
AFBI - Supply Delivery Installation and Commissioning of a Anaerobic Slurry Digester	£770,109.00	Greenfinch Ltd	Ludlow	SY8 1XE
DARD Economic Appraisal for Downpatrick and Down Royal Racecourses	£12,500.00	KPMG	Watford	WD1 1DA
DHSSPS - Support for the Implementation of a Rolling Audit and Improvement Programme	£40,051.00	Gillian Cooper	Cheshire	SK14 8NQ
DEL-SPECIALIST SUPPORT FOR TRAINING ORGANISATION IN THE TRAINING FOR SUCCESS PROVISION	£16,000,000.00	Opportunity Youth	Belfast	
DARD Supply & Delivery of TSE Rapid Testing Kits	£860,600.00	Bio-Rad Laboratories	Hemel Hempstead, Herts	HP2 7TD
DFP - IT Security Health Check 2007	£12,411.00	Selex Communications Ltd	Chelmsfor Essex	CM1 1PL
FCILC - Feasibility Study on an Aquatic/ Ecosystem Management Programme	£9,617.00	KPMG	Watford	WD1 1DA
LMC Advertising Campaign	£100,000.00	Genisis	Dublin 2	ROI

NI Assembly Upgrade of Network Facilities and Associated Support Services	£300,143.00	Hewlett-Packard Ltd	Berks	RG12 1BQ
DARD - CAFRE Evaluation of the Increasing Access to ICT Scheme	£20,450.00	Computa Centre	Edinburgh	E12 9DQ
DEL - Provision of a CESG IT Health Check	£2,900.00	Actica Consulting		GU2 7F
DVLNI Management system for the production of Identification plates and labels for NI taxis	£154,000.00	Plastisign	Clydebank, Scotland	G81 2NR
DETI MATRIX Procurement Study	£15,463.00	Segal Quince Winstead (SQW)	Cambridge	CB4 9ZR
DFP LPS Executive Search for Independent Non-Executive Director	£7,000.00	The Whitehall & Industry Group		SW1H 9AA
DHSSPS VFM Audit of Staff Absence and Staff Turnover	£68,000.00	KPMG	Watford	WD1 1DA
DARD Lough Neagh Rescue Supply & Delivery of Kinnego Lifeboat	£120,589.00	Delta Power Services	Cheshire	SK7 5DR
AFBI - Laboratory Information Management System	£160,908.00	Orbis Information Systems	Carysfort Avenue, Blackrock	Dublin
DEL-PROVISION OF A CLAS (CESG) CONSULANT	£2,400.00	Evolve Business Consultancy Ltd	Farnham, Surrey	GU10 1DW
DFP CPG - Assessment Tool for General Service Promotion Competitions	£31,000.00	Pearn Kandola		2
DOE EHS - Economic Appraisal & Business Case on Future IT/IS Provisions	£6,125.00	KPMG	Watford	WD1 1DA
Health Promotion Agency Appointment of an Advertising Campaign	£1,300,000.00	Leith Agency	Edinburgh	EH6 6QU
NITB - Provision of Consultants to Conduct a Tourism Visitor & Domestic Holiday Attitude Survey 2007	£41,800.00	TNS Travel & Tourism		EH3 8HQ
DID - PABX Upgrade of 8 Buildings	£80,000.00	BT Business Communications	London	SE1 8BB
DETI Rewiew of the Current NI Sustainable Enegry Market	£60,888.00	Arthur D Little Ltd	Cambridge	CB4 0XL
DEL - CITB - Provision of a New Mobile Training Unit	£118,065.00	Lynton Trailers (UK) Ltd	Lancashire	M18 8GJ

Invest NI Economic Appraisal of Invest NI Design Service	£6,566.00	KPMG	Watford	WD1 1DA
DETI-Economic Research on Business Opportunities and Challenges Presented by Carbon Emissions Targets	£92,349.00	Cambridge Econometrics		CB1 2HS
DARD AFBI Indirect Elisa Test Kits for Detection of Antibodies to BR in Bovines	£750,000.00	Svanova Biotech AB	Sweden	
DETI - Provision of Actuarial services arising from Asbestos related compensation claims against H&W	£39,950.00	Oliver Wyman Acurail Consulting Inc	New York	NY 10036
DSD ILEX Feasibility study to assess the potential for an Arts & Culture Cluster at Ebrington	£59,858.00	Segal Quince Winstead (SQW)	Cambridge	CB4 9ZR
DARD - Ground Preparation for Replant Sites	£172,106.00	Kevin Harold Contracts Ltd	Co Donegal	
DHSSPS-Independent Audit of Standards of Environmental Cleanliness in HSC Acute Hospital Facilities	£70,000.00	KPMG	Watford	WD1 1DA
Del- CESG Health Check-Del ITNetwork	£3,400.00	Actica Consulting		GU2 7F
National Museums Northern Ireland - Provision of Internal Audit Services	£84,375.00	KPMG	Watford	WD1 1DA
Invest NI -Provision of Bakery Sector Best Practice Visit to London	£13,003.00	SPA Consulting	Hertfordshire	EN11 8LD
DRD Business Development Analysis for NI Railways	£38,950.00	Booz Allen & Hamilton Ltd	Dublin 2	ROI
DOE Preparation of Derry District Conservation Area Design Guidance	£65,835.00	Colin Buchanan & Partners	London	W11 3PB
DEL - CMS Health check	£2,900.00	Actica Consulting		GU2 7F
DEL - IT Health Check on OITFET Case Tracking Application	£2,700.00	Actica Consulting		GU2 7F
Invest NI - INTERNATIONAL FOOD	£74,672.00	Food from Britain	22 Carlisle Place, London	SW1P 1JA

BUSINESS DEVELOPMENT
OPPORTUNITY 2008

DHSSPS IT Security Health Check 2007	£12,750.00	NTA Monitor Limited	Rochester, Kent	ME2 4FA
INVEST NI-Tso Loan Funds	£33,021.00	KPMG	Watford	WD1 1DA
DETI CCNI Comparison of the UK Insurance Marketplace	£24,350.00	McAteer Research and Consulting		N16 9PG
DSD Ilex Economic Appraisal for the Redevelopment	£7,950.00	KPMG	Watford	WD1 1DA
DOE EHS Benthic Infaunal Analysis 2007	£95,427.00	Unicomarine Ltd	Hertfordshire	SG6 1LW
InterTradeIreland - Economic Appraisal for Phase 3 of the Network and Getwork Programme	£4,935.00	KPMG	Watford	WD1 1DA
International Fund For Ireland (IFI) Analysis of Financial Commitments	£23,040.00	Mr Trutz Haase	Dublin	6W
NITB Internet Connection	£15,300.00	NTL		W1P 3HB
DSD ILEX Retail Study and Strategy for Derry-Londonderry City Centre	£61,298.00	Roger Tym & Partners		WC2A 2EY
DETI - Assessment of the Potential for Bioenergy Development in NI	£24,275.00	AEA Energy and Environment	Didcot	OX11 0QR
DARD AFBI Supply of a CTD Sensor Unit with Water Sampler	£49,209.00	Explorocean Technologies Ltd	Surrey	TW20 8RN
DOE EHS Analysis of Benthic Diatoms	£10,000.00	ENSIS Ltd	Gower Street, London	WC1E 6BT
DCAL - Supply and Delivey of Two Workboats for DCAL Fisheries Operations & Technical Support Unit	£47,008.00	International Marine Supplies	South Yorkshire	DN10 4ES
DE-Closure of Balmoral High School	£49,910.00	KPMG	Watford	WD1 1DA
DEL-Evaluation Of Special Projects	£19,000.00	KPMG	Watford	WD1 1DA
DARD AFBI Supply, Installation and Commissioning of an Autotrawl System	£54,040.00	Scandanavian Control Systems AS	Norway	N-5035
Intertrade Ireland - Phase 3 - Go - 2 - Tender - Programme	£4,950.00	KPMG	Watford	WD1 1DA

DCAL ACNI Development of a Dance Strategy for Arts Council NI	£15,000.00	Scottish Cultural Enterprise Ltd	53 Bothwell Street, Glasgow	G2 6TS
DOE EHSS Living History Events Management Service, Carrick Castle February & March 08	£18,528.00	Irish Arms Historical Reproductions	Ballyjamesduff, Co Cavan, Ireland	
DOE School Bus Occupancy Survey	£10,250.00	Research and Marketing Plus	Ocean Park, Cardiff	CF24 5RE
DOE - Legal Services for the Waste Infrastructure Programme	£800,000.00	Addleshaw Goddard		EC1A 4EJ
DFP Account NI - IT Security Health Check	£13,695.00	Selex Communications Ltd	Chelmsfor Essex	CM1 1PL
DRD Audit of Concessionary Fares Scheme	£21,969.00	KPMG	Watford	WD1 1DA
DARD AFBI Supply of a Multi Beam Echo Sounder System	£202,900.00	Kongsberg Maritime Ltd	Aberdeen, Scotland	AB22 8GT
DOE EHS Purchase of A High Resolution LCMS TOF System	£171,834.00	Waters Chromotography Ireland Ltd	Santry	Dublin 9
Invest NI-Research on the Digital Content Industry in Northern Ireland	£23,210.00	Coventry University Enterprise Ltd	Puma Way, Coventry	CV1 2TT
DCAL - Supply and Delivery of Acoustic Tagging Equipment	£30,576.00	Hydrosphere UK Ltd	Upper Froyle, Hampshire	GU34 4JR
DCAL Library Authority Photocopier	£1,630.00	NRG Group Ltd	Birmingham, West Midlands	B7 4AP
DARD CAFRE - Evaluation of the On-Line Learning Project at Cafre	£19,200.00	Coventry University Enterprise Ltd	Puma Way, Coventry	CV1 2TT
Labour Relations Agency IT Security Healthcheck	£4,565.00	Selex Communications Ltd	Chelmsfor Essex	CM1 1PL
NITB - Purchase of 3 MFPS	£107,720.00	NRG Group Ltd	Birmingham, West Midlands	B7 4AP
DCAL- OSNI - Procurement of GNSS Reference Station Receivers	£57,344.00	Leica Geosystems Ltd	Milton Keynes	MK5 8LB
LPS CONCEPTUAL DATA MODEL	£31,825.00	ESRI (UK) Ltd	Buckinghamshire	HP20 2QZ
DEL-Audit of Education & Library Board - Audit & Payment Certificates	£29,476.00	KPMG	Watford	WD1 1DA
DARD AFBI Supply, Delivery, Installation	£400,421.00	Applied Biosystems	Cheshire	WA3 7QH

and Commissioning of a
Liquid & /or a Gas
Chromatograph MSMS

DRD Vehicle Kilometres of Travel Survey	£440,500.00	Sky High Technology Ltd	Leeds Bicester,	LS24 9AT
Audit of ARDL - Air Route Development (NI) LTD	£2,300.00	KPMG	Watford	WD1 1DA
EHS Purchase of a Boat for Lough Neagh	£79,800.00	Redfinn Boats	Co Meath, Ireland	
DARD AFBI - IT Replacement Post Benefit Evaluation	£4,950.00	Computa Centre	Edinburgh	E12 9DQ
DETI - North West Direct International Connectivity Project Kelvin	£234,900.00	MPD International Limited	Tuam Road	Galway, Ireland
DOE Supply and Delivery of Personal Protective Clothing, Equipment and Hygiene supplies for DVA	£250,000.00	Simon Jersey Limited	Lancashire	BB5 5YE
DOE EHS Purchase of GPS Units and Associated Software	£48,152.00	KOREC	Nangor Road, Dublin	12
OFMDFM ECNI Stakeholder Survey	£27,400.00	CMS Consultancy	Huddersfield	HD1 5LP
Contract Title	Contract Value	Supplier Name	Address	Postal code
Lompard St Air Monitoring Station (Sub-contractor)	£30,488.50	BCM GRC Limited	Whitchurch	S413 1TT
Exhibition Contractor for Redvelopment of the Ulster Museum	£3,199,953.00	Beck Interiors Ltd	Surrey	KT9 1SG
Appointment of Consultant for Derry City Centre Public Realm	£492,050.00	Building Design Partnership	London	EC1V 4LJ
Invest NI Framework for Planning Consultancy Services	£41,850.00	Building Design Partnership	London	EC1V 4LJ
Master Plan for Crumlin Rd Goal & Girdwood Barracks	£156,500.00	Building Design Partnership	London	EC1V 4LJ
Integrated Transport Strategy & implementation Plan for the Derry- Londonderry City Region	£149,382.50	Colin Buchanan and Partners Ltd	London	N26LG
Arthur Square Art Works	£180,000.00	Dan George (artist)	USA	
Procurement of Financial Adviser for Omagh Hospital Development	£404,405.00	Deloitte & Touche	London	EC4A 3BZ
Provision of Consultancy Services for Preparation of	£511,856.00	Deloitte & Touche	London	EC4A 3BZ

Full Business Case for Maze/Long Kesh Site & Business Plan for Proposed International Centre for Conflict Transformation at above site				
Legal Services for New Jobs & Benefits Offices	£36,250.00	Denton Wilde Sapte	London	EC4M 7WS
Appointment of Professional Advisors	£575,327.00	EC Harris LLP	London	NI 9AB
Titanic Signature Project (TSP) Appointment of Independent Technical Advisors	£2,082,040.00	EC Harris LLP	London	NI 9AB
Advance Contract - NWIFHE - Demolition/Remediation of Contaminated Material	£281,177.00	Euro Dismantling Services Ltd	Sheffield	S6 6RW
Antrim, Ballymena and Larne Retail & Commercial Study	£64,897.50	G V A Grimley	Manchester	M2 2EE
'Clarendon Area Belfast - Regeneration Masterplan (Secondary Framework)	£124,595.00	G V A Grimley	Manchester	M2 2EE
East Belfast Strategic Study	£149,957.90	G V A Grimley	Manchester	M2 2EE
Lisburn City Centre Masterplan	£130,070.00	G V A Grimley	Manchester	M2 2EE
Masterplan for Larne Town Centre (Secondary Framework)	£122,290.00	G V A Grimley	Manchester	M2 2EE
The Lands at Glen Road (Glen 10) Research Study	£45,265.00	G V A Grimley	Manchester	M2 2EE
Interim Management and Professional Services for the Asset Realisation Team (OGC Framework)	£267,237.36	Gardiner & Theobald	London	WC1B 3JTE
Intergrated Exhibition Design Team for Ulster Museum	£379,500.00	Haley Sharp Design Ltd	London	EC1R 0BE
Procurement of Consultant to write Business Case for CENI	£10,800.00	KPMG	London	EC4Y 8BB
Malachy's Wall Bangor	£45,350.00	Mann Williams	Bath	BA1 2NH
Business Case for Maze Multi-Sports Stadium (SIB Framework)	£191,800.00	Pricewaterhouse Cooper LLP	London	WC2N 6RH
Provision of Consultancy Services for Proposed Titanic Signature Project (SIB Framework)	£125,763.00	Pricewaterhouse Cooper LLP	London	WC2N 6RH

NIHE Stock Condition Survey	£1,102,795.00	Savills Commercial Limited	London	W1K 3HQ
Dungannon Town Centre Masterplan	£51,825.00	Scott Wilson	Basingstoke	RG21 7PP
Armagh City Centre (Secondary Framework Competition)	£75,867.50	The Paul Hogarth Company	Edinburgh	EH30 9TF
Carrickfergus Regeneration Masterplan (Secondary Competition)	£67,775.00	The Paul Hogarth Company	Edinburgh	EH30 9TF
Coleraine Town Centre Traffic Impact Study	£22,875.00	The Paul Hogarth Company	Edinburgh	EH30 9TF
Crossnacreevy Plant Testing Station (Secondary Framework Competition)	£2,500.00	The Paul Hogarth Company	Edinburgh	EH30 9TF
Downpatrick Town Centre Masterplan	£46,021.88	The Paul Hogarth Company	Edinburgh	EH30 9TF
Lisburn/Laganbank Transport Assessment	£95,609.00	The Paul Hogarth Company	Edinburgh	EH30 9TF
St Patrick's Barracks Ballymena - Transport Assessment (Secondary Competition)	£15,827.50	The Paul Hogarth Company	Edinburgh	EH30 9TF
Craigavon Development Framework	£110,750.00	Tribal Consulting Ltd	Northumberland	NE11 9XW
Strabane Town Centre Regeneration Masterplan	£53,355.00	Tribal Consulting Ltd	Northumberland	NE11 9XW
Supply & Fit of Double Glazed Relocatable Partitions at Causewaay Exchange	£14,843.00	Walls to Workstations Limited	Dublin	Dublin 22

1 The information contained in Tables 3A & 3B is held in separate databases which cover different three-year periods.

[1] Northern Ireland SME refers to an SME whose headquarters is registered in Northern Ireland

[2] The information contained in Tables 3A & 3B is held in separate databases which cover different three-year periods.

DFP - Correspondence on Apprenticeships

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Mr Shane McAteer
Clerk
Committee for Finance and Personnel
Room 419
Parliament Buildings
Stormont

20 July 2009

Dear Shane

The Committee for Employment and Learning produced its report on the 'Way Forward for Apprenticeships' on 17 June 2009. The Assembly debated the report on 22 June 2009.

One of the recommendations contained in the Report, as set out below, is that:-

"The Committee urges the Minister to seek the support of his Executive colleagues in establishing in legislation that an appropriate quota of apprentices should be involved in the workforce undertaking any public procurement contract. It is also important to ensure that these apprentices remain employed with the contractor beyond the period of the contract."

The paragraphs from the Committee for Employment and Learning Report that provide the rationale for the above recommendation are attached.

The Committee for Employment and Learning wrote to the Clerk of the Committee for Finance and Personnel on 30 June 2009 requesting that the above recommendation and associated paragraphs be brought to the Committee's attention.

The Committee for Finance and Personnel subsequently requested comment on the recommendation and associated paragraphs from Central Procurement Directorate.

Public Procurement Policy and Legislation

Public Procurement is governed by the Public Contracts Regulations 2006 and the EU Directive 2004/18/EC, upon which the Regulations are based. The Regulations provide scope whereby it is permissible to address requirements for apprenticeships in public procurement processes, so long as those requirements are relevant to the contract, proportionate and do not unfairly discriminate against prospective companies.

Northern Ireland Public Procurement Policy is guided by the concept of "Best value for money". It is defined as "the optimum combination of whole life cost and quality (or fitness for purpose) to meet the customer's requirements". This definition also allows for the inclusion, as appropriate, of social, economic and environmental objectives within the procurement process.

Current procurement policies and legislation therefore allow apprenticeship requirements to be included in public procurement contracts. However, there is no overriding legislation requiring companies who have been awarded public contracts to employ apprentices.

Current Requirements

Central Procurement Directorate in conjunction with the Equality Commission for Northern Ireland produced guidance on integrating 'Equality of Opportunity and Sustainable Development in Public Sector Procurement'. The Guidance, which was launched on 29 May 2008, provides practical advice and case studies for policy makers and practitioners to assist them to more effectively integrate equality of opportunity and sustainable development considerations into public sector procurement. Whilst the Guidance refers to the use of contract conditions as a means of integrating equality and sustainability into contracts, it does not include specific targets.

Current requirements and associated targets for main contractors to recruit apprentices, either directly or through the supply chain are set out in the "Proposals for Promoting Equality and Sustainable Development by Sustainable Procurement in Construction" that have been developed by a Sustainability Task Group operating under the auspices of the Construction Industry Forum for Northern Ireland (CIFNI)[\[1\]](#).

A specific 'social' measure contained in the CIFNI proposals, aimed at encouraging training and skills development within the construction industry, requires, where appropriate, main contractors to recruit one apprentice, either directly or through the supply chain, for each £2m of project value, depending on the nature of the project. This baseline target set by the Task Group was deemed realistic and sustainable in the context of the buoyant, expanding market at that time and generally reflected the ConstructionSkills[\[2\]](#) forecast of the industry's needs for new entrants to deliver the anticipated workload.

It was agreed at CIFNI that contracting authorities have a degree of flexibility in setting their targets. This flexibility gives contracting authorities the discretion, depending upon the scope and nature of the project, to adjust the targets for the recruitment of apprentices to reflect particular social or economic circumstances in relation to a specific project.

All Centres of Procurement Expertise (CoPEs) with responsibilities for construction procurement are represented at the Procurement Practitioners Group (Construction Works and Services Sub-Group). At a Sub-Group meeting on 30 September 2008, it was agreed that CoPEs would include the CIFNI proposals, in so far as it is practicable, into all new construction contracts from December 2008.

Currently there is no comparable target to require companies to employ apprentices in the delivery of Government's supplies and services contracts. Unlike the construction industry, where apprentices are an established feature of the labour force, many of the business sectors delivering supplies and services contracts have less well developed apprenticeship arrangements. The appropriateness and extent of any requirement for apprentices therefore needs to be considered, on an individual procurement basis, by the relevant CoPE in conjunction with the Department(s) funding the contract.

There is an expectation that apprentices will remain employed beyond the period of the Government contract. However, it would be difficult to monitor such a requirement, as there would be no ongoing contractual relationship. In addition, the requirement may be difficult to enforce, particularly if, in the current economic climate, the company's workload is uncertain.

Policy in GB

There is no legislation in Scotland that requires a quota of apprentices to form part of the workforce undertaking a Government contract. Various issues concerning the employment of apprentices were discussed at an Apprenticeship Summit held by the Scottish Government on 28 April 2009. The event was attended by a wide range of stakeholders including employers, Trade Unions and training providers. The Summit concluded that the Scottish Government should look at its procurement practices, and how they could support apprenticeships, but did not call for legislation.

The Office of Government Commerce and the Department for Innovation, Universities and Skills (DIUS) have jointly developed guidance entitled 'Promoting Skills through Public Procurement'. The guidance, published in April 2009, sets out how public sector bodies can embed skills and apprenticeships within their procurement processes. The guidance draws on real examples and case studies to describe how skills training and apprenticeships can be promoted throughout the procurement process, but is not based on a legislative mandate.

Future Role of Legislation

Under the Public Contracts Regulations 2006, it is already possible to address requirements for apprenticeships in Government contracts. Where appropriate, it is permissible to use contract conditions to, for example:-

- require successful contractors to have a formal training plan in place for the development of their project workforce;
- require that a specified proportion of the workforce or a particular number of those employed on a contract are apprentices or are in receipt of relevant skills training; or
- specify that a proportion of the hours worked in delivering the contract, be undertaken by trainees or apprentices.

While responsibility for sustainable development rests with Departments, their CoPE will be responsible for including specific requirements into the procurement process. This means that procurement specialists advise on the appropriateness of including a requirement for apprentices in each particular contract and early dialogue with the supplier community can be undertaken to inform this process.

Any future legislation requiring an appropriate quota of apprentices to be involved in the workforce undertaking a Government contract would need to be structured so that it would apply only where it would:-

- be relevant to the subject matter, or performance, of the contract (the requirement may not be feasible for all contracts);
- comply with the law, in particular, the principles of the EU Treaty, and the Public Contracts Regulations 2006 implementing the EU Public Procurement Directives;
- not result in making the procurement burdensome and thereby deter a variety of suppliers, such as SMEs;
- not distort competition (the process should not give advantage to any particular supplier);
- not result in a supplier making qualified employees redundant; and
- be flexible enough to accommodate fluctuations in the company's economic performance, its ability to recruit and retain staff and other market forces.

The practicalities of enforcing such legislation, particularly if it were to apply beyond the end of the specific contract, would need careful consideration.

Yours sincerely



NORMAN IRWIN

Committee for Employment and Learning Report on 'Way Forward for Apprenticeships'

Extract concerning Public Procurement Contract Apprentice Quotas

"Public Procurement Contract Apprentice Quotas

95. The Committee has been very active in the promotion of an agreed quota of apprentices being a key prerequisite to the award of any public procurement contract. The Committee has written to all Executive Ministers highlighting the need for a proportion of the workforce involved in public procurement contract to be apprentices. In that correspondence the Committee's focus was construction apprentices and the possibility of quotas for this group in any department's capital expenditure programme. At that point the Committee was aware that construction apprentices formed the largest proportion of redundant apprentices. The Committee is keen that the issues of apprentice quotas for public contracts be widened out to encompass all public procurement contracts.

96. The Committee has urged that public contracts under the Investment Strategy of Northern Ireland (ISNI) should contain a provision that a specific quota of apprentices must be employed. The Committee understands that such a system along these lines already operates in Scotland. The Committee is also aware that the Procurement Practitioners' Group, including representatives from the NICS Centres of Procurement Expertise with responsibility for construction procurement, agreed to accept the local Construction Industry Forum's (CIF(NI)) proposals in September 2008. However, these proposals would only provide for one apprentice per £2M of each contract and are limited to construction procurement. The Committee commends the Minister on his actions thus far on apprentices being represented as a quota of the workforce involved in public procurement contracts.

97. The Committee would urge the Minister to seek the support of his Executive colleagues in establishing in legislation that an appropriate quota of apprentices should be involved in the workforce undertaking any public procurement contract. It is also important to ensure that these apprentices remain employed with the contractor beyond the period of the contract."

[1] CIFNI provides a strategically focused interface between representatives from Government and the construction industry, where both parties can consider matters of mutual interest.

[2] ConstructionSkills is the Sector Skills Council for construction. It represents all sectors of the construction industry, from architects to bricklayers, in every part of the UK.

Central Procurement Directorate Response to the Committee for Finance and Personnel's Inquiry into Public Procurement

1. Introduction

1.1 The Central Procurement Directorate (CPD) has carried out an analysis of the procurement related issues raised by respondents to the Committee's call for written submissions to its Inquiry into Public Procurement Policy and Practice. Broadly speaking the issues fall into four main categories and our comments in relation to each are set out below:

The categories are: Dealt with in Paragraphs

1. Barriers to Small and Medium Sized Enterprises (SMEs) and Social economy Enterprises (SEEs) doing business with the Public Sector. 2.1 to 2.37

2. Integration of Social Considerations in Public Procurement. 3.1 to 3.13

3. Standardisation of the Procurement Process. 4.1 to 4.7

4. Use of Framework Arrangements in Public Procurement. 5.1 to 5.13

1.2 The committee has also asked for CPD comments on the issues raised by the Royal Institute of Chartered Surveyors in their evidence session and these are included at paras 6.1 to 6.20. Finally CPD's conclusions are set out at paras 7.1 to 7.5.

2. Barriers to SMEs/ SEEs doing business with the Public Sector

Issues raised

2.1 A number of the submissions focussed on the need for greater awareness of opportunities and the accessibility of the systems and processes together with drawing attention to the significant costs and complexity/bureaucracy of bidding for government business.

CPD's response

2.2 First of all by way of background, the Inter Departmental Business Register (IDBR) - Edition Ten (30 June 2008)[1] shows that of the 72,550 SMEs in Northern Ireland 7,870 businesses had more than 10 employees and, of this figure, only 1,240 employed more than 50 people. The remaining 64,680 (89%) businesses are classed as micro businesses, employing less than 10 people. Fifty percent of all businesses in Northern Ireland are registered as "Sole Proprietors".

2.3 CPD and the other Centres of Procurement Expertise (CoPEs) between them establish contracts on behalf of Departments and other public bodies for a diverse range of goods, services and works, from desks and computers for office staff to new schools, hospitals and other capital infrastructure projects for Northern Ireland's citizens. This procurement expenditure represents approximately £2 billion per year and constitutes a significant share of the local

economy. While the variety of systems used throughout the CoPEs cannot give a definitive position on the value of contracts awarded to SMEs in Northern Ireland, anecdotal evidence from procurement practitioners in CPD and other CoPEs would indicate that the vast majority of their contracts are awarded to Northern Ireland SMEs. By way of illustration 78.5% of all contracts awarded by CPD in the last 3 years have gone to businesses with local addresses^[2]. It should also be noted that, in the case of construction works and services, contracts of the value of £120m or 90% of the total value of contracts awarded by CPD over this period went to businesses with a local address.

Awareness Raising

2.4 CPD is conscious of the need to continue to raise awareness among SMEs and SEEs of tendering processes. In support of this objective CPD has attended and spoken about public sector tendering processes and opportunities at 16 different events, attended by approximately 900 representatives of small businesses and the social economy, since June 2008. A number of events are already in the pipeline for the Autumn period and the programme will continue for the foreseeable future.

2.5 All procurement falls into one of three categories – supplies, services and construction works. Some examples of work carried out in relation to each category to encourage SMEs and SEEs to seek opportunities to bid for public sector contracts are set out below:

Supplies and Services

2.6 CPD has been working with a number of government, cross-border and representative bodies to increase awareness of local SMEs and SEEs of the opportunities to compete for public sector contracts for supplies and services. Examples are as follows: -

The Tender Support Programme

2.7 The Tender Support Programme is divided into ten manageable programmes and has involved 107 SME's and Social Economy Enterprises. Approximately 20 of these SME's /SEEs are from the ROI with the rest from Northern Ireland. The programme is part-financed by the European Union through the Interreg IIIA Programme managed for the Special EU Programmes Body by the ICBAN Partnership and further supported by a variety of organisations including Enterprise Ireland and a number of local Councils.

InterTrade Ireland Go-2-Tender Programme

2.8 CPD has worked with InterTradeIreland since 2005 on the Go-2-Tender Programme. The aim of the programme is to create cross-border business opportunities for SMEs in the all island Public Procurement market through provision of regional workshops to enhance the skills, expertise and efficiency of SME businesses wishing to target the public sector. Specifically, the Programme seeks to provide participating companies with the basic knowledge and practical support required to target and win contracts in the all island public procurement market.

2.9 The objectives of the Programme are to: -

- Increase awareness among suppliers, particularly regarding cross-border contracts and to create cross-border opportunities for SMEs in the all island public procurement market;
- Provide knowledge to SMEs regarding the public sector market throughout the island;

- Provide development of the skills required to win public sector work in both jurisdictions; and
- Provide experienced one to one support in the process of bidding for work.

2.10 Between 2005 and 2008 CPD presented at 30 workshop events, which were attended by over 400 SME suppliers. Many of these suppliers have gone on to successfully compete for public sector contracts both on the island of Ireland and across Europe. Recent research by InterTradeIreland indicates that over the last two years the Go-2-Tender Programme had resulted in 234 companies being awarded public sector contracts approaching £17 million in value.

Intertrade Ireland - Competitiveness Study

2.11 CPD has also assisted InterTradeIreland with its "All Island Public Procurement Competitiveness Study" which is designed to produce initiatives that will enhance the effectiveness and efficiency of public procurement spend on the Island of Ireland and the results of which are expected to be published in early Autumn.

2.12 The objectives of this Study are:

1. To gain a fuller understanding of the dynamics of the public procurement market on the island.
2. To make recommendations for mutually beneficial cooperative actions in the following areas:
 - The provision of supports to build SME capacity and capability.
 - The identification and removal of the barriers that prevent the operation of an open all-island public procurement market.
 - The use of public procurement to drive innovation.
 - The identification of ways to enhance local sustainable development.

Construction Works and Services

2.13 CoPEs, led by CPD, recognise the important contribution SMEs operating in this field make to the economy of Northern Ireland.

2.14 Much of the public sector requirement for construction is procured from integrated teams of contractors, consultants and their supply chains. CPD and CoPEs encourage SMEs to join together as consortia to bid for contracts or to look for opportunities within the supply chains that will be formed by successful tenderers.

2.15 CoPEs and CPD are already required to advertise all procurement opportunities in excess of the designated threshold of £30k on their website and in the local Press. Where the value of the contract is in excess of EU thresholds (£90k for goods and services and £3.5m for works), the opportunity must also be published in the Official Journal of the European Union (OJEU).

2.16 A Sustainability Task Group, acting under the auspices of the Construction Industry Forum for Northern Ireland has developed 'Proposals for Promoting Equality and Sustainable Development by Sustainable Procurement in Construction'. These proposals, which have been included in all new public sector contracts from December 2008, include specific measures to assist SMEs in identifying construction procurement opportunities. For example, Government

construction clients are to include a contractual requirement that main contractors publish opportunities for sub-contracting within their supply chain on their website and/or, where appropriate, in the local Press.

2.17 As is the case for Supplies and Services, individual contractors can request information and clarification on specific tenders from CPD or CoPEs and are routinely offered feedback on the quality of their tenders following the completion of tender competitions. The purpose of this feedback is to assist individual SMEs to compete more effectively for future opportunities.

2.18 In addition, the Construction Industry Forum NI – Procurement Task Group (PTG), established by Minister Dodds in December 2008, has considered how to further maximise the opportunities for SMEs to bid for, or benefit from, public sector construction contracts, both as main contractors and as partners in the supply chain.

2.19 The PTG Report, which was presented to the Procurement Board in May 2009, includes a number of actions, to be taken forward by CIFNI working groups which are specifically aimed at addressing issues relating to SMEs. These Actions are included as Annex A.

2.20 For example, a CIFNI Working Group has commenced examining how the procurement process accommodates applications from joint ventures; the setting of proportionate minimum standards for economic and financial standing; and how experience of work of a similar nature, scope and complexity should be used to evaluate the technical and professional ability of potential tenderers.

2.21 In addition, a Working Group will consider expanding the 'Code of Practice for Government Construction Clients and their Supply Chains' to include a 'Fair Payment Charter' and a requirement that first tier sub-contractors provide 360o feedback directly to the Government Construction Client on monthly payment progress from the main contractor to the supply chain. The Group will seek to ensure that all contractors and sub-contractors benefit from fair and transparent payment practices, which are essential to underpinning successful integrated working on construction projects.

Accessibility of Public Sector Procurement Opportunities

2.22 CPD and the CoPEs are committed to making it easier for suppliers to access government opportunities and have a variety of websites and systems to accommodate suppliers interested in doing business with the public sector.

2.23 A key action in responding to this challenge is CPD's development of an electronic procurement portal - e-SourcingNI - registration on which is free to SMEs and SEEs. The system gives access to business opportunities within the public sector and provides web-based technology which allows buyers and suppliers to manage all their interactions online, creating greater transparency, speed and efficiency throughout the tender process. In addition the system provides details of CPD's current tender opportunities and the tender opportunities within the other NI CoPEs who have implemented the system.

2.24 e-SourcingNI is part of a UK wide system commissioned by the Office of Government Commerce and available to public sector organisations throughout the UK. As such, local users of eSourcingNI have access to other public contract opportunities across the UK including 2012 Olympics. e-SourcingNI went live in May 2008 and to date over 7,000 vendors registrations have been logged on the portal. Of these, over 50% have a local Northern Ireland address.

2.25 The system has the ability to hold a supplier's corporate information (e.g. annual accounts, insurance details, etc) thereby reducing the amount of information required from suppliers at the pre qualification stage in the procurement process. The Procurement Board has recommended that other CoPEs use the e-SourcingNI platform thereby creating a single portal for all government procurement activity within Northern Ireland. A roll out programme has been established to achieve this and it is hoped that it will be substantively in place by the end of the financial year.

Investment Strategy (ISNI) Information Website

2.26 The Strategic Investment Board (SIB), with input from CPD, has developed the Delivery Tracking System (DTS) which is a secure database specifically designed to collate information on the delivery status of all ISNI projects and to produce reports on progress against programme. It is the responsibility of Departments to populate and update this database.

2.27 A new ISNI Information Website, which draws its information from the DTS, has also been developed, with input from the industry, to provide detailed, up-to-date information on upcoming construction projects. The project information held includes departmental ownership, the number and nature of projects, contract milestones and project costs. Approximately 200 construction industry delegates attended the launch of this new Website during the Construction Employers' Federation 'Government Procurement Conference' on 11 June 2009. Representatives from CPD and CoPEs held procurement surgeries during the afternoon session at the Conference.

2.28 While the Website was being developed and rolled out, CPD provided the industry with lists of projects that were either about to be advertised or which were at various stages of the procurement process. The last of these lists was issued by CPD to the construction industry on the 7 August 2009.

Dept of Enterprise, Trade and Investment (DETI) Strategy for Social Economy Enterprises (SEEs)

2.29 CPD is supporting the DETI's work with the Social Economy Sector and the development of its SEE Strategy. As a member of the DETI Social Economy Policy Group and the Social Economy Procurement group CPD will continue to provide support through interaction with the Social Economy Network, Meet the Buyer events and working closely with CoPEs and the Sector to contribute to the development of a successful social economy in Northern Ireland. In the past year CPD has attended 4 Social Economy Enterprise events to raise awareness of public sector procurement processes.

CBI Study

2.30 Similar concerns – regarding awareness and accessibility - were highlighted in the Confederation of British Industry (CBI) Northern Ireland's Procurement Survey carried out in July 2008 among its members. The findings were discussed at a workshop hosted by CPD and attended by Heads of Procurement from all CoPEs, SME and CBI representatives. The workshop produced an agreed action plan to address the issues raised. One such action was the organisation of a jointly sponsored Procurement Conference (attended by approximately 160 delegates) in Belfast in March 2009 the theme of which was "Winning Public Procurement Markets at Home and Away". This event included a number of "surgeries" or afternoon workshops where delegates could engage directly, and in some detail, with representatives of CPD and the CoPEs on specifics around the procurement process.

EC Small Business Act

2.31 On the wider front, the European Commission has recognised that SMEs are generally considered to be the backbone of the EU economy and in order to make the most of their potential for job creation, growth and innovation SMEs' access to public procurement markets should be facilitated. In pursuit of this the Commission has included in its "Small Business Act" for Europe (at Principle V) the recommendation that EU and Member States should adapt public policy tools to SME needs and facilitate SMEs' participation in public procurement. This has been further enhanced through the publication of a Code of Best Practice providing guidance to Contracting Authorities on how they may apply the EC public procurement framework in a way that facilitates SMEs' participation in public procurement procedures.

The areas addressed in the Code include:

- Overcoming difficulties relating to the size of contracts;
- Ensuring access to relevant information;
- Improving quality and understanding of the information provided;
- Setting proportionate qualification levels and financial requirements;
- Alleviating the administrative burden;
- Putting emphasis on value for money rather than on price;
- Giving sufficient time to draw up tenders; and
- Ensuring payments on time.

GB Glover Report

2.32 In parallel, in preparation for the 2008 Pre-Budget Report, the UK Government commissioned and published the Glover Report on action to reduce the barriers SMEs face when competing for public sector contracts. This Report makes a number of key recommendations which aim to build on the existing initiatives by further improving SME participation in public procurement by:

- Making opportunities as open and transparent as possible;
- Making the procurement process equitable and as simple as possible; and
- Managing procurement strategically to encourage –
 - innovation;
 - procurer capability; and
 - ensuring a fair deal for SMEs that participate in a supply chain.

CPD is reviewing the extent to which additional guidance is now required in Northern Ireland.

Procurement Best Practice Guidance

2.33 In its leadership role within public procurement in Northern Ireland CPD has produced Guidance Notes for both SME and SEE suppliers and for public sector procurement practitioners with a focus on removing barriers. CPD will review this guidance further in the light of the outcome of more recent initiatives and the Committee's Inquiry.

2.34 The guidance for SME suppliers provides information for those seeking to widen their customer base to include the Northern Ireland public sector. The companion guide for procurement practitioners examines the barriers SMEs might face in participating in public sector tender competitions and suggests measures that purchasers might take to reduce or eliminate these barriers. The guidance also addresses the achievement of best value for money through adherence to the 12 principles of procurement policy which ensures that public confidence is maintained in the procurement process and that mutual trust exists between contracting authorities and suppliers. This approach safeguards the role SMEs play in providing goods and services to government to enable it to provide effective public services.

2.35 The guidance aimed at SEEs seeks to help the sector to understand public procurement, how to prepare bids and address issues on the delivery of the contract.

2.36 Recommended actions for procurement practitioners contained within the guidance include, supporting 'meet the buyer' events and supplier workshops, offering debriefs to unsuccessful suppliers to assist them to compete more effectively for future opportunities and ensuring access to opportunities by SMEs and SEEs by advertising all contracts over £30,000.

Costs and Complexity of bidding for Government Business

2.37 Some submissions highlighted a need to streamline the procurement process and reduce the costs of bidding. A number of initiatives which should help achieve these objectives are being taken forward by CPD in conjunction with CoPEs. These are outlined in section 4.

3. Integration of Social Considerations in Public Procurement

Issues raised

3.1 A number of the submissions made were concerned that to date there has been little perceived progress in the use of social clauses within public sector procurements and called for a greater emphasis on outcomes rather than outputs.

CPD Response

3.2 CPD and CoPEs have a key role to play in the drive towards the integration of social, considerations in the procurement process by assisting the Northern Ireland Public Sector to embed the wider sustainable development considerations into its spending and investment decisions.

3.3 The leverage provided by the volume of public sector spend provides significant opportunities to help deliver the Executive's overarching aim, set out in the Programme for Government, of building a peaceful, fair and prosperous society in Northern Ireland, with respect for the rule of law and where everyone can enjoy a better quality of life now and in years to come.

3.4 The Programme for Government 2008 - 2011 and Investment Strategy 2008 - 2018 reinforce the importance of achieving sustainable outcomes. They also provide the high-level context in which contracting authorities can identify specific sustainable goals to achieve through public procurement.

3.5 CPD and the Equality Commission for NI have produced a joint Guide designed to support public authorities as they integrate equality and sustainable development in their procurement practice.

3.6 The early chapters of the Guide are directed at policy makers and decision takers in Public Bodies and address how they should approach integration through compliance with the Statutory Duties and with obligations and commitments under the Northern Ireland Sustainable Development Strategy.

3.7 The remaining chapters are directed at Procurement Practitioners and provide advice and guidance on the integration of equality and sustainability and what steps can be taken at the various stages of the procurement process.

3.8 The Guide also has a range of case studies to help illustrate what is possible and has a summary flow chart as an aide memoire for policy makers and practitioners alike to determine what needs to be considered at the various stages of the procurement process.

3.9 Throughout the guide the reader is reminded of the two cardinal rules, set out in the Procurement Directives and implementing UK legislation. These state that where sustainable development considerations are integrated into the procurement process they must be linked to the subject matter of the contract and/or to the performance of the contract. This effectively rules out of the tender evaluation process any consideration of a tenderer's general benefits to the community when such benefits are not directly connected with the specific contract being evaluated.

3.10 The Government Construction Clients Group (GCCG) and the construction industry, as represented by the Construction Industry Group for Northern Ireland (CIGNI), acting jointly as The Construction Industry Forum for Northern Ireland (CIFNI), explored how sustainability issues could be incorporated into construction contracts. A Sustainability Task Group was established to develop proposals that could promote the economic, social and environmental elements of sustainable development through sustainable procurement in construction. The Group produced agreed contract requirements and further development through the CoPEs' Practitioner Group has extended the contract requirements to supplies and services contracts. A list of the contract requirements, which can be further refined to suit a particular contract, is attached as Annex B.

3.11 The Task Group also identified the following seven key Social Objectives –

- To encourage the economically inactive back into the work place – the associated action is for main contracts to include a requirement that main contractors recruit one long term unemployed person, either directly or through the supply chain, for each £5m, as a minimum, of project value.
- To encourage training and skills development to build a sustainable industry – the associated action is for main contracts to include a requirement that main contractors recruit one apprentice, either directly or through the supply chain, for each £2m, as a minimum, of project value.
- To promote equality in the workplace - main contracts to include a requirement that main contractors comply with the application of fair employment, equality of treatment and anti-discrimination legislation.
- To promote Respect for People.
- To promote best practice in Health and Safety.
- To incorporate 'Fair trade' products within construction projects.

- To promote development of Essential Skills – the associated action is for main contracts to include a requirement that main contractors and their supply chain provide opportunities for all employees to develop essential skills through, for example, the promotion of the DEL Essential Skills Programme.

3.12 CIFNI agreed that the objectives were realistic and sustainable in the context of an expanding market and generally reflected the construction skills forecast of the industry's needs for new entrants to deliver the anticipated workload at a time of relevant buoyancy in the construction market. It is recognised, however, that a degree of flexibility is required to reflect the current state of the industry and to allow contracting authorities the discretion, depending upon the scope and nature of the project, to adjust the targets for the recruitment of long term unemployed and apprentices to reflect particular social or economic circumstances in relation to a specific project e.g. the ILEX Urban Regeneration Company Limited footbridge project where the target for the recruitment of one long term unemployed person is £1m. The target for apprentice recruitment is one apprentice for each £2m of project value. The contractor is currently working with ILEX to implement these requirements which are included in the contract.

3.13 The CIFNI Sustainability Task Group is to be re-convened on the 8 September to review the current implementation status of its Proposals and agree next steps.

4. Standardisation of the Procurement Process

Issues raised

4.1 Standardisation of the procurement processes and documentation across CPD and the CoPEs has been an issue for some time now and features in submissions to the Committee's Inquiry. Another issue raised by some is the difficulty for SMEs and SEEs meeting pre-qualification criteria to be eligible for selection to tender.

CPD Response

4.2 The public procurement process throughout the UK and indeed Europe is regulated by the Procurement Directives and implementing Regulations. Within this framework there are flexibilities in the approach that Contracting Authorities can adopt and it is these variances in approach that lead to comment from suppliers. As custodians of public money, Contracting Authorities are always conscious of their responsibilities in relation to accountability and may appear to be overly cautious at times in relation to the process employed to ensure transparency and non-discrimination in the conduct of public procurement.

4.3 While commonality in approach is desirable it will only be achieved through agreement and coordination of processes within the CoPEs. The Procurement Practitioners' Group (PPG) which is representative of CPD and the CoPEs is attempting to address this issue. Currently guidance exists on Disclosure of Information following the award of a tender and PPG is currently considering guidance on a common approach to evaluation of tenders. This guidance will issue to CoPEs shortly.

4.4 The CIFNI Working Groups taking forward the out workings of the CIFNI Procurement Task Group Report, are seeking to rationalise Pre-qualification Questionnaires (PQQs) for competitions above and below the EU thresholds. This will mean a common approach to issues such as financial standing, consortia bids, mandatory exclusions and health and safety assessments. The templates will include guidance on completion for suppliers and on evaluation of submitted PQQs for purchasers.

4.5 The Working Group is currently exploring how the PQQ can be simplified and streamlined through CoPE and CPD reliance on Constructionline^[3]. Where a contractor or a consultant is registered with Constructionline, it is envisaged that the supplier would not be required to submit, for example, account information for each PQQ. CoPEs and CPD would instead rely on Constructionline's financial assessment which can be accessed using the Supplier's registration number.

4.6 The agreement of a common electronic tendering system – eSourcingNI – is a significant step forward in the achievement of increased standardisation of processes across all Centres of Procurement Expertise. This system is in operation within CPD and is being rolled out within CoPEs. The system has the ability to hold a supplier's corporate information (e.g. annual accounts, insurance details, etc) thereby reducing the amount of information required from suppliers at the pre qualification stage in the procurement process. The portal will operate 24/7 and is supported by both an on-line and telephone help line service. The provision of a single portal is particularly timely in today's economic climate as it reduces the time and cost of bidding and standardises and simplifies both the registration and tendering process.

4.7 CoPEs and CPD have agreed to NEC3 forms of contract for all construction related works and services contracts, thereby encouraging the construction industry to develop its expertise in this new, modern form of contract. Key to the successful use of NEC is users adopting the desired cultural transition. The main aspect of this transition is moving away from a reactive and hindsight-based decision-making and management approach to one that is foresight based, encouraging a creative environment with pro-active and collaborative relationships.

5. Use of Framework Arrangements in Public Procurement.

Issues raised

5.1 Frameworks featured a great deal in the submission to the Committee. The comments expressed about framework arrangements included the view that the minimum turnover figure (construction work mostly) required to prequalify for selection mitigate against small companies and the length of time the frameworks operated (3-4 years) effectively excluded business from the opportunity to tender for Government business for that period. Other concerns expressed were that the success rate of SMEs in winning business of frameworks is low and that the process did not result in reduced bureaucracy for secondary competitions following admission onto a framework arrangement.

CPD Response

5.2 A framework agreement is a general term for agreements with providers that set out terms and conditions under which specific purchases can be made throughout the life of the agreement. These agreements form part of a contract with the exception of guaranteed consideration i.e. there is no obligation on the procurers to buy anything. With this approach, contracts are formed only when an order is placed for the goods, works or services covered by the agreement.

5.3 Framework agreements offer a number of advantages for a contracting authority such as:

- the value for money advantages of centralised procurement without the commonly associated with single procurements;

- In the case of single provider frameworks, a single tendering exercise over the life of the arrangement; multi-provider framework agreements typically include the use of secondary competitions amongst its members;
- a reduction in administrative effort and cost for the contracting authority;
- the initial tendering process allows contracting authorities to identify competitive suppliers, who should offer more competitive prices on the basis of an expected value of business;
- the agreed range for the supply of items or services can be given at short notice by the contracting authority, therefore reducing or avoiding stock holding for goods, and reducing down-time on equipment maintenance and repairs; and
- a mutually beneficial longer-term working relationship can be established with the supplier.

5.4 The benefits spread to the supplier include:

- a longer term approach to business development planning;
- a longer term approach to planning, for example in terms of stock levels and continuity of supply; and
- a mutually beneficial longer-term working relationship can be established with the contracting authority.

5.5 Suppliers have indicated that the process can be lengthy, cumbersome and expensive with no guarantee of business from inclusion on the framework. For those unsuccessful candidates, exclusion for the life of the framework can be detrimental to success in future competitions as they may not have the opportunity to gain the experience necessary for participation.

5.6 Supplies and Services in CPD have in operation, a wide range of call-off agreements covering the common reoccurring needs of the NICS. These arrangements are serviced by a large percentage of suppliers with local NI addresses, including, one person operations and sole traders.

5.7 CPD Supplies and Services also have a number of Framework Arrangements in place covering routine services within the NICS. To maximise opportunities and minimise the risks of potential barriers to entry for local SMEs to these Framework Arrangements a number of key sector groups have been established covering Consultancy, ICT, Advertising, Legal Services, Social Economy Enterprises. These groups advise CPD on issues or difficulties their members have experienced when competing for public sector contracts.

5.8 On the construction front CPD and Centres of Procurement Expertise have been discussing their current procurement strategies, with the Construction Industry Group for Northern Ireland at the Procurement Task Group.

5.9 The Task Group has recognised that framework agreements can provide better value for money compared with procurement on an individual project basis and that they allow long-term relationships to be developed which facilitates better programming of work, planning of resources and allows more time to mobilise teams to undertake the construction of the project.

5.10 Through the use of framework agreements the expectation is that savings in cost and time will come from:-

- a reduction in tender costs for both contractors and the public sector;

- continuous improvement by transferring the learning from one project to another;
- developing skills and competences of supply chain members and their workforce;
- improved working relationships;
- continuous workflow; and
- speed of procurement.

5.11 The Procurement Task Group's review of procurement strategies included an examination of the suitability of using frameworks to procure construction works and services in Northern Ireland. The Task Group endorsed the use of single provider and multi-provider frameworks as two of the recommended contract strategies. Its report contains recommendations in relation to the value and duration of agreements.

5.12 CPD is currently establishing a framework agreement for construction professional services and has gone to considerable lengths to ensure that SMEs have the opportunity to tender. The tender documents were produced following an extensive consultation process with the 'Professional College' of the Construction Industry Group for Northern Ireland. The documents included, for example, agreements on the minimum turnover required to maximise the opportunities for SMEs to compete, either as team leaders or as discipline team members.

5.13 Each team to be included in the framework agreement, comprises a team leader and a further seven team members of various disciplines. The twenty nine tenders received included eight from firms that are NI SMEs and ten from enterprises, whilst not being NI SMEs, have a practice office in NI. In addition, there were eighty three other individual enterprises included within the twenty nine teams. Of these, forty seven firms are NI SMEs and thirteen from enterprises, whilst not being NI SMEs, have a practice office in NI.

6. RICS Evidence

6.1 In addition to the written submissions, the Royal Institution of Chartered Surveyors (RICS) evidence session, held on 24 June 2009, raised six key issues. Three of these were already set out within the various written submissions received by the Committee. Accordingly, CPD's response to these particular points has been included within the main response above. The three remaining issues raised by the RICS and CPD's response are set out below.

Level of Government investment

6.2 The RICS suggests that the impact of the economic downturn on the construction industry in Northern Ireland has been exacerbated by the lack of Government investment. They state that the construction industry geared up in anticipation of the workflow from the Investment Strategy for Northern Ireland (ISNI) and it has not been realised.

CPD Response

6.3 The primary measure of the value of construction output in Northern Ireland (the Index of Construction) is obtained from the Northern Ireland Quarterly Construction Enquiry (QCE). This is a statutory survey of construction firms operating in Northern Ireland undertaken by the Central Survey Unit of the Northern Ireland Statistics and Research Agency. Each quarter a sample of construction firms is asked to provide details of the value of the construction activity they have undertaken in a specified period.

6.4 The latest Bulletin, published on 6 August 2009, shows that the provisional seasonally adjusted Index of Construction for the period 1 January to 31 March 2009 was 96.4, down 1.8 points on the previous quarter (98.2), and down 5.4 points on the corresponding quarter in 2008 (101.8).

6.5 In contrast to the evidence provided by the RICS, further analysis of the latest Bulletin shows that the overall fall in construction output is primarily due to a reduction in the private commercial and industrial sectors and that in fact the public sector spend actually increased during this period.

6.6 This analysis demonstrates that the perceived lack of Government spend highlighted by the RICS is not reflected by the wider construction industry in the statutory survey. The industry has benefited significantly as a direct result of the Executive's continuing commitment to the Investment Strategy, which saw some £1,700 million of gross capital investment in 2008-09 equivalent to a 20.1% increase on last year. Without this unprecedented level of Government investment, the impact of the economic downturn on the construction industry in Northern Ireland would have been much worse.

6.7 RICS members, and other construction professionals such as architects, mechanical and electrical engineers and structural engineers tend to be more involved in building rather than civil engineering projects. The significant proportion of expenditure within ISNI on civil engineering projects within the roads and water sectors may contribute to the perception held by RICS members that there is a lack of Government investment.

Progress on delivery

6.8 The RICS have raised concerns about the time taken to assess tenders and calls for the process to be speeded up and made more efficient in order that contracts can be awarded sooner and investment delivered on the ground.

CPD Response

6.9 The economic downturn, the setting of financial standards that are proportionate to contract value and receipt of bids from consortia in order to maximise opportunities for SMEs, has led to an increase in the number of firms expressing interest in procurement competitions. Instead of typically receiving 5-10 expressions of interest, some market sectors are now receiving in excess of 30 Pre-Qualification Questionnaires (PQQs).

6.10 This increase in the number of bidders multiplied across numerous competitions means that the resources and the time taken to shortlist, usually five, firms to tender for an individual project takes longer. The resource implications for both CoPEs and the construction industry were discussed as part of the CIFNI Procurement Task Group. The Task Group concluded that standardisation of PQQs across all CoPEs and the use of parts of the PQQ for selection for more than one project could be used to increase the efficiency of the process.

6.11 A CIFNI working group is currently taking forward this action and to date good progress has been made towards developing a standard PQQ. This PQQ will maximise the generic information, which need only be reviewed annually, allowing both bidders and CoPEs to focus on the submission and assessment of technical and professional capability details relevant to the project.

6.12 The Task Group also recognised that framework agreements can provide significant improvement in procurement efficiencies with savings in cost and time. In particular, the

appointment of a team of construction professionals to take forward a project would typically take 4-5 months following the timescales set out within the EU Regulations. This compares to a typical period of 2 months for appointment using an existing framework agreement. Once the scope of the project has been developed by the professional team, the appointment of a contractor would also normally take at least 4-5 months. This could also be reduced to some 2-3 months using an existing framework agreement. Overall, framework agreements can therefore reduce the time taken to deliver projects to site by around 4 months.

6.13 The legal challenges to the CPD and the Department of Education frameworks agreements for the design and construction of projects has meant that the reduction in project programmes resulting from the use of contractor framework agreements is not currently available. However, CPD and the Department of Education have professional services framework agreements in place, which means that programmes, can typically be reduced by 2-3 months.

Visibility of procurement opportunities

6.14 The RICS underlined the importance of receiving up-to-date information relating to the procurement of construction works and services and how this information facilitates business planning by the construction industry. They welcome the ISNI Information Website and its potential to deliver this information, but raised concerns that there are gaps in the information, project details are not being kept up-to-date and it does not include details of local council, MOD or Prison Service Projects.

CPD Response

6.15 The CIFNI Procurement Task Group Report includes a key action, under Principle 1 'Visibility of Opportunities', to launch the new ISNI Information website and to update the project data on a monthly basis.

6.16 The launch of the web portal on 11 June 2009, which draws its information from the Delivery Tracking System, met with a positive response from the industry, which has high expectations that it will have access to relevant, accurate and timely information.

6.17 In order to build the construction industry's confidence in the operational effectiveness of the website it is vitally important that Departments ensure that information included in the DTS, and consequently that available through the website, meets the expectations of the industry.

6.18 The First Minister and deputy First Minister have written to their Executive colleagues highlighting the key role the ISNI Information Website will play in providing the construction industry with information on Government's capital investment programme in order to help the industry plan workload, particularly in the present challenging trading environment. The Website will also be a regular item for discussion at CIFNI where the industry will be able to provide feedback on the usefulness of the content.

6.19 Whilst the Website was being developed and rolled out CPD provided the industry, on behalf of Departments, with a list of projects that were about to be advertised or were at various stages in the procurement process. The last of these lists was published on 7 August 2009. CPD has no plans to provide any further project lists as do so would divert resources across the departments away from the need to maintain the DTS.

6.20 The DTS has been established by the Strategic Investment Board to monitor and report on ISNI. It therefore only includes those projects that are part of central Government spend in

Northern Ireland. This excludes local council projects and those projects funded by GB departments including the NIO and MOD.

7. Conclusion

7.1 Much work has been done by CPD and CoPEs over recent years to address the issues raised by suppliers and others and efforts continue through association with industry lead bodies to identify further steps that can be taken to make the procurement process accessible to all interested bodies. The Committee's recommendations from this Inquiry will assist in this respect.

7.2 In conducting its procurement the Public Sector must always adhere to the EC Treaty principles of:

- Freedom of movement of goods;
- Freedom of establishment;
- Freedom to provide services; and
- Deriving from these, the principles of mutual recognition, proportionality and transparency, while making every effort to encourage participation from local suppliers.

7.3 As a result, procurement practitioners are continually having to balance achieving value for money for the taxpayer, satisfying the needs of the supply chain and ensuring legal compliance.

7.4 This balance can only be achieved in an environment that encourages all participants to work together openly and co-operatively and requires a commitment from all that they are serious about wanting to be better customers and better suppliers within relationships that can bring mutual rewards. Suppliers play an important role in delivering the Public Sector's core business and contributing to its aim of providing high quality, efficient, responsive and customer focused services. In its turn, the Public Sector contributes to the business and aims of suppliers. Therefore, the way in which the Public Sector and suppliers throughout the chain work together and the relationships that are developed are critical.

7.5 In taking forward the outcome of the Inquiry and the outstanding recommendations of recent initiatives, CPD will further develop relationships with the supplier community to help facilitate the achievement of Programme for Government objectives and deliver value for money from public procurement to the benefit of the people of Northern Ireland.

Annex A

Examples of actions from the Construction Industry Forum NI – Procurement Task Group Report that relate to SMEs

Action

Joint Ventures – a CIFNI working group will consider how procurement processes currently accommodate applications from joint ventures. The group will seek to ensure that Government Construction Clients have processes in place that allow smaller enterprises to come together to genuinely compete against applications from a single entity.

Financial Standing – a CIFNI working group will consider the current minimum standards for economic and financial standing for contracts of various values and complexity. The group will seek to ensure that the minimum standards set by Government Construction Clients do not remove the potential for small and medium

Action

sized enterprises (SMEs) to be short-listed to tender for contracts that they are capable of completing.

Develop SMEs – a CIFNI working group will consider how SMEs can be given further opportunities for growth through participation in public sector construction contracts. The group will seek to ensure that the minimum standards set by Government Construction Clients for technical and professional ability do not remove the potential for SMEs to be short-listed to tender for contracts on the basis of them not having experience of identical work when they have other relevant experience.

Fair Payment – a CIFNI working group will consider expanding the 'Code of Practice for Government Construction Clients and their Supply Chains' to include:-

a 'Fair Payment Charter'; and

a requirement that first tier subcontractors provide 360° feedback directly to the Government Construction Client on monthly payment progress from the main contractor through the supply chain.

The group will seek to ensure that all contractors and subcontractors benefit from fair and transparent payment practices, which are essential to underpinning successful integrated working on construction projects.

Efficient Pre-Qualification process – a CIFNI working group will consider if the resources required by enterprises to complete Pre-Qualification Questionnaires (PQQs) for numerous individual projects can be reduced. The group will explore and make recommendations on how Government Construction Clients could:-

- Reduce the number of questions within the PQQ;
- Use a PQQ, or parts of a PQQ, for selection for more than one project; and
- Reduce the time given to suppliers to submit PQQs and the time required for assessment in order to bring work to the marketplace more quickly.

Standardised Pre-Qualification Questionnaire (PQQ) – a CIFNI working group will consider those parts of a PQQ that could be common to all contracts. As far as practicable, the group will seek to develop a standardised PQQ template for use across all Government Construction Clients.

Pre-Qualification Questionnaire (PQQ) Health and Safety section – a CIFNI working group will consider how Government Construction Clients' duties under the Construction (Design and Management) Regulations (Northern Ireland) 2007 could be fulfilled using a more streamlined health and safety section within the PQQ whilst ensuring that high standards of health and safety are maintained.

Registration with Constructionline and e-SourcingNI – a CIFNI working group will:-

- Review the role of Constructionline within public sector construction procurement processes; and
- Promote awareness of the roll-out of the e-sourcingNI, electronic tendering system, across all Centres of Procurement Expertise (CoPEs).

Annex B

Promoting Equality and Sustainable Development through Sustainable Procurement

General Requirements

It is anticipated that while the following requirements were developed for construction contracts, with minimal refinement /amendment a number of the requirements could also be incorporated within contracts for the provision of goods and services and can be further refined to suit any particular contract. Where the proposals might be applicable for goods or services contracts as well as construction then this is denoted by the following legend in the right hand column.

(G) – Goods

(W) – Works

(S) – Services

(CS) - Construction related services/consultancy

Economic

1 Objective:	Mandatory exclusion from procurement competitions due to fraud, corruption & money laundering	
Contract Requirement:	<ul style="list-style-type: none"> ▪ Pre-qualification questionnaire and tender documents to include a declaration from the Main Contractor that none of their directors have any convictions relating to any of the offences listed under Regulation 23(1) of the Public Contract Regulations 2006. 	G W S
2 Objective:	To encourage the establishment of local partners	
Contract Requirement:	<ul style="list-style-type: none"> ▪ Government Construction Clients to publish Main Contractor and supply chain details on ISNI project database. ▪ Main contracts to include a requirement that Main Contractors publish the opportunities available within their supply chain on their website and or where appropriate in the local press. 	W G W S
3 Objective:	To encourage prompt payment to suppliers	
Contract Requirement:	<ul style="list-style-type: none"> ▪ Main contracts to include a requirement that Government Construction Clients have access to contractors' accounts (as part of the open book process) to allow timeliness of payments to subcontractors to be verified. 	G W S
4 Objective:	To promote fair dealing	
Contract Requirement:	<ul style="list-style-type: none"> ▪ Main contracts to include Government Construction Clients' right to approve subcontract terms and conditions for consistency with main contract terms, particularly in relation to fair dealing and open book accounting. ▪ Main contracts to include a requirement that the Main Contractor complies with the Code of Practice for Government Construction Clients and their Supply Chains. 	G W S W

Economic

- 5 Objective: To limit opportunities for criminal organisations to target construction procurement projects
- Contract Requirement:
 - Main contracts to include a Construction Contractor Monitor (CCM) enabling condition of contract. CCM would then be deployed on contracts where intelligence indicates cause for concern or by way of random audit to ensure contractors are meeting their requirements under the contract.
- W

Social

- 1 Objective: To encourage the economically inactive back into the work place
- Contract Requirement:
 - Main contracts to include a requirement that Main Contractors submit an employment plan setting out:-
 - General policy on recruitment, training and retention of employees;
 - Proposals for recruitment and retention of employees for project and monitoring system to be used to report to Government construction client.
 - Main contracts to include a requirement that Main Contractors recruit one long-term unemployed person, either directly or through the supply chain, for each £5m of project value.
- G
W
G
W
S

- 2 Objective: To encourage training and skills development to build a sustainable industry
- Contract Requirement:
 - Main contracts to include requirement that the Main Contractors recruit one apprentice, either directly or through the supply chain, for each £2m of project value.
 - Government Construction Client to work the Construction Industry Group NI and the Department for Employment and Learning (DEL) to monitor apprentice progress and retention.
- W
W

- 3 Objective: To promote equality in the workplace
- Contract Requirement:
 - Main contracts to include a requirement that:
 - Main Contractors comply with the application of fair employment, equality of treatment and anti-discrimination legislation;
 - Main Contractors shall use their best endeavours to ensure that in their employment policies and practices and in the delivery of the services required under the contract they have due regard to the need to promote equality of treatment and opportunity.
- G
W
S

- 4 Objective: To promote Respect for People
- Contract Requirement:
 - Main contracts to include a requirement that Main Contractors and their supply chains comply with the
- W

Social

requirements of the 'Respect for People (RfP) – Code of Good Working Health and Safety Practices' incorporating the 'Code of Practice for Industrial Relations and Health and Safety'. Compliance with this Code will include payment of operatives in accordance with the Working Rule Agreements.

- 5 Objective: To promote best practice in Health and safety
- Main contracts to include a requirement that:
 - Main Contractors and their first tier subcontractors have or will obtain within a reasonable time period 3rd party accreditation of their documented health and safety management systems¹; W
- Contract Requirement:
- all site operatives and supervisors have attained set minimum standards in health and safety training; and W
 - 'BuildHealth' to be a possible future requirement. W
 - Main contracts to include a requirement to enable Government Construction Clients to discharge their monitoring duties under the CDM Regulations 2007 by assessing main contractors and their supply chains via office audits and site inspections. W
- 6 Objective: To incorporate 'Fair trade' products within construction projects
- Main contracts to include a requirement that Main Contractors and their supply chain provide and maintain corporate Fair Trade policies. G W S
- Contract Requirement:
- Main contracts to include a requirement that Main Contractors and their supply chains embrace procurement of Fair Trade goods and services within construction projects in accordance with CPD Procurement Guidance note 02/06. G W S
- 7 Objective: To promote development of Essential Skills
- Main contracts to include a requirement that Main Contractors and their supply chain provide opportunities for all employees to develop essential skills through, for example, the promotion of the DEL Essentials Skills Programme. G W S

1 The proposed Buildsafe-NI 2009 Action Plan, once launched, will introduce the requirement for first tier subcontractors (with 15 or more employees) to have/obtain a documented health and safety management system which has been certified by a 3rd party.

Environmental

- 1 Objective: To ensure compliance with the Northern Ireland Miscellaneous Provisions Act 2006
- Contract Requirement:
- Government Construction Clients to co-operate with other Government departments in discharging their G W S

Environmental

statutory duty to act in a manner which they consider best contributes to sustainable development. This includes:-

- taking account of any DOE strategy or guidance on sustainable development including Departmental guidance.
- Compliance with the 'Policy Framework for Construction Procurement' incorporating the 'Achieving Excellence in Construction' initiative, the Government Constructions Clients Group - Sustainability Action Plan and all guidance produced by the Procurement Practitioners Group - Sustainable Construction Task Group. W CS

- | | | | |
|---|-----------------------|---|--|
| 2 | Objective: | To promote Design Quality | |
| | | <ul style="list-style-type: none"> ▪ Main contracts to include a requirement that Main Contractors and their supply chains:- ▪ Develop designs that are consistent with Government policy on Architecture and the Built Environment for Northern Ireland; and W CS ▪ fully participate with other project stakeholders in design review process and workshops (eg Design Quality Indicator workshops) which seek to establish and enhance design quality. W CS | |
| | Contract Requirement: | | |
| 3 | Objective: | To promote Environmental Management Systems | |
| | | <ul style="list-style-type: none"> ▪ Main contracts to include a requirement that Main Contractors have, or will attain within a reasonable time period, 3rd party accreditation of their Environmental Management System with appropriate scope to cover the services to be provided under the contract2. G W S | |
| | Contract Requirement: | | |
| 4 | Objective: | To minimise and manage waste | |
| | | <ul style="list-style-type: none"> ▪ Main contracts to include a requirement that Main Contractors and their supply chain prepare and submit a Site Waste Management Plan for consideration by the Government Construction Client prior to commencement of works. W | |
| | Contract Requirement: | | |
| 5 | Objective: | To promote recycling and reuse of construction materials | |
| | | <ul style="list-style-type: none"> ▪ Main contracts to include requirement that: ▪ at least 10% of the material value of the project be derived from recycled/reuse content; and G W CS ▪ Main Contractors report on the recycled/reuse content achieved using suitable standard industry tools. G W | |
| | Contract Requirement: | | |
| 6 | Objective: | To promote environmental assessment | |

Environmental

- Contract Requirement: Main contracts to include a requirement that Main Contractors and their supply chains achieve a CEEQUAL or BREEAM rating of "Excellent" and "Very Good", or equivalent, for new build and refurbishment projects, respectively. W CS
- 7 Objective: To promote the reduction in energy and water consumption and carbon emissions.
Contract Requirement: Main contracts to include overarching design requirements for energy, water and low carbon design. G W CS
- 8 Objective: To promote the use of legal & sustainable timber
Contract Requirement: Main contracts to include a requirement that Main Contractors and their supply chain source timber from legal sources and provide an audit trail for chain of custody. G W CS
- 9 Objective: To promote the Considerate Constructors Scheme
Contract Requirement: Main contracts to include a requirement that Main Contractors register projects with the Considerate Constructors Scheme. W

2 As part of NI public procurement policy contractors are not currently required to have an Environmental Management System that has been accredited by a 3rd party. This requirement has not yet been agreed at CIFNI.

[1] Contains information on all businesses which are VAT registered or operating a PAYE scheme.

[2] AQW 8866/09 – July 2009.

[3] Constructionline is the UK's register of local and national construction and construction related suppliers, pre-qualified to work for public and private sector buyers. There are 1.639 NI enterprises registered with Constructionline, of these 1,635 are NI SMEs.

DFP - Submission to Committee for Finance & Personnel on 5 October



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Mr Shane McAteer
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Room 419
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6 October 2009

Dear Shane

Public Procurement

Background

At its meeting on 16 September 2009, the Committee for Finance and Personnel gave further consideration to CPD's correspondence of 5 June 2009 and issues arising from the evidence session held on 20 May 2009. As a result, the Committee requested further information on a number of issues.

1 Contracts awarded to SMEs

The Committee requested further information on the number and value of contracts awarded to SMEs.

CPD has requested the appropriate data from Departments, but is still awaiting a number of outstanding returns. As soon as all the returns have been received, CPD will forward the completed templates to the Committee.

2 Application of Public Contracts Regulations 2006 to the procurement of social housing.

As part of its correspondence of 5 June 2009, CPD advised the Committee that Contracting Authorities must consider the main purpose of the transaction to determine whether a contract is subject to the Regulations.

CPD included an example from social housing where the transaction is to achieve the development of the site by construction of housing for a Housing Association. In this case the predominant purpose is the construction of housing and not the acquisition of the land. The contract is therefore considered a works contract and the Regulations apply. If the works were not the main objective of the contract, but were incidental to another non-regulated objective, the Regulations would not apply.

The Committee has requested examples of instances when the Regulations would not apply to contracts as the "works" are incidental to another objective.

One example of where the "works" would be incidental would be the sale of land by a Contracting Authority for development, where the developer is free to use the land for purposes of his own choice. Provided the Contracting Authority places no contractual obligation on the developer to develop the site in accordance with the Contracting Authority's requirements, then there would be no procurement of "works" within the meaning of the Regulations.

If on the other hand, the Contracting Authority included a development agreement as part of the land disposal, which placed obligations on the developer to construct, for example, social housing to the Contracting Authority's specification, then the Contracting Authority would be entering into a works contract, since the works are "for" the Contracting Authority.

Yours sincerely,



NORMAN IRWIN

DFP - Update on InterTradeIreland Report & Output from the Construction Industry Forum for NI

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**Finance and
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Mr Shane McAteer
Clerk
Committee for Finance and Personnel
Room 419
Parliament Buildings
Stormont

7 October 2009

Dear Shane

Background

The Committee for Finance and Personnel requested an update on a number of issues, two of which relate to Central Procurement Directorate (CPD). The current position regarding these issues is set out below.

Copy of IntertradeIreland Report

The report entitled 'All Island Public Procurement Competitiveness Study' has not yet been published by IntertradeIreland. When published, a copy will be forwarded to the Committee.

Output from the Construction Industry Forum for Northern Ireland (CIFNI) Procurement Task Group - Working Groups

The Procurement Task Group Report includes seven key principles and some 25 actions. Whilst some of these actions can be introduced with immediate effect, it is acknowledged that full implementation will require further detailed development work.

A number of Working Groups have been established, drawing representation from CPD and the Centres of Procurement Expertise (CoPEs), to take forward this further work in an incremental manner and, in full, by 31 December 2009.

The first of these Groups is examining:-

- how the procurement process accommodates applications from consortia;
- the setting of proportionate minimum standards for the economic and financial standing of enterprises wishing to be short-listed for tender;
- how experience of work of a similar nature, scope and complexity should be used to evaluate the technical and professional ability of enterprises to be short-listed for tender; and
- how parts of the Pre-Qualification Questionnaires (PQQs) used by Government Construction Clients could be common to all contracts.

Draft output from this Group was passed to the Construction Industry Group for Northern Ireland (CIGNI) in June for consideration. CIGNI responded to CPD on the 28 September 2009. CPD has responded to the issues raised by CIGNI and it is envisaged that formal agreement with CIGNI and the other CoPEs on these actions will be achieved by the end of October.

This Working Group has also made significant progress on developing a standard PQQ to be used, as far as is practicable, by all Government Construction Clients. It is envisaged that this initial draft will be issued to CIGNI early in November for consideration.

A second Working Group is examining how the assessment of a contractor's health and safety competence can be assessed more efficiently as part of the procurement process. Draft output from this Group was passed to CIGNI for consideration on 7 October 2009.

A third Working Group is currently considering the development of a proactive dispute resolution procedure that will mitigate the need for legal action. Initial proposals from CIGNI were considered at a meeting of CPD and the CoPEs held on 1 September 2009. The Group is scheduled to discuss further draft proposals later this month with a view to issuing revised proposals to CIGNI by the end of October 2009.

The Task Group Report recognises that enterprises have the opportunity to benefit from participation in Government contracts either as a main contractor or as a subcontractor. A further Working Group will be convened shortly to consider expanding the 'Code of Practice for Government Construction Clients and their Supply Chains' to include a 'Fair Payment Charter' and a requirement that first tier subcontractors provide feedback directly to the Government Construction Client on monthly payment progress from the main contractor to the supply chain. The proposals, to be developed by December 2009, will seek to ensure that main contractors pass on the benefits of prompt payment to subcontractors.

Overall progress by the Working Groups is scheduled for discussion at the next meeting of the Construction Industry Forum for NI to be held on 13 October 2009. CPD will keep the Committee informed of the output from the Working Groups.

Yours sincerely,



NORMAN IRWIN

Central Procurement Directorate:
Follow up Information

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Mr Shane McAteer
Clerk
Committee for Finance and Personnel
Room 419
Parliament Buildings
Stormont

14 October 2009

Dear Shane

Committee Inquiry into Public Procurement Policy and Practice

With reference to your minute of 2 October I can confirm that Central Procurement Directorate (CPD) would welcome an independent Supply Chain Ombudsman to provide a confidential and unbiased route for the supply chain to raise issues pertaining to procurement across all public sector bodies in Northern Ireland. The Ombudsman's role could also include local supplier development, encourage new entrants and public sector opportunities outside Northern Ireland working in conjunction with InvestNI and InterTrade Ireland.

CPD has reviewed the Unite magazine article which suggests that contracts can be split by making use of 20% local placement allowance. CPD has advised that it is not aware of any Articles within the EU Procurement Directives that would permit the application of a local placement allowance and is of the view that such allowances would be a breach of these Directives.

Unite may be confusing Article 9 of the EU Directives that states "where a contract can be broken into lots and the total value exceeds the relevant threshold, each lot is subject to the full terms of the Directive". However, this requirement can be waived for individual lots with value less than EUR 80,000 providing that the total value of these waived lots does not exceed 20% of

the total. Under these circumstances the lots would not be subject to the full rigours of EU Procurement Directives however, they would still be subject of an open tender competition.

Yours sincerely,



NORMAN IRWIN

Contract Information:
Centres of Procurement Expertise

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Mr Shane McAteer
Clerk
Committee for Finance and Personnel
Room 419
Parliament Buildings
Stormont

15 October 2009

Dear Shane

Further to my correspondence of 06/10/2009 please find attached a number of completed templates in respect of both Construction and Supplies & Services contracts and from Belfast Education and Library Board. HSC – Procurement & Logistics Services have not completed the proforma but have provided a summary of information over financial year 2008 – 2009 based on an exercise previously commissioned by DHSSPS.

Returns are still awaited from the other Education and Library Boards and Health Estates who have all advised that it will take time to collate the information required.

NI Water, Roads Service and Translink have indicated that they do not hold the information requested and are therefore unable to complete the template. CPD are still awaiting a response from the NI Housing Executive.

Could you advise if the Committee still requires CPD to pursue the outstanding returns.

Yours sincerely

Norman

NORMAN IRWIN

Contracting Entity)	CPD / CoPE (Specify	BELB					
Number of contracts awarded to Northern Ireland SMEs and SEEs - as the main contractor - since 2004							
Northern Ireland SMEs	1Apr04 - 31Mar05	1Apr05 - 31Mar06	1Apr06 - 31Mar07	1Apr07 - 31Mar08	1Apr08 - 31Mar09	Total	
Medium (less than 250 employees)			38	9	36	83	
Small (less than 50 employees)			26	36	33	95	
Micro (less than 10 employees)			14	10	20	44	
MTC Electrical (BI Electrical & Blackbourne Electrical Nov 06 < 50 employees							
MTC Mechanical (WJM Building Nov 06 >50 employees							
MTC Building (Scott Ferguson July 2008 >50 employees)							
Sub-Total-SME	0	0	78	55	89	222	
Northern Ireland SEEs						Total	
Medium (less than 250 employees)					1	1	
Small (less than 50 employees)						0	
Micro (less than 10 employees)						0	
Sub-Total-SEE	0	0	0	0	1	1	
						Total	
Sub-Total for SMEs and SEEs	0	0	78	55	90	0	
Number of contracts awarded to other organisations in the same period (i.other than SMEs / SEEs)							
Other organisations							
Summarise the types of organisations							

SMEs/SEEs External to N.I.			1	1	3	
Non SMEs: From N.I.			8	7	11	
Non SMEs: External to N.I.				2		
						Total
Sub-Total-Other Organisations	0	0	9	10	14	0
						Total
Total - All Contracts	0	0	87	65	104	0
Number of SME and SEE Contracts as Proportion of Total						
	#DIV/0!	#DIV/0!	0.897	0.846	0.865	#DIV/0!

Contracting Entity CPD / CoPE (Specify) BELB

Value of contracts awarded to Northern Ireland SMEs and SEEs - as the main contractor - since 2004

	1Apr04 - 31Mar05	1Apr05 - 31Mar06	1Apr06 - 31Mar07	1Apr07 - 31Mar08	1Apr08 - 31Mar09	TOTAL
Northern Ireland SMEs						
Medium (less than 250 employees)			£10,329,166.00	£13,224,500.00	£45,447,136.00	£69,000,802.00
Small (less than 50 employees)			£17,009,466.00	£4,958,652.00	£19,662,095.00	£41,630,213.00
Micro (less than 10 employees)			£1,095,239.00	£694,028.00	£1,839,178.00	£3,628,445.00
Sub-Total-SME	£0.00	£0.00	£28,433,871.00	£18,877,180.00	£66,948,409.00	£114,259,460.00
Northern Ireland SEEs						Total
Medium (less than 250 employees)					£29,000.00	£29,000.00
Small (less than 50 employees)						£0.00
Micro (less than 10 employees)						£0.00
Sub-Total-SEE	£0.00	£0.00	£0.00	£0.00	£29,000.00	£29,000.00

						Total
Sub-Total for SMEs and SEEs	£0.00	£0.00	£28,433,871.00	£18,877,180.00	£66,977,409.00	£0.00
Value of contracts awarded to other organisations in the same period (i.other than SMEs / SEEs)						
Other organisations						
Summarise the types of organisations						
SMEs/SEEs External to N.I.			£22,500.00	£150,000.00	£133,750.00	
Non SMEs: From N.I.			£9,081,656.00	£4,980,500.00	£3,504,592.00	
Non SMEs: External to N.I.				£1,000,000.00		

						Total
Sub-Total-Other Organisations	£0.00	£0.00	£9,104,156.00	£6,130,500.00	£3,638,342.00	£0.00

						Total
Total - All Contracts	£0.00	£0.00	£37,538,027.00	£25,007,680.00	£70,615,751.00	£0.00
Value of SME and SEE Contracts as Proportion of Total						
	#DIV/0!	#DIV/0!	£0.76	£0.75	£0.95	#DIV/0!

Contracting Entity	CPD / CoPE (Specify)	CPD - Supplies and Services				
Number of contracts awarded to Northern Ireland SMEs and SEEs - as the main contractor - since 2004						
Northern Ireland SMEs	1Apr04 - 31Mar05	1Apr05 - 31Mar06	1Apr06 - 31Mar07	1Apr07 - 31Mar08	1Apr08 - 31Mar09	Total
Medium (less than 250 employees)	535	543	509	438	261	2286
Small (less than 50 employees)						0
Micro (less than 10 employees)						0
Sub-Total-SME	535	543	509	438	261	2286
Northern Ireland SEEs						Total
Medium (less than 250 employees)						0

Small (less than 50 employees)						0
Micro (less than 10 employees)						0
Sub-Total-SEE	0	0	0	0	0	0
						Total
Sub-Total for SMEs and SEEs	535	543	509	438	261	2286
Number of contracts awarded to other organisations in the same period (i.other than SMEs / SEEs)						
Other organisations						
Summarise the types of organisations						
SMEs/SEEs External to N.I.					83	83
Non SMEs: From N.I.						
Non SMEs: External to N.I.						
						Total
Sub-Total-Other Organisations	0	0	0	0	83	83
						Total
Total - All Contracts	535	543	509	438	344	2369
Number of SME and SEE Contracts as Proportion of Total						
	1	1	1	1	0.759	0.965

Contracting Entity CPD / CoPE (Specify)

CPD - Supplies & Services

Value of contracts awarded to Northern Ireland SMEs and SEEs - as the main contractor - since 2004

	1Apr04 - 31Mar05	1Apr05 - 31Mar06	1Apr06 - 31Mar07	1Apr07 - 31Mar08	1Apr08 - 31Mar09	Total
Northern Ireland SMEs						
Medium (less than 250 employees)	£157,424,163.00	£349,775,497.00	£200,412,882.00	£723,860,817.00	£82,659,563.00	£1,514,132,922.00
Small (less than 50 employees)						£0.00
Micro (less than 10 employees)						£0.00

Sub-Total- SME	£157,424,16 3.00	£349,775,49 7.00	£200,412,88 2.00	£723,860,81 7.00	£82,659,563. 00	£1,514,132,92 2.00
Northern Ireland SEEs						Total
Medium (less than 250 employees)						£0.00
Small (less than 50 employees)						£0.00
Micro (less than 10 employees)						£0.00
Sub-Total- SEE	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
						Total
Sub-Total for SMEs and SEEs	£157,424,16 3.00	£349,775,49 7.00	£200,412,88 2.00	£723,860,81 7.00	£82,659,563. 00	£1,514,132,92 2.00
Value of contracts awarded to other organisations in the same period (i.other than SMEs / SEEs)						
Other organisati ons						
Summaris e the types of organisati ons						
SMEs/SEE s External to N.I.					£39,056,376. 00	
Non SMEs: From N.I.						
Non SMEs: External to N.I.						
						Total
Sub-Total- Other Organisati ons	£0.00	£0.00	£0.00	£0.00	£39,056,376. 00	£39,056,376.0 0
						Total

Total - All	£157,424,16	£349,775,49	£200,412,88	£723,860,81	£121,715,93	£1,553,189,29
Contracts	3.00	7.00	2.00	7.00	9.00	8.00
Value of SME and SEE Contracts as Proportion of Total						
	£1.00	£1.00	£1.00	£1.00	£0.68	£0.97

Contracting Entity	CPD / CoPE (Specify)	CPD Construction					
Number of contracts awarded to Northern Ireland SMEs and SEEs - as the main contractor - since 2004							
Northern Ireland SMEs	1Apr04 - 31Mar05	1Apr05 - 31Mar06	1Apr06 - 31Mar07	1Apr07 - 31Mar08	1Apr08 - 31Mar09	Total	
Medium (less than 250 employees)	9	10	16	17	17	69	
Small (less than 50 employees)	17	9	8	8	6	48	
Micro (less than 10 employees)	1	5	0	1	8	15	
Sub-Total-SME	27	24	24	26	31	132	
Northern Ireland SEEs						Total	
Medium (less than 250 employees)						0	
Small (less than 50 employees)						0	
Micro (less than 10 employees)						0	
Sub-Total-SEE	0	0	0	0	0	0	
						Total	
Sub-Total for SMEs and SEEs	27	24	24	26	31	132	
Number of contracts awarded to other organisations in the same period (i.other than SMEs / SEEs)							
Other organisations							
Summarise the types of organisations							
SMEs/SEEs External to N.I.	2	0	1	3	1	7	
Non SMEs: From N.I.	3	3	8	7	5	26	
Non SMEs: External to N.I.	3	0	1	0	6	10	
						0	
						0	

						Total
Sub-Total-Other Organisations	8	3	10	10	12	43
						Total
Total - All Contracts	35	27	34	36	43	175
Number of SME and SEE Contracts as Proportion of Total						
	0.771	0.889	0.706	0.722	0.721	0.754

Contracting Entity	CPD / CoPE (Specify)	CPD Construction					
Value of contracts awarded to Northern Ireland SMEs and SEEs - as the main contractor - since 2004							
Northern Ireland SMEs	1Apr04 - 31Mar05	1Apr05 - 31Mar06	1Apr06 - 31Mar07	1Apr07 - 31Mar08	1Apr08 - 31Mar09	Total	
Medium (less than 250 employees)	£11,053,189.84	£37,466,317.78	£33,775,203.54	£46,180,219.98	£54,080,209.33	£182,555,140.47	
Small (less than 50 employees)	£7,530,400.64	£880,266.56	£6,407,030.21	£4,770,715.99	£4,602,954.08	£24,191,367.48	
Micro (less than 10 employees)	£23,620.00	£477,264.82	£0.00	£149,382.50	£431,905.04	£1,082,172.36	
Sub-Total-SME	£18,607,210.48	£38,823,849.16	£40,182,233.75	£51,100,318.47	£59,115,068.45	£207,828,680.31	
Northern Ireland SEEs						Total	
Medium (less than 250 employees)						£0.00	
Small (less than 50 employees)						£0.00	
Micro (less than 10 employees)						£0.00	
Sub-Total-SEE	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	
						Total	
Sub-Total for SMEs and SEEs	£18,607,210.48	£38,823,849.16	£40,182,233.75	£51,100,318.47	£59,115,068.45	£207,828,680.31	

Value of contracts awarded to other organisations in the same period (i.other than SMEs / SEEs)

Other organisations

Summarise the types of organisations

SMEs/SEEs

External to N.I.	£276,826.00	£0.00	£379,500.00	£506,527.00	£6,724.00	£1,169,577.00
Non SMEs: From N.I.	£8,851,604.80	£12,306,741.46	£15,782,462.31	£43,019,762.89	£28,357,244.41	£108,317,815.87
Non SMEs: External to N.I.	£382,788.00	£0.00	£36,250.00	£0.00	£1,690,275.86	£2,109,313.86
						£0.00
						Total
Sub-Total-Other Organisations	£9,511,218.80	£12,306,741.46	£16,198,212.31	£43,526,289.89	£30,054,244.27	£111,596,706.73
						Total
Total - All Contracts	£28,118,429.28	£51,130,590.62	£56,380,446.06	£94,626,608.36	£89,169,312.72	£319,425,387.04
Value of SME and SEE Contracts as Proportion of Total	£0.66	£0.76	£0.71	£0.54	£0.66	£0.65

Total Value of Spend with N.I. Suppliers*

	Total Spend	Spend with N.I. Companies	Percentage
Non-Stock and Warehouse Stock Transactions	£226,671,685	£114,414,541	50.48%
Non-transactional Contracts (estimates)	£47,396,930	£15,930,649	33.61%
Recruitment Agencies (estimate)	£40,000,000	£20,000,000	50.00%
Overall Position	£314,068,615	£150,345,190	47.87%
Pharmacy Contracts (estimate)	£63,545,800	0	0

* For the purposes of this work N.I. companies were defined as those having an ordering address in Northern Ireland

DFP-Final response to Committee
on returns from CoPEs on SEE and
SME contracts - 23 November 2009

Department of
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Mr Shane McAteer
Clerk
Committee for Finance and Personnel
Room 419
Parliament Buildings
Stormont

23 November 2009

Dear Shane

Further to my correspondence of 15 October and 19 November please find attached the final outstanding returns from ELBs.

As previously advised NI Water, Roads Service and Translink have indicated that they do not hold the information requested and are therefore unable to complete the proforma.

Yours sincerely



NORMAN IRWIN

Number of Contracts Awarded

Contracting Entity	CPD / CoPE (Specify)	Northern Ireland Housing Executive
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Number of contracts awarded to Northern Ireland SMEs and SEEs - as the main contractor - since 2004

Northern Ireland SMEs	1Apr04 - 31Mar05	1Apr05 - 31Mar06	1Apr06 - 31Mar07	1Apr07 - 31Mar08	1Apr08 - 31Mar09	Total
--------------------------	---------------------	---------------------	---------------------	---------------------	---------------------	-------

Medium (less than 250 employees)	1731	1665	1252	936	637	6221
Small (less than 50 employees)	72	62	72	72	38	316
Micro (less than 10 employees)	719	665	477	322	244	2427
Sub-Total-SME	2522	2392	1801	1330	919	8964
Northern Ireland SEEs						Total
Medium (less than 250 employees)	0	0	0	0	0	0
Small (less than 50 employees)	0	0	0	0	0	0
Micro (less than 10 employees)	0	0	0	0	0	0
Sub-Total-SEE	0	0	0	0	0	0
						Total
Sub-Total for SMEs and SEEs	2522	2392	1801	1330	919	0

Number of contracts awarded to other organisations in the same period (i.other than SMEs / SEEs)

Other organisations

Summarise the types of organisations

SMEs/SEEs External to N.I.	0	0	0	0	0	
Non SMEs: From N.I.	0	0	0	0	0	
Non SMEs: External to N.I.	0	0	0	0	0	
						Total
Sub-Total-Other Organisations	0	0	0	0	0	0

Total

Total - All Contracts	2522	2392	1801	1330	919	0
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Number of SME and SEE Contracts as Proportion of Total

	1	1	1	1	1	#DIV/0!
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Value of Contracts Awarded

Contracting Entity	CPD / CoPE (Specify)	Northern Ireland Housing Executive
--------------------	----------------------	------------------------------------

Value of contracts awarded to Northern Ireland SMEs and SEEs - as the main contractor - since 2004

Northern Ireland SMEs	1Apr04 - 31Mar05	1Apr05 - 31Mar06	1Apr06 - 31Mar07	1Apr07 - 31Mar08	1Apr08 - 31Mar09	Total
Medium (less than 250 employees)	£123,437,793.00	£135,571,343.00	£118,764,096.00	£112,494,895.00	£44,636,687.00	£534,904,814.00
Small (less than 50 employees)	£33,291,004.00	£28,902,151.00	£23,308,485.00	£24,457,254.00	£22,562,917.00	£132,521,811.00
Micro (less than 10 employees)	£3,500,000.00	£3,300,000.00	£2,850,000.00	£2,700,000.00	£2,600,000.00	£14,950,000.00
Sub-Total-SME	£160,228,797.00	£167,773,494.00	£144,922,581.00	£139,652,149.00	£69,799,604.00	£682,376,625.00
Northern Ireland SEEs						Total
Medium (less than 250 employees)	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Small (less than 50 employees)	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Micro (less than 10 employees)	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Sub-Total-SEE	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
						Total
Sub-Total for SMEs and SEEs	£160,228,797.00	£167,773,494.00	£144,922,581.00	£139,652,149.00	£69,799,604.00	£0.00

Value of contracts awarded to other organisations in the same period (i.other than SMEs / SEEs)

Other organisations

Summarise the types of

organisations						
SMEs/SEEs						
External to N.I.	£0.00	£0.00	£0.00	£0.00	£0.00	
Non SMEs: From N.I.	£0.00	£0.00	£0.00	£0.00	£0.00	
Non SMEs: External to N.I.	£0.00	£0.00	£0.00	£0.00	£0.00	
						Total
Sub-Total-Other Organisations	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
						Total
Total - All Contracts	£160,228,797.00	£167,773,494.00	£144,922,581.00	£139,652,149.00	£69,799,604.00	£0.00
Value of SME and SEE Contracts as Proportion of Total	£1.00	£1.00	£1.00	£1.00	£1.00	#DIV/0!

WELB - Works Contracts Number

Contracting Entity	CPD / CoPE (Specify)	WELB-Works Contracts					
Number of contracts awarded to Northern Ireland SMEs and SEEs - as the main contractor - since 2004							
Northern Ireland SMEs	1Apr04 - 31Mar05	1Apr05 - 31Mar06	1Apr06 - 31Mar07	1Apr07 - 31Mar08	1Apr08 - 31Mar09	Total	
Medium (less than 250 employees)	7	2	6	0	0	15	
Small (less than 50 employees)	17	12	35	0	1	65	
Micro (less than 10 employees)	9	15	23	0	1	48	
Sub-Total-SME	33	29	64	0	2	128	
Northern Ireland SEEs						Total	
Medium (less than 250 employees)	0	0	0	0	0	0	
Small (less than 50 employees)	0	0	0	0	0	0	
Micro (less than 10 employees)	0	0	0	0	0	0	
Sub-Total-SEE	0	0	0	0	0	0	
						Total	
Sub-Total for SMEs and SEEs	33	29	64	0	2	128	

Micro (less than 10 employees)	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Sub-Total-SEE	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
						Total
Sub-Total for SMEs and SEEs	£6,322,369.67	£1,851,126.21	£4,426,449.58	£0.00	£58,581.31	£12,658,526.77

Value of contracts awarded to other organisations in the same period (i.other than SMEs / SEEs)

Other organisations

Summarise the types of organisations

SMEs/SEEs

External to N.I. £35,588.30 £0.00 £0.00 £0.00 £0.00

Non SMEs: From N.I. £0.00 £0.00 £0.00 £0.00 £0.00

Non SMEs: External to N.I. £0.00 £0.00 £0.00 £0.00 £0.00

Total

Sub-Total-Other Organisations £35,588.30 £0.00 £0.00 £0.00 £0.00 £35,588.30

Total

Total - All Contracts £6,357,957.97 £1,851,126.21 £4,426,449.58 £0.00 £58,581.31 £12,694,115.07

Value of SME and SEE Contracts as Proportion of Total

£0.99 £1.00 £1.00 #DIV/0! £1.00 £1.00

WELB - Maintenance Number

Contracting Entity	CPD / CoPE (Specify)	WELB - Maintenance
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Number of contracts awarded to Northern Ireland SMEs and SEEs - as the main contractor - since 2004

Northern Ireland SMEs	1Apr04 - 31Mar05	1Apr05 - 31Mar06	1Apr06 - 31Mar07	1Apr07 - 31Mar08	1Apr08 - 31Mar09	Total
Medium (less than 250 employees)	25	13	16	38	25	117
Small (less than 50 employees)	75	44	49	84	59	311
Micro (less than 10 employees)	129	64	88	127	118	526

Sub-Total-SME	229	121	153	249	202	954
Northern Ireland SEEs						Total
Medium (less than 250 employees)						0
Small (less than 50 employees)						0
Micro (less than 10 employees)						0
Sub-Total-SEE	0	0	0	0	0	0
						Total
Sub-Total for SMEs and SEEs	229	121	153	249	202	0
Number of contracts awarded to other organisations in the same period (i.other than SMEs / SEEs)						
Other organisations						
Summarise the types of organisations						
SMEs/SEEs External to N.I.						
Non SMEs: From N.I.						
Non SMEs: External to N.I.						
						Total
Sub-Total-Other Organisations	0	0	0	0	0	0
						Total
Total - All Contracts	229	121	153	249	202	0
Number of SME and SEE Contracts as Proportion of Total						
	1	1	1	1	1	#DIV/0!

WELB - Maintenance Value

Contracting Entity	CPD / CoPE (Specify)	WELB - Works Contracts					Total
Number of contracts awarded to Northern Ireland SMEs and SEEs - as the main contractor - since 2004							
Northern Ireland SMEs	1Apr04 - 31Mar05	1Apr05 - 31Mar06	1Apr06 - 31Mar07	1Apr07 - 31Mar08	1Apr08 - 31Mar09		Total
Medium (less than 250 employees)	7	2	6	0	0		15
Small (less than 50 employees)	17	12	35	0	1		65

Micro (less than 10 employees)	9	15	23	0	1	48
Sub-Total-SME	33	29	64	0	2	128
Northern Ireland SEEs						Total
Medium (less than 250 employees)	0	0	0	0	0	0
Small (less than 50 employees)	0	0	0	0	0	0
Micro (less than 10 employees)	0	0	0	0	0	0
Sub-Total-SEE	0	0	0	0	0	0
						Total
Sub-Total for SMEs and SEEs	33	29	64	0	2	128

Number of contracts awarded to other organisations in the same period (i.other than SMEs / SEEs)

Other

organisations

Summarise the types of organisations

SMEs/SEEs External to N.I.	1	0	0	0	0	
Non SMEs: From N.I.	0	0	0	0	0	
Non SMEs: External to N.I.	0	0	0	0	0	
						Total
Sub-Total-Other Organisations	1	0	0	0	0	1
						Total
Total - All Contracts	34	29	64	0	2	129

Number of SME and SEE Contracts as Proportion of Total

	0.971	1	1	#DIV/0!	1	0.992
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SEELB - Maintenance Number

Contracting Entity	CPD / CoPE (Specify)	SEELB - Maintenance
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Number of contracts awarded to Northern Ireland SMEs and SEEs - as the main contractor - since 2004

Northern Ireland SMEs	1Apr04 - 31Mar05	1Apr05 - 31Mar06	1Apr06 - 31Mar07	1Apr07 - 31Mar08	1Apr08 - 31Mar09	Total
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Medium (less than 250 employees)						0
Small (less than 50 employees)						0
Micro (less than 10 employees)						0
Sub-Total-SME	0	0	0	0	0	0
Northern Ireland SEEs						Total
Medium (less than 250 employees)						0
Small (less than 50 employees)		321	628	1320	1492	3761
Micro (less than 10 employees)	4	743	1,491	2,636	2,388	7262
Sub-Total-SEE	4	1064	2119	3956	3880	11023
						Total
Sub-Total for SMEs and SEEs	4	1064	2119	3956	3880	0
Number of contracts awarded to other organisations in the same period (i.other than SMEs / SEEs)						
Other organisations						
Summarise the types of organisations						
SMEs/SEEs						
External to N.I.						
Non SMEs: From N.I.						
Non SMEs: External to N.I.						
						Total
Sub-Total-Other Organisations	0	0	0	0	0	0
						Total
Total - All Contracts	4	1064	2119	3956	3880	0
Number of SME and SEE Contracts as Proportion of Total						
	1	1	1	1	1	#DIV/0!

SEELB - Maintenance Number

Contracting Entity	CPD / CoPE (Specify)	SEELB - Maintenance

Value of contracts awarded to Northern Ireland SMEs and SEEs - as the main contractor - since 2004

Northern Ireland SMEs	1Apr04 - 31Mar05	1Apr05 - 31Mar06	1Apr06 - 31Mar07	1Apr07 - 31Mar08	1Apr08 - 31Mar09	Total
Medium (less than 250 employees)						£0.00
Small (less than 50 employees)	£10,500.00	£420,444.00	£821,322.00	£1,341,134.00	£2,051,740.00	£4,645,140.00
Micro (less than 10 employees)	£24,802.00	£839,954.00	£1,510,021.00	£2,581,134.00	£4,122,974.00	£9,078,885.00
Sub-Total-SME	£35,302.00	£1,260,398.00	£2,331,343.00	£3,922,268.00	£6,174,714.00	£13,724,025.00
Northern Ireland SEEs						Total
Medium (less than 250 employees)						£0.00
Small (less than 50 employees)						£0.00
Micro (less than 10 employees)						£0.00
Sub-Total-SEE	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
						Total
Sub-Total for SMEs and SEEs	£35,302.00	£1,260,398.00	£2,331,343.00	£3,922,268.00	£6,174,714.00	£0.00

Value of contracts awarded to other organisations in the same period (i.other than SMEs / SEEs)

Other organisations
Summarise the types of organisations
SMEs/SEEs
External to N.I.
Non SMEs:
From N.I.

Non SMEs:
External to
N.I.

						Total
Sub-Total- Other Organisations	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Total - All Contracts	£35,302.0 0	£1,260,398.0 0	£2,331,343.0 0	£3,922,268.0 0	£6,174,714.0 0	£0.00
Value of SME and SEE Contracts as Proportion of Total	£1.00	£1.00	£1.00	£1.00	£1.00	#DIV/0!

SEELB - Works Number

Contracting Entity	CPD / CoPE (Specify)	SEELB - Works Contracts					
Number of contracts awarded to Northern Ireland SMEs and SEEs - as the main contractor - since 2004							
Northern Ireland SMEs	1Apr04 - 31Mar05	1Apr05 - 31Mar06	1Apr06 - 31Mar07	1Apr07 - 31Mar08	1Apr08 - 31Mar09	Total	
Medium (less than 250 employees)						0	
Small (less than 50 employees)						0	
Micro (less than 10 employees)						0	
Sub-Total-SME	0	0	0	0	0	0	
Northern Ireland SEEs							
Medium (less than 250 employees)						0	
Small (less than 50 employees)						0	
Micro (less than 10 employees)						0	
Sub-Total-SEE	0	0	0	0	0	0	
Total							
Sub-Total for SMEs and SEEs	0	0	0	0	0	0	
Number of contracts awarded to other organisations in the same period (i.other than SMEs / SEEs)							
Other organisations							

Summarise the types of organisations
 SMEs/SEEs
 External to N.I.
 Non SMEs: From N.I.
 Non SMEs: External to N.I.

						Total
Sub-Total-Other Organisations	0	0	0	0	0	0
						Total
Total - All Contracts	0	0	0	0	0	0
Number of SME and SEE Contracts as Proportion of Total						
	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!

SEELB Goods & Services Value

Contracting Entity	CPD / CoPE (Specify)	SEELB (Goods & Services)				
Value of contracts awarded to Northern Ireland SMEs and SEEs - as the main contractor - since 2004						
Northern Ireland SMEs	1Apr04 - 31Mar05	1Apr05 - 31Mar06	1Apr06 - 31Mar07	1Apr07 - 31Mar08	1Apr08 - 31Mar09	Total
Medium (less than 250 employees)			£375,000.00	£2,811,000.00	£181,800.00	£3,367,800.00
Small (less than 50 employees)			£225,000.00	£3,454,000.00	£209,000.00	£3,888,000.00
Micro (less than 10 employees)			£600,000.00	£4,528,000.00	£70,000.00	£5,198,000.00
Sub-Total-SME	£0.00	£0.00	£1,200,000.00	£10,793,000.00	£460,800.00	£12,453,800.00
Northern Ireland SEEs						Total
Medium (less than 250 employees)						£0.00
Small (less than 50 employees)						£0.00
Micro (less than 10 employees)						£0.00

Sub-Total-SEE	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
						Total
Sub-Total for SMEs and SEEs	£0.00	£0.00	£1,200,000.00	£10,793,000.00	£460,800.00	£0.00
Value of contracts awarded to other organisations in the same period (i.other than SMEs / SEEs)						
Other organisations						
Summarise the types of organisations						
SMEs/SEEs						
External to N.I.			£0.00	£70,000.00	£200,000.00	
Non SMEs: From N.I.			£195,000.00	£1,450,000.00	£440,000.00	
Non SMEs: External to N.I.			£0.00	£0.00	£0.00	
						Total
Sub-Total-Other Organisations	£0.00	£0.00	£195,000.00	£1,520,000.00	£640,000.00	£2,355,000.00
						Total
Total - All Contracts	£0.00	£0.00	£1,395,000.00	£12,313,000.00	£1,100,800.00	£14,808,800.00
Value of SME and SEE Contracts as Proportion of Total						
	#DIV/0!	#DIV/0!	£0.86	£0.88	£0.42	£0.00

SEELB Goods & Services Number

Contracting Entity	CPD / CoPE (Specify)	SEELB (Goods & Services)				
Number of contracts awarded to Northern Ireland SMEs and SEEs - as the main contractor - since 2004						
Northern Ireland SMEs	1Apr04 - 31Mar05	1Apr05 - 31Mar06	1Apr06 - 31Mar07	1Apr07 - 31Mar08	1Apr08 - 31Mar09	Total
Medium (less than 250 employees)			3	12	4	19
Small (less than 50 employees)			2	37	5	44
Micro (less than 10 employees)			1	65	2	68
Sub-Total-SME	0	0	6	114	11	131
Northern Ireland SEEs						Total

Medium (less than 250 employees)			0	0	0	0
Small (less than 50 employees)			0	0	0	0
Micro (less than 10 employees)			0	0	0	0
Sub-Total-SEE	0	0	0	0	0	0
						Total
Sub-Total for SMEs and SEEs	0	0	6	114	11	131
Number of contracts awarded to other organisations in the same period (i.other than SMEs / SEEs)						
Other organisations						
Summarise the types of organisations						
SMEs/SEEs External to N.I.			0	2	1	
Non SMEs: From N.I.			2	8	5	
Non SMEs: External to N.I.			0	0	0	
						Total
Sub-Total-Other Organisations	0	0	2	10	6	18
						Total
Total - All Contracts	0	0	8	124	17	149
Number of SME and SEE Contracts as Proportion of Total						
	#DIV/0!	#DIV/0!	0.75	0.919	0.647	0.879

SELB - Works Number

Contracting Entity	CPD / CoPE (Specify)	SELB - Works Contracts				
Number of contracts awarded to Northern Ireland SMEs and SEEs - as the main contractor - since 2004						
Northern Ireland SMEs	1Apr04 - 31Mar05	1Apr05 - 31Mar06	1Apr06 - 31Mar07	1Apr07 - 31Mar08	1Apr08 - 31Mar09	Total
Medium (less than 250 employees)	37	37	25	41	13	153
Small (less than 50 employees)	59	104	48	58	29	298
Micro (less than 10 employees)	53	44	30	33	22	182
Sub-Total-SME	149	185	103	132	64	633

Northern Ireland SEEs						Total
Medium (less than 250 employees)						0
Small (less than 50 employees)						0
Micro (less than 10 employees)						0
Sub-Total-SEE	0	0	0	0	0	0
						Total
Sub-Total for SMEs and SEEs	149	185	103	132	64	0
Number of contracts awarded to other organisations in the same period (i.other than SMEs / SEEs)						
Other organisations						
Summarise the types of organisations						
SMEs/SEEs						
External to N.I.						
Non SMEs: From N.I.	1	1	1	1	2	
Non SMEs: External to N.I.						
						Total
Sub-Total-Other Organisations	1	1	1	1	2	0
						Total
Total - All Contracts	150	186	104	133	66	0
Number of SME and SEE Contracts as Proportion of Total						
	0.993	0.995	0.990	0.992	0.970	#DIV/0!

SELB - Works Value

Contracting Entity	CPD / CoPE (Specify)	SELB - Works Contracts				
Value of contracts awarded to Northern Ireland SMEs and SEEs - as the main contractor - since 2004						
Northern Ireland SMEs	1Apr04 - 31Mar05	1Apr05 - 31Mar06	1Apr06 - 31Mar07	1Apr07 - 31Mar08	1Apr08 - 31Mar09	Total
Medium (less than 250 employees)	£13,295,256.00	£5,018,426.60	£5,633,321.80	£3,749,964.50	£649,334.77	£28,346,303.67

Contracting Entity	CPD / CoPE (Specify)		SELB - Works Contracts			
Small (less than 50 employees)	£4,387,480.40	£9,591,499.60	£4,996,616.70	£9,462,655.60	£3,201,158.10	£31,639,410.40
Micro (less than 10 employees)	£1,972,114.93	£3,018,044.00	£2,892,187.30	£4,096,327.60	£548,815.96	£12,527,489.79
Sub-Total-SME	£19,654,851.33	£17,627,970.20	£13,522,125.80	£17,308,947.70	£4,399,308.83	£72,513,203.86
Northern Ireland SEEs						Total
Medium (less than 250 employees)						£0.00
Small (less than 50 employees)						£0.00
Micro (less than 10 employees)						£0.00
Sub-Total-SEE	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
						Total
Sub-Total for SMEs and SEEs	£19,654,851.33	£17,627,970.20	£13,522,125.80	£17,308,947.70	£4,399,308.83	£0.00
Value of contracts awarded to other organisations in the same period (i.other than SMEs / SEEs)						
Other organisations						
Summarise the types of organisations						
SMEs/SEEs						
External to N.I.						
Non SMEs: From N.I.	£79,427.77	£56,388.93	£12,329.12	£20,901.71	£16,937,070.00	
Non SMEs: External to N.I.						
						Total

Contracting Entity	CPD / CoPE (Specify)	SELB - Works Contracts				
Sub-Total-Other Organisations	£79,427.77	£56,388.93	£12,329.12	£20,901.71	£16,937,070.00	£0.00
Total - All Contracts	£19,734,279.10	£17,684,359.13	£13,534,454.92	£17,329,849.41	£21,336,378.83	£0.00
Value of SME and SEE Contracts as Proportion of Total						
	£1.00	£1.00	£1.00	£1.00	£0.21	#DIV/0!

SELB Works & G & S Number

Contracting Entity	CPD / CoPE (Specify)	SELB					
Number of contracts awarded to Northern Ireland SMEs and SEEs - as the main contractor - since 2004							
Northern Ireland SMEs	1Apr04 - 31Mar05	1Apr05 - 31Mar06	1Apr06 - 31Mar07	1Apr07 - 31Mar08	1Apr08 - 31Mar09	Total	
Medium (less than 250 employees)	37	54	43	69	28	231	
Small (less than 50 employees)	59	129	75	100	52	415	
Micro (less than 10 employees)	53	100	89	126	72	440	
Sub-Total-SME	149	283	207	295	152	1086	
Northern Ireland SEEs						Total	
Medium (less than 250 employees)						0	
Small (less than 50 employees)						0	
Micro (less than 10 employees)						0	
Sub-Total-SEE	0	0	0	0	0	0	
						Total	
Sub-Total for SMEs and SEEs	149	283	207	295	152	0	
Number of contracts awarded to other organisations in the same period (i.other than SMEs / SEEs)							
Other organisations							
Summarise the types of organisations							

Contracting Entity	CPD / CoPE (Specify)		SELB			
SMEs/SEEs External to N.I.						
Non SMEs: From N.I.	1	3	3	3	3	
Non SMEs: External to N.I.						
						Total
Sub-Total-Other Organisations	1	3	3	3	3	0
						Total
Total - All Contracts	150	286	210	298	155	0
Number of SME and SEE Contracts as Proportion of Total	0.993	0.990	0.986	0.990	0.981	#DIV/0!

SELB Works & G & S Value

Contracting Entity	CPD / CoPE (Specify)		SELB			
Value of contracts awarded to Northern Ireland SMEs and SEEs - as the main contractor - since 2004						
Northern Ireland SMEs	1Apr04 - 31Mar05	1Apr05 - 31Mar06	1Apr06 - 31Mar07	1Apr07 - 31Mar08	1Apr08 - 31Mar09	Total
Medium (less than 250 employees)	£13,295,256 .00	£8,416,424. 60	£7,567,236.8 0	£6,630,691. 50	£4,776,014. 70	£40,685,623. 60
Small (less than 50 employees)	£4,387,480. 40	£14,648,162 .00	£7,874,533.7 0	£13,749,551 .00	£9,342,193. 10	£50,001,920. 20
Micro (less than 10 employees)	£1,972,114. 93	£14,239,112 .00	£9,278,475.3 0	£13,609,232 .00	£14,176,177 .00	£53,275,111. 23
Sub-Total-SME	£19,654,851 .33	£37,303,698 .60	£24,720,245. 80	£33,989,474 .50	£28,294,384 .80	£143,962,655 .03
Northern Ireland SEEs						Total
Medium (less than 250 employees)						£0.00

Contracting CPD / CoPE Entity (Specify)	SELB					
Small (less than 50 employees)						£0.00
Micro (less than 10 employees)						£0.00
Sub-Total-SEE	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
						Total
Sub-Total for SMEs and SEEs	£19,654,851.33	£37,303,698.60	£24,720,245.80	£33,989,474.50	£28,294,384.80	£0.00
Value of contracts awarded to other organisations in the same period (i.other than SMEs / SEEs)						
Other organisations						
Summarise the types of organisations						
SMEs/SEEs External to N.I.						
Non SMEs: From N.I.	£79,427.77	£1,706,388.90	£131,551,997.12	£3,318,343.70	£17,205,248.00	
Non SMEs: External to N.I.						Total
Sub-Total-Other Organisations	£79,427.77	£1,706,388.90	£131,551,997.12	£3,318,343.70	£17,205,248.00	£0.00
						Total
Total - All Contracts	£19,734,279.10	£39,010,087.50	£156,272,242.92	£37,307,818.20	£45,499,632.80	£0.00
Value of SME and SEE Contracts as Proportion of Total						
	£1.00	£0.96	£0.16	£0.91	£0.62	#DIV/0!

NEELB Goods and Services Number

Contracting Entity	CPD /	NEELB				Total
	CoPE (Specify)	Goods and Services				
Number of contracts awarded to Northern Ireland SMEs and SEEs - as the main contractor - since 2004						
Northern Ireland SMEs	1Apr04 - 31Mar05	1Apr05 - 31Mar06	1Apr06 - 31Mar07	1Apr07 - 31Mar08	1Apr08 - 31Mar09	Total
Medium (less than 250 employees)						0
Small (less than 50 employees)						0
Micro (less than 10 employees)						0
Sub-Total-SME	0	0	19	6	23	0
Northern Ireland SEEs						
Medium (less than 250 employees)						0
Small (less than 50 employees)						0
Micro (less than 10 employees)						0
Sub-Total-SEE	0	0	0	0	0	0
						Total
Sub-Total for SMEs and SEEs	0	0	19	6	23	0
Number of contracts awarded to other organisations in the same period (i.other than SMEs / SEEs)						
Other organisations						
Summarise the types of organisations						
SMEs/SEEs						
External to N.I.						
Non SMEs: From N.I.			0	2	3	
Non SMEs: External to N.I.						
						Total
Sub-Total-Other Organisations	0	0	0	2	3	0
						Total
Total - All Contracts	0	0	19	8	26	0
Number of SME and SEE Contracts as Proportion of Total						
	#DIV/0!	#DIV/0!	100%	0.75	0.885	#DIV/0!

NEELB Goods and Services Value

Contracting Entity	CPD / CoPE (Specify)	NEELB Goods and Services				
Value of contracts awarded to Northern Ireland SMEs and SEEs - as the main contractor - since 2004						
Northern Ireland SMEs	1Apr04 - 31Mar05	1Apr05 - 31Mar06	1Apr06 - 31Mar07	1Apr07 - 31Mar08	1Apr08 - 31Mar09	Total
Medium (less than 250 employees)						£0.00
Small (less than 50 employees)						£0.00
Micro (less than 10 employees)						£0.00
Sub-Total-SME	£0.00	£0.00	£14,209,552.00	£1,273,200.00	£1,397,531.00	£0.00
Northern Ireland SEEs						
Medium (less than 250 employees)			£0.00	£0.00	£0.00	£0.00
Small (less than 50 employees)			£0.00	£0.00	£0.00	£0.00
Micro (less than 10 employees)			£0.00	£0.00	£0.00	£0.00
Sub-Total-SEE	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Total						
Sub-Total for SMEs and SEEs	£0.00	£0.00	£14,209,552.00	£1,273,200.00	£1,397,531.00	£0.00
Value of contracts awarded to other organisations in the same period (i.other than SMEs / SEEs)						
Other organisations						
Summarise the types of organisations						
SMEs/SEEs						
External to N.I.						
Non SMEs:						
From N.I.						
			£0.00	£50,000.00	£44,000.00	

Contracting Entity	CPD / CoPE (Specify)	NEELB Goods and Services					Total
Non SMEs: External to N.I.							
Sub-Total- Other Organisations	£0.00	£0.00	£0.00	£50,000.00	£44,000.00	£0.00	Total
Total - All Contracts	£0.00	£0.00	£14,209,552.00	£1,323,200.00	£1,441,531.00	£0.00	Total
Value of SME and SEE Contracts as Proportion of Total	#DIV/0!	#DIV/0!	£1.00	£0.96	£0.97	#DIV/0!	

Classification of Contractor

Classification Of Contractor (Jan. 2009)	BELB	NEELB	SEELB	SELB	WELB	Average
Very small (less than 10 employees)	27	14	80	142	101	
Small (11 to 50 employees)	50	148	44	64	67	
Medium Siazed (51 & 250 employees)	52	14	17	43	19	
Total SMEs	129	176	141	249	187	
Over 250 employees	24	13	13	16	14	
Social Economy Enterprise (SEE)	1	0	0	0	0	Average
SME % Overall	84%	93%	92%	94%	93%	91.20%
SEE % Overall	0.60%					

NEELB - Works Contracts / Maintenance Number

Contracting Entity	CPD / CoPE (Specify)	NEELB - Works Contracts / Maintenance					Total
Number of contracts awarded to Northern Ireland SMEs and SEEs - as the main contractor - since 2004							
Northern Ireland SMEs	1Apr04 - 31Mar05	1Apr05 - 31Mar06	1Apr06 - 31Mar07	1Apr07 - 31Mar08	1Apr08 - 31Mar09		Total

Contracting Entity	CPD / CoPE (Specify)		NEELB - Works Contracts / Maintenance			
Medium (less than 250 employees)	19	6	28	32	43	128
Small (less than 50 employees)	78	28	82	106	57	351
Micro (less than 10 employees)	29	34	62	121	48	294
Sub-Total-SME	126	68	172	259	148	773
Northern Ireland SEEs						Total
Medium (less than 250 employees)						0
Small (less than 50 employees)						0
Micro (less than 10 employees)						0
Sub-Total-SEE	0	0	0	0	0	0
						Total
Sub-Total for SMEs and SEEs	126	68	172	259	148	0
Number of contracts awarded to other organisations in the same period (i.other than SMEs / SEEs)						
Other organisations						
Summarise the types of organisations						
SMEs/SEEs						
External to N.I.						
Non SMEs: From N.I.						
Non SMEs: External to N.I.						
						Total
Sub-Total-Other Organisations	0	0	0	0	0	0
						Total
Total - All Contracts	126	68	172	259	148	0
Number of SME and SEE Contracts as Proportion of Total						
	1	1	1	1	1	#DIV/0!

NEELB - Works Contracts / Maintenance Value

Contracting Entity	CPD / CoPE (Specify)	NEELB - Works Contracts / Maintenance				
Value of contracts awarded to Northern Ireland SMEs and SEEs - as the main contractor - since 2004						
Northern Ireland SMEs	1Apr04 - 31Mar05	1Apr05 - 31Mar06	1Apr06 - 31Mar07	1Apr07 - 31Mar08	1Apr08 - 31Mar09	Total
Medium (less than 250 employees)	£2,922,242.59	£1,602,997.72	£5,234,369.00	£2,143,399.82	£3,377,641.19	£15,280,650.32
Small (less than 50 employees)	£6,413,528.94	£1,967,130.75	£5,972,704.87	£5,169,015.21	£6,106,384.27	£25,628,764.04
Micro (less than 10 employees)	£985,655.95	£1,079,823.53	£1,200,326.01	£2,085,214.06	£1,889,971.91	£7,240,991.46
Sub-Total-SME	£10,321,427.48	£4,649,952.00	£12,407,399.88	£9,397,629.09	£11,373,997.37	£48,150,405.82
Northern Ireland SEEs						Total
Medium (less than 250 employees)						£0.00
Small (less than 50 employees)						£0.00
Micro (less than 10 employees)						£0.00
Sub-Total-SEE	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
						Total
Sub-Total for SMEs and SEEs	£10,321,427.48	£4,649,952.00	£12,407,399.88	£9,397,629.09	£11,373,997.37	£0.00

Value of contracts awarded to other organisations in the same period (i.other than SMEs / SEEs)

Other organisations

Summarise the types of organisations

Contracting Entity	CPD / CoPE (Specify)	NEELB - Works Contracts / Maintenance				Total
SMEs/SEEs External to N.I.						
Non SMEs: From N.I.						
Non SMEs: External to N.I.						
Sub-Total- Other Organisations	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Total - All Contracts	£10,321,427.48	£4,649,952.00	£12,407,399.88	£9,397,629.09	£11,373,997.37	£0.00
Value of SME and SEE Contracts as Proportion of Total	£1.00	£1.00	£1.00	£1.00	£1.00	#DIV/0!

DFP - Correspondence on Procurement Issues Information Communication Technology



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Mr Shane McAteer

 Clerk

 Committee for Finance and Personnel

 Room 419

 Parliament Buildings

 Stormont

24 November 2009

Dear Shane

Correspondence on Procurement Issues

I am writing in response to your letter of 12 November regarding correspondence received by the Committee relating to Procurement Issues.

All Public Procurement in Northern Ireland is subject to Public Contracts Regulation (2006) and Public Procurement Policies. These procurements must be adhered to. Three basic principles enshrined in EC Treaty:

- Openness and transparency of award procedures;
- Genuine competition in the award of contracts;
- No unlawful discrimination on the grounds of nationality.

All Central Procurement Directorate (CPD) tender opportunities are managed through eSourcingNI portal. This portal allows suppliers to download and return tender documents electronically and is available 24/7. At present there are approximately 8000 vendor registrations on this system, which is currently been rolled out across all the Northern Ireland Centres of Expertise.

Generally ICT requirements including software are subject to internal quality management controls and governance arrangements to ensure and enable successful delivery of value for money products or services within defined project timetables.

Furthermore the Delivery Innovation Division (DID) of the Department is about to review the NICS Information Systems Strategy. This process will involve engaging with the NICS Departments about their information needs and also carrying out market research, including; talking to the industry, about the latest products offering that could meet these future business needs. The output from this review will advise future ICT procurement strategies within the NICS.

Where appropriate, collaboration across the other Centre of Procurement Expertise is considered and promoted by CPD. However, these opportunities are considered on a project by project basis and in consultation with the end user to ensure that this has no impact on their business delivery needs or timetables.

Yours sincerely



NORMAN IRWIN

Report on the Reaccreditation of Centres of Procurement Expertise (CoPEs)

Assembly Section



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Mr Shane McAteer
Clerk
Committee for Finance and Personnel
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Stormont

2 December 2009

Dear Shane,

Please find attached a copy of report on the reaccreditation of Centres of Procurement Expertise (CoPEs).

Northern Ireland Public Procurement Policy requires that the competency of CoPEs be reviewed by the Procurement Board on a periodic basis. The first review was carried out in 2005 with the publication of a report in November 2005.

The assessment criteria agreed by the Procurement Board in 2005 were as follows:-

- Unique procurement portfolio;
- Responsibility for awarding contracts with an annual value of £80m averaged over a 3-year period;
- Specialist knowledge/competency of the unique portfolio and/or client base;
- Procurement expertise evidenced by the qualifications, training and development of staff;
- Successful track record of achieving best value for money, regulatory compliance and application of best practice;
- Operable complaints procedure;
- High standards of service responsiveness;
- Accredited (or equivalent) quality assurance systems in operation;
- Adequate mechanisms in place to provide assurance that the conditions of contract are adequately monitored and pursued; and
- Improved performance on procurement over the period as demonstrated by the use of an appropriate Excellence Model.

The Procurement Board subsequently agreed in December 2008 to apply the same criteria in the 2009 review. The Board also agreed that in light of the forthcoming establishment of the new Education and Skills Authority (ESA) that a review of CoPE status in the Education Sector would not be carried out until twelve months after ESA is set up. In the meantime ESA will assume CoPE status, subject to assessment 12 months after coming into existence.

Summary of the Report's Findings

The report established that in general CoPEs have made good progress since the 2005 review. They were found to have addressed the improvements suggested by the 2005 review and have improved their overall procurement processes. CoPEs' accreditation scores improved by between 8% - 21% compared with 2005 and all achieved scores above 800 points, which is regarded as the "exemplar standard" (See paras 2.15 and 2.16 of the report).

Summary of the Report's Recommendations

There are nine general recommendations. These are set out in Paragraph 2.99 of the report. In addition they highlight a number of areas of further improvement that could be achieved by each CoPE. These have been discussed with individual CoPEs along with the detail of their scores/performance. All have agreed action plans to secure the further improvements that were identified.

Review of Accreditation Process

In considering the results of the Report, CoPEs have restated their commitment to continuous improvement. It has been agreed that the assessment model should be reviewed to ensure that it presents both a challenge and a support to this commitment. CPD intends to commence this work in the near future.

I would be grateful if you would bring the report and the following to the attention of the Committee.

Yours sincerely

A handwritten signature in black ink, appearing to read "Norman", followed by a long, sweeping horizontal stroke.

NORMAN IRWIN

Department of Finance and Personnel

Review of Centres of Procurement Expertise Status and Policy Implementation

Final Report

September 2009



This report has been prepared for and only for the Department of Finance and Personnel in accordance with the terms of our engagement letter dated 13th March 2009 and for no other purpose. We do not accept or assume any liability or duty of care for any other purpose or to any other person to whom this report is shown or into whose hands it may come save where expressly agreed by our prior consent in writing.

You may not make copies of this report available to other persons except as described in the Letter of Engagement and Terms of Business. Where provision has been made copies are subject to the conditions described therein.

[PricewaterhouseCoopers LLP](#)

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2 Our Approach 4

1 Introduction

Background

- 1.1 In 2001, a review team completed a Review of Public Procurement with recommendations consisting of a combination of policy and institutional reform initiatives. This led to the creation of a Procurement Practitioners Group (PPG) to provide a forum for the Central Procurement Directorate (CPD) to interact with Centres of Procurement Expertise (CoPEs) organisations in Northern Ireland.
- 1.2 Against this context, PricewaterhouseCoopers LLP (PwC) was engaged in 2005 to assess the level of competency of each of the CoPEs against agreed criteria as detailed in the CoPE Assessment model and identify areas where improvement was required as well as developing action plans for CoPEs that did not meet the required standard.
- 1.3 The CoPEs that were assessed as part of the initial review included:
 - CPD – Construction & Advisory Division; (CPD Construction)
 - CPD – Supplies & Service Division; (CPD SSD)
 - Roads Service;
 - Northern Ireland Water (NIW);
 - Health Estates;
 - Procurement and Logistics Service (BSO) formerly called RSS;
 - Education and Library Boards; and
 - Northern Ireland Housing Executive (NIHE).
- 1.4 The findings of the PwC Report concluded that five of the CoPEs met the basic requirement to be accredited with CoPE status. Three CoPEs were classified as 'Good' and were considered as passing with merit. None of the CoPEs achieved exemplar level.
- 1.5 Since that review was completed, Translink has been assessed against the diagnostic benchmarking tool and awarded CoPE status in 2007.

Terms of Reference

- 1.5 Against the requirement that CoPEs should satisfy the Procurement Board of their competency every three years against set criteria, PwC was engaged by the DFP to conduct the Review of CoPE Status and Policy Implementation.
- 1.7 The terms of reference for the 2009 review included the following:
 - Conduct an assessment of the status of each CoPE to identify how each CoPE meets the criteria using the agreed methodology;
 - Analyse how procurement policy has been implemented and embedded across the CoPEs and if the arrangements have been effective and provide an electronic copy of the methodology which CoPEs can use to conduct periodic self-assessments to map and monitor competence levels;
 - Produce a first draft report by 1 July 2009;

- Produce a final report by mid September 2009 that will:
 - Specify the level of competency of each of the CoPEs against the agreed criteria;
 - Identify areas where improvement is required;
 - Include action plans for any CoPEs that do not meet the required standard to retain CoPE status; and
 - Detail the resources required to support the action plans, target dates for achievement and review dates for when progress should be evaluated.

- 1.8 Following a Project Initiation meeting it was agreed that the 2009 assessment would be carried out using the 2005 methodology. However it was also decided that a separate assessment would be carried out to determine the status of the CoPEs around Sustainability, Socially Responsible Procurement (SRP) and the Integration of Social Considerations into Public Procurement in line with the Sustainable Procurement Action Plan for Northern Ireland document.

2 Our Approach

Introduction

2.1 The approach used was a focused and comprehensive five step approach, as outlined in Figure 2.1.

Figure 2.1: CoPE Assessment Project Process



Methodology

- 2.2 In conducting this review, the Heads of Procurement of all the Centres of Procurement Expertise (CoPEs) were invited to attend a workshop to review and confirm the current CoPE assessment tool. The Heads of Procurement collectively discussed the content of the assessment tool and the weightings assigned to each of the criteria.
- 2.3 It was agreed at the workshop that the current 2005 CoPE assessment tool would again be used during this 2009 review. The use of the current tool would provide a direct, like-for-like comparison against the 2005 assessment results.
- 2.4 The CoPE assessment tool allows for a maturity profile on a scale of 1 to 5 and was used to determine the scores to be allocated during the assessment exercise, as detailed below in Table 2.1.

Table 2.1: CoPE Assessment Maturity Profile

Maturity Level	Traits Identified
1	Performed informally
2	Planned and tracked
3	Standardised
4	Quantitatively controlled
5	Continuously improved

- 2.5 Where a category was not identified as applicable, in agreement with DFP, a standard score of 3 was applied consistently to all CoPEs.
- 2.6 To be recognised as a CoPE each procurement organisation must have a procurement expenditure of at least £30m. This criterion was assessed on a Yes/No basis. The remainder of the evaluation model has a maximum score of 1000 and the table below outlines the high level criteria and a summary of the scores assigned. Further sub-sections within the assessment criteria are described in more detail in our findings below (Table 2.2).

Table 2.2: CoPE Assessment Criteria

CoPE Assessment Criteria	Max Score
Strategy Spend	YN
Strategy Unique Portfolio	50
Use of Appropriate Excellence Model	100
Best VFM	175
Best Practice	175
People Procurement Expertise & People Procurement Competency	100
Process Quality Assurance Systems & Regulations	75
Contract Management	100
Customer /Supplier /Operational Complaints	75
Process: Customer Service	150
Total	1000

- 2.7 As part of this review, we have again used the previously recommended thresholds that reflect standards of good practice as detailed in the scoring matrix below (Table 2.3).

Table 2.3: CoPE Scoring Matrix

Level	Points
Meets requirements	650
Good	725
Exemplar	800

- 2.8 Preliminary meetings were set up with each of the CoPEs to discuss the logistics of the assessments and to provide an Information Request for all the supporting evidence required. Further meetings were arranged to conduct the assessments. During each assessment the tool was used to guide discussions around procurement in each of the CoPEs. Documents were also gathered to provide evidence of the current policies, processes and procedures in place within each of the CoPEs and to support statements made.

Review Findings of CoPE Status and Policy Implementation

- 2.9 Following the assessment meetings the supporting evidence provided by each CoPE was assessed and scores were allocated based on the maturity profile appropriate to each criterion.
- 2.10 Our assessment established that in general, the CoPE members have made good progress since the 2005 review exercise. All have addressed the improvements that were suggested and have improved their overall procurement functions.
- 2.11 Below is a summary of the CoPEs that were assessed, and an overview of the overall findings. We have also set out common themes and areas of good practice identified.
- 2.12 The CoPE members that were assessed in this review included:
- CPD Construction Division;
 - CPD Supplies and Services Division (SSD);
 - Health Estates;

2.16 In general, all CoPEs have seen improvements in their scores in this year's assessment, ranging from between 8% to 21 %, as can be seen in Table 2.5.

Table 2.5: CoPE Scores Comparison (2005 against 2009)

	2005/2006		Variance	% change
	score	2009 score		
Translink	747	866	119	16%
Procurement and Logistics BSO	749	843	94	13%
Roads Service	723	815	92	13%
Health Estates	723	840	123	17%
Housing Executive	742	802	60	8%
CPD Construction	718	824	106	15%
CPD SSD	736	832	96	13%
NI Water	670	814	144	21%

2.17 As the CoPE assessment is a benchmarking tool and designed as a mechanism to drive continuous improvement, the percentage change from the 2005/2006 score compared with 2009 is a reflection of the progress and improvement made by each individual CoPE in their area of expertise.

2.18 A detailed breakdown of strengths and areas for improvement are detailed for each CoPE in the action plans.

2.19 However, our review has again highlighted some areas that require continued attention from all CoPEs. This includes the following:

- There needs to be further improvements in knowledge sharing of best practice and greater interplay across all CoPE organisations to avail of collaborative procurement opportunities with support from the PPG (Procurement Practitioners Group);
- CoPE organisations are encouraged to continue to embed category management and further develop commodity group strategies;
- There is the need for a uniform tendering and contracting documentation across CoPEs where permissible. This initiative was identified as part of the last CoPE review and should be taken forward for implementation;
- Further embed e-technology plans and develop an integrated, CoPE-wide strategy to address e-procurement development to support integration among CoPE members; and where possible move to a common e-enablement platform;
- Develop specific KPIs that measure how Value for Money (VfM) in the procurement function is to be achieved in each CoPE. All CoPEs should aspire to KPI maturity levels for processes and people that are quantitatively controlled and continuously being improved;
- Improve upon quality accreditation awards and continue to review action plans from EFQM and similar awarding bodies to drive improvement levels;
- CoPE members should constantly monitor and conduct regular risk assessments for all contracted suppliers within their supply chain to establish their current economic status. Vendor rating mechanisms and supplier appraisal tools need to be put in place to continuously monitor performance of suppliers to assist contract management; and

- Develop knowledge sharing strategies on how to implement Socially Responsible Procurement (SRP) environmental goals. This can be achieved through policy dissemination and education.
- 2.20 As mentioned in the Introduction, there were also specific improvements identified for each CoPE organisation.
- 2.21 All CoPEs were briefed on improvement areas. Currently, individual CoPEs are reviewing action plans and time scales for implementation.
- 2.22 As part of the ongoing improvement by the CoPEs, we recommend that each CoPE reports on progress on at least a 1 year basis to the FPG group.
- 2.23 In the following sub-sections, this report will define the areas evaluated across the CoPE organisations and highlight areas of good practice identified during assessments.

Category Spend

- 2.24 All of the CoPEs have the minimum procurement spend set by the Procurement Board. CoPEs such as the CPD, Housing Executive and the Procurement and Logistics Service (BSO) also assist and advise other public bodies and non-profit organisations with procurement in their relevant fields.

Procurement Strategy - Unique Procurement Portfolio

- 2.25 In this category, we reviewed the range of products and services that each CoPE organisation procures on behalf of their customer base. In addition to examining their unique spend items, CoPEs' analysis and categorisation of their procurement spend was evaluated, as was the extent to which they have developed commodity group strategies. PwC also requested examples of shared purchasing of products or services with other CoPEs in order to reduce tendering costs and to improve pricing.
- 2.26 The evidence provided by the CoPEs confirmed that they have well defined procurement portfolios with each of the CoPEs procuring specific services or products to meet unique market needs.
- 2.27 Following on from the last review, there was strong evidence that all of the CoPE organisations reviewed have worked to strengthen their category management capabilities, improving the levels of analysis and categorisation of products to facilitate specialists procuring similar items. The Procurement and Logistics Service (BSO) and NI Water already have well defined category management structures in place. Translink for instance, has used the last CoPE review in late 2006 to drive the restructuring of the procurement function along category lines and employed additional specialist procurement resource. Similarly, the Housing Executive has restructured its procurement function and now has well defined plans in place which when fully implemented would drive the category management agenda forward and further embed the development of commodity group strategies. The CPD Construction, Roads Services and Health Estates have addressed this by managing their contracts and projects along category lines (maintenance and capital spend). The CPD SSD is now working to develop robust category management strategies in its contracting activities.
- 2.28 Another key area reviewed within this sub-category was the extent to which contracts set up by other CoPEs and other bodies such as Office of Government Commerce (OGC) were utilised. There were some clear examples of CoPEs buying from CPD SSD contracts, OGC and other National contracts. For instance, all CoPE members reviewed currently contract for the supply and delivery of office paper through ELB (Education Library Boards) existing contracts. Similarly, the Housing Executive has availed itself of the Procurement and Logistics Service (BSO) contract for

the supply of office furniture; NI Water and the Housing Executive currently buy vehicles together with one managing van procurement and the other managing procurement of lorries. However, further collaborative opportunities exist across CoPEs in using national procurement contract arrangements.

- 2.29 In addition, the review identified opportunities to optimise supply chains across the seven CoPEs through improved supply chain integration initiatives such as utilising the Procurement and Logistics Service (BSO) stores for holding and onward distribution of commodities for other CoPEs.

Use of an Appropriate Excellence Model

- 2.30 The extent to which CoPEs have adopted an appropriate Excellence Model such as the European Foundation of Quality Management (EFQM) (a core criterion for CoPE status) was reviewed including whether or not they have pursued quality awards.

2.31 All CoPEs have actively pursued and achieved some form of excellence/quality awards since the last review. For instance, the Procurement and Logistics Service (BSO) has achieved the EFQM Silver Award status and ISO Accreditation; Roads Services has achieved the EFQM Mark of Excellence and ISO Awards and the CENI Achieving Excellence Awards; Health Estates possesses the EFQM Gold Standard and the Achieving Excellence Award; NI Water has achieved the EFQM Bronze award for their supplies and services division and an Achieving Excellence Awards for Capital projects division. Similarly, the CPD Construction has the EFQM Bronze award and Achieving Excellence Award, while the CPD SSD has achieved the EFQM Bronze award. Translink has the Achieving Excellence Award and is currently using the EFQM Procurement Excellence Pilot.

- 2.32 Within this criterion it is clear that some CoPEs have fully embraced Excellence Model philosophies and have used such models to drive improvement in areas such as customer service. It should also be noted that some CoPE organisations very much view the CoPE tool and accreditation status as an excellence model in its own right and use it to drive improvements.

Best Value for Money (VFM)

- 2.33 The Best VFM assessment sub-category assessed the CoPEs against all the 12 principles guiding the administration of Public Sector Procurement which when abided by helps towards the achievement of Best VFM.

Accountability

2.34 In assessing the level of accountability in public procurement within the CoPE organisations, an assessment of the existence of approval hierarchies to manage financial risk, payment of orders and payment authorisation was scrutinised. In addition, evidence of proper working procedures was examined, especially with regard to how a preferred/suitable method of procurement was decided as well as supplier and product selection including subsequent engagement and payment.

2.35 In general terms, a high level of accountability and traceability in the procurement and supply/contractor payment processes was demonstrated by all CoPE organisations reviewed, with three way matching principles in place through the Accounts Payable (Finance) function. Some CoPEs are transferring and processing all payment activities to Account NI which should provide a robust overview and control of the payment and authorisation process.

Competitive Supply

- 2.36 In reviewing the CoPEs against competitive supply, a record of the whole procurement exercise

was reviewed in line with the rules guiding competition in public procurement regulations. As part of this review evidence of publically advertised tendering opportunities were sought and the reasons for employing a particular procurement route was discussed (e.g. Restricted, Open, Competitive Dialogue, Negotiated).

- 2.37 There was evidence of appropriate use of the various procurement routes in the contracts that were examined during this review, with the Restricted Procedure the most commonly used. There was some indication that the use of the Open Procedure may have been the default position (in order to allow as many organisations to be involved in tendering opportunities). Evidence now suggests that the choice of procurement route among all CoPEs is decided based upon the nature of the contracting opportunity, supply market and business needs.

Consistency

- 2.38 There was clear evidence of a consistent approach to a documented procurement policy for all the CoPE organisations reviewed. Our review of the availability of standardised templates and policy document to drive procurement revealed that all CoPEs had a documented procurement policy in place. Also, there was reference to the NI Public Procurement Policy Document. In addition, there were well documented procurement procedure and guidance documents to assist all procurement staff and the wider organisation, with mechanisms for updating these documents and disseminating them amongst staff. For example, CPD Construction issued Technical Notes to all procurement staff via the intranet updating them of changes to procurement policy and legislation.

- 2.39 Each CoPE had standardised templates (PQQ, ITT, Award and Regret letters and Debrief documents/letters) and consistent policy documentation bespoke to their organisation. However, there is scope to further develop conformity and uniformity in documentation, such as the pre-tendering, tendering and contract management documentation, and procedures across all the CoPEs. There was an inconsistent application of CPD policy guidelines across the CoPE organisations, particularly with regard to whether or when to conduct face to face feedback to suppliers.

Effectiveness

- 2.40 CoPEs were assessed on how they met the Northern Ireland commercial, regulatory and socio-economic goals in a balanced manner appropriate to procurement requirements. These included elements such as assisting Small and Medium Enterprises (SMEs) to access existing contracting opportunities and effective debriefing policies.

- 2.41 There were examples of sound application of effectiveness policies across the CoPEs. In general, all CoPEs were actively involved in 'Meet the Buyer' events where advice and assistance was offered to SMEs in particular.

- 2.42 The CPD is actively involved with the CIPNI task group where SMEs are educated and encouraged on how to prepare for tendering opportunities. They also have a link on their website to help SMEs become more involved in the bidding process whilst not disadvantaging larger organisations.

- 2.43 The Housing Executive meet regularly with Trade Organisations to discuss the potential impact of new initiatives on suppliers and CPD SSD is taking a significant role in presenting to SMEs on public sector buying. In addition some of the CoPEs, such as the Road Service, through the development of contracts such as grass cutting and road marking contracts and Housing Executive have attempted to assist SMEs by encouraging them to form consortia with other similar companies and develop partnerships.

- 2.44 In terms of supplier feedback, all CoPEs currently issue a standard template regret letter to

unsuccessful bidders. However, there is a lack of consistency amongst the CoPEs as to the use of face to face debriefs.

Efficiency

2.45 CoPE efficiency is discussed further in Best Practice Process Efficiency and Best Practice Systems.

Fair Dealing

2.46 CoPE procurement mechanisms were reviewed against their ability to ensure the fair treatment and non-discrimination of all prospective bidders, whether they were SMEs or well established, larger organisations. In addition they had well documented criteria for selecting suppliers and criteria for pre-qualification, selection and award.

2.47 The CoPE organisations reviewed had clearly defined methods for enabling SMEs to access prospective opportunities, i.e. meet the buyer events, trade awareness days and website FAQs on available opportunities while ensuring that larger organisations were not excluded. Some CoPEs tried to encourage SMEs to form consortia when bidding. For example, CPD Construction encouraged SMEs to collaborate on joint venture initiatives for tendering opportunities.

Integration

2.48 The CoPE review of Integration examined initiatives such as developing SMEs, sustainability, targeting the unemployed and people with disability.

2.49 All the CoPE organisations reviewed had standard equality and diversity clauses which were included in each contracting opportunity sent out to all prospective bidders early on in the process. Sustainability clauses were also included in tendering and used as part of the prequalification, selection and award process with weighting assigned to it. For instance, the CPD SSD uses a social enterprise company for the disposal of its obsolete ICT equipment. There is evidence of targeting unemployed and encouraging apprenticeships and training in contract documentations examined.

2.50 All CoPEs are aware of the Northern Ireland Sustainable Procurement Action Plan (NI SPAP) and some have developed strategies for addressing this government policy direction. For example, Translink has published its corporate environmental strategy on its website and works with its supplier's to measure and improve environmental performance.

Integrity

2.51 Most CoPEs abide by the Northern Ireland Civil Service Standard Code of Ethics. There were nominated personnel dedicated to ensuring that tenders were received and stored until the deadline had passed where paper based tender returns were still accepted. All CoPEs have also now begun to use (or are moving towards) e-tendering systems (e.g. Bravo Solutions, Procon, Procure) and expect all prospective suppliers to respond electronically. This ensures that all suppliers receive the same information and communication, can be held to ITT deadlines and provides an accurate record of the entire end-to-end tendering process.

Informed Decision Making

2.52 Best VFM requires the CoPE to ensure that information used to make decisions is accurate and contracts are KPI-monitored - monitoring supplier performance, conducting category reviews and applying adequate contract management mechanisms. Contract reviews are covered in more detail in section 8 of this report.

2.53 It was clear from the contracts reviewed across all of the CoPEs that contract and category reviews were conducted periodically based on good contract management. For instance, well documented quarterly and bi-annually reviews of contracts were scheduled and included in Service Level Agreements (SLA). Supplier and contract performance measures were conducted and used as part of the decision making process (e.g., Contract Renewals and Extensions). NI Water had good performance monitoring within its framework agreements, including benchmarking suppliers against one another.

Legality

2.54 The extent to which CoPEs meet the EU Directives and UK regulations and how they document decisions for selecting restricted and negotiated contracts was reviewed. NAO audit reports, CoPE procurement procedures and evidence of contracts awarded were reviewed. This was an area where all the CoPEs performed well.

Responsiveness

2.55 This principle assesses the extent to which the CoPEs endeavour to meet the aspirations, expectations and needs of the community - whether or not the CoPEs have Service Level Agreements (SLAs) with both internal and external customers/users in place, conduct customer satisfaction surveys and how complaints are reviewed. These areas are covered in more detail again in section 9 and 10 of the report.

2.56 Procurement and Logistics Service (BSC) have implemented SLAs and conduct customer satisfaction surveys on a Trust-by-Trust basis. The CPD SSD has SLA agreements with other CoPEs. Most CoPEs have well developed and established customer satisfaction reports as part of their overall organisation's complaints procedures. There were some examples of well developed and applied complaints procedures such as the Housing Executive mechanisms. Also, Translink have a clear escalation procedure of complaints review conducted. The Road Service uses information gathered on 'Road Stats' through its website.

Transparency

2.57 The final area of Best VIM is focused on making information freely available to potential suppliers. In this area the CoPEs performed strongly and many of them provide useful background information on via their websites and provided clear guidance with tender documents. This area is covered in more detail in the consistency, fair dealing, integrity, and customer and supplier management sections.

Best Practice

2.58 This section of the evaluation tool looked at several key areas of Procurement Best Practice such as Strategy, Key Performance Indicators (KPIs), Organisation, Process Efficiency, Systems and Supplier Development.

Strategy

2.59 Best practice CoPE strategy assessment establishes how well-developed and communicated the CoPEs strategy is, including elements such as Vision and Mission statements, and how well communicated that strategy is.

2.60 All CoPEs have well documented procurement strategies in place with values and mission statements supported by senior management signoff and linked to their overall corporate business plan.

Key Performance Indicators (KPIs)

- 2.61 The development of an effective application of appropriate KPIs within CoPEs acts as an important mechanism to monitor performance and drive continuous improvement. The review looked at evidence of financial, people, process, customer and supplier KPIs within each CoPE.
- 2.62 All CoPEs had general KPIs and a number had effective, working people and process KPIs in place. However there are opportunities across the CoPEs to improve in the areas of customer and supplier/contract management KPIs. Specifically, there needs to be more appropriate and focused purchasing and supplier performance KPIs to ensure continuous improvement in contract management and to measure in more detail the service levels provided.

Organisation

- 2.63 This area of Best Practice focuses on organisational structures and responsibilities including the use of cross functional teams, commodity management structures and culture including the promotion of the departmental ethos.
- 2.64 Several of the CoPEs such as the NI Water, Translink and Housing Executive have recently initiated structural change in the procurement function – emphasising a level of fluidity in endeavouring to achieve Best Practice and continuously adapted organisational structures.
- 2.65 Translink has used the CoPE assessment strategically to restructure its procurement function in an internal customer focused way but with elements of category management being used providing the best fit for the organisation. Procurement and Logistics Service (BSO) has in place commodity group strategies in line with Best Practice and were effective in terms of communication and team briefing. The CPD SSD procurement organisation structure has separate functional specialists responsible for Services and ICT Procurement. Construction related procurement organisations were effective in the application of cross functional teams to award contracts and monitor performance.

Process Efficiency

- 2.66 This section of the evaluation model focused on the application of procurement efficiency improvement mechanisms such as low value ordering systems, framework contracts, benchmarking and e-procurement to reduce administration and drive efficiency.
- 2.67 Framework contracts have become widely used across all the CoPE organisations and this is especially true for NI Water, Health Estates and Road Service. CPD SSD and CPD Construction have set up framework contracts on behalf of its customers which are widely used. There has been mixed progress in the adoption of low value ordering systems, with a number of CoPEs hoping to deploy the use of Purchase Cards for low value items more widely in the near future or to rely on Account NI services for low value order processing and the payment of suppliers. Currently, NI Water only uses Purchasing Cards for processing its travel arrangements.
- 2.68 There has been good progress in the take up of e-procurement payment systems across the CoPEs with some now using the Oracle Electronic Purchase Systems for the development of Purchase Orders. It was evident that there were a variety of maturity levels across the CoPEs. For example, CPD SSD adopted small value order systems and use of e-procurement tools. The Procurement and Logistics Service (BSO) currently process its warehouse ordering via electronic purchase orders and 30% of its non-stock orders via electronic purchase orders. There remains further opportunities for this to be further embedded into CoPEs in order to drive process efficiencies in the procurement and accounts payable activities of the organisations.

Systems

- 2.69 The appropriateness and effectiveness of CoPE procurement systems has a significant impact on CoPE efficiency and effective management. Technology plans, levels of systems integration, appropriateness of management information systems and e-business application were all assessed.
- 2.70 Several CoPEs including CPD SSD, CPD Construction, and NI Water have comprehensive e-procurement technologies in place to support e-business activities such as E-Sourcing NI (Bravo Solutions), Procure and Procon. Health Estates and Housing Executive in particular have detailed technology plans in place to deploy the use of E-Sourcing NI to support e-business activities around tendering and contracting of opportunities.
- 2.71 Many of the CoPEs have implemented new systems: NI Water now use Cap-trax and Oracle, Housing Executive uses the Eros and Rocus systems, while Health Estates has deployed RIPAC and TRIM. Management information reporting can now be obtained using these systems for most CoPEs. These have assisted in reducing the time to market cycle where they have been implemented. Procurement and Logistics Service (BSC) has significantly automated its purchase-to-pay process and achieved high levels of automation. It is hoped that CoPEs will continue to develop in this area and to continuously explore opportunities to reduce cycle times using existing technologies and to add on appropriate modules that will support increased internal integration and improve transactional processes.

Supplier Development

- 2.72 This section of Best Practice examines how CoPEs monitor, manage, and work with suppliers (and developing suppliers where appropriate). The construction type CoPEs (such as Health Estates, CPD Construction and NI Water) have strengths in appointing contract/project managers who manage contracts and review supplier performance over the duration of the contracts using appropriate KPIs for both the design team and contractors. Contract Management is discussed in further detail in section 8.
- 2.73 In terms of vendor rationalisation, there is ongoing widespread usage of framework contract arrangements to reduce the numbers of suppliers and to drive competition and VFM within framework arrangements. NI Water also uses 'Super Bundles' as a tool for supplier rationalisation.
- 2.74 There are examples of CoPEs assisting supplier development, for example Housing Executive meets regularly with Trade Organisations and attends industry workshops to discuss mutually beneficial issues in the supply chain. A number of CoPEs organise 'meet the buyer' events and workshops to educate SMEs on how to access contracting opportunities. However, few CoPEs have run specific initiatives in conjunction with suppliers to reduce costs or to determine vendor ratings.

People - Procurement Expertise & Procurement Competencies

- 2.75 The CoPE criteria for people 'Procurement Expertise' and 'Procurement Competencies' were combined into one section. This section of the evaluation examines the use of competency matrices, training and development plans, adequately qualified personnel, procurement courses taught and staff's knowledge of the market place.
- 2.76 All the CoPE organisations had well developed Personal Development Plans (PDP) with a high level of relevant, public sector procurement training courses attended both in-house and external to

the organisation. There was a minimal degree of cross functional staff development, an area which all CoPEs would need to improve upon to foster deeper and wide spread knowledge of public procurement among the CoPEs. The Housing Executive has, in line with the Procurement Competency Framework for Northern Ireland, well documented competency matrices in place with a responsible officer training booklet to guide its delivery and application. The Procurement and Logistics Service (BSO) also has a Competency Matrix for procurement staff which is mapped to grade levels. Other CoPEs have a procurement career path framework and training and development plans in place for all purchasers and buyers. However, recruitment, training and development within Procurement and Logistics Service (BSO) are currently limited by budgetary constraints.

- 2.77 Across CoPEs like CPD BSO, Translink and NIW with the exception of purely construction CoPE organisations a high proportion of both senior and junior level staff are Chartered Institute of Purchasing and Supply (CIPS) qualified with others being financially supported to attain the full qualification. In construction procurement organisations, procurement staff are qualified under one of the construction related professions such as chartered engineers, registered architects, chartered quantity surveyors, and there is a perception of limited advantage in having staff CIPS qualified. However, there is evidence that public procurement training courses are being attended by these people to enable them to function effectively in the procurement domain.
- 2.78 The market knowledge of staff across CoPEs was considered strong, exemplified by NIW benchmarking against, and working closely with major construction projects and water utility companies in England. The Procurement and Logistics Service (BSO) demonstrated sound supplier market knowledge through their application of national benchmarking and knowledge of customer needs through the Supply Boards with three year development plans in place.

Procurement Processes (Quality Assurance (QA) systems, Contract Management, Complaints and Customer Service)

QA Systems

- 2.79 Effective, working QA systems are important mechanisms in assisting consistent application of procedures and to help drive improvements. This evaluation looks at areas such as CoPEs having external accreditation for their QA systems, working quality procedures and use of systems to ensure adherence to EU Directives and UK Regulations.
- 2.80 Virtually all CoPE organisations are now ISO or EFQM accredited and have rigorous policies in place to ensure that the directives and regulations are met. The CoPEs with full ISO 9001 use their quality procedures to drive improvements.
- 2.81 All the CoPE organisations were seen to meet OJEU advertising requirements with opportunities published in OJEU, TED, and SIMAP on CoPE websites and in local newspapers. In general, there was widespread use of framework contracting arrangements and where the different procurement routes (Open, Restricted, Negotiated and Competitive Dialogue) have been used, they have been deployed appropriately within the rules and regulations of EU procurement. The adoption of e-Sourcing NI (Bravo Solutions) and other e-tendering technologies has also helped reduce timescales for some CoPEs. Specifications are developed in conjunction with end user teams and in all the contracts examined, the ideals of MEAT (Most Economically Advantageous Tender) and VIM were strictly adhered to.

Contract Management

- 2.82 This area of the assessment evaluated how CoPEs prepared for contracts (including risk assessments), evaluated tenders and monitored contract performance.
- 2.83 The Construction CoPEs generally demonstrated effective contract preparation and appropriate use of the intelligent client function which was seen as critical to the success of the overall project. This was exemplified by NI Water and Health Estates – with a high level of involvement of suppliers/contractors and customers very early on in the life cycle of the project with procedures requiring the customer to identify their specific needs at the beginning of a project. The construction CoPEs also carry out risk assessments on all projects with well developed Risk Allocation Matrices. Health Estates uses a Gated Project Review Process, 'Preferred Contractor' status, and 'Guaranteed Maximum Works Costs' to manage both risk and costs in contracts as outlined in their PRP Project Manager's Guide Document.
- 2.84 All CoPEs had robust evaluation and selection criteria which are developed with end-user representatives and based on the particular needs of a contract. However, greater clarity on the assessment and selection criteria and weightings used at both the PQQ and Invitation to Tender (ITT) stage is likely to be of benefit to CoPEs and bidders alike as discussed in the Effectiveness and Efficiency criteria (See section 6a). This may help mitigate the possibility of a legal challenge following the award stage by providing clear reasons as to why bidders are unsuccessful.
- 2.85 In general, all CoPE organisations appear to have an open and constructive relationship with their respective contractors and suppliers. Once contracts are in place, the CoPE organisations all have some form of monitoring in place to ensure compliance and to monitor performance. The Housing Executive has a 'standing order/rule of work' scheme with quarterly site visits and reviews conducted; there is also a risk register and a potential risk assessment done for each contract. CPD Construction participates in client 'project progress' meetings where issues are discussed and actions plans developed. CPD BSD relies on its client end-users to manage contracts.
- 2.86 In the months leading up to contract extensions and at the end of contracts, CoPEs discuss the suppliers' performance with contractors/suppliers (following feedback from the end-user) enabling the CoPE to determine if contracts should be extended or to establish what should be included/amended in future contracts before re-tendering.
- 2.87 However, there is a clear need for CoPEs to improve on the existing monitoring system, with appropriate metrics and KPIs to continuously monitor performance of suppliers / contracts and ensure that this is enshrined in the Service Level Agreements (SLA) with agreed penalty clauses for non performance for each contract/ project.

Customer /Supplier /Operational Complaints & Customer Service

- 2.88 The operational complaints assessment examines the complaints processes within the CoPEs, including how complaints are captured, escalated, and subsequently used to improve their performance. The customer service assessment examines how the CoPEs interact with customers; how they define their needs and monitor their satisfaction with the service being provided to them.
- 2.89 In general, CoPE organisations have good processes in the terms and conditions of contracts through which suppliers and contractors can escalate any issues that may arise. Most CoPE organisations have had a minimal number of successful complaints made against them, and where there has been a successful complaint, this has been used to drive improvements. All CoPEs had organisational complaints procedures in place to deal with complaints and to drive improvements.
- 2.90 CPD Construction has demonstrated good intelligent client approach by encouraging customer

focused group feedback and also holds regular customer communication events to engage with their customers and to clarify any issues.

Sustainability (integrating equality of opportunity & sustainable development into procurement)

- 2.91 As part of this review, some elements of socio-economic and environmental sustainability were assessed under the CoPE assessment tool; however the current model does not take into full consideration the recommended policy in the Sustainable Procurement Action Plan for Northern Ireland. As such, it was decided at the project initiation meeting that the current status of all CoPEs in relation to sustainability and socially responsible procurement should be considered in a separate non-scoring summary.
- 2.92 Our assessment revealed that, in general, all CoPEs are fully aware of the Sustainable Procurement Action Plan for Northern Ireland and have shown their commitment by developing their own strategies and action plans to fall in line with government policy. During the assessment we evidenced mission statements on sustainability within corporate business plans, strategy and policy documents which were accessible on CoPE websites.
- 2.93 In addition, we evidenced working Corporate Social Responsibility (CSR) clauses within procurement procedures which sought to address a range of environmental, social and economic responsibilities covering environmental impact, social inclusion and training, removing barriers to business, encouraging SME access, reengaging the economically inactive and sustainable design quality.
- 2.94 Additionally, standard environmental, equality and diversity clauses are inserted into all contracting and tendering opportunities which were evidenced during the CoPE review. These were also used as part of the selection and assessment criteria for the award of contracts.
- 2.95 However, challenges were identified in terms of successfully implementing some socially responsible procurement clauses in government policy and this should be considered if it is to be scored in a future CoPE model.

Embedding the Career Path Framework (CPF)

- 2.96 As part of our review, we were also required to report on the progress made so far by CoPEs in embedding the Career Path Framework (CPF) for the Northern Ireland public sector.
- 2.97 Our assessment revealed that, in general, the Career Path Framework is widely deployed and implemented by CoPEs. There is an increased appreciation of the role of procurement skills in public sector activity. All CoPEs had pursued an ambitious programme of procurement training and CIPS membership for its staff. Where CIPS was not actively pursued by some CoPEs, there was evidence of public sector procurement training courses attendance, as well as registered membership of construction related professional bodies.
- 2.98 We saw evidence of well trained and professionally qualified procurement staff working in the

procurement function. Even though the framework identified the Chartered Institute of Purchasing and Supply (CIPS) qualification as a possible qualification that enables procurement competency, there was evidence that procurement competency was being developed through in-house public sector related courses provided by subject matter experts.

Recommendations

2.99 Following the completion of the assessment exercise for all the CoPE organisations, and a detailed review of supporting evidence and documents provided, we highlighted a number of areas of improvements applicable to each CoPE. Alongside these recommendations, PwC has also discussed with each CoPE their scores/performance during the review and suggested actions plans for future improvements. This section of the report highlights our general recommendations going forward.

- **Recommendation 1:** Further improvements are required in knowledge sharing of best practice and greater interplay recommended across all CoPE organisations so that they can avail of collaborative procurement opportunities with support from the PPG (Procurement Practitioners Group).
- **Recommendation 2:** CoPE organisations are encouraged to continue to embed category management and further develop commodity group strategies.
- **Recommendation 3:** There is the need for uniform tendering and contracting documentation across the CoPEs where permissible. This initiative should have been implemented as part of the last CoPE review and should be taken forward for implementation.
- **Recommendation 4:** Further embed e-technology plans and develop an integrated, CoPE-wide strategy to address e-procurement development to support integration among CoPE members and where possible move to a common e-enablement platform.
- **Recommendation 5:** Develop specific KPIs that measure how Value for Money (VfM) in the procurement function is to be achieved in each CoPE. All CoPEs should aspire to KPI maturity levels of processes and people that are quantitatively controlled and continuously being improved.
- **Recommendation 6:** Improve upon quality accreditation awards and continue to review action plans from EFQM and similar awarding bodies to drive improvement levels.
- **Recommendation 7:** CoPE organisations should constantly monitor and conduct regular risk assessments for all contracted suppliers within their supply chain to establish their current economic status. Vendor rating mechanisms and supplier appraisal tools need to be put in place to continuously monitor performance of suppliers to assist contract management.
- **Recommendation 8:** Develop knowledge sharing strategies on how to implement Socially Responsible Procurement (SRP) environmental goals. It is considered that this should be assisted through further support regarding policy dissemination and education on practical examples.
- **Recommendation 9:** CoPE organisations should consider appointing an in-house, dedicated resource to drive procurement compliance and conformity to CoPE requirements.

2.100 In general, the scoring and maturity levels demonstrated by all CoPE organisations against the assessment tool have improved commendably since the last review and this reflects the level of effort and commitment on the part of CoPEs to implementing continuous improvement following from the last review in 2005. There are still common areas for development and further progress.

2.101 However, in order for the tool to remain relevant in the future, there needs to be a review of the CoPE assessment tool to bring it up to date with procurement good practice and current standards at the present time. Scoring and maturity levels need to be reassessed and exemplar status reassigned to reflect required procurement standards from 2009 onwards.

2.102 As stated earlier, PwC discussed with each CoPE organisation their individual areas for improvement. Each CoPE is currently identifying actions and timescales for implementation which will then be included in the individual CoPE Action Plans. As part of the ongoing improvement by CoPEs, we recommend that each CoPE reports on its progress on at least a 1 year basis to the PPG group.

Central Procurement Directorate
Response to follow up issues

Assembly Section
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Mr Shane McAteer
Clerk
Committee for Finance and Personnel
Room 419
Parliament Buildings
Stormont

11 December 2009

Dear Shane

At its meeting on 25 November 2009, the Committee requested Central Procurement Directorate to reply in writing to further questions arising from the evidence session, but which could not be covered in the time available. The response to these questions is set out below.

1a What consideration does CPD give to other options for procurement rather than direct contracts? For example, how often would an option like Grant in Aid be used? Does CPD provide advice to other CoPEs in this regard?

Northern Ireland Public Procurement Policy defines public procurement as "the process of the acquisition, usually by means of a contractual arrangement after public competition, of goods, services, works and other supplies by the public sector". This definition plus the Public Contracts Regulations 2006 and the overarching EU Directives firmly establish the regulatory framework for public procurement in NI.

The Review of Procurement, carried out in 2002, acknowledged the complex relationship between grants and procurement and after consideration decided not to include grant-giving within the scope of the definition attached to procurement. However, the Review Team concluded that many of the principles suggested for procurement, in appropriate circumstances, could be equally applicable to grant giving.

As a result, the Review Team recommended that the Procurement Board consider the implications of procurement for grant-giving within the first 2 years of its operations. This was done and the result was the production of guidance on "The Use of Grant for Procurement". This guidance provided advice to Departments to enable them to obtain assurance that the use of grant for procurement is in compliance with public procurement law and policy. The guidance can be found at http://www.cpdni.gov.uk/gn01-07-the_use_of_grant_for_procurement_v_2.pdf

The question of whether Departments should acquire services directly through a procurement competition or via a third party through the provision of grant-in-aid is a matter for Departments.

1b What consideration has been given to breaking larger contracts into lots to allow access to a greater range of SMEs

Construction works and services contracts

CPD has considered splitting larger contracts and framework agreements into lots to increase opportunities for SMEs to bid for work. For example, it is currently establishing new framework

agreements for civil engineering works valued up to £400k per order. The total value of the work to be procured over 4 years is estimated to be in the region of £45m and, rather than have a single framework, a total of 5 geographically based frameworks are being established, each valued between £7m and £12m.

However, there can be significant extra costs to a client in awarding multiple contracts or frameworks. There is the additional administrative cost of running several procurement competitions and then managing multiple contracts with different contractors. The economies of scale may also be reduced. It should be noted that larger firms cannot be prevented from tendering for all of the lots and therefore there is no guarantee that SMEs will be successful.

Creating opportunities for SMEs was also considered by the Construction Industry Forum for NI Procurement Task Group and a number of its recommendations are aimed specifically at that sector. These include:

- a) Encouraging SMEs to come together as consortia to bid for work;
- b) Requiring main contractors to advertise sub-contracting opportunities;
- c) Setting proportionate financial thresholds that do not unreasonably exclude SMEs; and
- d) Requiring relevant experience – not necessarily gained on government contracts - to be taken into account when drawing up tender shortlists.

The procurement of the Integrated Consultant Team Framework Agreement for construction related professional services, recently concluded by CPD, demonstrates how these recommendations can work in practice. Following extensive consultation with the local construction industry, the procurement was structured in a way that maximised the opportunities for smaller consultant practices. The framework agreement comprises 7 multi-disciplinary professional teams providing a range of construction related services. Of the 7 teams, 4 are led by locally based SMEs and 2 by national practices with established offices in Northern Ireland. Of the 37 consultant firms that form the 7 teams, 22 are locally based SMEs and 6 are national practices with established offices in Northern Ireland.

Supplies and services contracts

Where appropriate, CPD procurement competitions have allowed local SMEs to bid for part or all of the requirements. Tenders can be split geographically into schedules or lots which allow for businesses, who would not have the capacity or capability to tender for all the work, to bid for part of these requirements.

A good example is in relation to security and cleaning contracts. The approach taken was to schedule government buildings into small lots linked to geographical areas. This was to encourage local companies to compete. It has to be recognised however that these types of strategies can increase transaction and management costs and therefore need to be considered on a sector by sector basis.

1c How common is it for contractors to follow up compliant bids with variant bids? What would be the advantages and disadvantages of this approach?

The call for variant bids is at the discretion of the Contracting Authority. In addition, variant bids are only applicable when the Contracting Authority intends to award a contract on the basis of

the most economically advantageous tender (MEAT). Variant bids are not lawful when awards are made on the basis of lowest price.

Construction works and services contracts

Submitting a variant bid puts a contractor to considerable extra expense, since an alternative solution has also to be developed and costed. As the drive has been to reduce bidding costs by, for example, developing exemplar designs, CPD does not call for variant bids for its construction contracts.

Supplies and services contracts

The application of a variant bid in the procurement of supplies and services is not a common practice. However, it has been used where we wish to encourage innovation and sustainability within procurement competitions. A good example of this is the forthcoming office supplies contract where we are keen to promote and develop within the market innovative and sustainable procurement solutions.

2 Can you outline the relationship between commissioners and purchasers and where responsibilities lie, for example, in relation to defining and applying social value/clauses to contracts?

In this context "commissioners" could be defined as Departments, Agencies, NDPBs and Public Corporations, i.e. most bodies covered by the Northern Ireland Public Procurement Policy. "Purchasers" can be defined as CoPEs, since it is a requirement of the policy that procurement is undertaken by means of an SLA with CPD or a CoPE.

Public Procurement Policy established 12 guiding principles. The policy document outlines the implications of the principles in relation to both purchasers and commissioners. These roles and expectations will be further clarified in the Northern Ireland Public Procurement Handbook currently being developed by CPD.

Commissioners have a statutory duty to act in a way they consider best calculated to contribute to the achievement of sustainable development, including the delivery of social objectives. CoPEs assist commissioners to interpret this duty and define practical applications that can be lawfully included in contracts.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Norman", with a long horizontal stroke extending to the right below the name.

NORMAN IRWIN

DFP - Reply Letter relating to the
Impact of the Executive's Advertising Policy

From the Office of the
Minister for Finance & Personnel



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Your reference:

Our reference: COR 10862009

Jennifer McCann MLA
Chairperson
Committee for Finance and Personnel
Room 419
Parliament Buildings
Stormont Estate

7 January 2010

A handwritten signature in cursive script, appearing to read "Jennifer McCann".

Thank you for your letter of 7 December 2009 which asked for comments in relation to the impact of the Executive's advertising policy on the local press.

My Department is not responsible for advertising policy as this falls under the remit of the Government Advertising Unit (GAU) within OFMDFM. I am however keen to ensure that best value for money is obtained for the provision of all advertising across the NICS.

The Central Procurement Directorate within my Department is working with the GAU to develop future procurement strategies for advertising. These strategies will reflect the changing business needs of the NICS and how improved value for money can be achieved through increased competition.

Therefore I cannot respond to the issue raised and you may wish to refer the matter to OFMDFM.

Yours sincerely

A handwritten signature in cursive script, appearing to read "Sammy Wilson".

SAMMY WILSON MP MLA

COMMITTEE FOR
FINANCE AND
PERSONNEL
F & P

DFP - Procurement Governance Review

Assembly Section



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Mr Shane McAteer
Clerk
Committee for Finance and Personnel
Room 419
Parliament Buildings
Stormont

15 January 2010

Dear Shane

Procurement Governance Review

I refer to your letter of 11 December 2009 attaching correspondence received from the Citizen's Advice Bureau regarding a procurement exercise for face to face debt advice.

I can confirm that Central Procurement Directorate (CPD) provided DETI with advice and guidance on the procurement process for face to face debt advice. This included advice on the specification of services to ensure that it was compliant with relevant procurement legislation and policy, and advice on the procurement strategy to ensure that it encouraged competitive supply. It also managed the tendering process and ensured that the evaluation of tenders was carried out in accordance with the published criteria and weightings and that the criteria were compliant with relevant legislation and case law.

The reference to 'good governance review' related to the contract management phase of the procurement process. This process involves monitoring the service delivery to ensure that services are provided in accordance with the specification (including targets/outputs and key performance indicators), the terms of the contract and the accepted tender offer. This is not a new a procedure as the NI public procurement policy requires that all contracts are monitored to ensure that best value for money is achieved and contractual obligations are satisfied.

CPD understands that as part of this Contract management process DETI carried out a number of checks with the successful Tenderer immediately after the contract award including matters brought to its attention in the course of recent legal proceedings and that those enquiries have been completed to its satisfaction.

Apologies for not making the response date.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Norman", followed by a long horizontal stroke.

NORMAN IRWIN



**Legal Challenges against
Government Procurement**

February 2010

Legal Challenges against Government Procurement

Background

European Legislation

1. Public Procurement is regulated in the European Union (EU) through the EC Treaty and Directives. These Directives are then transposed into national legislation by Member States. In addition to the requirements of European Community law, public procurement policy is also constrained by the World Trade Organisation's (WTO) Government Procurement Agreement.
2. Within this context the EU retains overall responsibility for the negotiation and development of WTO legislative proposals as they affect Member States and the UK, as the Member State, retains overall responsibility for the negotiation and development of EU legislative proposals in relation to Devolved Administrations. The current EU procurement directives were transposed into UK National law on 31st January 2006 as The Public Contracts Regulations (2006) SI 2006 No.5 (as amended) and the Utilities Contracts Regulations (2006) SI 2006 No.6 (as amended).
3. The purpose of the EU Procurement Rules and the UK Regulations is to open up the public procurement market and to ensure the free movement of supplies, services and works within the EU.
4. Compliance with EU procurement rules ensures compliance with GPA, where it applies, and GPA suppliers have the same rights as EU suppliers. GPA members include Canada, Hong Kong, China, Norway and USA.

Regulations

5. The EU Directives have been implemented into national law by Regulations. The current Regulations came into force on 31 January 2006 in the form of

- The Public Contracts Regulations 2006 (SI 2006 No5); and
- The Utilities Contracts Regulations 2006 (SI 2006 No6).

These Regulations do not extend to Scotland where separate but similar regulations have been made there.

Main Changes in 2006 Regulations

6. The 2006 Regulations introduced a number of significant changes including:
 - a single set of Regulations for supplies, services and works;
 - they expressly provide for framework agreements;
 - the introduction of a 10 (calendar) day mandatory standstill period at the award stage before contract signature to permit unsuccessful tenders to consider taking actions in the courts; and
 - the need to inform unsuccessful tenderers of the characteristics and relative advantages of the successful tender.
7. The introduction of a mandatory standstill period and the revised requirements for the provision of information to tenderers before a contract is awarded were introduced to allow an aggrieved tenderer the opportunity to have a contracting authority's award decision suspended by way of court intervention. Ultimately this can lead to the decision to award being set aside where claims are substantiated.
8. The result of the introduction of the mandatory standstill period has been greater awareness among tenderers of the opportunity to challenge decisions, not just at the award stage but at all stages of the procurement process. As a result there has been a marked increase in demands for debriefing and in the number of legal challenges.
9. It is also important to note that the EU procurement regime, described by the Directives and Regulations, is not static. It is subject to change and evolves, driven by the Courts' interpretations of European and

domestic case law, European Commission Communications, new and revised Directives and amendment to the UK Regulations.

Current Position

10. Since 1 April 2007 thirteen of the cases brought against Centres of Procurement Expertise (CoPEs) and Departments have been concluded. A list of these cases is contained in **Annex A**. Details of cases which are on-going have not been included in this report as the matters in dispute have not yet been resolved and are still the subject of litigation.
11. The decisions made by the Northern Ireland High Court in relation to these and other cases illustrate the challenges facing public procurement.
12. **Annex B** provides more detail on individual cases however the plaintiff in each case has not been identified

List of Concluded Legal Cases since April 2007

Name of Contract	Page
Provision of Agency Recruitment Services to BHSC and SEHSC	6
Supply of Automated Pharmacy Dispensing Equipment	7
NICS Provision of Temporary/Short Term Workers	8
NICS Financial Services Framework Agreement	9
Financial Services Framework (F/14286/05)	10
Independent Counselling Services for Schools NI	11
Workplace 2010	12
Carland Bridge	13
Term Contract for Maintenance and Improvement of Structures 2008	14
Collection, Rendering and Disposal of potentially contaminated meat, dead cattle and by-products and the collection of brain tissue for TSE sampling from animals potentially contaminated by Dioxins	15
Face to Face Debt Advice	16
Supply, Delivery and Installation of Office Furniture and Associated Items	17
Building Maintenance Measured Term Contract	18

Name of contract	CoPE/Department Involved	Type of proceedings	Date Court proceedings commenced	Date case concluded	Total Cost including payments to the Complainant
Provision of Agency Recruitment Services to BHSC and SEHSC	HSC BSO Procurement and Logistics Service / DHSSPS	Injunctive Relief	22 nd July 2009	22 nd July 2009	Not available
<p>Total Legal costs, estimated or actual (broken down as follows): -</p> <p>Total Legal costs, actual (broken down as follows):</p> <p>a) in-house legal costs (in-house legal advisers) Not yet known</p> <p>b) legal costs (counsel) Not yet known</p> <p>c) contractor legal fees (if paid by contracting authority) N/A</p> <p>d) settlement (if not protected by confidentiality as part of the settlement) NO</p>					
<p>Background</p> <p>Injunctive relief was sought to prevent Belfast Trust placing restrictions on the selection of agency provider (due to financial position) alleging breach of contract by Belfast HSC Trust. An injunction was also sought against BSO PaLS although it is not clear why this was done as BSO PaLS is not the contracting authority.</p>					
<p>Outcome</p> <p>Case withdrawn by plaintiff following clarification by BHSC. Settled on Counsel's advice.</p>					

Annex B - Concluded Legal Cases

Name of contract	CoPE/Department Involved	Type of proceedings	Date Court proceedings commenced	Date case concluded	Total Cost including payments to the Complainant								
Supply of Automated Pharmacy Dispensing Equipment	RSS (now known as HSC BSO Procurement and Logistics Service) / DHSSPS	Injunction to Prevent Award	8 th February 2009	Settled 13 th February 2009	Costs borne by parties								
Total Legal costs, actual (broken down as follows): <table border="0" style="width: 100%;"> <tr> <td>a) in-house legal costs (in-house legal advisers)</td> <td style="text-align: right;">£956.01</td> </tr> <tr> <td>b) legal costs (counsel)</td> <td style="text-align: right;">£2932.50</td> </tr> <tr> <td>c) contractor legal fees (if paid by contracting authority)</td> <td style="text-align: right;">N/A</td> </tr> <tr> <td>d) settlement (if not protected by confidentiality as part of the settlement)</td> <td style="text-align: right;">None</td> </tr> </table>						a) in-house legal costs (in-house legal advisers)	£956.01	b) legal costs (counsel)	£2932.50	c) contractor legal fees (if paid by contracting authority)	N/A	d) settlement (if not protected by confidentiality as part of the settlement)	None
a) in-house legal costs (in-house legal advisers)	£956.01												
b) legal costs (counsel)	£2932.50												
c) contractor legal fees (if paid by contracting authority)	N/A												
d) settlement (if not protected by confidentiality as part of the settlement)	None												
Background Following evaluation of a tender for the supply, delivery, installation and maintenance for an Automated Pharmacy Dispensing System for Belfast HSC Trust, mandatory standstill letters were issued to bidders. One of the unsuccessful bidders sought a debriefing and then issued a challenge to the award. This challenge was robustly defended by both RSS and its legal advisers as the terms and conditions in use were standard across NHS. However the bidder proceeded to seek a formal injunction the key element of which was the application of a costing model that considered costs over a 5-year period whereas the complainant maintained that the tender documents indicated costs would be measured over a 6-year period.													
It was determined that there was a lack of clarity in how the timescales had been presented in the tender documents, and inconsistency in the scoring at evaluation of an element of the complainant's bid.													
Outcome The tender award has been stood down and the competition will be re-run.													

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Annex B - Concluded Legal Cases

Name of contract	CoPE/Department Involved	Type of proceedings	Date Court proceedings commenced	Date case concluded	Total Cost including payments to the Complainant								
NICS Provision of Temporary/Short Term Workers	CPD/DFP	High Court Claim	02/05/2008	30/06/2008	Department's Legal costs: £4250.00								
Total Legal costs, estimated or actual (broken down as follows): <table border="0" style="width: 100%;"> <tr> <td>a) in-house legal costs (DSO or other internal legal advisers)</td> <td style="text-align: right;">£1250.00</td> </tr> <tr> <td>b) legal costs (bought in external legal advice/counsel)</td> <td style="text-align: right;">£3000.00</td> </tr> <tr> <td>c) contractor legal fees (if paid by contracting authority)</td> <td style="text-align: right;">0</td> </tr> <tr> <td>d) settlement (if not protected by confidentiality as part of the settlement)</td> <td style="text-align: right;">N/A</td> </tr> </table>						a) in-house legal costs (DSO or other internal legal advisers)	£1250.00	b) legal costs (bought in external legal advice/counsel)	£3000.00	c) contractor legal fees (if paid by contracting authority)	0	d) settlement (if not protected by confidentiality as part of the settlement)	N/A
a) in-house legal costs (DSO or other internal legal advisers)	£1250.00												
b) legal costs (bought in external legal advice/counsel)	£3000.00												
c) contractor legal fees (if paid by contracting authority)	0												
d) settlement (if not protected by confidentiality as part of the settlement)	N/A												
Background An unsuccessful supplier took proceedings against DFP on the decision not to include them on the Framework for the provision of temporary workers. The supplier applied to the court to suspend the decision to establish the Framework. The court refused to grant the suspension.													
Outcome Challenge not upheld. Both parties paid their own costs on the advice of Counsel.													

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Annex B - Concluded Legal Cases

Name of contract	CoPE/Department Involved	Type of proceedings	Date Court proceedings commenced	Date case concluded	Total Cost including payments to the Complainant
NICS Financial Services Framework Agreement	CPD/DFP	High Court	13/11/2008	11/12/2008	£4,500 (estimated)
Total Legal costs, estimated or actual (broken down as follows):					
a) in-house legal costs (DSO or other internal legal advisers) £1,000 (estimated) b) legal costs (bought in external legal advice/counsel) £3,500 c) contractor legal fees (if paid by contracting authority) nil d) settlement (if not protected by confidentiality as part of the settlement) n/a					
Background					
An unsuccessful supplier challenged the outcome of the evaluation of the Framework for Financial Services.					
Outcome					
Both parties exchanged affidavits. The supplier withdrew the complaint prior to initial hearing. Each party agreed to pay their own legal costs on the advice of Counsel.					

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Annex B - Concluded Legal Cases

Name of contract	CoPE/Department Involved	Type of proceedings	Date Court proceedings commenced	Date case concluded	Total Cost including payments to the Complainant
Financial Services Framework (F/14286/05)	CPD/DFP	High Court	August 2006	November 2007	£62,419
Total Legal costs, estimated or actual (broken down as follows):					
a) in-house legal costs (DSO or other internal legal advisers) £3,837 b) legal costs (bought in external legal advice/counsel) £20,836 c) contractor legal fees (if paid by contracting authority) £37,746 d) settlement (if not protected by confidentiality as part of the settlement) _____ e) settlement protected by confidentiality clause No					
Background					
An unsuccessful supplier challenged the award decision of the Financial Services Framework. CPD carried out a review of the process and agreed that the supplier be added to the list of participating companies.					
Outcome					
The case was withdrawn.					

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Annex B - Concluded Legal Cases

Name of contract	CoPE/Department Involved	Type of proceedings	Date Court proceedings commenced	Date case concluded	Total Cost including payments to the Complainant
Independent Counselling Services for Schools NI	CPD/Dept of Education	High Court	April 2009	May 2009	NIL – DE Awarded Costs of £16k
Total Legal costs, estimated or actual (broken down as follows):					
DE awarded costs of £16k					
Background					
The unsuccessful tenderer, did not agree with the outcome of the assessment of their bid.					
Outcome					
Judge found in favour of DE / CPD and awarded costs					

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Annex B - Concluded Legal Cases

Name of contract	Department Involved	Type of proceedings	Date commenced	Date Concluded	Total Cost
Workplace 2010	DFP	High Court Claim	July 2007	December 2007	£1.2m.
Total Legal costs, estimated or actual (broken down as follows):					
a) in-house legal costs (DSO or other internal legal advisers) £76,000					
b) legal costs (bought in external legal advice/counsel) £942,000					
c) contractor legal fees (if paid by contracting authority)					
d) settlement (if not protected by confidentiality as part of the settlement) £225,000					
e) settlement protected by confidentiality clause					
Background					
The Workplace 2010 project was being procured using the competitive Negotiated procedure in accordance with the Public Services Contracts Regulations 1993. A High Court Claim was initiated in July 2007 against DFP by an unsuccessful supplier who was not taken forward to the final stage of the procurement. The case was settled between the parties in December 2007 before the full court hearing commenced.					
The grounds for challenging were based on a claim that the Authority's evaluation process, and subsequent decision to exclude the supplier from the next stage of the procurement, were in breach of the regulations. It was claimed that there was a breach of fairness and a number of errors in the evaluation of its tender.					
Outcome					
The Court granted an interlocutory injunction, ruling that there was a fair issue to be tried. The issue was scheduled to be heard fully in early 2008, however in December 2007, the case was settled out of court. Although the Department was convinced that it could win the case, it concluded on the advice of Counsel that the balance of advantage for the Workplace 2010 Programme and the best value for money for the taxpayer would be achieved by seeking to agree a settlement. In negotiating a settlement, the Department agreed to acknowledge that there had been shortcomings in the ITN evaluation process and in the feedback to the unsuccessful supplier following that process. In return, the unsuccessful supplier accepted that, in light of further information released during the discovery process, these shortcomings did not alter the outcome of the ITN evaluation.					

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Annex B - Concluded Legal Cases

Name of contract	CoPE/Department Involved	Type of proceedings	Date Court proceedings commenced	Date case concluded	Total Cost including payments to the Complainant
Carland Bridge	Roads Service/DRD	High Court Claim	16/01/2008	13/05/2008	£138,097.35
Total Legal costs, actual (broken down as follows):					
a) in-house legal costs (DSO)			£5,856.00		
b) legal costs (counsel)			£43,768.75		
c) contractor legal fees (if paid by contracting authority)			£88,472.60		
d) settlement (if not protected by confidentiality as part of the settlement)			Not applicable		
e) settlement protected by confidentiality clause			No		
Background					
A contractor, who had been unsuccessful at the prequalification stage of the A29 Carland Bridge Realignment, took court proceedings against Roads Service on the grounds that the prequalification procedure did not comply with the requirements of The Public Contracts Regulations 2006.					
Outcome					
Case settled on Counsel's advice pre-hearing (no damages paid). Contractor's costs reimbursed by Department.					

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Annex B - Concluded Legal Cases

Name of contract	CoPE/Department Involved	Type of proceedings	Date Court proceedings commenced	Date case concluded	Total Cost including payments to the Complainant
Term Contract for Maintenance and Improvement of Structures 2008	Roads Service/DRD	High Court Claim	27/02/2008	16/09/2008	£112,210.50 (estimated)
Total Legal costs:					
a) in-house legal costs (DSO)			£15,000 (estimated)		
b) legal costs (counsel)			£29,372.50		
c) contractor legal fees (if paid by contracting authority)			£67,838		
d) settlement (if not protected by confidentiality as part of the settlement)			Not Applicable		
e) settlement protected by confidentiality clause			No		
Background					
A contractor, who had been unsuccessful at the prequalification stage of the Term Contract for Maintenance and Improvement of Structures 2008, took court proceedings against Roads Service on the grounds that the prequalification procedure did not comply with the requirements of The Public Contracts Regulations 2006.					
Outcome					
Case was settled on Counsel's advice pre-hearing (no damages paid). Contractors' legal costs reimbursed by Department.					

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Annex B - Concluded Legal Cases

Name of contract	CoPE/Department Involved	Type of proceedings	Date Court proceedings commenced	Date case concluded	Total Cost including payments to the Complainant
Collection, Rendering and Disposal of potentially contaminated meat, dead cattle and by-products and the collection of brain tissue for TSE sampling from animals potentially contaminated by Dioxins	CPD/DARD	High Court Claim	Writ served on 18/05/09	14/10/09	£1,000 (estimated)
Total Legal costs, estimated or actual					
a) in-house legal costs (DSO or other internal legal advisers)			£1,000 DSO costs (estimated) to be paid by Plaintiff		
b) legal costs (bought in external legal advice/counsel)			£0		
c) contractor legal fees (if paid by contracting authority)			£0		
d) settlement (if not protected by confidentiality as part of the settlement)			N/A		
e) settlement protected by confidentiality clause			N/A		
Background					
A tenderer was unsuccessful in the competition for the contract to render the carcasses of cattle which were potentially infected by feed contaminated by dioxins which came from the same source as that fed to pigs in the Republic of Ireland and which gave rise to the contaminated pork scare last year.					
Outcome					
The company did not serve a Statement of Claim and a Summons for an Order to strike the case out was issued, which was heard on 14th October 2009. Following receipt of instructions from the Department an agreement was secured that the company would pay the Department's costs of the action and of the application as a condition of the Department's consent to the case being withdrawn. The matter was resolved at court on 14th October 2009.					

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Annex B - Concluded Legal Cases

Name of contract	CoPE/Department Involved	Type of proceedings	Date Court proceedings commenced	Date case concluded	Total Cost including payments to the Complainant
Face to Face Debt Advice	CPD/DETI	High Court	29 September 2009	The Applicant withdrew and each party bore its own costs	Est. £13,000 + VAT
Total Legal costs, estimated or actual:					
Final costs have not been calculated but are estimated £13K+VAT.					
Background					
The tenderer's offer was unsuccessful for a contract to provide 'Face to Face Debt Advice' (Part B Service) on behalf of DETI. During the standstill period (voluntarily applied by CPD/DETI following the recent judgement in the Federal Security services case) the tenderer applied to the High Court seeking an interim order suspending the procedure leading to the award of the and/or in the alternative suspension of the implementation of the decision taken by the defendant contracting authority.					
Outcome (if settled)					
During proceedings the Applicant agreed to withdraw if both parties paid its own costs. In considering the offer from the Applicant DETI noted the following:					
<ul style="list-style-type: none"> Junior Counsel's opinion that there is "no manifest error" in the procurement process we (DETI and CPD) followed; there are strong grounds to defend the integrity of the procurement process and deter others from mounting similar speculative challenges; and DETI's costs had amounted to some £15k which we would not be able to recover in the event of settlement. 					
Against this DETI noted:					
<ul style="list-style-type: none"> Junior Counsel's opinion that "it would be most unwise to approach this case on the basis that success is inevitable" and that "we should be slow to reject the proposed settlement"; in the event of success DETI would still face (according to DSO) unrecoverable costs amounting to some £15k; and contesting the action would lead to a delay in the award of a contract of at least two months with the consequent unrecoverable loss of debt advice services valued at £50k per month (notwithstanding the value of the public good that would be delivered by these services). 					
DETI decided that the most appropriate course of action was to agree to the Applicant's offer.					

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Annex B - Concluded Legal Cases

Name of contract	CoPE/Department Involved	Type of proceedings	Date Court proceedings commenced	Date case concluded	Total Cost including payments to the Complainant
Supply, Delivery and Installation of Office Furniture and Associated Items	HSC Business Services Organisation, Procurement and Logistics Service (HSC BSO PaLS)	Injunction to prevent award of tender with case for hearing set-down for January 2010.	Wednesday 14 October 2009	As yet unknown – date of hearing set for 20 January 2010	Unknown as yet
Total Legal costs, estimated or actual (broken down as follows): - As yet unknown					
a) in-house legal costs (DSO or other internal legal advisers) _____					
b) legal costs (bought in external legal advice/counsel) _____					
c) contractor legal fees (if paid by contracting authority) _____					
d) settlement (if not protected by confidentiality as part of the settlement) _____					
e) settlement protected by confidentiality clause _____ Yes/No					
Background					
2 of the unsuccessful tenderers were 2 of the incumbent suppliers on the existing contract and will inevitably lose business following the award of contract.					
Outcome (if settled)					
An injunction preventing HSC BSO PaLS from awarding this contract upon expiry of standstill period on 14 October 2009 was granted at the High Court of Justice NI on the same date. Following advice from Counsel BSO PaLS agreed to stand down award of contract and re-tender with both sides bearing their own costs.					

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Annex B - Concluded Legal Cases

Name of contract	CoPE/Department Involved	Type of proceedings	Date Court proceedings commenced	Date case concluded	Total Cost including payments to the Complainant
Building Maintenance Measured Term Contract	Belfast Education and Library Board ELB (NIELB)	High Court Claim	October 2006	October/November 2009	Not known
Total Legal costs, estimated or actual (broken down as follows):					
a) in-house legal costs (DSO or other internal legal advisers) _____					
b) legal costs (bought in external legal advice/counsel) _____					
c) contractor legal fees (if paid by contracting authority) _____					
d) settlement (if not protected by confidentiality as part of the settlement) _____					
e) settlement protected by confidentiality clause _____ No					
Background					
Ongoing challenge by unsuccessful tenderer on grounds of ambiguity to particular wording of tender documents pertaining to introduction of measured term contracts for building maintenance. Other grounds of challenge dismissed by High Court in December 2006 but injunction prohibiting Board from proceeding with tender exercise remained in place from October 2006 to July 2008. Proceedings now involve the unsuccessful tenderer, the successful tenderer (who couldn't perform the contract because of the injunction), the Board and the firm of quantity surveyors who drafted the relevant tender documents who have joined the board as co-defendants.					
Outcome (if settled)					
Settled.					

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Appendix 5

Memoranda and Papers from Others

Federation of Small Businesses Briefing Note – Presentation to Finance and Personnel Committee – 26th November 2008



The FSB is currently working with members in Northern Ireland to gain a fuller understanding of current attitudes of SMEs towards the issue of public procurement.

This work involves includes examining if public procurement can play a role in boosting opportunities for local SMEs, who have been badly affected by the current economic slowdown

In particular, significant concerns have been expressed in relation to the issue of Framework Agreements.

There is a perception amongst many businesses that the outcome of these has been to exclude SMEs and a sense of despondency that due to the amounts of finance and time already invested in their creation they are unlikely to be reversed.

Below is direct quotation from a FSB member involved in this sector;

“My organisation has, up until now, been appointed to a number of governmental projects. We are a highly experienced company and it is these projects that allow us onto shortlists for future project opportunities. If frameworks are designed to last for 4-5 years, we will be excluded from the next round of frameworks as we will not have experience of similar projects of a similar size (usually criteria is to look for the last 5 years experience of similar projects). This framework has created sufficient interest for the large UK/Irish consultancies to establish offices in Northern Ireland. Rather than create new job opportunities this has displaced jobs from local SME's and concentrated the potential income generation to a few larger organisations”.

Attached to this submission is a report jointly published by the FSB and CBI in October 2008 entitled 'Evaluating SME experiences of Government Procurement'. This document is relevant to this submission, and outlining the common issues affecting small businesses throughout the UK.

**Wilfred Mitchell OBE
Northern Ireland Policy Chairman**

**FSB Press Release
Don't Ignore Glover Recommendations**

**Don't ignore Glover recommendations, says the Federation of Small
Businesses**

26 November 2008 PR/2008/85

FSB News release

PR/2008/85

Issue date: Tuesday 25 November 2008

Don't ignore Glover recommendations, says the Federation of Small Businesses.

The Federation of Small Businesses (FSB) today cautiously welcomed an influential review of government procurement that calls for a fairer deal for small firms when bidding for public sector contracts, and urged the Government to respond promptly.

The FSB supports the Glover Review's push to improve:

- Small firms access to government contracts; and to
- Increase channels of communication between government small businesses; and
- Simplify the process of winning public contracts.

However, the FSB wanted to see more far-reaching recommendations to further help small businesses in these difficult times, for example:

- Set a limit on the turnover of companies which can apply for the Low Value tenders, e.g. those with a turnover of more than £500k should not be eligible to bid;
- Lower the burden of proof for SMEs bidding for Low Value tenders;
- Ensure more help is at hand so that procurement managers are confident in engaging with consortia of small and micro businesses; and
- Set a target for 30 per cent for all government contracts to be awarded to Small and Medium Enterprises (SMEs), specifically micro businesses.

On average only 16 per cent of government contracts are awarded to small businesses and the FSB believes that the micro end of SMEs should have been targeted more, for a low tender.

The FSB believes the Government has an important opportunity to change the procurement landscape for micro businesses. By implementing the Glover recommendations, it can ensure that small businesses increase their chances of winning a larger share of the £175 billion spent annually on public contracts.

The funds that have been bought forward by the Chancellor, announced in his Pre Budget Report for building infrastructure, could offer ideal opportunities for small businesses to win Government contracts.

Clive Davenport, FSB Trade and Industry Chairman, said:

"The FSB welcomes the Glover review's recommendations to reduce the barriers small firms experience when bidding for government contracts. Small businesses offer great value to our

communities, especially in these difficult economic times, and by using small businesses, money is kept within the local

"However, the recommendations could have gone further and will not be effective if they are not taken up by all levels within Government. After a promising Pre Budget Report for small businesses, SMEs should not be ignored when bidding for public contracts. We want to see real solutions and the FSB will be holding the Government to account on this one."

Ends

Notes to Editors:

1. In the 2008 budget, the Government included a provision to investigate a practicality for setting a target for SMEs to win over 30 per cent of public service contracts. The Glover Review led an enquiry into the barriers faced by small businesses in winning public sector contracts. The review is to report jointly to the Chancellor and the Secretary of State for the Department of Business, Enterprise and Regulatory Reform in time for the Pre-Budget Report.

2. Micro businesses are those with 0-9 employees; small businesses are those with 10-49 employees; medium sized businesses are those with 50-249 employees. The FSB is convinced that the Glover Review proposals should be aimed at the micro business sector.

3. The FSB is Britain's biggest business organisation with over 215,000 members. It exists to protect and promote the interests of the self-employed, and all those who run their own business. More information is available at www.fsb.org.uk.

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Submission on Current Issues Affecting Construction Procurement in Northern Ireland for the Committee for Finance and Personnel

By Edward Quigg

London Dublin Belfast

Issues raised in "Terms of Reference"

1. The purpose of this document is to make brief comment on each of the issues identified in the Committee's Terms of Reference. It also introduces a new issue the Committee may wish to consider.

2. My understanding is that this is the first contribution to the work of the Committee in this area. As such the document tries to give a simple overview of the issues and the legal framework and humbly suggests areas the committee may wish to explore further with stakeholders. This is not intended in any way to be a comprehensive briefing.

3. The first four issues come directly for the Committee's Terms of Reference, the last two have been added.

Issue 1: The robustness of the process and compliance with legal requirements

4. This issue presumably relates to the challenges currently being experienced in relation to some public procurement procedures. The most recent being the challenges to the Schools Framework and IST Framework Agreements.

5. In both cases unsuccessful contractors challenged the process, for different reasons, and in each case were successful. This is obviously extremely serious at this time, when private construction work is at a low, and the construction industry are looking to, and perhaps even relying on, public work.

6. What is particularly disappointing is that in both cases it was not the underlying policy that was held to be unlawful, but the implementation of that policy.

Background to legal requirements

7. Where a public body intends to award a contract for more than a threshold it must comply with the Public Contracts Regulations 2006, which implements Directive 2004/18. The current threshold for construction works is about £3.5m.

8. Where this is the case the detailed procedures are laid down in the regulations.

9. Even where the works are for less than the threshold the public body must still ensure it does not infringe the principles of the EC Treaty, specifically:

1. Art. 28 - Free Movement of Goods;

2. Art. 43 - Freedom of Establishment;

3. Art. 49 - Free Movement of Services;

4. Art. 12 - Discrimination on Grounds of Nationality.

10. The Commission Communication 2006/C171/02 confirms that the Public Sector hands are not free just because the threshold has not been reached and the Directives do not apply.

11. As well as the legislative obligations there are also obligations at common law. The so called two contract theory provides that where a contractor submits a tender at the request of a

employer the employer is then obliged to consider that tender reasonably, equally, fairly and objectively.

12. In summary, no matter what the value of the works, the public body must treat all tenders fairly, equally, objectively and in a way that does not infringe the EU Treaty. Where the works are above c. £3.5m the public body must follow the detailed Public Contracts Regulations.

More than just these two cases

13. The Committee should not believe that the two Framework challenges are the only challenges to public procurement in Northern Ireland. There have been other cases concerning various public bodies which have been successful, are pending, or were settled by the public body.

14. I am personally aware of 13 such cases.

15. This is not a comprehensive list; it is only those issues that I have personal knowledge of. It would be fair to say that Northern Ireland are the UK leaders in public procurement litigation.

Why is there so much litigation in NI?

16. The reasons are varied, set out below is what I consider to be the underlying reasons.

Size

17. It is certainly plausible to argue that in relation to the IST and Schools Frameworks, they were so lucrative that unsuccessful bidders would look very closely to see if a challenge could be maintained.

18. If there had been eight Frameworks for the £1.4b it is much less likely that a challenge would have been made.

19. However, neither of the Frameworks would, or more properly could, have been challenged had the competitions been conducted lawfully.

Too much emphasis on quality

20. Where quality marks are too high a proportion of the award criteria challenges are more likely.

21. In the past contracts were awarded to the cheapest; we have moved away from this to awarding on the Most Economically Advantageous Tender ("MEAT") basis. This makes commercial sense. The easiest example being a long life battery, it may be cheaper in the long term to buy a more expensive battery that lasts longer than a cheaper one that needs replacing earlier.

22. The use of suitable criteria for evaluating the MEAT will be considered below as it represents its own ground for challenge.

23. The CPD in its guidance suggests quality could make up 20-40% of the award criteria for innovative projects whereas for repeat projects a range 5-10 % is suggested.

24. I have seen maintenance contracts being awarded on 70% quality. This is 7 times the suggested maximum.

25. The problem with awarding contracts with too much emphasis on quality is the difficulty in setting suitable criteria and objectively marking the tenders. Many construction professionals could spot a "good" contractor; but it is very hard to specify one.

26. In one of the cases I was involved in a medium sized contractor had done the same work for the last 30 years, each year being commended on his performance and receiving excellent comments. He did not pass the pre-qualification stage when the contract was renewed. Yet the public sector employer accepted on affidavit that it would be acceptable for that same contractor to carry on doing the work, but as a sub-contractor to another.

27. As the judge rightly asked in that case, are we looking for good contractors or good form fillers?

28. It should be remembered that if a project is fully designed and specified by an Employer there is limited scope for quality considerations. This is obviously not the case where the project is designed by the contractor.

Departure from the Regulations

29. Whereas the size of the contacts and too much emphasis being put on quality may lead to a unsuccessful contractor wanting to challenge a competition, such a challenge will fail unless there has also been a failure to follow the regulations or common law obligations

30. The failures include:

1. Issues not relevant to MEAT taken into account at award stage;
2. Criteria not being set out in advance;
3. Unequal treatment;
4. Subjective criteria not being used;
5. Failing to publish correct notices;
6. Failing to take into account relevant issues;
7. Ambiguous tender documentation.

31. Although it is easy to point to individual failures it is not so easy to say why there are so many failures.

32. It is true that the rules are to some extent complex. But they are not so complex that competent professionals cannot comply with them.

33. It is also true that the rules are developing all the time; what may have been considered lawful some time ago has now been ruled as unlawful. But very few of the cases in NI have relied on novel propositions of law, nearly all refer to previous cases which have held similarly.

34. Certainly the complexity of the chosen procedure meant that it was much more likely that mistakes would have been made. Historically procurement processes were seldom challenged; mainly because the award was on price, a simple and entirely objective criterion. The more objective and complex the criteria are the more likely there will be a challenge.

35. It is suggested that only where the nature of the works merits it should complex procurement processes be used. This is dealt with again below.

36. What is very concerning to many involved in the construction industry is some of the facts that were disclosed in the IST Framework challenge. It was discovered that the tender marking scheme was only drawn up AFTER tenders were received and that the panel of three who carried out the assessment over a period of two months could not produce any notes of their deliberations.

37. These facts, although not relied upon by the Claimant, are worrying because they point to poor practice and shake the confidence of those tendering.

38. They also allow, especially in relation to marking quality submissions, which are sometimes collections of 600 word essays, for corrupt practices. I must make it clear that there was no such allegation in the case.

Summary

39. The larger the size of the contract being awarded, the greater the emphasis on issues which are difficult to objectively mark, such as quality, and the more complex the procedure the more likely a unsuccessful contractor will want to make a challenge.

40. The Public Sector must comply with its legislative and common law obligations. To do so it may need to be better trained and monitored and may need to use external expertise.

Issue 2: The extent to which government contracts make provision for social clauses

41. Social considerations are a component of the wider issue of sustainability. Sustainability umbrellas a number of considerations including:

1. Prompt payment to subcontractors;
2. Apprenticeship and training opportunities;
3. Back to work schemes;
4. Health and Safety;
5. Equality Issues;
6. Environmental Management Systems;
7. Proposals for recycling; and
8. Sustainable materials.

42. Numerous reports have been produced on how these considerations fit with modern public procurement practices. The Cabinet Office recently conducted a survey on social clauses, the results of which are published on their website. In Northern Ireland the Equality Commission for Northern Ireland (ECNI) and the Central Procurement Directorate (CPD) produced a paper in May 2008 entitled 'Equality of Opportunity and Sustainable Development in Public Sector Procurement'; which looks at local practice and procedures.

43. Sustainability issues should be considered in advance of commencing the procurement process. There are four potential areas for the inclusion of sustainability considerations, these are:

1. The Specification;
2. At Selection Stage;
3. At Award Stage; and
4. During the Contract.

The Specification and Contract Management

44. It is easier to deal with areas together.

45. The primary place for inclusion of any necessary social or sustainability requirements is the specification. This makes it a term of the contract that the contractor has to do certain things.

46. In order for the sustainability obligations to carry contractual weight they should be accompanied by an effective incentive or sanction.

47. This incentive or sanction should be proportionate. A problem at the moment is that this incentive/sanction mechanism is not in place and so there is little feasible recourse for non-compliance other than determination of the contract, which is a nuclear option and therefore seldom, if ever, implemented.

48. There are two ways in which I could foresee a proportionate and therefore effective incentive/sanction regime:

49. As a lump sum payment either to the contractor for compliance or from the contractor for non-compliance; or

50. As a Key Performance Indicator ("KPI") score which would affect payment, i.e. the higher the score the contractor receives more money, the lower the score the contractor receives less money.

At Selection and Award Stages

51. The legal position in relation to scoring sustainability requirements at both selection and award stages is in a state of flux, and so it is with some trepidation that Public Sector employers should pursue this avenue.

52. The key is that the sustainability criterion must be linked to the subject matter and not contravene the principle of equality nor must they allow effective freedom to an employer to pick who they want.

53. The Public Contracts Regulations 2006 contain a number of changes with regard to social considerations in public procurement but they largely reinforce the old position which takes a very restricted view on the inclusion of social responsibility considerations in the tender and selection processes.

54. Until such times as the courts have clarified this area expert legal advice should be sought as to the lawfulness of selecting and awarding contracts on sustainability grounds.

Issue 3: The scope for increasing the capacity of Small and Medium Enterprises (SMEs) Social Economy Enterprises (SEEs) to compete for public contracts

55. The Chancellor on Monday referred to SMEs as the driving force of the economy and to the fact that they account for 60% of employment.

56. Within construction SMEs participate in two principle ways, as main contractor and as sub-contractors.

57. At present there is a concern that current procurement policy is making it harder for SMEs to act as main contractor to the Public Sector. For example the use of frameworks means that SMEs will simply not be able to get on the very large framework agreements. Only five contractors were picked for the £500-800m IST Framework. Also it is felt that even for some of the smaller jobs the questions asked at POQ stage and the "quality" criteria give undue weighting to the larger firms.

58. This can be overcome by SMEs carrying out more sub-contracting and combining to form joint ventures to compete when tendering as main contractors.

59. The problem with the former is that firms which are quite capable as acting as main contractors are forced to accept reduced margins and the problem with the later is that not all SMEs want to form joint ventures.

60. Again looking at the IST Framework, it seems strange that 4 of the winning firms were joint ventures, with the top, FHT, a joint venture between Farrans, Herron Bros and Tracey Bros. Is it really right that none of these three large firms could do the work on their own?

1. The effect on the Public Sector of excluding SMEs is that it may not always achieve best value.

2. The obvious solution is to ensure there is sufficient work let in a way that does not bar or make it difficult for SMEs to take part.

61. The same argument would undoubtedly apply to SEEs, but this is not directly related to construction.

62. The Commission has published "European Code of Best Practices Facilitating Access by SMEs to Public Procurement Contracts" (SEC (2008) 2193). When published by the Internal Market and Services Commissioner, Charlie McGreevy, it was made clear that, following a consultation with

stakeholders, what was needed was a change in culture of the procuring bodies rather than a change in legislation. The main areas to be addressed are:

1. Suitable size of contracts;
2. Ensure access to relevant information;
3. Simplifying the information required;
4. Setting proportionate qualification levels and financial requirements;
5. Reducing administration burden;
6. Emphasis on value for money rather than price;
7. Allowing sufficient time to draw up tenders;
8. Ensuring payments are made on time.

63. Also refer to Dr D Davenport; Size Matters – Access to Public Procurement By Small and Medium Enterprises in the EU Construction Sector; International Construction Law Review 2008 page 85.

Issue 4: The consequences of undue delays in progressing procurement contracts, especially in terms of the impact on the construction sector of delays in planned capital expenditure

64. This is really for others to comment on but it is clearly true that delays could not come at a worse time. The private sector of the construction industry is very slow, residential, retail, office and industrial works are not even being sent to tender.

65. What is most disappointing is that some of the delays could have been entirely avoided had lawful procedures been followed. The needs have been addressed, capital money has been approved, contractors are ready; yet the work is not being done.

New Issue: Appropriate Choice of Contracts and Early Contractor Involvement

66. One choice the procuring body has to make is the form of contract to be used.

67. The Office of Government Commerce ("OGC") has put forward the use of the NEC as the preferred contract. However choices still have to be made, such as to what extent the contractor is to have design input.

68. The most significant choice is which main option to use. There is a range of main options but the most common one are lump sum based on an activity schedule or target cost based on an activity schedule. With the former the contractor is paid his tendered lump sum for the building he priced plus any variations made. With the later he is paid his actual costs together with a share of any savings made or less a share of the overrun costs.

69. The target cost option is designed to share the risks between to employer and contractor and provide the contractor with an incentive to make savings. However it requires additional administration with the contractor having to have open book accounting and requires the contractor to seek three competitive quotations for every expenditure incurred.

70. Perhaps for projects designed by the employer below say c.£8m it is unlikely that the benefit will outweigh the additional administration.

71. Equally there is a desire to get early contractor involvement in the design process. The benefits of this are clear but again only for contracts above a certain size. It is also necessary to fully explore to what extent early contractor involvement gives that contractor too much bargaining power and how easy is it for the employer to break off with that contractor and move to the next.

72. This is an area that needs to be explored in more detail. The stakeholders need to set out what they would like in terms of early contractor involvement and then that process needs to be set against the legislative framework to check that it can be done lawfully. From an initial review it can be done lawfully, but the procedure needs to be transparent and advertised correctly.

New Issue: Contract Duration

73. It has always seemed strange to me that the Employer should dictate the duration to the tenderers. It is of course correct that the Employer should state the maximum duration it would find acceptable, but it is surely best for each tender to consider what duration is the most economical given its individual construction methods.

74. Duration of construction clearly goes to help decide which is the Most Economical Advantageous Tender and could clearly be part of the award criteria, yet it is uncommon for this to be part of the criteria. The common practice is that the duration is specified.

75. I suggest that for every procurement process tenderers are requested to provide, at a minimum, a price and a duration. This is common in other parts of the EU including RoI.

Summary of Areas which could be explored

76. In seeking the views of stakeholders and in considering whether what, if any, recommendations are made the Committee may find it useful to explore:

1. What the advantages are to the public to have very large framework agreements in the NI market and do those advantages outweigh: the risks of a challenge; the exclusion of some large firms from such a large source of turnover in one competition; and the exclusion of all SMEs?

2. What value of construction work is being procured in a simple manner, in suitable sizes and without overly complex procedures to allow SMEs to compete for public work?

3. Do the questions currently asked and taken into account at selection and award stage really go to the most economically advantageous tender, how do they save the public purse?

4. Why it is that the known legal obligations are not being followed?

5. How could the CPD allow a marking scheme be drawn up after tenders are received and allow a 2 month review with no notes kept?

6. What social or sustainability issues should be addressed and what is the best way to ensure contractors comply with those obligations?

7. What type and value of projects should be let using target cost?

8. What type and value of projects should use early contractor involvement and what is the best procedure to avoid being held over a barrel?

9. Why contractors are not commonly asked to tender on duration as well as price?

10. How much of the work due to be let under the IST and Schools Frameworks could now be put to tender on simple price and construction duration criteria?

77. My own view is that the rule must be "unless it for any project it can be justified otherwise, keep it simple", over complex procedures exclude SMEs and create potential challenges. Keeping it simple means:

1. A significant proportion of work procured in a way that is accessible to SMEs and large firms;

2. Price and duration has to be the dominant award criteria;

3. Other criteria should only be used where it is clear there is an economic reason and they can be marked in a objective manner;

4. Target cost contracts and early contract involvement should only be used where saving are likely;

5. The public sector and its consultants must follow lawful procedures; and

6. Social and sustainability clauses must have an effective enforcement mechanism that effects the contractor's pocket.

78. I would suggest that projects could fall into a number of categories, ignoring small projects:

1. Category 1: Simple works less than say £5m designed by the employer; award on price and duration only;

2. Category 2: Between category 1 and 3; Only use complex procedures with target cost and early contractor involvement where a saving to the public purse is likely, otherwise award is based on tendered duration and price; and

3. Category 3: Complex Works greater than £15m; use complex procedures with target costs and early contractor involvement.

79. As set out at the start, this is a preliminary overview of some of the issues. Once the Committee has had the benefit of input from the various stakeholders I would be happy to provide further specific comment if the Committee would find it helpful.

Confederation of British Industry

NI 12 09 Public Procurement – What is a World Class Client?

Background

1. The public procurement system in Northern Ireland has undergone radical change in recent years. With both new and still evolving structures in place, CBI Northern Ireland conducted a survey in the first half of 2008 to assess private sector experiences in Northern Ireland of public procurement.
2. The survey results provided a framework for representatives of the public and private sectors to meet in September 2008 to discuss the progress to date and identify areas for further improvement. At that meeting, a number of Action Points were agreed, one of which was that CBI Northern Ireland would develop draft metrics on the definition of 'World Class' client and bring these to a future meeting.
3. The aim of this paper is to stimulate debate on a definition of 'World Class' client.

Setting the Vision

4. Public procurement is about providing the infrastructure and services needed to deliver and sustain the sort of society we collectively aspire to become, within the resources available to that society. To seek to be 'World Class' must therefore begin with an aspiration driven by a vision of what that society seeks to be.
5. The vision, set by the Executive and the Assembly, should become the core qualitative value for all those engaged in the procuring and delivering of goods and services. In short, the process of procurement and delivery should have the end user as its focus. The quality, timeliness and value for money of delivery of goods and services to the consumer (and tax payer) are therefore the objective.
6. The mindset of all those involved in the procurement and delivery of public infrastructure, goods and services must be such that the processes of procurement and delivery are seen merely as the mechanisms by which the service is delivered, and are not of themselves the objectives.

The Parameters

7. In 2006, the CBI prepared a briefing paper 'Realising best practice in procurement and contract management'. This paper identified three objectives for the delivery of best practice and advocated that steps be taken to ensure:
 - Competitive supply markets managed by skilled professional staff.
 - Transparency and rigour in the tendering process.
 - Governance arrangements that are fit for purpose.
8. The core characteristics of each of these is given in summary below:
 - Competitive supply markets managed by skilled professional staff.
 - o Developing partnerships characterised by understanding, shared objectives and innovation.

- Developing commercial skills on a par with the private sector.
- Sharing of good practice between procurement agencies and with the private sector to achieve a standardised, efficient process to reduce bidding costs and contribute towards value for money delivery.
- Transparency and rigour in the tendering process.
 - Procurements driven by outcomes, not processes, with an understanding of how risk is being allocated and managed.
 - Clear specifications of what is required with project specifications being closely aligned with desired policy outcomes.
 - The ability for bidders to identify flaws in the procurement requirements.
- Governance arrangements that are fit for purpose.
 - High level buy-in is essential for project success, irrespective of governance arrangements. All projects should have a 'sponsor' to strengthen accountability. For large projects, the sponsor should be at the highest level.
 - On both sides, key staff should be involved throughout the whole life of the project wherever possible – from setting the specification to project completion.
 - Public and private sector partners must agree shared disciplines for contract performance measures which monitor all aspects of the project.

What will identify a 'World Class' client?

9. Since 2006, significant steps have been taken and improvements continue to be made in procurement processes and practices. At this point it would therefore be helpful to give a clear illustration to all stakeholders of the objectives that are being pursued. To this end, a draft matrix is attached [Appendix 1], indicating the key attributes of best practice that CBI believe are essential in a 'world class' procurement process.
10. CBI notes that other agencies are engaged in similar exercises. We are particularly aware of work being done in this area within the Scottish government in developing both a Procurement Competency Framework and a Working Group to develop people and skills. We would therefore encourage benchmarking and co-operation between authorities in Northern Ireland, Scotland and other regions to avoid duplication of effort and enhance standards.
11. A draft matrix of the core attributes of a world class client is given in Appendix 1. This matrix is intended to stimulate further discussions that will lead to agreement and common understanding of how a world class client might be recognised and a scorecard by which progress towards the goal of world class client can be measured.

World class clients need world class suppliers

12. Achieving a world class procurement process is not a one-sided exercise. It is important to note that suppliers must aspire to and deliver equally high standards of process, competency, skill and communication. For example, while there is an onus on the public client to be accessible, consistent and transparent, there is an equal onus on suppliers to seek out those procurement opportunities that are of interest to them, bring themselves to the attention of the procuring body and ensure the

procuring body is fully aware of how the supplier differentiates itself from its competitors and the value for money it brings to the table.

Conclusions / Recommendations

13. The procurement matrix shown in Appendix 1 illustrates that it is possible to define a 'world class client' in terms of a measurement against a set of standard requirements. It would therefore be CBI's recommendation that Appendix 1 form the basis for discussion and agreement between CPD / CoPE's and CBI on the standard to be achieved by procuring bodies.
14. CBI recognises that there is an onus on suppliers to continuously improve their own processes and procedures and to that end, CBI will develop a 'world class suppliers' matrix to complement the clients' matrix.
15. It is also recommended that both the clients' and suppliers' metrics be periodically reviewed to ensure standards continue to rise.

CBI Northern Ireland

March 2009.

APPENDIX 1

World Class procurement – Key metrics for procuring bodies

This self assessment matrix is to be used by Directors of Centres of Procurement Expertise and other procuring bodies to identify actions for the improvement of the procurement process. The matrix and progress against the identified actions are designed to add value to a procuring body and should be taken into account in their bi-annual evaluation.

	Theme	Key attributes	Rating – self-evaluation by COPE *	Proposed action (by whom & target date) – where rating is less than 5
1	Scoping the requirements [Do you know what you are trying to buy?]	<ul style="list-style-type: none"> • Clear understanding of the needs to be satisfied by the procurement process. • Clearly defined and specific criterion • Engagement with management / operational staff to fully understand their business needs • Timely and unequivocal response to tender's questions 		
2	Competitive supply markets [Do you know what the market can deliver?]	<ul style="list-style-type: none"> • Good understanding and knowledge of the supply markets • Good understanding of the innovations either recently or about to come into the market. 		
3	Achieving best value [Do you have processes in place to engage with the market to close the gap between 1 & 2?]	<ul style="list-style-type: none"> • Able to demonstrate a process for market engagement and good ongoing dialogue with market participants. • Policies in place which encourage the development of the market 		
4	Organisational capabilities –	<ul style="list-style-type: none"> • Skilled and dedicated professional staff with relevant qualifications (CIPS's) and experience. 		

4

	[Do you have sufficient people with high levels of commercial and business skills to prepare, negotiate, assess, manage and deliver procurement projects?]	<ul style="list-style-type: none"> • Ability to identify additional expertise and/or share this expertise on specific projects. • Suitable career structures and effective succession planning in place. • Capability reviews in place to ensure appropriate skills are available and identify gaps in skills. • Senior managers must have comprehensive understanding of how procurement options will realise specific outcomes and how risks to be allocated and managed. • Every project to have a named senior-level sponsor accountable for project delivery and able to take key decisions. 		
5	Tendering process [Is the tender process efficient, cost effective, timely, fair, robust and transparent?]	<ul style="list-style-type: none"> • Business case prepared for all procurements prior to procurement process starting. • Identification of necessary skills and expertise required to effectively manage the procurement. • Capacity to establish timescales and manage these to meet specified timelines – failure to meet timelines to trigger external intervention. • Clear, outcome focused specifications established at outset aligned with desired policy outcomes. • Terms and conditions appropriate to the scale of the tender. • Standardisation of generic material. • Effective communication strategy with the supply base. • Transparent and rigorous tendering process. • Mechanisms in place to identify weaknesses in the procurement process. • Large, complex projects subject to Gateway review. 		
6	Evaluation	<ul style="list-style-type: none"> • Transparent and well thought through evaluation 		

5

	[Is the evaluation process efficient, cost effective, timely, fair, robust and transparent?]	<p>criteria in place at outset.</p> <ul style="list-style-type: none"> • Criteria appropriate to the scale of the procurement. • Where timescales are not met, provision of meaningful communication to tenderers • Evaluation panel to have necessary skills and expertise and be adequately prepared • Focus on best value for money – demonstrating how value will be assessed • Evaluation on 'whole life cost'. 		
7	Award and Feedback [Is there clarity and understanding in how contracts are to be awarded; how bidders are informed of the outcome; and how post award communications are to be conducted with both successful and unsuccessful bidders?]	<ul style="list-style-type: none"> • Evaluation scrutiny to confirm adherence to policies. • Mechanism in place to communicate decision to all interested parties. • Mechanism in place to receive feedback from suppliers on the tender process. • All bidders offered one to one feedback. • No successful supplier challenges to procurement decisions. • Review / appeal process in place in event of dispute. • Facilitation of transfer of service to new provider through the provision of timely and accurate information 		
8	Contract management [Are responsibilities and risks identified, with project targets and milestones understood and agreed?]	<ul style="list-style-type: none"> • Award based on standard generic terms and conditions, with additions to fit scale and nature of the procurement. • Monitor and assess contract delivery against tender specification. • Demonstrate effective partnership arrangements with suppliers. • Identified / agreed milestones and timescales for targets / review. 		

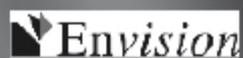
6

		<ul style="list-style-type: none"> • Risks identified and responsibility for management allocated. • No contract price overruns. • Savings targets achieved. • Every project has named individual responsible for whole life of contract. • No supplier claims due to poor contract terms and conditions. • Effective knowledge transfer of records from procurement phase to delivery – end to end shared project plans as standard practice. 		
9	Customer Care [Is dialogue and support positive, pro-active and continuous?]	<ul style="list-style-type: none"> • Provide single, accessible point of contact for supplier. • Pro-active approach to providing information and regular progress reports. • Seek feedback from stakeholders on the levels of performance and customer care achieved throughout the process. • Achieve favourable comparisons with other benchmarked organizations / companies. 		

* Rating: 1 poor to 5 excellent.

Proposed Actions must indicate a named person responsible for leading the action, and a target date for implementation.

7



Inter *Tradelreland*

All Island Public Procurement: A Competitiveness Study

Executive Summary

June 2003

ADVISORY

1 Executive Summary

1.1 Terms of Reference and Methodology

InterTradeIreland has commissioned KPMG and Envision Management Consultants (hereafter referred to as Envision) to research and complete a policy paper that will make recommendations for mutually beneficial cooperative initiatives to enhance the competitiveness of SMEs to access public procurement opportunities on the island of Ireland.

The high-level objectives of this study are:

- To provide InterTradeIreland with a more comprehensive understanding of the dynamics of the public procurement market on the island of Ireland.
- To make recommendations for mutually beneficial cooperative actions in the following areas:
 - The provision of supports (by InterTradeIreland and other organisations, North and South) to build company capacity and capability.
 - The identification and removal of barriers preventing the operation of an open all-island public procurement market.
 - The use of public procurement to drive innovation.

During the research, the core study team (from KPMG and Envision) was supported by an Advisory Panel, which included:

- Patrick McGovern (Arthur Cox, Dublin) – Partner and Legal Advisor
- Peter Curran (Arthur Cox, Belfast) – Partner and Legal Advisor
- Janis Simpson – Mahoney - (Construction Supplier Model) – Strategic Advisor
- Jeanne Copeland - (Forum for Public Procurement) – Strategic Advisor

The study was guided by a Project Steering Group, which convened and advised at key stages during the research period. The Project Steering Group included the following:

Organisation	Contact Names
InterTradeIreland	Adán Gough Eoin Magennis Aine-Marie McAteer
Department of Finance (DoF)	Tom O'Brien
Central Procurement Directorate (CPD)	Brendan O'Neil David Carson
Strategic Investment Board	Brett Hannam
National Development Finance Agency	Steven Burgess

The methodology for the study encompassed:-

- A review of operational and policy documentation, of relevance to the study in both jurisdictions.
- Analysis of the economic backdrop (recent and projected) for public procurement activity on the island of Ireland (given that this will have an immediate bearing on the characteristics and dynamics of the market).

- A high-level review of the trends and characteristics of the website 'traffic' of the main public procurement websites on the island of Ireland – to provide insights into the recent dynamics of the public procurement environment on the island of Ireland.
- Detailed semi-structured interviews with the majority of the key buyers in Northern Ireland (NI) and the Republic of Ireland (RoI), spanning capital/works and goods and services procurement.
- 200 semi-structured interviews with suppliers/SMEs in both NI and RoI and spanning suppliers/SMEs in capital/works and goods/services arenas.
- An interview programme with development agencies (and other organisations) active in each jurisdiction in developing SME competitiveness.
- Completion of a number of case studies, largely of SMEs who had been successful in winning public procurement contracts on a cross-border basis, to promote understanding of some of the critical success factors.
- A mapping exercise of the key programmes and interventions available to help SMEs access the public procurement market (in their own jurisdiction or on a cross-border basis).
- A review of good practice with respect to actions and interventions to facilitate SME access to public procurement markets (largely in external regions) – which was completed on a thematic basis, linked to issues and market failures identified through the research.
- An action planning workshop, involving the study team, Advisory Panel and the Project Steering Group to debate and prioritise emerging actions and to challenge some of the research findings.

1.2 Context for the Study

While EC public procurement law ensures the opening up of markets for all economic operators, without distinction between SMEs and other types of economic operators, there are some provisions which are particularly important for SMEs, as they provide solutions for problems faced by SMEs (or mainly by SMEs). In addition, certain rules and practices in Member States provide additional or more specific solutions in this field. The recently published 'European Code of Best Practices Facilitating Access by SMEs to Public Procurement Contracts (Code of Best Practices)¹' aims to provide contracting authorities in Member States' with general guidance on how they may apply the EU legal framework in a way which enables SMEs to participate in contract award procedures and highlights a number of national rules and practices that facilitate access to public contracts by SMEs.

At a UK level there has also been recent work in the area of SME access to public procurement contracts – notably the 'Glover²' report in the United Kingdom (UK), co-ordinated through Office of Government Commerce (OGC), and published in November 2008. It sets out a number of recommendations to improve SMEs participation in public procurement markets (through actions to improve the transparency, simplicity and strategic management of procurement). Furthermore, the NI Assembly Committee for Finance and Personnel is in the process of implementing an inquiry into the same, which is focusing on the end-user experience of SMEs and Social Economy Enterprises (SEEs) in tendering for and delivering public contracts in NI. The Inquiry, which is currently ongoing, is also examining the use of social clauses within public sector contracts.

¹ Commission Staff Working Document – Brussels 25.06.2008 SEC (2008) 2192

² Accelerating the SME Economic Engine: through transparent, simple and strategic procurement (November 2008)

This study complements some of the above activity. Furthermore, the key differentiating factor in this study is the focus on implementation of an 'all-island' research programme with suppliers and buyers, and the associated output of mutually co-operative actions to improve access for SMEs to public procurement opportunities, on a cross-border basis in particular.

The structural landscape of public procurement on the island of Ireland is significantly different in NI compared to RoI. Since the Review of Public Procurement in 2001, NI has had a high degree of centralisation in terms of public procurement, which is shaped around the Central Procurement Directorate (CPD). CPD has a unique role to play in the public sector procurement marketplace within NI. Whilst it leads on public sector procurement policy and best practice, it is also jointly responsible for central purchasing on behalf of Central Government Departments. In addition, there are a number of Centres of Procurement Expertise (CoPEs)³, which retain a focus on their sectoral areas, in light of the fact that they have a specialist focus and strong links with their customer base. From the perspective of the local government sector in NI, there is an embryonic public procurement group⁴ evolving, under the auspices of the Review of Public Administration (RPA), and co-ordinated through Department of the Environment (DOE) Local Government Branch.

By contrast the public sector procurement market in RoI has always been more fragmented and decentralised than has been the case in NI, with each public body performing procurement functions independently within the framework of EU/ national laws and national guidelines. However, the increasing complexity and importance of purchasing decisions by public bodies is leading to a more strategic focus and improved management of the public sector procurement process. Accordingly the centralisation of public procurement in RoI has therefore gathered momentum in recent months. A key aspect of this is a proposal to create a National Operations Unit (NOU), in the Office of Public Works (OPW), which will have operational responsibility for the implementation of much of the procurement activity⁵, monitored and guided at a policy level by the Department of Finance (DoF) National Public Procurement Policy Unit (NPPPU). The drivers behind the creation of this proposed unit include the drive for efficiency savings, the need for improved transparency and the requirement for a more coordinated strategic approach to public procurement. It is anticipated that the creation of this Unit will play a key role in the ongoing capability development of public procurement in RoI, similar to the role that CPD has had since 2001 in driving a process of reform in NI. In this regard, there has already been a productive process of senior policy exchange in recent months from NI to RoI in relation to the creation of the NOU and associated reform (learning from the experiences of NI in recent years). This activity represents a positive 'backdrop' for any proposed mutually co-operative recommendations emerging from this study.

Finally, with the advent of the economic downturn and associated budgetary pressures, it was evident through the research, that there was an increased focus and interest in learning from practice 'in the other jurisdiction' to expedite actions to enhance public procurement practice and avoid 're-inventing the wheel'.

Allied to this actions to improve NI/ RoI collaboration between buyers were viewed to be critical in the efficient and effective delivery of public services on an all-island basis, with associated scope for cost savings – and a case study of this principle in action is set out in the main body of this report.

³ The CoPEs include: CPD, CSA/RSS, HESA, NI Water, Roads Service, Translink, NHEE and the ELBs (whose procurement spend will be incorporated within the new Education and Skills Authority ESA in due course)

⁴ The Purchasing Officers Group, under the auspices of Department of the Environment (DOE) Local Government Branch

⁵ For example, this does not include public procurement activity within HSE.

1.3 Scale, Dynamics and Characteristics

The research with buyers suggests that the Public Procurement market on the island of Ireland is worth circa €19bn. This figure comprises an indicative annual spend of €2.8bn (£2.6 bn⁶) in NI (based on 2008/09 data) and in the region of €17bn in RoI (based on 2007/08 data). These figures if combined⁷ would represent a sizable proportion of the economic activity on the island of Ireland, equating to c10.3% of the current Gross Domestic Product (GDP)⁸ of the island of Ireland. It is also comparable to the 13% figure quoted in this regard in the 'Glover'⁹ report for the UK. It should be noted, that these figures are high-level estimates, given that there is limited means to access centralised contract award data.

Recent figures from CPD¹⁰ suggest that public procurement expenditure (which falls under the responsibility of the CoPEs¹¹) has increased over recent years, from circa €1.6bn in 2002/2003 to circa €2.2bn in 2007/2008. Indeed, discussions with all of the CoPEs and other buyers in NI suggest that the procurement spend, is forecast to remain steady in the short-term. In some instances there was even projected increases in expenditure reported by some buyers (e.g. Roads Service) linked to the timetabling of major infrastructure projects.

Discussions with buyers in RoI suggested that the public procurement market 'peaked' around 2006/2007. By contrast with NI and in line with the recent public sector budget cuts, the general message in RoI going forward was one of projected contraction in procurement expenditure.

The research with buyers in both jurisdictions provided evidence of an upsurge in interest in public procurement opportunities in recent months, which was viewed to be driven in part by the current economic downturn, where in relative terms the public sector was often viewed as a more 'stable' source of potential income. As such there were constant references throughout the study to an increasingly 'hungry and competitive' market.

The buyers interviewed within the research programme for the study, in the main indicated very low levels of tendering activity from the 'other jurisdiction'. Within this more examples of NI SMEs winning contracts with RoI buyers, were detected than the reverse, which would be consistent with the fairly high levels of use of eTenders by NI suppliers and the findings of the SME survey (detailed in Section 4 of the main report). In effect there was multiple evidence sources within the research suggesting that cross-border tendering activity is extensively dominated by North to South 'traffic' rather than the reverse.

The statistics provided by CPD on the activity levels of suppliers from NI and RoI within their eSourcing system from 6th May to 31st October 2008 (in the table overleaf) also provide testimony to the market failure in relation to cross-border procurement, particularly in terms of South to North 'traffic'. Specifically, the limited numbers of RoI based suppliers registered with the system, follows through to an even poorer representation in terms of tender issue and submissions back to CPD.

⁶ €1 = £0.92

⁷ Albeit that they are based on different financial years – full information for 2008/09 for RoI is not available on a centralised basis – the only centralised information that could be sourced related to capital expenditure.

⁸ Circa 184bn Euros in 2008/09

⁹ Accelerating the SME Economic Engine: throughout transparent, simple and strategic procurement (November 2006)

¹⁰ CRI Public Procurement Conference – 5th March 2009

¹¹ Excluding Local Government

Activity Levels of Suppliers from NI and ROI within the CPD eSourcing System

Jurisdiction	NI	NI %	ROI	ROI %	Total
Companies Registered	1468	88.7%	187	11.3%	1655
Companies Active	904	89.1%	111	10.9%	1015
Active Companies %	61.0%		59.4%		61.3%
ITT Invites Issued	4164	95.4%	199	4.6%	4363
ITT Responses Received	730	96.8%	26	3.2%	806
Responses Received %	18.7%		13.1%		18.5%

Over the period 6th May to 31st October 2008, 806 ITT responses were received by CPD from suppliers within the island of Ireland, for NI based public procurement opportunities.....97% of these were from NI based suppliers and 3% from ROI based suppliers' - CPD

1.4 Summary of the Main Market Failures (with respect to Cross-Border Procurement)

The factors emerging from the research as contributors to cross border market failure with respect to public procurement include:

- Lack of visibility of tender opportunities in the opposite jurisdiction (particularly on the part of ROI suppliers with respect to NI tenders and for low-value/sub threshold opportunities).
- Procurement practices on the island of Ireland which could be more 'SME friendly' (e.g. 'unbundling' of contracts, proportionate thresholds, and reduced bureaucracy) to improve the accessibility of the contract opportunities for SMEs. This issue applies primarily in a 'single jurisdiction' context, although it was viewed that North/South debate and policy exchange on the relevant issues between buyers could help to ease SME access, on the island of Ireland as a whole.
- Lack of understanding amongst SMEs of how to pursue tender opportunities in the opposite jurisdiction and sufficient capacity and capability to carry out the research needed to identify and pursue these opportunities.
- Capability in terms of 'intelligent' tender writing particularly for cross-border tenders, where the level of understanding of buyer needs may be more limited. Generally, the research suggested that in the past SMEs failed more on compliance issues, whereas in recent years the levels of compliance were reported to have improved substantially and SMEs are perceived to fail, more on 'a failure to answer the exam question'.
- A limited understanding of the concept of Sustainable Development and Sustainable Procurement (amongst both buyers and SMEs) - which given the potential of the same to encourage indigenous supply within the island of Ireland is a relevant market failure that needs to be addressed.
- Inconsistency and variable buyer practices within and across the two jurisdictions, which means that SMEs do not have a "consistent view" of how the market operates - which can increase the lead-in time for them to become more active and successful in winning public procurement contracts.

- A 'mismatch' in the availability of centralised management information¹² between NI and RoI. In practice this means that it is difficult to establish any baseline at an 'all-island' level about SME penetration within the public procurement market. It is relatively better within NI (e.g. the CPD Good and Services arena) than in RoI, although the creation of the NOU in OPW should bring increased potential for greater levels of centralised management information in due course.
- A need to distinguish between procurement and tendering, where the former also encompasses the identification of the public sector 'need' and associated market sounding/dialogue in advance of the issue of the ITT. It was acknowledged that this pre-commercial stage provided most scope for innovation and fit with buyer needs. Accordingly, the research strongly highlighted the need for more structured mechanisms (including on a cross-border basis) to facilitate a transparent process of engagement between buyers and SMEs at this pre-tender/pre-commercial stage. There was also recognition of the role that public procurement could play in driving research and innovation by providing 'lead markets' for new technologies.
- Both the research with buyers and SMEs highlighted limited evidence of joint-working between SMEs on a cross-border basis (to access public procurement opportunities) and interventions to facilitate the same (which were solely focused on the public procurement market). Given that having a partner 'on the ground' in the other jurisdiction (to boost capacity and capability) could be an 'easier' route for market entry this is a key market failure to highlight. Furthermore the research suggests that outside the construction sector¹³, may be a need for different approaches to facilitate 'strategic teaming' between SMEs particularly on a cross-border basis.

1.5 Summary of Key Findings & Recommendations

Before progressing to outline a series of recommendations, it is important to highlight that at an overall level the public procurement market presents a significant opportunity for SMEs with scope for new entrants, particularly on a cross-border basis. The increasing importance of this market to SMEs is reinforced by the challenges of the current economic environment. Furthermore the research has confirmed the potential for cross-border co-operation between buyers to enhance the effectiveness of public service delivery and create the potential for associated cost savings.

Outlined below are a series of cross-border recommendations linked to the market failures set out above. These have been informed by a review of good practice, which is set out in the main report. It is important to also highlight that the study has identified recommendations and actions that will be required in a single jurisdiction context to maximise the opportunity for cross-border procurement (and SME access to same). In effect these are critical to creating a positive and reinforcing environment for the implementation of the cross-border recommendations below. Furthermore they could form some of the focus of debate within the all-island practitioner group suggested as one of the recommendations below. However given the primary requirement in this study to highlight mutually co-operative actions that will have a cross-border impact, the single jurisdiction recommendations have been separated out and included in Appendix 8 of the main report for reference.

¹² e.g. with respect to tenders awarded by value, size of company and jurisdiction

¹³ Where the Supplier Model can facilitate SMEs to gain the networking and capacity skills to access sub-contract opportunities within large construction projects.

Cross Border Recommendation(s)	
1	Consideration should be given to implementation of a promotional campaign, perhaps through the relevant trade bodies, to encourage registration of RoI SMEs with the CPD eSourcing system.
2	The feasibility of a single 'all-island' system for consolidated access to lower-value public sector contracts should be explored, where the www.laquotes.ie model is viewed as a potential starting point. Clearly this would require engagement and debate with the evolving local government procurement group in NI and the host local authority in RoI (Kerry County Council). This should explore whether it is desirable that this could be linked to eTenders and the CPD website/ eSourcing system, to facilitate maximum coverage.
3	There should be encouragement to all NI buyers to advertise open tenders on the eTenders system. It is understood that the practice is variable at this point in time. This would improve the visibility of NI public procurement opportunities for RoI SMEs, given that, the 'traffic' in terms of South to North tendering is very limited.
4	The research has highlighted that there are shortcomings in the availability of centralised management information (e.g. with respect to tenders awarded by value, size of company and jurisdiction), although it is relatively better within NI (e.g. the CPD Good and Services arena) than in RoI. In the longer term the development of a centralised eSourcing system in RoI is a potential solution to this, which could arise through the progressive centralisation of activity that will happen through the proposed creation of a National Operations Unit in the OPW. In this regard it was suggested that a medium-term recommendation arising from this study, could be the creation of an 'all-island' eSourcing system with common supplier registration database (perhaps based on extension of the CPD eSourcing system). A compromise position could be for the RoI system to have similar design specification, to aid commonality of reporting on a North/South basis. It was however highlighted that in a tighter budgetary environment there may be merit in considering the economies of scale that could be achieved through an 'all-island' approach. It was further highlighted that with the creation of the NOU there was a 'window of opportunity' to consider the concept in the short-term. Any legislative obstacles to this should be explored based on the fact that aspects of the European Union (EU) procurement directives are transposed differently in NI relative to RoI.
5	As SMEs have cited the lack of resource (i.e. person power) as a barrier it is recommended that ITI could consider the provision of an experienced resource to assist inexperienced SMEs in submitting cross border tenders. Such an approach could include dedicated time (some 3-5 days) of an external resource with the experience to assist the company rather than actually complete the tender. Practically, this could involve a call-off mentoring framework of suitable mentors, which would require flexible delivery at short notice. Such an intervention would be weighted towards developing expertise in the company given that the onus should be on developing SMEs that are 'bid-ready'. This recommendation could be incorporated within the concept of the Trade Accelerator Voucher being developed by InterTradeIreland.
6	In the short term efforts should be made by ITI to weight participation in Go 2 Tender from RoI relative to NI. This could help to increase 'traffic' in the public procurement market from RoI to NI.
7	ITI could consider building on the Go 2 Tender programme with more intensive/advanced follow up support intervention – particularly in terms of support for 'intelligent tender writing' and research/capability support to assist SMEs to develop a strategic approach to targeting their products/services to buyers in the other jurisdiction.
8	Some of the local authorities interviewed in RoI for the study suggested hosting regional 'roadshows' for SMEs involving groups of local authorities, with the view that they would go through a mock case study of a tender process complete with sample winning tender submission. Given the potential that the local authority market offers for SMEs this could be worth pursuing. The local authority programmes that are offered tend to be specific to each Council, and a more collaborative approach could facilitate SMEs who are successful with their local Council to replicate the approach elsewhere, including on a cross-border basis. There could therefore be a role for ITI to facilitate a version of Go-2-Tender that use local authority specific, involving participation from Local Authority representatives on an all island basis as speakers. The programme should target those who are already successful in their own jurisdiction in tendering to local councils.
9	Sustainable Development is an evaluation criterion that is going to become more common through public procurement. A structured approach is required to increase SMEs knowledge of how they can use this criterion to compete - as well as increasing economic, social and environmental innovation

Cross Border Recommendation(s)	
	within the public procurement process. This could take the form of follow-up/ supplementary training to the Qe 2 Tender programme and would enable SMEs to enter new cross border markets on a key competitive offering (e.g. particularly in the construction sector). More broadly better understanding of the concept (amongst buyers and SMEs) could encourage more indigenous supply on the island of Ireland.
10	Establishment of all-island senior practitioner network to pool knowledge and best practice in public procurement. This could draw for instance on membership from the Public Procurement Practitioners Group (PPPG) in NI and similar bodies in RoI (e.g. the Government Construction Contracts Committee (GCCO) pertaining to capital projects only, and should potentially have a local authority dimension. The suggestion was that it should meet quarterly.
11	The Procurement Exchange Programme, developed as a concept in NI to facilitate secondments, mentoring, work-shadowing in NI between CoPEs could be piloted on a cross border basis, to act as a mechanism to expedite the development of more consistent procurement practice amongst buyers on an 'all-island' basis.
12	Consideration could be given to piloting a procurement process of staged tendering – allowing for an innovation phase in which SMEs on an 'all-island' basis can participate. This would be suitable for application within the science, technology and R&D fields and could be similar in nature to the good practice example cited within the Netherlands in Section 6 of the main report, which is currently being considered for application in NI (by DETI).
13	Consolidate and develop the current approach to events in which the buyer meets the suppliers (e.g. particularly Network and Getwork). This would involve an increase in buyer / supplier participation as well as ensuring concerns of both parties with regards to such events (outlined in the report and supporting appendices) are addressed. It is recommended that buyers could demonstrate their commitment to cross border procurement by travelling to the opposite jurisdiction for events (e.g. sectoral Network and Getwork events) rather than reliance on a large group of SMEs travelling to the opposite jurisdiction. This would potentially result in a higher level of exposure of SMEs to buyers on a cross-border basis. It is understood that this is being actively considered by ITI and the two Chambers of Commerce at this point in time. Consideration could also be given to broadening the scope of cross-border events, to include a format (as per the French model 'Met' set out in Section 6 of the main report) which enables a group of SMEs to present their innovative products or solutions to contracting authorities in a given technological field. This could involve approaching SMEs participating in programmes such as Innova, Seedcorn, Enterprise Innovation Networks (EIN) or Innovation Vouchers to participate in such events.
14	The eTenders system currently records details of all parties who register an interest in a particular tender. The research detected interest on behalf of SMEs for the names of such parties to be disclosed (where they are willing) so that they could be contacted a view to preparing joint bids and/or subcontracting arrangements. One possible solution to this might be to have a tick box whereby suppliers registering interest in a particular tender on eTenders could indicate whether they agree to have their details released to other parties for the purpose of preparing joint bids. This would be cross-border in nature given the high level of engagement of NI suppliers with eTenders.
15	The research into the competitiveness of SMEs in accessing public sector contracts has clearly indicated that lack of critical mass / size is one of the significant barriers to SMEs consistently and successfully securing public sector contracts. This has already been recognised in one particular sector, specifically construction. The Supplier Model is a 'supply chain' model that provides capability support to SMEs in the construction sector – to potentially gain access to work packages as part of larger construction projects – it's success is based on the specific 'sequential' nature of the construction tendering process, where lead contractors are appointed initially, and then components of the overall contract are tendered to sub-contractors, and in turn sub-contractors may further sub-contract smaller work packages to other companies. However at this point in time it is not available on a cross border basis and there could be scope to consider reintroducing it as a cross border programme – offering support to SMEs either side of the border to potentially access work within large construction projects on the island of Ireland.
16	It is suggested that a different approach to facilitating joint working may be required in sectors other than construction. The rationale for this is set out in more detail in Appendix 7. Accordingly consideration could be given to providing SMEs on the island of Ireland with support in relation to the formation of joint ventures / consortia for public sector tendering. It is recommended that this support

Cross Border Recommendation(s)

could consist of a combination of:

- Workshops – designed to change the mindsets of many Irish companies in relation to the formation of joint ventures / consortia
- Mentoring – to provide companies with the practical assistance requires taking SMEs through the steps involved in researching, identifying and establishing JV partnerships.

The support (workshops and mentoring) to be provided needs to address the following issues:

- The cultural and commercial challenges (and advantages) of establishing joint ventures / consortia;
- Establishing clear criteria for the screening and selection of joint venture / consortia partners;
- Understanding how to go about researching and identifying potential joint venture partners;
- Understanding the different forms of joint venture partnership – the pros, cons, and practical steps involved in establishing and operating them;
- Legal advice/ input on the various forms of joint venture partnerships;
- Good practice in relation to joint venture / consortia agreements;
- Best practice in relation to sustaining joint ventures – and making them work for the participant businesses.

SMEs could effectively use any consortia developed to tender for specific public sector opportunities (that they would not otherwise be able to secure), to develop new skills and capabilities, to enter new market sectors, and to grow their businesses. In time, this approach could enable SMEs to develop the critical mass to target larger public sector opportunities on their own, or indeed to develop further larger JV partnerships / consortia. This approach could be piloted on a cross border basis.

A programme based on the above could be piloted by ITI centred on one or two public procurement areas which could lend themselves to joint working/ networking (e.g. facilities management and ICT contracts).

Ulster Community Investment Trust - Briefing Notes

12th June 2009

Shane McAteer
Committee Clerk
Room 419
Parliament Buildings

Stormont
Belfast
BT4 3XX

Dear Mr McAteer

With reference to your correspondence dated 14th May 2009, I enclose further information on the issues raised by the Committee for Finance and Personnel at our briefing on Wednesday 13th May 2009. The enclosed information includes:

1. details of the UCIT research into the barriers facing social economy enterprises in Northern Ireland in accessing finance;
2. a briefing note on the rationale for UCIT seeking regulation from the Financial Services Authority; and
3. a briefing note on the UCIT proposals regarding steps which the local banks could take to assist the social economy sector.

Due to ongoing discussions with a new partner organisation, I have omitted the draft terms of reference on the proposed "public procurement brokerage service until these discussions conclude. I anticipate that I will be in a position to forward this briefing note within the next 2 weeks.

If you or any of the Committee members require further clarification on any aspect of the enclosed briefing notes please do not hesitate to contact me or my colleague, Mark Dougan.

In the meantime, I would like to take this opportunity to thank you and the Committee for your continued support on these matters.

Yours sincerely



Brian Howe
Chief Executive

Briefing Note 1: Details of UCIT's research into the barriers facing social economy enterprises in Northern Ireland in accessing finance

Introduction

Ulster Community Investment Trust (UCIT) was originally established in 1995 to provide flexible loan finance and business support to social enterprises who found it difficult to access finance from elsewhere.

Evidence of Demand for Finance

In recent years, UCIT has experienced a growing demand for loan finance from organisations that, prior to the financial crisis, found it less difficult to access credit facilities from the banking sector. As a result, we have seen our annual level of investment more than double to £3.6m in 2007, with a further increase of 6% to £3.8m in 2008.^[1]

Barriers to Finance

To test the claim that social enterprises are experiencing difficulties in accessing finance from the banking sector, UCIT contacted 36 (52%) of our existing loan-holders and new applicant organisations at the beginning of June 2009.^[2]

Of the 36 social enterprises contacted:

- 39% (14) indicated that they had come directly to UCIT for loan finance
- Of the remaining 22 respondent organisations that approached the banks for loan finance before opting to take a loan out with UCIT, 82% (18) indicated that they had experienced difficulties accessing bank finance. Of these respondent organisations:^[3]
- 7 had been refused a loan or overdraft facility
- 10 felt that the banks had applied excessive interest rates and fees to new loan facilities
- 5 indicated that their bank had increased interest rates on existing loans and overdrafts
- 5 indicated that their assets were unacceptable as security for the banks

Where a respondent organisation specified which bank they had approached, one of the four main local banks was highlighted.^[4]

Some of the comments made by respondent organisations include:

'In business 20 years with no borrowing history; Bank refused overdraft facilities to support cashflow despite presenting letters of offer from Funders; Assets for security an issue and personal guarantees requested by bank.'

'With Bank for 15 years and naturally went to them first. Became increasingly more difficult to deal with. High charges on the overdraft facility. Ended up having to guarantee the loan personally.'

'Spoke to banks but they were not interested in community housing project and not interested as houses offered as security'

'Spoke with banks but were refused because we were new customers and didn't proceed with another bank because of lack of flexibility and higher rates.'

'Did approach the banks, but the banks' did not have the appetite to lend. Our organisation has a good credit history - Banks not lending.'

- The 18 respondent organisations which indicated that they had experienced difficulties accessing bank finance have collectively drawn-down or applied for £4m in loan finance from UCIT over the last two years. Without UCIT's investment, which normally represents up to 20% of the total funds levered in by a social enterprise, some of these projects would almost certainly not have got off the ground with the potential loss of up to £20m in additional funding.

- Of the 36 respondent organisations which opted to take out a loan with UCIT:
- 53% (19) indicated that UCIT offered a more competitive interest rate and no fees on new loans in comparison to the banks (UCIT has traditionally worked on a margin of 1 – 2% over the Bank of England (BoE) base rate when striking a rate on new loans)
- 67% (24) indicated that UCIT offered more flexibility, including no early repayment charges, repayment holidays and the provision of loans unsecured
- 33% (12) indicated that they opted to take out a loan with UCIT because we shared a similar social ethos to their organisation in working to create wealth and jobs in more disadvantaged areas

Summary

The evidence outlined above has been collected from a small sample of (36) social enterprises in Northern Ireland. However, it clearly demonstrates that a sizable majority of UCIT's existing clients and new applicant organisations have and are continuing to experience difficulties in accessing finance from the banking sector in Northern Ireland.

Briefing Note 2: Further information, including draft terms of reference, on the proposed 'public procurement brokerage service'

Due to ongoing discussions with a new partner organisation, briefing note 2 has been omitted until these discussions conclude. UCIT anticipates that we will be in a position to forward this briefing note within the next 2 weeks.

Briefing Note 3: Rationale for UCIT seeking regulation from the Financial Services Authority

Introduction

UCIT is currently registered as an Industrial and Provident Society (IPS) in Northern Ireland with the Department of Enterprise, Trade and Investment (DETI).

The Financial Services Authority (FSA) does not regulate credit unions and Industrial and Provident Societies in Northern Ireland.

A recent enquiry by DETI into the role and potential of credit unions in Northern Ireland (February 2009) recommended that the regulation of the sector be undertaken by the FSA, in-line with the rest of the UK, while the registration function remains within DETI.

We understand that the Treasury will work with the Northern Ireland Executive to conduct a review of the legislative framework for credit unions and IPSs in Northern Ireland.

Rationale for FSA Regulation

UCIT is seeking FSA regulation as part of our aim to increase the supply of finance into the social economy in Northern Ireland.

In recent months, we have held very positive discussions with Wealth Management Companies that work with high-net-worth individuals, the Irish League of Credit Unions, Ulster Federation of Credit Unions and Northern Ireland Federation of Housing Associations on the possibility of borrowing funds from their members' reserves to invest into the social economy.

Each movement has been very supportive of using UCIT as a social investment vehicle for two reasons. Firstly, their members would be keen to use part of their reserves to support social enterprises in their local communities, making their funds much more mission driven. Secondly, they do not have the expertise and experience of investing funds into social enterprises which UCIT has developed over the last 9 years.

The single, most important issue expressed during all of our discussions has been security. Like all investors, the Credit Union Movement and Local Housing Associations have a duty of care to exercise due diligence when investing their reserves. UCIT has a proven track record in managing public funds; a strong balance sheet and more than £15 million in assets; however, under current legislation we cannot apply for FSA regulation.

FSA regulation would give UCIT financial credibility and increase confidence among private investors, such as the banking sector, and investors in the social economy who otherwise would not be in a position to independently verify our financial systems and controls.

Recommendation

We would ask the Northern Ireland Assembly to lobby Central Government to extend FSA regulation to UCIT.

We understand that before UCIT can be in a position to apply for FSA regulation, we must first be included as a named IPS under the anticipated new legislation for credit unions in Northern Ireland. This new legislative framework would:

- Open the way for UCIT and credit unions to apply for FSA regulation and
- Enable credit unions to lend funds to Community Finance Organisations such as UCIT
- FSA regulation would give UCIT financial credibility with high-net-worth individuals and companies seeking investment opportunities in line with their corporate social responsibility agenda.

Briefing Note 4: UCIT's proposals regarding steps which the local banks could take to assist the social economy sector

Future Funding

UCIT provides loan finance to social enterprises that often experience difficulties in accessing finance from elsewhere because of the perceived credit risk associated with their business model.

Over the next 10 years UCIT will require a minimum of £20m in new capital to meet the growing demand for loan finance from the social economy in Northern Ireland. This level of investment is needed to improve the availability of finance for commercially viable social enterprises that are well placed to expand their operations, create and retain jobs, deliver more public services, and ultimately reduce poverty and promote community cohesion.

Proposal – Banks Lend to UCIT to Support Social Economy

UCIT is seeking the support of the four main local banks, including: Ulster Bank; Northern Bank; Bank of Ireland; and First Trust Bank to lend UCIT £2 million per annum over 10 years to help increase the availability of loan finance to the social economy. The key features of our proposal are set out below:

- No risk to banks as UCIT would accept all liability for borrowed funds, which would be used to on-lend to the social economy. UCIT has nearly ten years experience in social lending and investing public funds, a strong balance sheet and more than £15 million in assets.
- A portion of the £2 million invested annually by the banks into UCIT for on-lending into the social economy would qualify for tax relief up to 5% per annum over 5 years.^[5]
- To ensure that this capital remains affordable for borrowers in the social economy, a subsidised rate would have to be applied to the banks' loan to UCIT. This is critical, because charging the full cost of funds would result in an unacceptable price for social enterprises borrowing from UCIT.

We estimate that if each of the four local banks invests £500,000 per annum, they would incur a small cost which is likely to be off-set by tax relief provided to the banks under the Community Investment Tax Relief scheme.

UCIT would on-lend funds to social enterprises at BoE base rate + up to 2% (or a minimum base rate of 3% + up to 2% when the BoE is lower)

UCIT would agree to repay the original capital and interest on a monthly basis over a term of 10 years with no risk of default. Any defaults by social enterprises are a matter for UCIT.

By applying a subsidised rate, UCIT is trying to strike a balance between the needs of:

- UCIT – which needs to make funds available at affordable rates and generate income to cover incremental costs and bad debts
- Banks – who can provide funds to discharge their Corporate Social Responsibility at a subsidised but reasonable rate
- Social Enterprise Borrowers – who require access to finance at affordable rates

Benefits to Local Banking Sector

By lending to UCIT to support the social economy, local banks would:

- Support the Northern Ireland Executive's work with UCIT to help grow the social economy – generating goodwill
- Make social finance more readily available to borrowers without the need for banks to take on any risk
- Enhance their Corporate Social Responsibility. As part of UCIT's communications strategy we would brand bank funds to demonstrate their support for social enterprises in local communities across Northern Ireland
- Mitigate further calls for 'gift' funding from the sector

Evidence of Similar Schemes

Republic of Ireland

In February 2007, the Irish Government announced the establishment of an independent Social Finance Foundation (SFF) with €25m in seed funding secured from the Irish banking sector. SFF acts as a wholesale supplier of investment finance for on-lending by 5 accredited social finance providers, including UCIT (Ireland).

Launching the initiative, the former Minister for Finance, Brian Cowan acknowledged that social enterprises 'have the potential to yield significant economic and social returns but often experience difficulties in accessing finance from mainstream financial institutions'.

In March 2008, the Social Finance Foundation reached agreement with the banking sector to borrow an additional €6 million per annum over the next 12 years at a subsidised rate. As a result, the Irish banking sector will use SFF to invest €97 million (approx. £88 million) into the social economy in the Republic of Ireland over the next 12 years.

United States

The Community Reinvestment Act (CRA) was introduced in 1977 to compel banks to provide financial services in so-called 'red-lined' disadvantaged communities, where they previously refused to lend. The Act has encouraged banks to partner with intermediaries such as Community Development Finance Institutions (CDFIs) who offer financial services in these communities.

Banks' support of the US CDFI sector was cemented following a 1995 amendment to the Act which made investing in a CDFI an accredited activity.^[6]

UK

In the UK, it was originally envisaged that the banking sector would be a natural ally of CDFIs in terms of funding, investment and referrals. Much progress has been made and a number of banks work very closely with the sector. However, partnerships can be developed further, building on the concept of the US Community Reinvestment Act.

UCIT fully supports the Community Development Finance Association (CDFA) intention to work with representatives from the banking sector, the Department of Business, Enterprise and Regulatory Reform and the Treasury to form a 'Partnership Group' that will formally agree a 'Community Finance Charter' by the end of 2009 to ensure greater cooperation in the provision of finances to under-served communities.

Next Steps

There is an urgency to reach agreement with the four main local banks to ensure that a minimum of £20m in new capital is made available to meet the demand for loan finance from the social economy in Northern Ireland over the next 10 years.

- UCIT has written to the four main local banks to request an opportunity to meet and discuss our proposal
- If the banks agree to our proposal, we will need to get a common loan agreement signed off by all of the banks

- UCIT would be keen to begin drawing down on funds in January 2010 at the latest

[1] In the wider UK context, members of the Community Development Finance Association (CDFA) reported an increase of 59% in social investment to £287m at the end of March 2007, up from £181m on the previous year. Inside Out 2007 – The State of Community Development Finance. 61 CDFIs participated in the survey which was carried out by the CDFA between March and September 2007. At the time of writing no figures were available for 2008.

[2] UCIT carried out a telephone based survey using a semi-structured questionnaire on 4th and 5th June 2009. All of the social enterprises surveyed included those that took out a loan with UCIT during 2007, 2008 or 2009, and those organisations currently in the process of applying to UCIT for loan finance.

[3] Some respondent organisations specified more than one difficulty in accessing finance from the Banks, hence the higher number of reasons listed in comparison to the 18 organisations that had experienced difficulties.

[4] The four main local banks include Ulster Bank; Bank of Ireland; First Trust and the Northern Bank.

[5] As a Community Development Finance Institution, UCIT qualifies to apply to the Government to become accredited under the Community Investment Tax Relief scheme (CITR), which provides tax relief for UK private investors that invest into CDFI's such as UCIT, who then on-lend into the social economy.

[6] Ulster Community Investment Trust (UCIT) is a Community Development Finance Institution (CDFI) in Northern Ireland, and part of the UK wide CDFA (Association) which works closely with Government.

CBI-NI 09a 09 Supplementary evidence to Finance Committee on Public Procurement

NI 09a 09

CBI supplementary evidence to the Finance and Personnel Committee's Inquiry into Public Procurement

CBI Northern Ireland welcomes the opportunity to provide additional evidence to the Committee on the issues of Extension of Contracts and the difficulties faced by businesses in accessing finance.

Extension of contracts

The issue of extension of contracts has not been a major policy discussion within the CBI membership. However we have consulted our members and wish to make the following observations and comments. There can clearly be both positive and negative aspects to extending contracts:

Positive features

- No re-tendering can save time and costs for both client and contractor

- Existing contractor should know the 'job' and should be more efficient and faster as the contractor becomes familiar with the contract (assuming they are doing a good job)
- From a client perspective it provides continuity of service
- Response times should be quicker
- There should be benefit in retaining the knowledge and earned expertise of the existing contractor

Negative features

- uncompetitive resulting in higher costs
- lack of knowledge of market improvements and service provision improvements
- lack of competition can mean a reduction in efficiency
- comfortable relationships can develop
- makes it more difficult for other suppliers to forecast when new contracts will be put out to the market (with implications for strategic planning, resourcing and budgeting)
- the client often assumes an extension will be cheaper on the basis of capital costs will already have been recovered

There is overall agreement that the driving force behind the decision should be achieving best value for money. This will require high quality contract management of the existing contract with clear Key Performance Indices. It will also involve a good understanding of the existing market place so that the client can assess whether there are likely to be opportunities to achieve greater value from money from putting the contract out to tender again (despite the additional costs of the tendering process), or whether to extend the existing contract.

We note that the Office of Government Commerce has recently published guidance on when existing contracts should be renewed – see Box 1 below.

Box 1 – OGC guidance regarding contract extensions

An extension of the existing contract is only to be recommended when:

- There was scope within the original advertisement in the OJEU (of the current contract) for a possible extension to the length of time or value)
- The existing supplier is performing well;
- The existing supplier is also well placed to deliver your needs, which are defined as a result of the strategic assessment set out above;
- The supplier in question is not over-dependant on your department or government more widely
- The market in question remains competitive. If there are few suppliers in a market place and you extend an existing large contract, competitiveness may be reduced. By extending a contract you are effectively excluding other suppliers, and one or more of them might quit the market as a result

Other issues raised by CBI members include:

- too often contracts are extended too close to the expiry date of the original contract term, indicating a lack of planning on the part of the procuring organisation
- many contracts will have specific terms regarding the extension process, often mandating that the client must serve notice to the contractor by a given date of its decision as to whether or not it will extend the contract term – this is not always achieved by the client
- there are examples of the private sector having to work at risk on the promise of extended contract periods (with contracts not formally agreed prior to the extension taking place) in order to ensure continuity of service

As with all aspects of public procurement best practice should apply:

- there should be more transparency of the benchmarking process to determine whether a contract should be extended eg this process should provide an objective assessment of 1) the existing contract and whether it has delivered against the original tender criteria and 2) whether value for money is likely to be achieved by contract extension
- complex contracts with a period of 3 years or more should normally include a notice period of at least 6-9 months to agree the terms of the contract extension and any extension should be agreed at least 3-6 months prior to the expiry of the initial contract term

CBI members remain strongly supportive of framework agreements, and welcome the recently completed Construction Industry Forum NI 'Procurement Task Group Report' published on 30 April 2009 with regards how frameworks should be taken forward in the future. With regards to frameworks:

- Projects will be delivered more quickly - frameworks are the only efficient means of delivering large numbers of projects within a reasonable timeframe
- There are efficiencies in the administration costs of both client and contractor
- Lessons learnt on earlier jobs are implemented on the next job
- Contractor led frameworks control design creep and manage design within budget - traditional one-off procurement fails abysmally on this score
- Client, contractor and supply chain alike benefit from collaborative, open and transparent working arrangements, driving efficiencies and cost certainty into projects. Lifecycle replacement and maintenance costs are factored into delivering best value for money into the scheme, rather than simply targeting cheaper initial build cost
- End users are included in the key decision making, delivering facilities that are more fit for purpose and user friendly
- Frameworks facilitate social inclusion, creating training and apprentice opportunities
- Frameworks facilitate more sustainable construction and balancing of objectives (cost benefit analysis)
- Statistical evidence supports the view that long term frameworks result in higher quality design, better quality construction, more economically maintained facilities and also fewer on-site accidents during construction, at greater cost certainty.

Difficulties faced by business in accessing finance

As stated at the Committee assessing the current difficulties and problems faced by businesses in a qualitative manner is extremely difficult.

Credit conditions remain extremely tight, albeit that the latest national CBI 'Access to Finance' survey published earlier this month reveals some marginal improvement in credit conditions. The key findings are:

- Shortage of trade credit insurance remains a worry
- Access to finance remains a serious problem for businesses, but the rate of deterioration in credit conditions slowed further over the past three months, and conditions are expected to stabilise in the months ahead
- Businesses were less negative than they were in March about the supply of new and existing credit
- The easing of conditions for new credit supply is expected to continue. Only a net 7% of firms see a further fall in new credit supply over the next three months. Meanwhile, no further worsening is anticipated for existing credit supply. 10% of firms expect the situation to improve, and another 10% expect it to deteriorate, giving a balance of zero per cent, which indicates that conditions for existing credit will be stabilising.

The most recent survey on credit conditions in Northern Ireland are reflected in an IoD survey on lending conditions published in May 2009 which revealed:

- 93% of businesses had been able to renew their existing bank loan, though only 63% of respondents were able to extend an existing bank loan
- 80% were able to renew an existing overdraft facility – though over 50% of requests for new overdrafts or extensions were being declined

Our overall view of the credit situation is summarised as follows;

- credit conditions remain extremely tight, though we expect the position to stabilise. Finance is being rationed (at a UK/international level) while the costs of finance have risen despite the fall in base rates – banks are seeking to move customers to Libor plus (from Base rate plus)
- on the demand side, investment intentions are very weak (which will impact on the economic recovery which CBI expects to come through early in 2010 albeit rather weak), the risks have increased substantially in certain sectors (though clearly less so in the public sector market)
- working capital demands have increased, and while companies are seeking to reduce working capital requirements, this is an area where accessing finance is particularly difficult and expensive
- companies are finding that it is taking more time/resource to access finance (with more robust credit assessments) while in some cases greater personal commitments/guarantees are being sought
- with base rates at 0.5% financial institutions are losing money on deposits, hence they are seeking to recover such losses from their lending side of the business

There is emerging evidence that there is margin erosion with regards public sector contracts. This is driven by competitive forces including new market entrants and in the current economic environment by over-capacity in the supply market.

In the Republic of Ireland there is currently significant evidence of contractors 'buying work' and a concern that this situation may extend to Northern Ireland. If such a situation was to develop in Northern Ireland, where the cheapest tender is scored highest, this will over time drive margins down to the point that quality of service will suffer and put jobs at risk of those organisations who have invested in skills and capabilities.

However with regard to businesses which have significant levels of public service contracts, we would make the following comments:

- such businesses, provided their contracts are profitable and the company has the capability to deliver the contract, should be attractive clients for the financial institutions with the public sector offering a secure customer base with no risk of bad debt – many other companies have a significant problem accessing trade credit insurance
- most, but not all, companies experience of government payment periods is good though delays are often incurred in verifying expenditure – clearly prompt payment is extremely important for helping reduce working capital requirements

CBI's public procurement survey undertaken in 2008 reveals that companies dependence on public sector work varies considerable:

- 35% of respondents have less than 5% of turnover generated from public procurement
- 24% have 5-25% of their turnover from public procurement
- 20% have 25-60% of their turnover from public procurement
- 18% have over 60% of their turnover from public procurement
- 3% don't know

While credit conditions remain difficult and the general economic environment remains very tough, most companies have been responding quickly to the situation, and the number of companies going 'out of business' remains at fairly low levels. As we have suggested above companies with public sector contracts are in a better position (due to their 'blue chip client') than many other companies who have to carefully manage the risk of bad debts.

The credit market difficulties have also made securing of finance for PFI/PPP contracts more difficult, but not impossible. There has been a spate of contract closure across the UK in recent months, including the southwest hospital project in County Tyrone. Some financial institutions have been reluctant to provide funding for more than 3 years.

CBI Northern Ireland
12 June 2009

RICS construction market survey UK

Workloads contract further but at a slower pace

- All sectors experienced declines in workloads
- Skills shortages for trades persons remain unchanged at a survey low
- Confidence remains mixed, employment expectations deteriorated fractionally, profit expectations fell more notably and workload expectations improved slightly

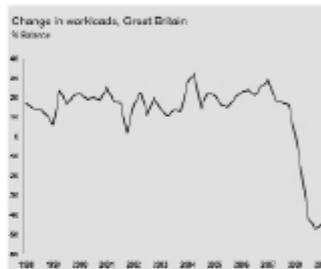
Construction activity in the UK continued to decline in Q1 2009, but at a marginally slower pace than in Q4 2008. The net balance of surveyors reporting a decline in activity increased from -47 to -45.

All sectors experienced declines in workloads, although such declines moderated in the private and, particularly, the public housing sectors. Private industrial and private commercial workloads continued to fall at pretty much the same rapid pace as in the previous quarter. Meanwhile, declines in infrastructure workloads accelerated and public non-housing workloads resumed their decline having increased in the previous quarter.

In terms of the outlook (twelve months forward), employment expectations deteriorated fractionally while profit expectations fell more notably. Workload expectations improved slightly, to reach the highest level since Q2 2008 but they remain deeply negative.

The proportion of respondents reporting skills shortages for trades persons remained unchanged at the same reading as last quarter, which was the lowest in the survey's history (1998). On average, 3% of respondents reported skills shortages. In terms of the breakdown of this figure, skills shortages were least visible for bricklayers, carpenters and plasterers and more evident for plumbers and electricians.

Although total workloads continue to decline across all regions, they are declining at the slowest pace in the South West. The next best performing regions are the North, the Midlands/ East Anglia and Wales. The weakest reading was found in Scotland.



The South West saw workloads decline at a slower pace across all sectors apart from infrastructure, where workloads stabilised and the private commercial sector, where they fell faster. The North saw workloads decline at a slower pace across all sectors apart from the private industrial area. The Midlands/ East Anglia region saw workloads decline at a slower pace across all sectors apart from the private commercial and the public non-housing sector (where they stabilised in the latter case).

In Wales, workloads declined at a slower pace in the public non-housing and infrastructure sectors, they stabilised in the public housing sector and they continued to fall at the same rapid pace in the private industrial and private housing sectors. In the London/ South East region, workloads declined at a faster pace across all sectors apart from private housing. In Scotland, workloads declined at a faster pace across all sectors apart from the public housing and private industrial sectors. In Northern Ireland, workloads declined at a faster pace across all sectors apart from the private housing, private commercial and private industrial sectors.

For press enquiries, and for requests to reproduce the graphs, please contact the RICS Press Office on: 0207 834 3769/3774



	Proportion of surveyors reporting a rise/fall or no change in construction workloads for quarter				Expected change over the next quarter - % balance*		% of surveyors reporting shortage of trades persons
	Rise %	Same %	Fall %	Balance*	Workloads	Employment	
					Not Seasonally Adjusted		
Q2	51	38	12	19	33	-47	27
Q3	29	65	6	27	45	-24	25
Q4	27	63	11	36	44	-26	25
2008 Q1	29	58	20	1	30	-21	21
Q2	15	48	36	-21	-17	-8	13
Q3	7	44	49	-42	-44	-28	6
Q4	8	34	58	-47	-45	-45	3
2009 Q1	11	32	55	-45	-38	-46	3

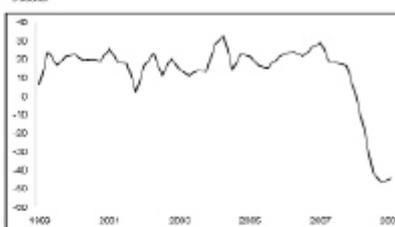
*Balance = Proportional surveyors reporting a rise in workloads minus those reporting a fall. Please note that data for workload, employment, profit margin expectations and skill shortages are now weighted by region and have been revised. Total contribution to the survey was 108,300ms.

National results — workloads

Total workloads

Total construction workloads continued to fall very sharply in Q1 2009, but at a fractionally slower pace than in Q4 2008. The pace of decline slowed in the South West, Wales, the North and the Midlands/ East Anglia region. In Scotland and the London/ South East region, total workloads declined at a faster pace. In Northern Ireland, total workloads declined at a slightly faster pace.

Change in total workloads—Great Britain

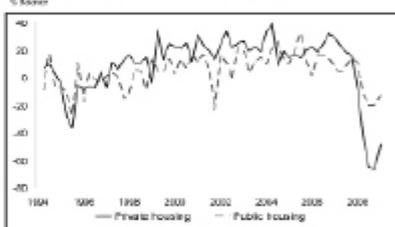


Private/public housing

Private housing workloads continued to fall sharply in Q1 2009, but at a slower pace than in Q4 2008. Workloads fell at a slower pace in the South West, the Midlands/ East Anglia region, the North, Scotland and the London/ South East region. In Wales, workloads continued to fall at the same sharp pace as in the previous quarter. In Northern Ireland, private housing workloads fell at slower pace.

Public housing workloads continued to fall, but only mildly. Workloads increased in the Midlands/ East Anglia region, they stabilised in Wales and they fell elsewhere. In Northern Ireland and Scotland, the pace of decline in public housing workloads picked up sharply.

Change in private/public housing workloads—Great Britain



Private commercial/indust

Private commercial workloads declined at pretty much the same rapid pace as in the previous quarter. Workloads declined at a faster pace in the South West, Wales, the Midlands/ East Anglia region, Scotland and the London/ South East region. In the North and Northern Ireland, workloads declined at a slower pace.

Private industrial workloads continued to fall at more or less the same rapid pace as in the previous quarter. In the North and the London/ South East region, workloads fell faster. In the South West, workloads fell slightly. In Northern Ireland, workloads fell at a slightly slower pace, while in Wales they continued to fall very rapidly.

Change in private commercial workloads—Great Britain

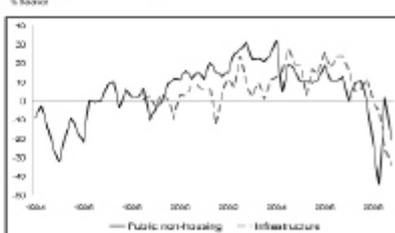


Public non-housing and infrastructure

Public non-housing workloads resumed their decline having stabilised in the previous quarter. Declines took place throughout all regions in Great Britain apart from the Midlands/ East Anglia region, where they stabilised. In Northern Ireland, workloads fell having stabilised in the previous quarter.

Infrastructure workloads declined at the fastest pace in the survey's history (1998). In the London/ South East region and Scotland, the pace of decline accelerated, whereas elsewhere across Great Britain, the pace of decline slowed. In Northern Ireland, workloads declined at faster pace.

Change in public non-housing/infrastructure workloads—Great Britain

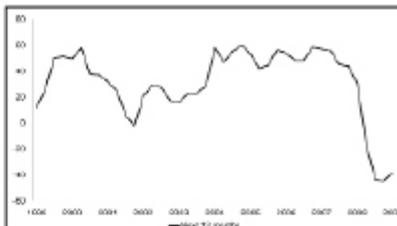


Expected workloads

Confidence in the outlook for workloads improved slightly but remains very depressed. Workload expectations are negative across all regions in the survey apart from the South West, where confidence turned neutral.

Workload expectations deteriorated in the London/ South East region and Northern Ireland. In Wales, the Midlands/ East Anglia region and Scotland, workload expectations improved.

Expected change in workloads—Great Britain
% change

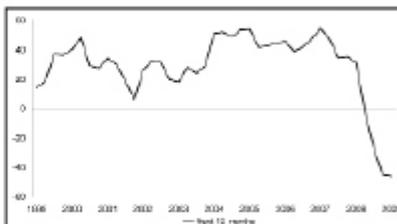


Expected employment

Confidence in the outlook for employment deteriorated fractionally to reach the lowest level in the survey's history (1999). Employment expectations are negative across all regions in the survey apart from the South West, where confidence turned positive.

Workload expectations deteriorated in the London/ South East region and Scotland. In Northern Ireland, workload expectations remained stable, while in Wales, the Midlands/ East Anglia region, the South West and the North, confidence improved but remains negative.

Expected change in employment—Great Britain
% change

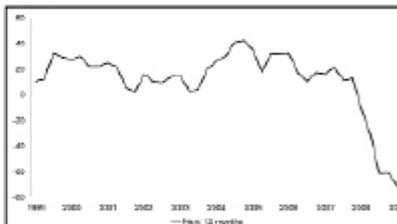


Expected profit margins

Confidence in the outlook for profits deteriorated further to reach the lowest level in the survey's history (1999). Profit expectations are negative across all regions in the survey.

Profit expectations deteriorated in the London/ South East region, the South West, the Midlands/ East Anglia and Scotland. In Wales, profit expectations improved (they also improved fractionally in the North). Profit expectations also improved in Northern Ireland but they remain very negative.

Expected change in profit margins—Great Britain
% change

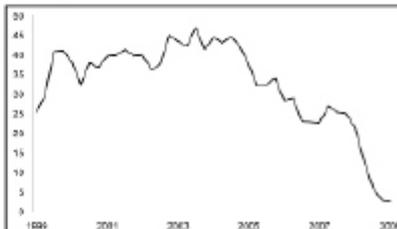


Labour availability

The proportion of respondents reporting skills shortages remained unchanged at last quarter's reading, which was the lowest in the survey's history (1999). On average, 3% of respondents reported skills shortages for trade persons.

In the London/ South East region, Wales, Scotland and Northern Ireland, skills shortages for trade persons are non-existent. In the South West and the North, skills shortages picked up slightly, but remain very minor.

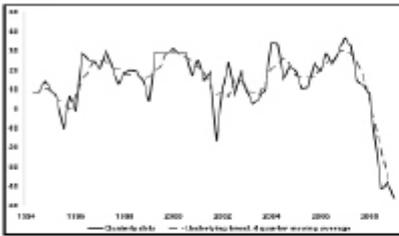
Surveyors reporting skills shortages for trade persons—Great Britain
% reporting 'no'



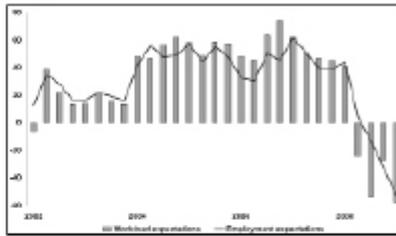
Regional results

London and South East

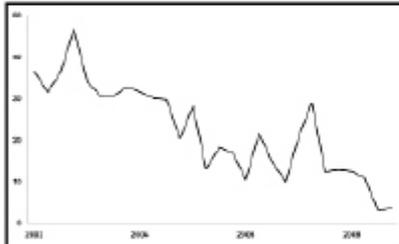
Change in workloads
% change



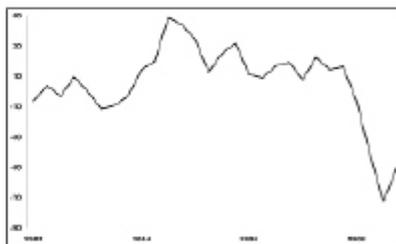
Workloads and Employment expectations (12 months forward)
% change



Surveyors reporting recruitment difficulties, trades people
% reporting 'or'

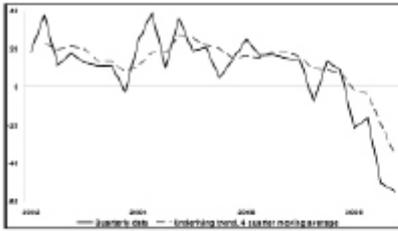


Profit expectations (12 months forward)
% change

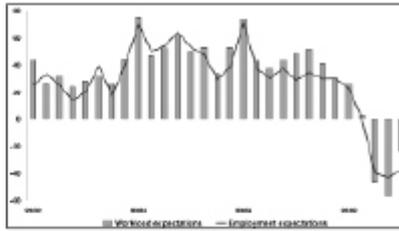


North

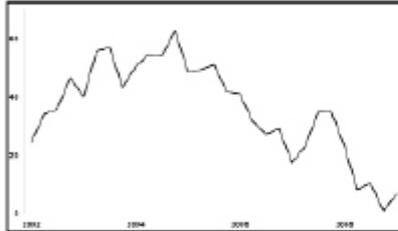
Change in workloads
% balance



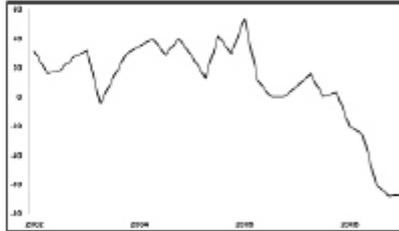
Workloads and Employment expectations (12 months forward)
% balance



Surveyors reporting recruitment difficulties, trade persons
% reporting 'yes'

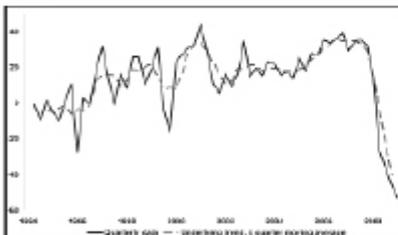


Profit expectations (12 months forward)
% balance

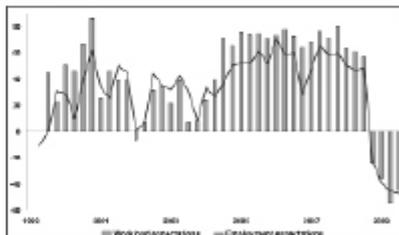


Scotland

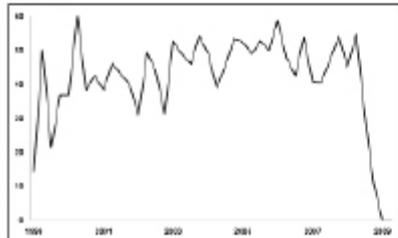
Change in workloads
% balance



Workloads and Employment expectations (12 months forward)
% balance



Surveyors reporting recruitment difficulties, trade persons
% reporting 'yes'



Profit expectations (12 months forward)
% balance

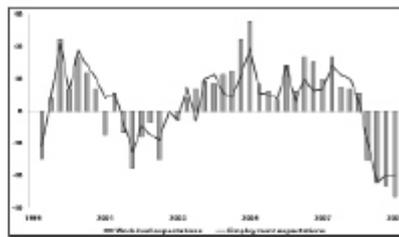


Northern Ireland

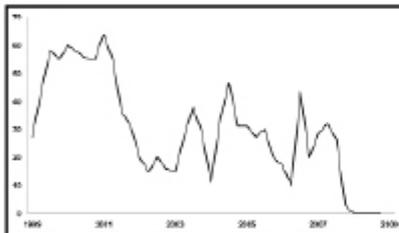
Change in workloads
% balance



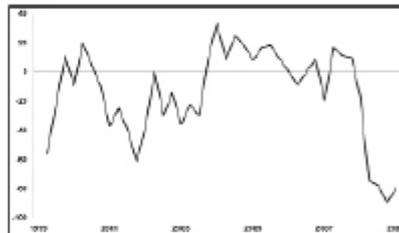
Workloads and Employment expectations (12 months forward)
% balance



Surveyors reporting recruitment difficulties, trade persons
% reporting 'yes'



Profit expectations (12 months forward)
% balance



South West

Change in workloads
% balance



Workloads and Employment expectations (12 months forward)
% balance



Surveyors reporting recruitment difficulties, trade persons
% reporting 'yes'

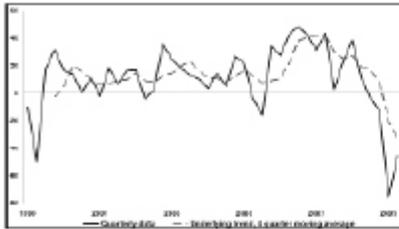


Profit expectations (12 months forward)
% balance

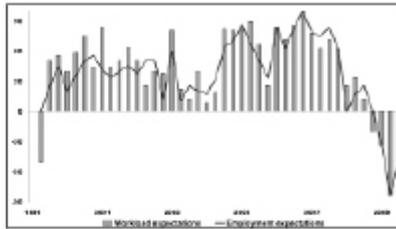


Wales

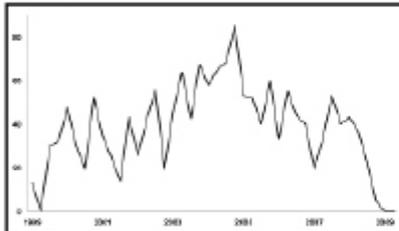
Change in workloads
% balance



Workloads and Employment expectations (12 months forward)
% balance



Surveyors reporting recruitment difficulties, takes persons
% reporting 'no'

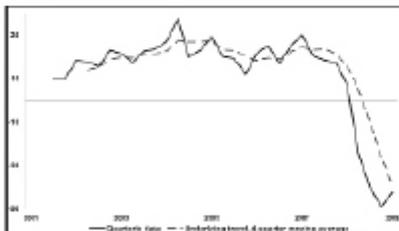


Profit expectations (12 months forward)
% balance

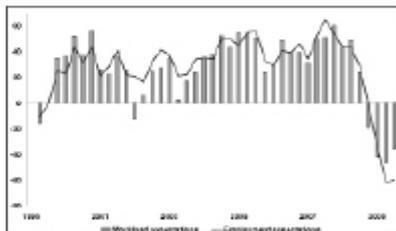


Midlands and Eastern

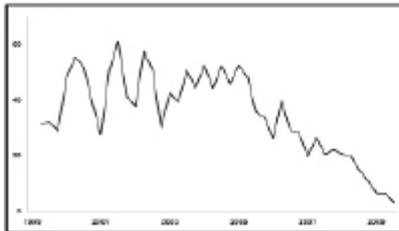
Change in workloads
% balance



Workloads and Employment expectations (12 months forward)
% balance



Surveyors reporting recruitment difficulties, takes persons
% reporting 'no'



Profit expectations (12 months forward)
% balance



Chartered Surveyor market comments

East Midlands

Peter Wilbow FRICS
W T Partnership
Professional fees bid in competition appear to be indicating increasing disparity by some firms.

East Midlands

Ian McKinlay FRICS
Gleeds
The general state of the economy is the overriding factor that has adversely affected decision making on capital expenditure is just about every Board/Room. Until confidence returns, the building industry will remain in the doldrums.

East Midlands

David Gaynor FRICS
David J Wynne
Local Authority and Housing Association inviting only large national contractors to tender for their works causing local small to medium sized contractors to have less work. I think this will be a very serious problem for the smaller contractors and may increase prices overall.

East Midlands

Tim Harley BSc(Hons) FRICS
Pitiful
Gould
The LSC funding debacle extensively covered in the press has cancelled or delayed numerous college projects both locally and nationally. This was a significant area of the work which the parts of construction industry was relying on in these difficult trading times.

East Midlands

Alex Robinson FRICS
Tomkins Robinson Surveyors
Tender prices continue to fall but the levelised remains difficult to credit. Workload has been maintained with level of new enquiries surprisingly good, but seeds of recovery remain dormant - certainly no green shoots yet and not anticipated for some time to come.

London

A M Rowden
Turner & Townsend
LDC and OGC frameworks spend has stalled and this combined with clients seeking significant discounts on fees is having a dramatic impact on resourcing. The majority of clients in the commercial and retail sectors are waiting on price alone.

London

Raja Abinavign (MRICS)
Accessible Advice Chartered Surveyors
With the current reduction in corporate activity within the private sector, available labour resources have become increasingly competitive. This has provided public sector project procurement teams with a positive price adjustment which in turn has secured (flexible) annual efficiency gains.

North East

Ian Walker BSc(Hons) MRICS
Turner & Townsend
Local Government is vital in stimulating the local construction market either by direct work, orders or funding. This must continue to be the single most important role of Local Authorities either by direct work orders or funding.

North East

Malcolm Scott LLB MRICS ACIARB
Thompkins and Thompkins
General lack of lending by banks is the most specific issue especially in relation to 'spec' housing schemes.

North West

C H Nixon BSc FRICS
Thornhill & Walker
Despite the reported national trend tender enquiries remain reasonably buoyant locally.

North West

High N Samuel MRICS
Williamson Johnson Partnership
Lack of 'movement' in private housing development (as above) - affects being felt by virtually all trades and construction professions.

Scotland

Mica McGregor MRICS BSC(Hons)
MMC
McGregor
The recession and lack of liquidity in the market is continuing to impact across all sectors and services with manufacturing, construction and housing all severely affected. Additionally, the reduction in public funding, announced by the Chancellor, will increase the economic challenge and efficiencies drive to deliver sustainable public services.

Scotland

John Fletcher FRICS
John Fletcher Associates
Lack of Government driven projects.

Scotland

Ian McCreesh MRICS
Dunmigo
Commercial/Industrial projects have stalled. Public sector projects coming through the system slowly.

South East

Tony Green MRICS
Halden Manning Bullock
We have experienced a welcome increase in Private Commercial, Private housing and Healthcare work which has eased to some of reduced workload in other sectors.

South East

Anthony Barnes
Druce Barnes James LLP
Recession is keeping construction activity down.

South East

A G Barnes G BSc FRICS
Druce Barnes James
The recession is hitting hard.

South East

Robert Muir MRICS
Robert Muir Chartered Building
Lack of confidence in the economy.

South East

Philip Jones FRICS
Ridge and Partners LLP
Project tendering is very keen, both for professional services and construction contracts. However there is cost pressure on material supply, in part as a result of the weak £ and its effect on imported materials.

South East

Brian Austin
Haden Young Ltd
The shortage is one of funding which is preventing projects of various types and procurement routes from proceeding. We have also observed substantial projects being undertaken by others on which work has been stopped and the project mothballed.

South East

Tony Sumner FRICS
KSP Consultancy LLP
Our workload shows a significant decline over the last 12 months and new schemes are not coming forward to replace schemes which have completed on site during the last 12 months. I view with some concern the prospects for our practice over the next year and similarly for the construction industry over this period.

South East

David Metcalf FRICS
Carlton Seaton Partnership
None other than period economic downturn.

South West

R J Pownall FRICS
Baley Partnership
Public sector procurement & funding problems are resulting in delayed or cancelled projects in this region.

South West

Christopher Valey FRICS FMB
Boulton Ellis Associates
Boom and bust.

South West

D J Tipping FRICS
Jenkins Hensford & Partnership
Withdrawal of bank funding/overheads to private housing developers has caused projects to be put on hold or abandoned.

South West

Douglas Cewley BSc MRICS
Douglas Cewley & Associates
Still have number of new starts in private/commercial residential and private industrialising.

South West

Nicholas A Threlly MRICS
Dickson Powell Partnership
Government, local authority and funding institutions reticence to spend/finance.

South West
Martin Stubbs MRICS
Neay Powell Partnership
 Public sector projects and schemes indirectly financed by Government funding has effect to some degree the reduction in the private sector and there is therefore concern over the effect of any cutback in future funding.

Wales
Wyn Walters MRICS
WRW Construction Ltd
 Downturn in the construction industry. There is a feeling of a gradual upturn in the coming months.

West Midlands
A Millward
Alan Reynolds Partnership
 The lack of confidence shown by our clients is reflecting in extreme caution when deciding on capital expenditure.

West Midlands
Adrian Aston FRICS MAPM
Wakerrans Limited
 We have noticed an increase in availability of skilled labour which wasn't previously in the marketplace.

West Midlands
G C Smith FRICS
Townsend & Townsend
 Increase in disputes.

West Midlands
Bob Patten BSc Hons FRICS
Franklin & Andrews
 Investment by Government and Private Sector is key to recovery. At the moment such investment cannot be seen in the Midlands.

West Midlands
Gavin Large BSc FRICS
Magna
 Clear evidence that those with money or access to funding are seriously looking at investing in property again. This is probably because alternative investment opportunities show little or no level of return for the foreseeable future. Property prices have fallen significantly but do not seem to be falling any further. There are therefore good deals to be done for the serious investor and it is a very good time to be in the market to buy construction work and services.

Yorkshire and Humber
NO TOWNSEND, BSc, MRICS
TURNER & TOWNSEND
 Construction relies on funding. There is no or little funding despite what the banks and government are saying. This is causing huge problems to existing schemes as well as new.

Yorkshire and Humber
Paul H. Mackie
Rea Procter and Partners
 Availability of finance, lack of confidence, depressed yields and a general reluctance to invest due to uncertainty in the market place.

Yorkshire and Humber
David Bishop MRICS
DEA Management Ltd
 Money supply a barrier to affordable housing. Market confidence an additional concern in regeneration mixed tenure schemes. Potential loss of industry skills a future concern.

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Ulster Community Investment Trust - Public Procurement Brokerage Service Briefing Note

The Need for a Public Procurement Brokerage Service

There are three reasons to help social enterprises win public service contracts:

1. There are an estimated 1,200 social enterprises, employing over 20,000 people in Northern Ireland. By improving access to region's estimated £2 billion public procurement market, social enterprises will be better placed to offer effective competition to the private sector, expand their services and create new employment opportunities in, for example, health and social care.
2. Social enterprises have a strong sense of community ownership, being managed by local people for local people. This makes them a highly effective partner for delivering public services to some of the most vulnerable sections of society.
3. A public procurement process that recognises the importance of delivering social value will help establish a level playing field for social enterprises that work in communities that are often underserved by the private sector.

Terms of Reference

A public procurement brokerage service would help like-minded social enterprises come together to win public service contracts. The key objectives would be to:

- Build the business capacity of social enterprises and their readiness for public procurement
- Facilitate business links and strategic alliances between social enterprises working in, for example, education and training, health and social care, and with the private sector. This will help build the sectors' collective business strength and ability to tender for public service contracts
- Link with Central Procurement Directorate (CPD) 'Meet the Buyer' events and advice sessions on the tendering process
- Segment the public procurement marketplace and source new procurement opportunities on behalf of social enterprises
- Assist social enterprises with writing proposals for public service contracts. The public procurement brokerage service will establish a pool of expertise and resources associated with tendering for contracts – such as bid writing, financial modelling, contract negotiation and performance management

The brokerage service would be managed by a Committee made up of four organisations:

UCIT – financing social enterprises and providing capital for administering the brokerage service

Social Economy Network – facilitating business links and identifying new tender opportunities

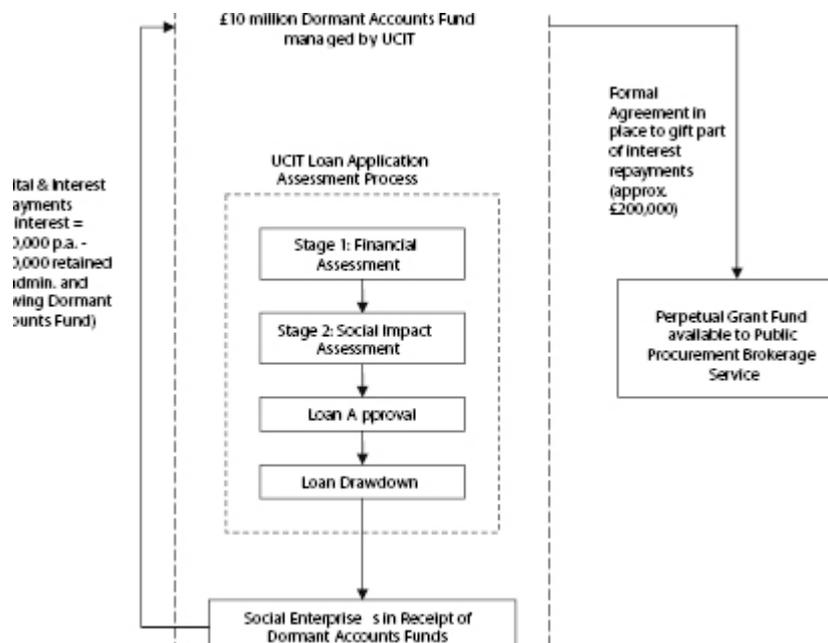
School for Social Entrepreneurs in Ireland – Building the sectors' business capacity and skills base

Bryson Charitable Group – Providing specific expertise in winning public procurement contracts

The public procurement brokerage service would be wholly sustainable by way of funds gifted by UCIT. This would involve UCIT securing approximately £10 million from the Dormant Bank and Building Society Accounts scheme for lending into the social economy in Northern Ireland. Part of the income generated by interest repayments would then be used to fund the brokerage service at no additional cost to public finances.

Diagram 1 illustrates how unclaimed funds from the Dormant Bank and Building Society Accounts scheme would be continuously re-invested by UCIT to generate revenue for administrating the public procurement brokerage service.

Diagram 1



For evidence of regional support for assisting social enterprises to win public service contracts see appendix 1.

Appendix 1: Evidence of regional support for social enterprise & public service provision

Establishment of a public procurement brokerage service

In April 2008, Futurebuilders England launch a new online match-making service for third sector organisations considering working together through merger, collaboration, or forming consortia to deliver public services in England.

Government investment into social enterprises and public service provision in the regions

The English, Scottish and Welsh Executives have all acknowledged the need to build the capacity of social enterprises to enable them to successfully bid for and deliver public services. There are two key elements to this strategy which are consistent across each region:

- Access to investment capital
- Provision of business support

Each region's strategy to build the capacity of social enterprises to successfully bid for public service contracts is briefly outlined below:

England

The Office for the Third Sector (OTS), as part of the Cabinet Office, has acknowledged the need to build the capacity of social enterprises to help improve public service delivery.

There are two key strands to this approach:

Access to Finance – In May 2004, the Government invested £150m in Futurebuilders England Ltd. A further £65m was invested into the Fund in April 2008. Futurebuilders is currently delivered by Adventure Capital Fund and provides a mixture of loans and grants to social enterprises looking to deliver public services.

Business Support – Over a 3 year period (2008 – 2011), The Office of the Third Sector will invest £88.5m into Capacitybuilders to improve the business capacity of the Third Sector (similar to Invest NI's Social Entrepreneurship Programme).

Example: Healthcare Provision by social enterprises in England – The Department of Health's £100m Social Enterprise Investment Fund, which will be managed by Futurebuilders England over the next 3 years to 2011, will provide a mixture of grants and loans to existing health and social care social enterprises in England to scale up their operations and readiness for public procurement.

Care Services Minister, Phil Hope, highlights the fact that social enterprises share the same public sector ethos as the NHS in that they re-invest surpluses into services and the community (Social Enterprise, Issue 76, April 09).

Health and social care services are widely recognised as the quickest growing sector for social enterprise in England.

Scotland

The Scottish Executive has also recognised the importance of building the capacity of social enterprises to successfully bid for public service contracts.

The Executive aims to achieve this in two ways:

Access to Finance – In June 2008, the Scottish Executive appointed Social Investment Scotland (similar social finance investor to UCIT) to manage a new £30m Scottish Investment Fund. The fund will initially provide a mixture of loan and grant finance to social enterprises over a 3 year period (2008 – 2011).

Strategic Support – The Executive's strategy for social enterprise acknowledges the contribution that the sector can make to supporting public service reform, particularly in local communities. To improve the sectors' chances of winning public service contracts, the Strategy aims to encourage better co-operation between well established enterprises and newer organisations with limited track records, and ensure that the sector gets access to effective business support.

(UCIT's proposal to establish a public procurement brokerage service for social enterprises would enable the NI Executive to achieve this aim at no additional cost to public finances).

Wales

A key aim for the Welsh Executive is to improve the opportunities social enterprises have to win business from the public and private sectors.

Access to Finance – Part of the Welsh Social Enterprise Action Plan makes provision for a new £8m Community Asset Transfer Fund to help social enterprises renovate public buildings to offer services to the community.

Business Support – In November 2008, the Welsh Executive announced a £7.1m Social Enterprise Support Project to be delivered by the Wales Cooperative Centre. The Funding will be used to develop the sustainability of 200 organisations over 5 years through a combination of advice and support for pre-start social enterprises and raising awareness of the sector's contribution to the economy.

Correspondence from Committee for Employment & Learning

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To: Shane McAteer
Clerk to the Committee for Finance and Personnel

From: Peter Hall
Clerk to the Employment and Learning Committee

Date: 30th June 2009

Subject: Committee Report on the Way Forward for Apprenticeships

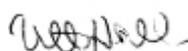
Dear Shane,

As you will be aware the Committee for Employment and Learning produced its report on the Way Forward for Apprenticeships on 17th June. The Assembly debated the report on Monday 22nd June.

One of the recommendations contained in the report details the Committee's view that a quota of apprentices needs to be incorporated into the workforce assigned to public procurement contracts. Paragraphs 95 and 96 of the report provide the rationale for the Committee making this recommendation.

The recommendation and paragraphs mentioned above are attached, as is a copy of the Committee's report, and I would ask that you bring this to the attention of the Finance and Personnel Committee, given the Committee's ongoing scrutiny of public procurement practice in Northern Ireland.

Regards



Peter Hall
Committee Clerk

Recommendation 6

The Committee urges the Minister to seek the support of his Executive colleagues in establishing in legislation that an appropriate quota of apprentices should be involved in the workforce undertaking any public procurement contract. It is also important to ensure that these apprentices remain employed with the contractor beyond the period of the contract.

Public Procurement Contract Apprentice Quotas

95. The Committee has been very active in the promotion of an agreed quota of apprentices being a key prerequisite to the award of any public procurement contract. The Committee has written to all Executive Ministers highlighting the need for a proportion of the workforce involved in public procurement contract to be apprentices. In that correspondence the Committee's focus was construction apprentices and the possibility of quotas for this group in any department's capital expenditure programme. At that point the Committee was aware that construction apprentices formed the largest proportion of redundant apprentices. The Committee is keen that the issues of apprentice quotas for public contracts be widened out to encompass all public procurement contracts.

96. The Committee has urged that public contracts under the Investment Strategy of Northern Ireland (ISNI) should contain a provision that a specific quota of apprentices must be employed. The Committee understands that such a system along these lines already operates in Scotland. The Committee is also aware that the Procurement Practitioners' Group, including representatives from the NICS Centres of Procurement Expertise with responsibility for construction procurement, agreed to accept the local Construction Industry Forum's (CIF(NI)) proposals in September 2008. However, these proposals would only provide for one apprentice per £2M of each contract and are limited to construction procurement. The Committee commends the Minister on his actions thus far on apprentices being represented as a quota of the workforce involved in public procurement contracts.

RICS Response to Design & Build Query

5 August 2009

Shane McAteer
Committee Clerk
Committee for Finance and Personnel
Room 419
Parliament Buildings
Stormont
BELFAST
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Dear Mr McAteer

Re: RICS follow up information on 'European Union judgment on Design and Build

RICS would like to take this opportunity to thank the Committee for the opportunity to provide evidence on the inquiry into Public Procurement, Policy and Practice in Northern Ireland. We look forward to hearing the outcome of this inquiry.

Further to your request for follow up information on the impact of the recent European Union judgment on Design and Build, I am pleased to inform you that the RICS response is as follows:

RICS Northern Ireland supports the implementation of procurement processes that are fair, transparent and in keeping with European procurement rules. The matter to which the question refers is the recent announcement by the Northern Ireland Housing Executive (NIHE) regarding the replacement of 'Negotiated Design and Build Packages' with alternative new build schemes using traditional procurement arrangements.

Negotiated Design and Build Packages provided new social housing whereby the developer who owns the land also builds the houses. As the NIHE stated, this worked well during the boom period when land prices increased beyond the affordability of most Housing Associations. However, this method may not represent value for money in today's market.

There has been some confusion over the NIHE announcement. Negotiated procurement is only permitted in restricted circumstances and its use must comply with the law. 'Design and Build' may still be used as a procurement route by any government body as per EU and Office of Government Commerce (OGC) guidelines, following a competitive process which is fair, transparent and provides equality of opportunity for the construction industry.

RICS Northern Ireland is aware that under the Department for Social Development new Social Housing Development Programme, procurement for social housing is currently being consolidated into frameworks representing contractors and professional services. While we

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welcome these tender opportunities for the construction industry, as part of our Charter, RICS must also bear in mind the public interest. We would therefore seek assurance that the social housing programme for 2009/10 is not unduly delayed as a result of changes to the procurement process.

If you require any clarification of the details provided in this response or if you require any further information, please contact me on 02890 322877 or astewart@rics.org.

Yours sincerely

Ann Stewart
Public Policy Executive



rics.org

FMS (NI) - Procurement Concerns and Issues

From: Sam Gaw
Sent: Tuesday, August 18, 2009 5:18 PM
Subject: Government Procurement

Dear MLA's,

I am writing to each and every one of you in a hope that someone can put their hand up and say "I can help", as I have listened with great interest while many of you have stated your support for small local businesses on programs such as radio Ulster's Nolan and Talk Back. Let me explain, myself and my business partner have what could be described as a very unique business. We are the only Northern Ireland Company that builds computers here in Northern Ireland to be included within the DFP / CPD framework agreement for the supply of computer hardware and supplies to NI Government. Great you might think, a local company building computers that can then be used within local government, creating local skilled jobs and keeping their earnings within the local economy.

However the truth of the matter is far from this scenario, even though the computers we build are to the exact or higher specifications required by each department and on many occasions much cheaper, we have been told by what could be described as two senior civil servants that the notion of purchasing from small local companies such as ours gets no more than lip service. In fact one of these civil servants at a meeting with CPD stated that it wouldn't matter how good or how cheap our products were he wouldn't purchase any of them. He went on to state that we should take his advice and become a reseller or sub contractor for one of the multi nationals. A recent example of departments choosing big name brands is the Probation Board. They have confirmed to us that the last two rounds of procurement for computers we have been the cheapest but because we don't carry a big name brand on our computers they have chosen the more expensive option offered.

We have no intention of becoming what is termed in our industry as a "box shifter"; we have far too much pride in the products we produce, which is why Intel have given us two international awards and for the past nine years invited us to be a part of their Premier Partner program, the only company in Ireland to receive this invitation.

Surely it is you as a Member of the Legislative Assembly that set policy for civil servants to carry out, and not for them to pick and choose which policies they like and dislike? There has to be at least one MLA that can ensure proper guidance is given on how civil servants treat small local companies when it comes to procurement?

As it stands we are at a loss as to what we can do to turn around this mind set within the civil service; however I'm sure that with the assistance of MLA's this can happen. We would be most grateful if you could take a little time out to reply with your ideas or suggestions on the way forward. We are more than willing to meet with any of you and try to formulate a plan of action that would benefit not only us but all the other small businesses in Northern Ireland.

Yours Truly

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Ministerial Advisory Group Correspondence

10 September 2009

Ms J. McCann
Chair
Finance and Personnel Committee
Office for the Finance and Personnel Committee
Room 419
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Stormont
BT4 3XX



Dear Chair

DESIGN QUALITY IN PUBLIC SECTOR PROCUREMENT

I am advised that your Committee will be taking evidence from bodies including the Royal Society of Ulster Architects with regard to Public Sector procurement strategies and procedures.

As you may be aware the Architecture and Built Environment Policy (A+BE), which was published by the Department of Culture, Arts and Leisure in 2006 strongly urges the delivery of "design quality". This is specifically referred to in Objective 1 of the Policy. The Policy which applies across all government departments their agencies, non departmental public bodies and other public bodies for which they are accountable commits to good design in all publicly funded construction. The policy also extends to grant aided work."

In 2007 a Ministerial Advisory Group (MAG) on architecture and the built environment was appointed to assist in the promotion of the Policy. As part of their prioritised A+BE Policy actions the MAG established a sub-group in April 2008 to address issues concerning Public Sector procurement. Accordingly that sub-group have, in the interim, been in discussions with the Central Procurement Directorate on the role of procurement in Improving design quality.

MAG would therefore be pleased to be given the opportunity to present evidence to the Finance and Personnel Committee

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MAG'S DIRECTORS



Inquiry, if you are able to afford such opportunity for the MAG, I will arrange for a delegation from the Group to present evidence to the Committee.

I thank you in anticipation for considering this request and ask that, in my absence, your response is issued to Richard Luton of the MAG secretariat who may be contacted by Tel: 02890 515026 or Email: richard.luton@ccalini.gov.uk.

Yours sincerely

A handwritten signature in black ink that reads 'PP Richard Luton'. The signature is written in a cursive, slightly slanted style.

Professor Barrie Todd MBE | Chair of the MAG

Ministerial Advisory Group: Correspondence

Dear Mr McAteer,

Thank you for your email [sent to Richard Luton in my absence] in response to my letter to Ms J McCann of the 10th Sept re. above.

You have asked how the Ministerial Advisory Group's [MAG] interests relate to the inquiry terms of reference. [TOR]

One of the main duties of The Ministerial Advisory Group is to monitor the implementation of the terms of the Architecture and Built Environment Policy which, as explained in my 10 September letter, is a Government Policy.

The MAG set up a sub-group to examine implementation with regard to Public Sector Procurement [PSP] procedures.

It discovered that a distinct lack of application was contained in those procedures and guidelines.

In particular little or no reference or intent is displayed in terms of requiring a delivery of design quality under the main guiding principles of the A+BE Policy ie

1. Creativity and Innovation
2. Heritage
3. Sustainable Development

It is considered therefore that the current PSP procedures and guidelines do not fully address in particular [but not necessarily exclusively] the TOR which require an examination of "maximising the economic and social benefits for the local community"

The MAG would therefore be obliged if our views findings and recommendations could be presented to the Committee for Finance and Personnel.

I look forward to your response.

Yours sincerely,
Professor Barrie Todd MBE | Chair MAG

Unite Union

Supply chain

Let's use public procurement to boost employment, says Unite regional officer Brendan Byrne

AT A TIME WHEN THE ECONOMY IS IN crisis, when companies are closing and people are losing their jobs, it would be incredible to think that public officials were letting billions of euros to slip out of the country.

Inevitable maybe, but sadly, yes. In total, government departments spend some €19bn each year buying in goods and services.

Yet currently much of this work goes abroad – work that could otherwise provide an income for tens of thousands of Irish families.

When challenged, government procurement officials say their hands are tied.

They claim that European procurement legislation means they are required to tender out contracts to firms across Europe – including low-wage countries of Eastern Europe.

Then they award the contract to the lowest bidder – and no surprises who loses.

Yet the simple fact is that Ireland is out of sync with the rest of Europe when it comes to public procurement.

The rules state that 20% of any contract can be exempt from the European tendering process. Put simply, that means that 20% of any one contract can be retained in Ireland in order to shore up small and medium-sized businesses and safeguard jobs.

This rule is applied right throughout Europe and exploited to the full in other EU countries.

What's more, the same rules say that any central government contract under €130,000 and any other public authority contract under €200,000 does not need to be tendered.

Elsewhere in Europe, contracts are unrolled and subdivided into small lots to ensure they remain below the threshold.

This 'splitting' process means that several leading European countries, such as France, Germany and Italy, keep large slices of their procurement budget within their borders.

Not so the Republic of Ireland. Here, the principle appears to be that good competition means getting rid of local competition.

Irish procurement officials seem to think it is 'un-European' to place contracts with Irish companies.

They interpret procurement rules to the letter of the law when the reality is that there is plenty of 'wiggle room' in terms of splitting contracts and making use of the 20% 'local placement' allowance.

What's more, Irish suppliers do not compete on a level playing pitch.

Irish companies must be compliant with all relevant employment and environmental legislation, including the working time directive and the minimum wage act – unlike many of

their European competitors.

Placing contracts from low-wage countries in Eastern Europe allows cheap labour to slip through the back door.

One recent Italian government report showed that Ireland was the only country out of 19 European states not to 'split' contracts.

Yet it doesn't have to be this way. Irish officials can be more imaginative. They don't have to award contracts on the basis of price alone.

Take for example, the print sector. The printing industry in the Republic generates a turnover of €2.5 billion each year and employs 19,000 people.

Yet it is now fighting now for its very survival. Irish suppliers and the printing industry specifically are being disadvantaged by public officials who are too rigid in their interpretation of EU rules.

Our government must take action to prevent the erosion of our marketplace as a result of inflexibility and intractable procurement rules. We request a government memo stipulating procedures for public procurement which are similar to those that apply throughout Europe.

All we are asking for is a fair chance and a level playing pitch.



FSB Northern Ireland
Federation of Small Businesses



Evaluating SME
Experiences of
Government
Procurement in
Northern Ireland

A report by 
For the FSB NI

Forward



The Federation of Small Businesses is the largest business organisation in Northern Ireland with 8000 members, drawn from across all sectors of industry. We also have over 210,000 members throughout the UK. The Federation campaigns to promote and protect the interests of all those who own or manage their own businesses, and to create a better business environment that will encourage small businesses to prosper and foster the creation of wealth.

The public sector in Northern Ireland spends over £2bn a year on public procurement, nearly 25% of the Executive's budget. The FSB has been concerned for some time that the current public procurement system does not fully enable small businesses to realise their potential to sell to the public sector. We gave evidence to the Assembly's Committee for Finance and Personnel in February 2009 and further to this meeting we decided to undertake further research to ensure we had a robust evidence-based view of the real experiences of small businesses of public procurement.

This research confirms that public procurement is an underused tool when it comes to supporting the indigenous small business sector. By using local suppliers, government buyers could expect better value for money, better quality of service and a more innovative and punctual completion of contracts.

I am pleased that this work reveals the current state of play, and when this is taken in the wider economic context, indicates the work required to help the these businesses become more engaged with this important marketplace.

Wilfred Mitchell O.B.E
FSB Policy Chairman, Northern Ireland

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1 - Executive Summary

1.1 The Importance of Public Sector Buying to N.I. Businesses

The Chancellor, Alistair Darling, announced at the start of 2009 that he would re-channel public spending into public projects to provide real contracts and income opportunities for the private sector in the difficult economic times ahead. He went on to commit to a capital investment programme totalling £40 billion with increased spending on schools, hospitals and transport. For many businesses across GB this will provide real trading opportunities.

In Northern Ireland we also spend significant amounts of public money on the purchase of goods and services. Average expenditure is more than £2 billion each year buying goods, services and expertise with key areas including:

- ✎ IT hardware, software and services
- ✎ office furniture and equipment
- ✎ temporary and permanent staff
- ✎ cleaning and maintenance services
- ✎ construction work, painting and decorating
- ✎ motor vehicle management and parts

Specialist departments will also buy specific skills and services relevant to their function - for example healthcare equipment and professionals' services will be purchased by the Department of Health, Social Services and Public Safety.

Working with the public sector means that businesses in Northern Ireland could have a long-standing, stable customer who is obliged to pay their bills within the agreed credit period. However, small businesses (and particularly micro businesses employing less than 20 staff) would say that it is not that easy to secure this work. The current rise in challenges on contract decisions by small businesses is an indicator of the current level of frustration in the systems used and the need for radical change.

1.2 The Northern Ireland Business Sector

Like the rest of the UK the small business sector in Northern Ireland plays a pivotal role in the sustainability and development of the economy. However, Northern Ireland has a unique business makeup to the rest of the UK.

In Northern Ireland the business economy is largely (98%) made up of businesses employing less than 20 people, with nearly 95% falling into the category of a "micro business", i.e. employing less than 10 people. Indeed, the micro business sector is fundamentally responsible for employing 65% of the Northern Ireland private sector workforce. In terms of legal status of businesses in Northern Ireland, the table below gives a breakdown of public and private sector organisations.

Legal Status	Businesses	%	Employees	%
Company	11880	18.0	289085	41.4
Sole Proprietor	37595	57.0	102880	14.7
Partnership	13365	20.2	82185	11.08
Public corporation	20	0	9255	1.3
Central government	120	0.2	165325	23.7
Local authority	110	0.2	20700	3.0
Non-profit making organisation	2900	4.4	28955	4.1
Total	65995	100	698395	100

Source: Facts and Figures from the Inter-Departmental Business Register (IDBR) – Issue 4, May 2002

1.3 *This Research*

In October 2008, the Federation of Small Businesses (FSB) joined forces with the Confederation of British Industry (CBI) to undertake extensive research across their membership in GB to evaluate the experiences of SMEs in government procurement. The resulting national report raised a number of important issues and recommendations.

In summary the report found that small and medium-sized enterprises find public procurement processes bureaucratic, expensive and non-inclusive. Specific barriers identified enabled the FSB to make practical recommendations to government for improvement and to enable better access for SMEs. The findings have been published in the report "Evaluating SME Experiences of Government Procurement Report":
<http://www.fsb.org.uk/documents/procurement/pdf/procurement.pdf>

The FSB in Northern Ireland believe there are similar problems with the public procurement system in Northern Ireland, but are conscious that there are different policies and procedures (compared to Great Britain), and that while there may be similar barriers for FSB members in Northern Ireland, the differences in the systems may require NI specific recommendations.

In November 2008, the Assembly Committee for Finance and Personnel initiated an Inquiry into public procurement policy and practice in Northern Ireland, following oral evidence given to the Committee by the FSB, a [written briefing](#) was also provided.

Following the results of the national survey and the current Northern Ireland Assembly inquiry, the FSB in NI has now undertaken this, locally based evaluation of this complex issue. The evaluation involved an online survey to gain a broad understanding of the experiences, barriers and needs of small and micro (that is, those with fewer than 20 employees) businesses in Northern Ireland when tendering for public procurement contracts.

This final report will form the basis of the FSB N.I. response to the current Northern Ireland Assembly inquiry on the issue and is part of a wider project to develop a more detailed report on the issue. The remit of this report does not extend to recommendations but rather the presentation of the results of the online survey.

1.4 Key Findings

Much of the evaluation of SME experiences on this issue has not focussed on the very small SMEs – i.e. the micro business sector and for this reason this piece of research is extremely important, especially in the Northern Ireland marketplace.

The online survey was completed by 161 SMEs and micro enterprises from across Northern Ireland. The results provide fresh insight into the Northern Ireland public procurement process and demonstrate that –

- ✎ In the majority of cases respondent SMEs in Northern Ireland bid for contracts below £50,000 with most of the work being provided to Local Authorities.
- ✎ SMEs in Northern Ireland do not know where to look for opportunities and have limited time to research
- ✎ SMEs believe that the processes required to tender for public sector work in Northern Ireland requires more time and resource than they their business can afford.
- ✎ The majority of SMEs in Northern Ireland believe that Frameworks are not a useful way to manage the public procurement process.
- ✎ The success rate for SMEs in the bidding process is low.
- ✎ The majority of SMEs prefer to bid to the public sector on their own rather than in partnership with others.
- ✎ As with SMEs in GB, SMEs in Northern Ireland rarely gain constructive feedback on tenders.
- ✎ SMEs stated that success in winning bids is heavily linked to price against other bidders.
- ✎ Tendering to the public sector in Northern Ireland is becoming increasingly important to SMEs for the income generation. Over 50% of those responding, stated that they expect the proportion of their business from the public sector to significantly increase in the next two years.
- ✎ SMEs (those employing less than 50 people) believe they are at a disadvantage in tendering for government work as contracts are predominantly awarded to larger companies.
- ✎ Overall 51% of SMEs stated that bidding to the public sector is significantly more difficult than bidding to the private sector.

2 – The Research Process

The Federation of Small Businesses in Northern Ireland has identified the need to conduct research into its members' experience of the public procurement system in Northern Ireland. This final report will form the basis of the FSB N.I. response to the current Northern Ireland Assembly inquiry on the issue and is part of a wider project to develop a more detailed report on the issue.

2.1 Survey Aim and Objectives

The aim of the online survey was to gain a broad understanding of the experiences, barriers and needs of small and micro (that is, those with fewer than 20 employees) businesses in Northern Ireland when tendering for public procurement contracts.¹ In particular the survey has evaluated the

- ↳ experiences of SMEs when tendering and delivering on public sector contracts;
- ↳ barriers to SMEs tendering and delivering on public sector contracts;
- ↳ the success rate in Northern Ireland of SMEs tendering for public sector contracts;
- ↳ The extent to which public bodies are open and transparent in their procurement processes;
- ↳ The extent to which central and local government procurement policy and procedures are "SME" friendly;
- ↳ The experience of SMEs in receiving feedback on their successful or unsuccessful bids.

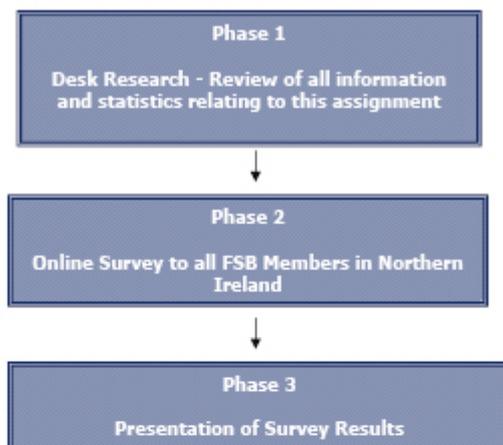
As part of the research it was important to identify the barriers for SMEs when tendering to the public sector in order that the FSB in Northern Ireland can make recommendations to the Northern Ireland Assembly for changes to the current system that will both increase SME / FSB NI members' access to contract opportunities and increase the success rates of SMEs winning bids.

The survey was particularly targeted at the experiences and needs of 'micro' firms (that is, those with fewer than 20 employees) and to consider the tendering and award of low-value contracts.

¹ "Public procurement opportunities" should be taken to include those offered by non-departmental public bodies and agencies, and local government bodies, as well as NI Government Departments.

2.2 *Our Approach*

This research comprised three main stages, summarised in the following diagram –



2.3.1 *Stage One – Desk Research*

Lestas Consulting worked closely with FSB Northern Ireland and GB to draw together all the relevant secondary research and information to inform this assignment, including the submissions already presented to the Northern Ireland Assembly. An in depth analysis of the survey already undertaken in GB by the FSB and the CBI was also undertaken. The information gathered was used to inform the content of the online survey.

2.3.2 *Stage Two – Online Survey*

The second stage of our research focussed on an in-depth assessment of the experiences of Northern Ireland SMEs and micro enterprises when bidding to the Northern Ireland Public Sector, i.e. all the NI Civil Service Departments, their agencies and non-departmental public bodies, the NIO and its agencies and all Local Councils. The questionnaire covered a number of issues, including –

- Company Baseline details such as - sector; business activity; turnover; number of employees; length of trading etc.
- Barriers to SME awareness of public procurement opportunities in Northern Ireland
- SME activity in the public sector (frequency of bidding for Government work, % of turnover from public sector, etc.)
- SME perceptions of the drivers behind success / failure in bidding for Government contracts
- Provision of feedback on bids and usefulness of that feedback
- The use of support schemes / initiatives to improve the SMEs approach to bidding
- Predictions for future activity with the public sector



2.2.3 Stage Three –Reporting of Results

The final stage in the process is the **presentation of the results** of the online survey to include the overall response rate, an analysis of the response to each of the survey questions and/or parts as relevant and appropriate, presentation of the findings in tabular and /or graphic format as relevant and appropriate, and recommendations for further follow-up to the report. **Importantly the project does not require any recommendations to be set out at this stage. This will be undertaken as part of a wider report developed by the FSB in Northern Ireland in the months ahead.**

3 – Key Findings of the eSurvey

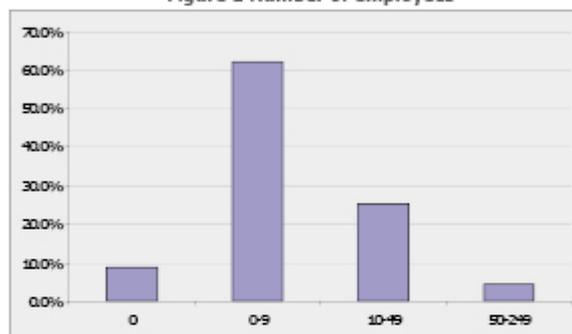
3.1 *The Respondents*

A total of 161 SMEs and micro enterprises from across Northern Ireland completed the survey. Importantly the diversity of respondents is also wholly representative of all sectors of SMEs and micro enterprises across Northern Ireland.

Out of these 161 –

- Over 71% employ less than 9 people - the following shows a summary of the size of businesses in relation to number of employees.

Figure 1 Number of employees



- The majority are well established with over 70% trading for over 5 years.
- 30% stated that their turnover for this year is estimated at less than £100k; while a similar percentage – 32% - estimate their turnover to be between £300k to £1m this year.
- Respondents represent a variety of sectors with predominance in construction (26%), property and business services (20%) and production (16%). This is again reflective of the main sectors in Northern Ireland that have an interest in tendering to the public sector.
- For 92% of the SMEs the majority of their sales are generated from Northern Ireland. With 30% stating that over 20% of their turnover currently comes from work delivered directly to publicly funded bodies in Northern Ireland.

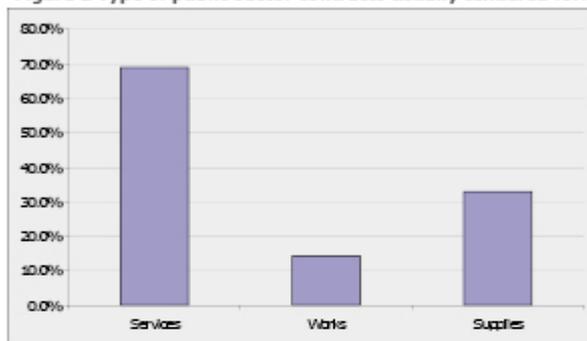
Importantly, 74% of the SMEs tender to the Northern Ireland public sector up to 10 times per year and therefore have an extensive insight into the experiences of SMEs bidding to the public sector.

3.2 Participating in Public Sector Procurement

In the majority of cases respondent SMEs in Northern Ireland bid for contracts below £50,000 with most of this coming from the Local Authorities, of which there are currently 26.

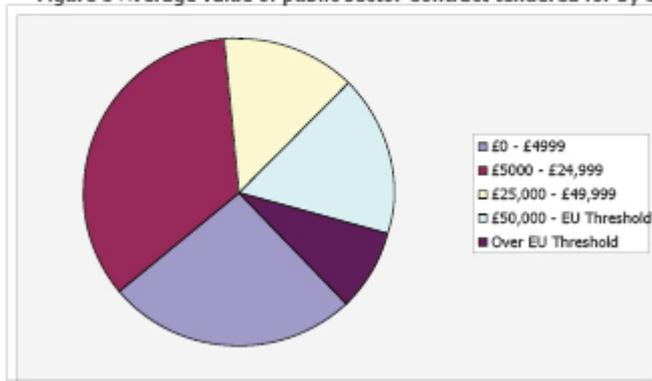
- ☞ The majority of SMEs (69% of total responses) bid for services contracts with fewer respondents bidding for works and supplies - as outlined in the following chart.

Figure 2 Type of public sector contracts usually tendered for.



- ☞ The majority of contracts tendered for by SMEs are below EU thresholds and in particular contracts below £50k as demonstrated in the following chart.

Figure 3 Average value of public sector Contract tendered for by SMEs



- ☞ 69% of the respondents tender to Local Councils, followed by the Department of Education (39%) and the Department of Health, Social Services and Public Safety (25%). Many SMEs in the study identified more than one organisation in their responses.

3.3 Identifying Appropriate Public Procurement Opportunities

SMEs in Northern Ireland do not know where to look for opportunities and have limited time to research

- ↳ There is a low level of awareness among SMEs in Northern Ireland on the sources of information for procurement opportunities with almost 50% of respondents unaware of any information sources.
- ↳ Almost half (48%) of respondents are unaware of the Northern Ireland civil service e tendering website, e-sourcingni. Of those that are aware of the website, 19% stated they found it a useful source of information in identifying opportunities.
- ↳ The majority of respondents still depend on newspapers and personal contacts/referrals (33% and 31% respectively) as their main information source.
- ↳ Respondents clearly stated a number of barriers preventing them from identifying suitable public procurement opportunities with one third stating a lack of time and resources and 35% stating that they find the documentation confusing.

3.4 SMEs Reasons not to bid for Public Procurement Opportunities

SMEs believe that the processes required to tender for public sector work in Northern Ireland requires more time and resource than they their business can afford.

- ↳ 50% of respondents stated that they have decided not to enter a bid for a Northern Ireland public sector tendering opportunity in the past 2 years.
- ↳ When there is an incumbent supplier already in place over one third (36%) of respondents believe their business has no chance of winning a contract and do not tender in this case.
- ↳ 15% of SMEs believe they would not meet the eligibility criteria to tender to public bodies and in particular the excessive insurance requirements. Respondents stated that they do not believe this criterion is in keeping with either the value or the level of the contract and that the public sector is applying "big business standards to small contracts". Respondents stated that this is excluding them from bidding at the outset.
- ↳ The following figure outlines additional responses –

Figure 4: Reason SMEs decided not to bid for NI public sector opportunities

Answer	Response Percent
The process of tendering for Government contracts requires more time effort / cost than my business could allow	50.0%
My business was not aware of any appropriate Government contracts	34.5%
My business would not have been able to compete with other larger suppliers	29.1%
I feel that my business has no chance of winning the contract against an incumbent supplier	36.5%
My business did not understand how to tender for Government contracts	17.6%
My business has not identified any suitable opportunities within Government	13.5%
My business is not on appropriate framework agreements	21.6%
My business did not meet the stated supplier requirements for SMEs delivering contracts to Government	11.5%
My business could not meet the eligibility criteria (e.g. British Standards, Codes of Practice, Insurance requirements, etc)	15.5%
My business has generated sufficient revenue through the private sector	4.7%
There are no skills in my business to write the bid	12.2%
Timescales were too short to respond	12.8%
The contract does not allow me to protect my intellectual property	7.4%
My business has had a poor relationship(s) with Government or public sector agency(ies)	6.8%
Not applicable / Don't know / Can't say	16.9%

3.5 Public Procurement through Frameworks

The majority of SMEs in Northern Ireland believe that Frameworks are not a useful way to manage the public procurement process.

☞ Only 12% of the businesses surveyed are on any of the current Northern Ireland government frameworks.

☞ Of the SMEs on frameworks, most, (70%) believed that frameworks are not a useful way to manage the public procurement process.

☞ Businesses provided additional comments, including -

- "It is difficult for a company of our size to get onto a Framework list."
- "We have been on the frameworks twice and they have not shortened the bidding process at all for us - the tender for the frameworks is also unduly complicated."
- "If your company is not on the list then you can be "locked out" for up to 3 years."

3.6 Success in Public Procurement

The success rate for SMEs in the bidding process is low.

☞ Only 36% of SMEs are successful in 1 in every 5 bids or less

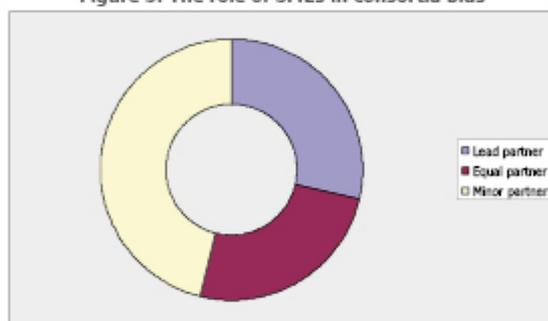
☞ Success in winning bids is predominantly attributed to a preference by the tendering authority for a known supplier (42% of respondents) and preference for an incumbent (17% of respondents)

3.7 Working in Partnership

The majority of SMEs prefer to bid to the public sector on their own rather than in partnership with others.

- ☞ Respondent SMEs experiences of bidding with others is at best satisfactory (12%) and at worst very poor (26%) and poor (20%).
- ☞ 64% of SMEs stated that they never bid in partnership with others while 33% state that they sometimes bid with others. Some of the comments provided include –
 - "It is difficult to manage quality and you are reliant on the other team members not to let you down."
 - "Consortia's assist us to satisfy the terms of reference and bid for larger contracts however, the responsibility of a lead partner for the quality of all team members is off putting."
 - "Working in this way is time consuming."
 - "Poor submissions by others affects whole group/consortia"
- ☞ In over half the cases the SME is the minor partner in the bid, as outlined in this chart –

Figure 5: The role of SMEs in consortia bids

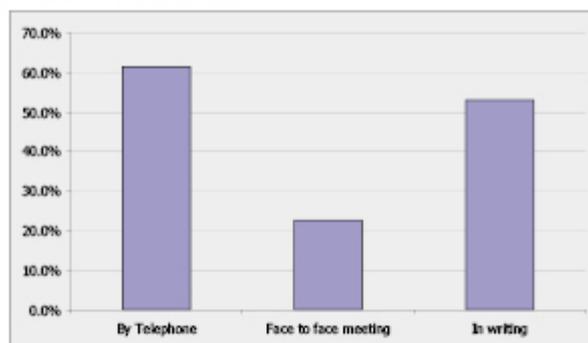


3.8 Receiving Feedback

As with SMEs in GB, SMEs in Northern Ireland rarely gain constructive feedback on tenders.

- ☞ The amount of feedback offered to SMEs following unsuccessful bids is very low. As with the FSB national survey, in almost 40% of cases, no feedback was received from the contracting authority on failed bids.
- ☞ Only 14% of respondents get feedback between 80% - 100% of their unsuccessful bids and in almost all case (83%) this is requested by the SME.
- ☞ The most popular ways to receive feedback from a public body is in writing and by telephone with only 22% undertaking a face to face meeting.

Figure 6 How Feedback was Communicated



- ☞ When feedback is received only 5% of respondents are completely satisfied that the information provided clearly stated the reasons why the SME did not win the contract.
- ☞ Over 40% of SMEs do not believe that the feedback received would assist them to better understand the Northern Ireland public sector tendering process.

3.9 Successful Bids

SMEs stated that success in winning bids is heavily linked to price against other bidders.

- ☞ In total, 41% of respondents stated that price was the most important issue when bidding to the public sector.
- ☞ After price, SMEs identified that the quality of their product/service was important (35%) and the ongoing reputation of their business to offer a quality product/service (34%).

3.10 Actions taken by SMEs to improve their chance of Success when Bidding

Tendering to the public sector in Northern Ireland is becoming increasingly important to SMEs for the income generation. Over 50% of those responding, stated that they expect the proportion of their business from the public sector to significantly increase in the next two years.

- ☞ Over one third of respondent SMEs are now actively seeking out more opportunities to tender to the public sector.
- ☞ SMEs have become more selective in their tendering with 30% of respondents stating that they are more selective about the opportunities they have tendered for in the past two years.
- ☞ One quarter of respondents have also made changes to their bidding technique and 20% have attended programmes to assist them with the bidding process and writing more successful tenders. On the other hand 70% stated they had never undertaken a national, regional or local scheme aimed at supporting SMEs in bidding for government contracts.

3.11 Ways the public sector could Support SMEs

SMEs (those employing less than 50 people) believe they are at a disadvantage in tendering for government work as contracts are predominantly awarded to larger companies.

Other comments stated by the SMEs include –

- ☞ "Purchasing managers should be very clear and print in the Terms of Reference the evaluation criteria that will be used to evaluate the tender."
- ☞ "Training on the various e procurement systems that are used would be useful."
- ☞ "Procurement Managers need to move away from the idea that the big companies are the only ones who can deliver on their contracts."
- ☞ "SMEs, who are the backbone of this economy, need to be supported to win more public sector tenders and ultimately compete in the European and global market."
- ☞ "It must be remembered that SMEs have limited resources to continuously tender for work while they build up their experience and a greater sense of partnership from Government Departments would go along way to assist SMEs overcome the hurdle of tendering."
- ☞ "It is necessary for government departments to stop using high turnover figures as a qualification to bid, as this eliminates most small business."
- ☞ "Don't assume that SMEs do not offer as good a service as large companies."

3.12 Lessons from the Private Sector Procurement Processes

Overall 51% of SMEs stated that bidding to the public sector is significantly more difficult than bidding to the private sector.

Some of the reasons provided include –

- ☞ "It takes an inordinate amount of time involving a huge and excessive amount of red tape/repetition."
- ☞ "Some tenders take over a day to fill out, and the financial benefits to us are often not worth it."
- ☞ "Often, the tendering process is withdrawn after our bid has been submitted due to a lack of planning on the part of the public body."

4 – Conclusion

This survey has provided significant and fresh insight into the experiences of SMEs in Northern Ireland when tendering to the local public sector.

One of the biggest issues is the fact that most small companies in Northern Ireland tendering to public bodies are working on contracts below the EU thresholds. Although smaller lots make it easier for SMEs to have the capacity and capability to deliver on contracts, in this respect public buyers are not bound by the usual EU requirements that are very clear about what can and cannot happen in a public tendering process. Instead, small businesses are at the mercy of the "good will" of public buyers to adhere to some form of good practice because they are buying with the public purse.

The research highlights there are many approaches by public buyers to procuring small contracts with little standardisation and therefore small businesses are very unclear of what their approach should be. The award of contracts are made without a clear understanding by the bidders of how their bid is to be evaluated - award criteria and sub criteria are not published in the terms of reference documentation so businesses are unclear of the emphasis required in their tender response. EU regulations are very strict on this issue – but they only apply to larger contracts.

SMEs are dissatisfied with the feedback process and do not see it as useful in terms of their overall business development model or as a means of improving their prospects of success.

The bottom line is that public bodies in Northern Ireland are always an important buyer for the private sector but the current economic downturn makes them even more so. This brings with it a responsibility to ensure that our smaller businesses are able to bid in a fair and open process whether they are bidding to a central government department, a local authority, or any partnership funded by the public purse. It is crucial those public bodies appreciate the cost, time and effort by small businesses in submitting bids and that they all work towards a standardised approach.

Next Steps – Full Report and Further Discussions

This report presents the findings of the online survey. To enhance the information gathered to date, the FSB NI will now develop a full report making recommendations on the reform of the public procurement system in Northern Ireland, and we will be taking our findings for discussion to the Assembly, the Central Procurement Division, to Local Government and to our Members.

We will include at least the following:

- ✎ A full analysis of our findings.
- ✎ A comparison of the findings against the national FSB survey completed in October 2008.
- ✎ The gathering of a small number of case studies to emphasise the issues.
- ✎ Considering the significant importance of Local Authorities for SME public sector tendering, an analysis of the key findings in the context of seeking an appropriate and fit-for-purpose approach to contracting, ready for implementation by new councils further to the Review of Public Administration.

Chartered Institute of Purchasing Supply - NI Procurement Opening Statement

Opening Statement for Evidence to the Northern Ireland Assembly:
Committee for Finance and Personal: 30 Sept 09

I am here to represent the Chartered Institute of Purchasing and Supply. The Institute and I are grateful to the committee for inviting us to give evidence.

I hope it will be helpful if I say a little about the Institute, which has 50,000 members in 150 countries, was established in 1932 and was awarded a Royal Charter in 1992.

The Chartered Institute of Purchasing and Supply promotes and develops high standards of professional skill, ability and integrity among all those engaged in purchasing and supply chain management. CIPS assists individuals, organisations and the profession as a whole. Our members work across the public, private and voluntary sectors.

We deliver our goals through 4 areas of activity:

- Professional qualifications and training for practitioners, from introductory to graduate level (levels 4 to 7).
- Promotion of excellence within organisations, helping them maintain the highest standards in their purchasing and supply management functions. This includes training staff and accrediting their procurement methods.
- Supporting academic research in our field.
- Representing the interests of our profession, within the wider community, and influencing government and EU policy on procurement.

I joined the CIPS in 1990, achieved membership in 1991 and have been a Fellow since 1998. CIPS have asked me to represent them today because of my public sector procurement experience. I have led the procurement function in a number of public sector organisations, the Department for International Development, Brighton and Hove City Council, the British Council and most recently Birmingham City Council. My interest in the economics of procurement relationships between the public and private sectors has informed my work as Director of Contract Innovation at OGC (2003-4) and my PhD (completed in 2004).

CIPS is aware that SMEs can play a significant role in the supply chain, and we are aware of some barriers to their participation. These barriers have included economies of scale, standardisation drives, and the importance of security of supply. There are also perceived barriers of bureaucracy, lack of understanding of SMEs and complexity of processes. We recognise the importance of the EU rules on Public Procurement and also recognise that these rules can make for a process that may seem daunting to the newcomer. EU countries in total command public expenditure spend of 175bn Euros, a vast market much of which is available to many SMEs once they have mastered EU rules. By contrast the NI public sector spend is of the order of £2.2bn

CIPS supports initiatives that enable SMEs to contract with the public sector, and through training and influencing, encourages CIPS members to facilitate SME participation in public procurement. We consider it essential that trained, professional personnel exercise the procurement role in public sector organisations. The 7 key points we make to our members, and others, are:

1. Make contracting information available and accessible to SMEs, especially for contracts that fall below the EU limit, including through portals such as Supply2gov, and that being developed here by the Central Procurement Directorate.

2. Encourage prime or first tier suppliers to work with SMEs, as BT, EDS and others are doing. Also encourage partnership mechanisms for groups of SMEs to collaborate on public sector contracting.
3. Keep guidance clear, avoid unnecessary jargon and acronyms and make it easy to find.
4. Train local SMEs so they can bid under EU rules, not just for local contracts, but across Europe.
5. Make sure all contract requirements are all necessary to the delivery of the contract.
6. Communicate effectively with all would be bidders and then bidders, throughout the procurement process.
7. Give open, constructive and educational feedback to unsuccessful bidders

The Institute recognises the complexity of Public Sector procurement, which seeks to achieve three different set of objectives. These may be thought of as three arrows, all within a circle, but pointed in three different directions, rather like the Mercedes symbol.

- First, there is the importance of getting best value for taxpayers' money.
- Secondly, there is a need to transparency, and regulatory compliance, including EU rules
- Thirdly there are policy requirement, including the SME agenda and other economic, social and environmental requirements.

These three objectives do not point in the same direction for all procurements. It is a difficult and challenging task to achieve the best possible outcome. CIPS professional training helps our members to relish the challenges of public sector procurement, and of achieving those three set of objectives.

Dr Glynis Davies FCIPS
28-9-09

Correspondence from Committee for Enterprise, Trade & Investment

From the Office of the Minister



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Our Ref: DETI SUB 463/2009

Mr Alban Maginness MLA
Chair
Enterprise, Trade and Investment Committee
Northern Ireland Assembly
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30th September 2009

Dear Alban,

**SCRUTINY OF PUBLIC PROCUREMENT PRACTICE IN NORTHERN IRELAND BY THE
FINANCE & PERSONNEL COMMITTEE**

As you may be aware, the Committee for Finance and Personnel, after initial consideration of public procurement policy and practice, has identified a range of related concerns that will be scrutinised under the Committee Work Programme from September 2009 to December 2009.

The areas within the terms of reference for the scrutiny which are of particular interest to DETI include:

- the scope for increasing the capacity of Small and Medium Enterprises (SMEs) and Social Economy Enterprises (SEEs) to compete for public contracts;
- improvements to public procurement policies and processes, aimed at increasing access to opportunities for SMEs and SEEs and maximising the economic and social benefits for the local community, whilst taking account of the principles governing public procurement.

You may recall that MATRIX published a study (in 2008) into the use of public procurement as an instrument to find and implement innovative solutions to issues faced by the public sector; and which might attract early-stage companies and SMEs which have ideas for such solutions. The study focussed on two strands, as follows:-

- a review of government policy to investigate the use of public procurement to encourage SMEs to increase their levels of R&D and science and technology innovation. This included exploring a number of examples of best practice including the US Government's SBIR, the use of bonds by SMEs in Spain to help them bid for Government contracts and the example of clusters competing for contracts in Finland; and
- an investigation of the potential for a targeted small scale pilot in a high technology area (e.g. ICT or Life and Health Sciences) in order to demonstrate best practice.

The report concluded that Government procurement can best stimulate economic return from the commercial exploitation of the local research, science and technology (S&T) base by implementing a pre-commercial procurement scheme that provides a mechanism to de-risk innovative ideas and make them more "procurement-ready", instead of trying to make substantial changes to mainstream procurement practices.

In light of the relevance of the scrutiny on Public Procurement by the Finance and Personnel Committee to the work of MATRIX, I believe that this report will bring some enhanced thinking to the review. I therefore recommend that you bring the MATRIX Report on Procurement to the attention of your counterpart on the Finance & Personnel Committee and I enclose 15 copies of the report for circulation to the members of the Committee.

Sincerely,


ARLENE FOSTER MLA
Minister of Enterprise, Trade and Investment

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WWW.MATRIX-NI.ORG

MATRIX

NORTHERN
IRELAND
SCIENCE
INDUSTRY
PANEL

MATRIX REPORT : VOL 7
10.2008

PUBLIC PROCUREMENT OF INNOVATIVE SCIENCE AND TECHNOLOGY SOLUTIONS



PREPARED FOR MATRIX BY
SQWconsulting



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THE NORTHERN IRELAND SCIENCE INDUSTRY PANEL

MATRIX is key to the development of Northern Ireland's future knowledge-based economy and will play a key advisory role in the formulation of R&D and Innovation policies.

A key objective for MATRIX is the successful development and implementation of HORIZON It's flagship programme tasked with carrying out focussed foresight exercises.

MATRIX

NORTHERN
IRELAND
SCIENCE
INDUSTRY
PANEL

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Albert Sherrard
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Clare Passmore
Colin Elliott
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Frank Blyan
Gerry McCormac
Rama Harrigan
Jin McLaughlin

PROCUREMENT PANEL

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Linda Brown (ICD)
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Brandsie O'Neill (Central Procurement
Directorate (DPP))

The Panel were facilitated by
Alex Smeets (BCW Consulting Ltd)

and advised by
David Corral (Centre for Business
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EXECUTIVE SUMMARY

Distinct from the Horizon Programme, MATRIX has conducted a study into the use of public procurement as an instrument to find and implement innovative solutions to issues faced by the public sector. This tightly focused study has been undertaken by a sub-panel of MATRIX with expert advice and support from SQW Consulting (SQWC).

The study focused on two strands, namely:

- A review of Government policy to use public procurement to encourage SMEs to increase their levels of R&D and science and technology innovation;
- An investigation of the potential for establishing a targeted small scale pilot in a distinct high technology area e.g. ICT or Medical Services in order to demonstrate best practice.

In recent years there has been growing recognition on the part of governments in the UK and elsewhere in Europe as well as the European Commission of the potential value of using public procurement as an instrument to find and implement innovative solutions to issues faced by the public sector and to fund small, early-stage companies with ideas for such solutions. The successful Small Business Innovation Research (SBIR) programme in the US is universally recognised as the main inspiration for this. The SBIR provides for a phased programme of funding for investigating new ideas and developing the most promising ones with a view to producing proven, market-ready solutions that can be taken up by the public sector as well as taken to the wider commercial market.

The UK equivalent, the Small Business Research Initiative (SBRI) does not include such funding and essentially consist of a voluntary target for participating Government Departments to spend 2.5% of their R&D requirements from SMEs. This has not had the desired effect because it has led to very few, if any, technology development

opportunities. This has been recognized in, among other reports, the Sainsbury Review. Various measures aimed at improving the situation have been proposed and some have been implemented. However, none address the fundamental issue that public procurement is of necessity a risk-averse process that is incompatible with the risks caused by technological uncertainty and the early-stage nature of small innovative companies.

The situation is very similar throughout most of Europe. However, in 2006 an ad-hoc working group of the National IST Research Directors Forum proposed a three-stage mechanism it called Pre-commercial Procurement of Innovation, which is very similar to the US SBIR approach. The paper concluded that a substantial proportion of the SBIR process could be implemented in Europe within the limitations imposed by State Aid regulations and Procurement (competition and anti-discrimination) Directives.

Two years prior to the publication of this paper, the Dutch Government had already started a pilot version of the SBIR designed along very similar lines, which is still ongoing and is managed by SenlerNovem, an executive agency of the Ministry of Economic Affairs. Although European rules mean that the Dutch version has to allow Europe-wide competition at key stages of the process, the experience to date has shown that this does not necessarily detract from the objective of working with ideas from small innovative Dutch companies and funding the development of the most promising of those ideas. This pilot is currently at the stage where a number of the initial ideas are being developed into non-commercial prototypes. The intention is to involve larger companies as prospective customers and investors in the third and final phase where prototypes are developed into commercial products.

There is the potential for implementing a similar

pre-commercial procurement pilot in Northern Ireland, with Departments that have a need for innovative solutions and access to budgets to support the development of such solutions and ultimately to procure them. Possible candidate Departments include the Department of Health, Social Services and Public Safety (DHSSPS), the Department of Agriculture and Rural Development and the Department of the Environment. In the Health and Social Care sector, the appropriate parties to implement a pilot would include the Central Services Agency (the Centre for Procurement Expertise for health supplies and services), HSC Innovations (the innovation management and IP exploitation centre for the Health Service), Biobusiness Northern Ireland (the business association for the Life and Health Technology sector), the MATRIX Health & Life Sciences Horizon panel and the HSC Research Office, which funds healthcare research.

An indicative minimum budget for a pilot would be £750,000 plus management costs (5-10% of the project budget), to cover at least four Phase 1 projects with an indicative budget of £35,000 each and at least two Phase 2 projects with an indicative budget of £300,000 each. The final development of a commercial product would then be funded by private sector companies with an interest in the outcomes. A full pilot would probably take around five years from the first preparations to producing procurement-ready products. Special consideration would need to be given to early engagement with prospective providers of solutions, to the involvement of large companies as prospective users and investors and to the management of Intellectual Property Rights.

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INTRODUCTION





1.1
SCW was commissioned by the Department of Enterprise, Trade & Investment (DETI) of the Northern Ireland Government to provide support to the MATRIX Procurement Panel in its deliberations on how government procurement in Northern Ireland can best stimulate economic return from the commercial exploitation of the local research, science and technology (S&T) base, especially through SMEs.

1.2
The MATRIX Procurement Panel is a panel established by MATRIX, the Northern Ireland Science Industry Panel. MATRIX is itself an expert advisory panel reporting to DETI and the DETI Minister on policies and strategies designed to maximise the region's abilities to gain economic advantage and generate wealth from the exploitation and commercialisation of science, technology and R&D. The MATRIX Procurement Panel (the Panel) consists of representatives of MATRIX, business representation organisations and Government.

1.3
Following the inception meeting with the Panel, it was agreed that the study would focus on two strands, namely:

- A review of what has been done in terms of overall Government policy to use public procurement to encourage SMEs to increase their levels of R&D and science

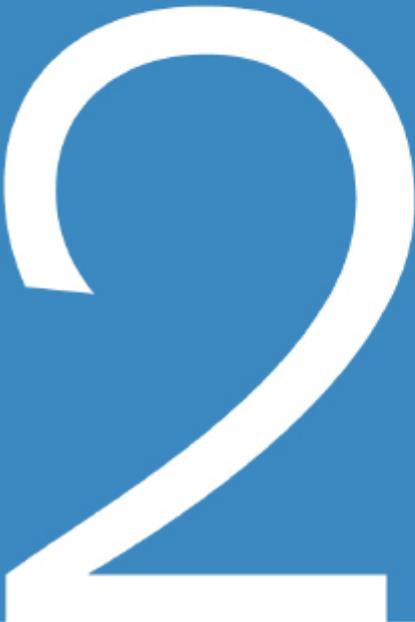
and technology innovation. This includes exploring a number of examples of best practice including the US Government's SBIR, the use of bonds by SMEs in Spain to help them bid for Government contracts and the example of clusters competing for contracts in Finland;

- The main focus should be an investigation of the potential for establishing a targeted small scale pilot in a distinct high technology area e.g. ICT or Medical Services in order to demonstrate best practice.

1.4
A number of policy and guidance documents, papers and websites on the subject were reviewed in order to ascertain the current status of UK Government policy and practice and to assess the relevance of policies and practices elsewhere in Europe and the rest of the world. Where appropriate, information of particular interest was followed up. A full list of all references is provided in Annex A.

1.5
Discussions were held with a number of individuals in key organisations within Northern Ireland in order to assess the potential for a pilot project, focusing on the Health and Social Care sector in particular. A list of consultees is provided in Annex B.

**REVIEW OF GOVERNMENT
POLICY AND PRACTICES IN THE
UK AND ELSEWHERE**



THE US SBIR

2.1

In recent years, there has been growing recognition on the part of governments in the UK and elsewhere in Europe, as well as the European Commission, of the potential value of using public procurement as an instrument to find and implement innovative solutions to issues faced by the public sector and to fund small, early-stage companies with ideas for such solutions. The successful Small Business Innovation Research (SBIR) programme in the US is universally recognised as the main inspiration for this¹.

2.2

The benefits that the SBIR programme brings to both the public sector and small innovative businesses have been extensively described elsewhere (see for example references 1 and 2 in Annex A) and will not be repeated in detail here. However, for the purpose of identifying other exemplars and devising a suitable pilot scheme for Northern Ireland it is important to consider the key characteristics and success factors of the scheme, which are as follows:

- Funding is made available in a phased approach that initially covers feasibility studies (undertaken by a number of different small companies with a maximum budget of \$100,000 per study), then takes successful projects into a development stage (maximum budget \$750,000) and finally brings successfully developed projects into the actual

mainstream procurement processes. This helps the public sector to manage the risk of funding speculative new ideas and enables very small companies to participate. In fact, the US SBIR programme does not require companies to be established until awards have been won.

- The programme provides fully funded R&D contracts with specific milestones and deliverables based on the real needs of the public body that wishes to undertake the ultimate procurement of the final product, not part-funded R&D grants. The relationship involved is therefore one between supplier and customer and the development is market-led.
- The Intellectual Property developed within the projects, remains owned by the companies involved, although obviously the public sector receives certain exploitation rights. The public sector is therefore a first customer of the solution developed, but by no means the only potential customer.
- Continuous discussions between interested companies and the managers who administer the programme are encouraged. This helps to inform the companies of future requirements and opportunities and helps the procurement managers to learn what innovative solutions the market may be able to offer.
- The tendering and award processes are based around competitions at roughly

six monthly intervals. They are fully transparent and standard contracts are used.

¹ The closely related but much smaller Small Business Technology Transfer (STTR) Programme is specifically for projects involving significant collaboration with a non-profit research institution. The STTR was not explicitly included in this study because it is much closer to existing UK schemes than the SBIR is.

DEVELOPMENTS IN THE UK

2.3

Unlike the US SBIR, the UK equivalent, called the Small Business Research Initiative (SBRI), is a voluntary scheme under which participating Government departments will aim to buy at least 2.5% of their R&D requirements from SMEs. Data is provided on the website of the Department for Business, Enterprise & Regulatory Reform (DBERR) to show that in 2005/6 all departments except the Department of Health exceeded this target and an average of 8.7% of the baseline budgets was spent with SMEs. However, the website provides little information about the nature of the contracts and the size and stage of development of the SMEs involved, and an unpublished analysis by David Cornell (advisor on this report) of the 150 SBRI contracts advertised so far, shows that only one was a genuine technology development opportunity for a business.

2.4

It is now widely recognised that the SBRI is not performing satisfactorily, and the subject of how public procurement can be more effectively mobilised to support innovation has been receiving increasing attention in UK Government circles. In a presentation on the importance of science to the Cambridge Rotary Club on 25th October 2007, Sir David King, Chief Scientific Advisor to the Government, explicitly mentioned that more should be done to stimulate the public procurement of solutions

based on new science and technology ideas. In his recent review of the Government's science and innovation policy (ref. 3), Lord Sainsbury mentions that 'Demand-side factors, such as procurement and regulation, which can play a critical role in encouraging innovation, have received too little government focus. The Review shows that value for money and innovation can be complementary objectives in government procurement and urges government departments and the economic regulators to engage in emerging technology development in collaboration with the Technology Strategy Board (TSB).'

2.5

Lord Sainsbury endorses David Cornell's report (ref. 1) and concludes that the SBRI should be reformed to resemble the US SBIR more closely. He also 'welcomes the 'Transforming Government Procurement' report (ref. 4) and recommends that the Government urgently press ahead with plans to improve procurement capability.' However, this latter report only discusses relatively minor changes to existing procurement practices. The same approach is evident from a broader review of policy and guidance documents issued by UK government bodies (primarily the Office of Government Commerce) and European sources on the subject of how the UK or Europe could use public procurement to achieve the kind of outcomes achieved by the US SBIR (references 5-15). The recommendations that

are most often put forward are:

- Early engagement of suppliers by procurement bodies (this is often referred to as 'Concept Viability' or 'Competitive Dialogue') in order to alert prospective suppliers, as early as possible, to potential tendering opportunities, help develop procurement policy and strategies and inform the public sector about new innovative solutions.
- The use of whole-life costing, to take into account the total costs and benefits (including the wider benefits to society beyond the body that is procuring the solution) over the lifetime of the product or service procured.
- The use of outcome-based procurement that avoids focusing too early on particular solutions and leaves open opportunities for entirely new ways of solving the issues in question, and allows variant bids.
- Aggregating demand between public bodies in order to create large enough demand to stimulate innovation.
- Allowing the transfer of Intellectual Property to suppliers, enabling the wider commercialisation of the innovations.
- Adjusting targets and incentives for procurement staff to encourage the procurement of innovative solutions.

2.6

These recommendations are arguably sensible and, if implemented, likely to have a positive

impact on the procurement of recently developed products that are still in the early stages of their market introduction. It is assumed that such guidelines are already being taken on board by the procurement bodies in Northern Ireland. However, they are still based on the assumption that the solutions are ready to be tested and procured, and they do not adequately address a key issue that prevents the public procurement of truly innovative solutions from early-stage companies, namely that of the risks caused by technological uncertainty and the early-stage nature of the companies.

2.7

When a truly novel, innovative solution to an issue is proposed there is inevitably a significant probability that it will in fact not work. New ideas are by definition untested and there are many unknown factors that will determine whether the idea can ultimately be translated into a reliable product, process, system or service. Also, they are often conceived by early-stage technology companies that lack the necessary track record (not only of the company itself but often also of the founders) that inspires confidence that the company will survive for long enough to allow its technology to be implemented. This is recognised by, for example, venture capital investors, who accept a high failure rate of their investments and have learnt to manage risk by, among other things, spreading it.

2.8

By contrast, public procurement practices and the officials who apply them are frequently criticised for being risk-averse and unwilling to procure any products, processes, systems or services that are not tried and tested and available 'off the shelf'. Such reluctance to take risks is understandable because high technological and implementation risk is basically incompatible with the core concept of public procurement, which is value for money. Procurement officers do not have the luxury of spreading their contracts over many different companies but need to select one that offers the best value for money, but it is extremely difficult, if not impossible, to assess that value properly if there is a high probability that the solution offered will never work at all. No amount of targets and incentives will address this unless much more fundamental changes are made to the entire procurement process.

2.9

Similarly, concepts such as 'competitive dialogue' will do little to address the issue of risk because they are intended 'to identify and define the means best suited to satisfying [the contracting authority's] needs'. Again it is very difficult to select the 'best suited' means when all of the proposed means have a high chance of failure.

DEVELOPMENTS ELSEWHERE IN EUROPE

2.10

Few countries in Europe appear to have moved beyond the stage of considering changes to standard procurement practices that are only ever likely to have a minor impact. Even initiatives to encourage or facilitate the participation by small companies in government procurement, in general, are very limited. In our desk research, specific attention was paid to Spain and Finland, which were believed by members of the Panel to have implemented certain practices that supported SMEs in their efforts to participate in procurement opportunities, but no evidence of this was found. In fact, in a survey reported on the website of the Public Procurement Network (see ref. 24e), a Europe-wide network of public procurement officials, every member except Greece and the Netherlands answered 'no' to the question 'Is there in your country a regulation that favours or benefits SME's (small or medium enterprises), for example by an obligation or otherwise (like contracts below certain thresholds are only for SME's or 25 % of all contracts by a contracting authority have to be awarded to SME's)?'

2.11

The member from the Netherlands did not provide an answer to this question and the answer from Greece was: 'Yes, there is a regulation as regards works and research contracts that favours SME's through the obligatory registration of companies in classes

depending on their size and the level of the budget of contracts sought. Thus, lower class registered companies can participate in competitions for contracts of lower budget whereas other, in higher-class registered companies may not.' It may be that this approach is based on the EU de minimis rules, which allow aid of up to €100,000 per company on a rolling three-year basis. We have asked the relevant contacts in Greece for clarification but have not yet received a response, but we assume that this is an implementation of the European Commission's de minimis rules that allow small amounts of State Aid.

2.12

Defence procurement is subject to certain exceptions to standard procurement rules, and the French government utilizes this to allow SMEs to directly conclude an R&D contract with the Ministry of Defence without having to face competition with other companies, provided the SMEs can prove that they are the originators of the innovative technology (see http://tendchart.cordis.lu/fo_datasheet.cfm?id=26568). It is unlikely that such avoidance of the competition rules would be acceptable in any area outside of defence, and since the Northern Ireland Government does not have its own defence budget it is of little relevance.

THE PRE-COMMERCIAL PROCUREMENT MODEL

2.13

An ad-hoc working group of the National IST Research Directors Forum (a group of ICT directors from European national administrations, ref. 16) has gone a significant step further by proposing a mechanism it calls 'pre-commercial Procurement of Innovation', which essentially is an extra step through which innovative ideas can be made 'procurement-ready'. The paper provides a thorough analysis of the whole issue (albeit focused around ICT), some useful insights into the relevant regulations as well as a proposal for one way in which such pre-commercial procurement of innovation could be realised.

2.14

The model proposed is similar to the US SBIR approach, in that it puts in place a separate multi-stage process that takes place prior to, and feeds prospective solutions into, mainstream commercial procurement. It recognises that mainstream procurement, even with modifications to make it more 'innovation-friendly', is not able to support the speculative development of technologically risky propositions and that standard grant mechanisms for supporting R&D are insufficiently market-driven and also subject to State Aid rules that limit the level of public sector support. It therefore proposes that early-stage ideas are supported through the procurement of pre-commercial R&D services.

2.15

The proposed mechanism uses the fact that procurement of (as opposed to grants for) R&D is not subject to the State Aid limitations that are imposed on R&D grants, and can therefore, in principle, be fully funded (ref. 17). At the same time, the procurement of pre-commercial R&D services is exempt from Public Procurement Directive 2004/18/EC and therefore does not have to be announced through the Official Journal of the European Union and Tenders Electronic Daily, unless the benefits of the R&D are completely for

the contracting authority and the R&D is fully paid by the contracting authority (ref. 18). This condition can be met by ensuring that the outputs of the R&D ultimately become available to others.

2.16

The paper splits the pre-commercial procurement of innovation into three steps. Depending on the level of technological uncertainty that exists among prospective solutions to a particular issue, the authors suggest that it is possible to skip the first or second of these steps:

- 1 R&D to take an idea, explore its feasibility and develop it into a solution proposal. The level of technological risk at this stage is high. Duration around 6 months.
- 2 R&D to take the proposed solution up to a prototype. The technological risk here is lower than in the first step. Duration around 2 years.
- 3 R&D to take the prototype up to a first batch of pre-commercial-volume preproducts/services validated through field tests. Duration around 2 years.

2.17

The paper discusses the definition of R&D as defined in the new 'Framework for State Aid for Research and Development and Innovation', which was adopted by the European Commission in late 2006 and was due to be implemented on 1st January 2007. This new framework extends the scope of R&D to become 'R&D&I', which includes 'experimental development', and the paper argues that therefore all three steps in the pre-commercial procurement process fall under the exception to the Procurement Directives. However, the Dutch government in a pilot of its own SBIR programme (see below) has concluded that the new definition does not encompass the third step but that it merely allows the second step to be extended further down the development path, but not to the point where a market-ready product has been obtained.

2.18

The text of the new State Aid Framework (ref. 17) is somewhat ambiguous but, among other things, states that 'the experimental production and testing of products, processes and services are also eligible, provided that these cannot be used or transformed to be used in industrial applications or commercially'. Also, the paragraph in the Framework that covers procurement uses the term 'R&D' rather than 'R&D&I', which suggests that in the context of procurement the new definition may in fact not be applicable. In any event, the actual status of the new State Aid Framework is unclear because although it has been 'adopted' by the European Commission it does not appear to have filtered through to the implementation stage.

2.19

A similar 'procurement readiness' mechanism was proposed for the UK in a recent paper on innovation and public procurement by the CBI and OlinetO (ref. 19) that recommends the creation of a UK equivalent to the US Defense Advanced Research Projects Agency (DARPA), which is a body that coordinates and funds innovative, high-risk projects to make them ready for defence procurement.

2.20

The CBI/OlinetO paper suggests that the Technology Strategy Board in the UK could be repositioned to undertake this kind of role - not just aimed at defence - and engage in precommercial procurement through technical feasibility to prototyping and advanced demonstration. It envisages that the TSB would partner government bodies, companies and research organisations and provide up to 50% funding for pre-competitive research and development projects, which could then be matched by sponsoring departments.

THE DUTCH EXPERIENCE

2.21

Uniquely among European countries, in 2004 the Dutch Ministry of Economic Affairs began a pilot of its own version of the US SBIR. The pilot is still ongoing and is being managed by SenterNovem, an agency of the Ministry of Economic Affairs. In 2006 the Ministries of Defence, Agriculture, Fisheries & Foods and Spatial Planning & Water Management joined in the pilot with their own requirements for innovative solutions. A total of six calls for proposals were issued.

2.22

The Dutch SBIR recognises a three-stage process:

- 1 A study into the technical, economic and organisational feasibility of a project idea. The maximum duration of this phase is six months.
- 2 R&D up until a first, non-commercial prototype. The R&D has to conform to the European definition and the maximum duration of a Phase Two project is two years.
- 3 Developing a market-ready product.

2.23

The Government acts as the customer by commissioning projects originally in Phase One, following a call for tenders in response to a defined need. Fixed-price contracts with agreed deliverables are awarded, and companies have to deliver the outputs required whether the budget is sufficient or not. Only

companies that successfully complete a Phase One project are eligible to tender for a Phase Two project. One of the selection criteria for Phase Two is whether the company has found an external party willing to fund or co-fund Phase Three. There is no specific mechanism for the Government to fund Phase Three projects, although it may wish to procure the outputs of a Phase Three project under normal procurement rules.

2.24

Each Dutch SBIR call originally had a budget of 200,000 euros (\$136,000) for Phase One projects (designed to cover at least four feasibility studies with a maximum budget of 50,000 euros (\$35,000) each) and a budget of 900,000 euros (\$620,000) for Phase Two projects (sufficient for at least two R&D projects with a maximum budget of 450,000 euros (\$310,000) each). Each Ministry spent most of its budgets, funding four or five Phase One projects, while the Ministry of Spatial Planning & Water Management increased the budgets for its calls because of the high number of proposals that it considered worthy of funding, and funded five and six projects respectively in its two calls.

2.25

SenterNovem consulted the European Commission on the interpretation of the exceptions to the Public Procurement Directives in order to ascertain whether it

would be allowable to restrict the Dutch SBIR to SMEs only. The response received spelt out certain conditions under which this might be acceptable, but it was concluded that it would be too difficult to argue that such a restriction to SMEs was sufficiently 'imperative in the general interest' and non-discriminatory, and consequently no such restriction was put in place.

2.26

Although no announcement, via the key European mechanisms, was required, the basic EU rules against discrimination still required that applications from companies of any size and from any European country should be accepted and that the calls for tender should be publicised widely on at least a national level. SenterNovem therefore used adverts in trade magazines, press releases to regional and national newspapers, its SBIR website and direct mail. The publicity was not aimed only at SMEs, but in all publicity the programme was described as being aimed particularly at SMEs, and SMEs were explicitly encouraged to respond. In addition, an information meeting was held for each call, and reports of the information meetings were published on the SBIR website.

2.27

In 2007, SenterNovem undertook an evaluation of the pilot while it was still ongoing. All the Ministries involved in the pilots were satisfied with the numbers of tenders

received, on average 16 serious responses per call, primarily from SMEs. The Ministries also reported that the pilot had brought new companies to their attention, that the quality of the proposals was generally high and in some areas very creative proposals were received.

2.28

Across all six calls, 97 proposals were received from 88 different companies. Five companies submitted more than one proposal within the same call, while two submitted proposals in two different calls. 83% of the proposals received came from small companies (<50 employees) and 56% had fewer than 10 employees. Only 9% were not SMEs; none of these ultimately were awarded contracts even though the size of the company was not a selection criterion.

2.29

For each call a judging committee was formed that consisted of representatives from the Ministry involved, the science community, potential further customers, the finance community and business. Proposals were judged on four criteria: contribution to solving the public sector issue; technological quality and innovation; economic prospects; and added value to society and sustainability.

2.30

Although the intention had been to award Phase One contracts within six weeks of the closing date of the relevant call, this was not

always achieved, mainly because of slow internal procedures. However, five of the six calls resulted in decisions within eight weeks.

2.31

28 contracts for phase 1 projects were awarded, half to companies with fewer than 10 employees while most of the remaining contracts went to companies with fewer than 50 employees. None of the companies that won contracts had more than 100 employees.

2.32

40% of the businesses that submitted proposals were less than five years old and 75% less than 15 years old. The age profile of those that won contracts was similar.

2.33

The vast majority (88%) of companies that were awarded an SBR contract chose to work with other companies (42%), research institutes (16%), or both (28%). 11% did not subcontract any of the work. The programme allows subcontracting up to 35% of the contract value in Phase One and up to 50% in Phase Two.

2.34

At the time of the evaluation, several of the Ministries involved were closely involved with the execution of the feasibility studies, feeding their requirements into the studies and trying to ensure that the outcomes are as relevant

and robust as possible. At the time of writing of this report, the earliest call (for which four Phase One projects had started in 2005) had led to two Phase Two projects that have nearly finished. The remaining Phase One projects (which started in early 2007) are either still ongoing or have just finished. Thus far, approximately 50% of finished Phase One projects have been approved for Phase Two.

THE POTENTIAL FOR A PILOT PROJECT IN NORTHERN IRELAND

3



3.1 Northern Ireland has already had some experience of its own with an initiative that has many of the hallmarks of the pre-commercial procurement of innovation. Under its Broadband Content Initiative, in May 2007, DETI invited creative companies in Northern Ireland to develop new commercial broadband content with a view to purchasing four examples of broadband content that best illustrate the creativity and skills of Northern Ireland companies. These exemplars will be used to promote the Northern Ireland creative sector in external markets.

3.2 The process involved, which is still ongoing at the time of writing of this report, consisted of three steps: an initial selection procedure identified 20 companies that best met the criteria; the development of their business plans, IP rights and Digital Rights Management agreements with financial and advisory support from DETI; and a presentation by all companies to a commissioning panel that selects at least four projects to take forward towards market readiness and ultimate procurement of the four products at a maximum price of 250,000 euros per product. These presentations were held in October 2007 and the initiative is scheduled to be completed by March 2008.

3.3 There are some specific aspects of the

Broadband Content Initiative that allow it to be implemented in relatively short timescales (just over 18 months from start to finish) and with very modest initial budgets (£3,000 plus limited advisory support for the development of the business plan) and the model would need to be adapted for the pre-commercial procurement of other types of products, but at the very least it demonstrates the Northern Ireland government's willingness to experiment with this type of approach.

3.4 In the broad context of Northern Ireland, a number of obvious candidate organisations exist for which the pre-commercial procurement of innovative solutions could well prove valuable, in particular those Government Departments that face challenges that are likely to require innovative science and technology solutions, such as the Department of Health, Social Services and Public Safety, the Department of Agriculture and Rural Development and the Department of the Environment. In addition, there will be requirements across the public sector for solutions to more generic issues such as for example document management or sustainability solutions in areas such as the public sector's own transport requirements.

3.5 The Health and Social Care sector was identified by the Panel as an area of particular

interest, and a number of discussions were therefore held with representatives of organisations active in public procurement, innovation in the Health sector and the biocscience business community. A full list of organisations and individuals consulted is provided in Annex 2.

3.6 These discussions confirmed that public procurement in Northern Ireland has much the same characteristics as it has elsewhere in the UK and Europe, that procurement of innovative science and technology-based solutions is rare and that SMEs often find it difficult to participate in public tenders, although examples were mentioned of SMEs that had been very successful.

3.7 The idea of a pre-commercial procurement pilot was widely supported by the consultees. For a possible pilot in the healthcare field, the consultees identified a number of key organisations and initiatives that could be involved, including the Central Services Agency (the Centre for Procurement Expertise for health supplies and services), HSC Innovations (the innovation management and IP exploitation centre for the Health Service), Biobusiness Northern Ireland (the business association for the Life and Health Technology sector), the MATROX Life & Health Sciences Horizon Panel and the HSC Research Office, which funds healthcare research.



CONCLUSIONS AND RECOMMENDATIONS

4

GENERAL CONCLUSIONS

4.1 Government procurement can best stimulate economic return from the commercial exploitation of the local research, science and technology (S&T) base by implementing a precommercial procurement scheme that provides a mechanism to de-risk innovative ideas and make them more 'procurement-ready', instead of trying to make substantial changes to mainstream procurement practices.

4.2 Such a scheme has to be aligned closely with mainstream procurement needs and mechanisms, as well as with the relevant innovative business and knowledge communities, in order to ensure that there is a clear path from the development of innovative solutions to subsequent mainstream procurement steps.

4.3 At the same time, mainstream procurement practices should be adapted to make them more 'innovation-friendly' as far as is practicable, using the guidelines issued by the Office of Government Commerce, since this will increase the likelihood that solutions developed using pre-commercial procurement can subsequently be adopted through mainstream procurement.

4.4 In order to manage the technological and financial risk and fit into the most favourable EU regulations, it is helpful to recognise three distinct stages in the pre-commercial procurement process, namely feasibility studies; R&D up to a first non-commercial prototype; and development of a market-ready product, with each stage having its own budgets and targets.

4.5 Pre-commercial procurement of feasibility studies and R&D up to a pre-commercial prototype can be classified as procurement of R&D services and therefore be exempt from State Aid restrictions and from the strict requirements for Europe-wide tendering, as long as the benefits of the R&D are not completely for the contracting authority (which can be achieved by allowing third-party exploitation) or the R&D is not fully paid by the contracting authority.

4.6 Nevertheless, any pre-commercial procurement needs to conform to WTO and EU competition and anti-discrimination rules and therefore cannot be restricted to certain classes of companies (such as SMEs) or to companies from a certain geographical area (such as Northern Ireland). Any calls for tender have to be published in such a way to enable real competition to occur. In practice however, it

has been demonstrated that it is possible to achieve high participation by small innovative companies from a single country, by tailoring the publicity and tender specifications appropriately.

4.7 The development of the first prototype into a market-ready product cannot be funded through the procurement of R&D services as defined in the EU Procurement Directives and is therefore subject to the normal WTO and EU procurement regulations. It would need to be announced Europe-wide and be subject to full competition, and it is more likely that at this stage a higher proportion of larger companies would be involved. However, it also becomes more likely that private sector parties will be prepared to fund the further development of prototype solutions generated under earlier pre-commercial procurement stages. By encouraging the identification of such sources of finance during the earlier pre-commercial procurement stages, the chance that a market-ready solution ultimately becomes available even without government finance can be maximised.

RECOMMENDATIONS FOR A PILOT PROJECT IN NORTHERN IRELAND

4.8

In Northern Ireland, a pilot could be undertaken in various sectors with various Government Departments, with the Health & Social Care sector a promising first candidate. A key first step would be to identify a budget, the size of which would depend on the characteristics of the proposed solutions, which in turn depends on the functional specification. Therefore, only indicative budgetary amounts can be provided here. An indicative minimum budget for a pilot would be £750,000 plus management costs (5-10% of the project budget), to cover at least four Phase One projects with an indicative budget of £25,000 each and at least two Phase Two projects with an indicative budget of £300,000 each. It may be desirable to budget for more Phase One projects in order to have a wider 'pool' of prospective solutions to choose from.

4.9

There is a strong argument that the customer (i.e. the organisation that ultimately wishes to procure and use the solution - in a healthcare pilot probably the Department of Health, Social Services and Public Safety (DHSSPS)) should provide the budget, in order to ensure a sense of 'ownership' and commitment to achieving the right outputs and outcomes, and to create the conditions for a clear contractual relationship between the supplier and the customer. If it is not feasible for the customer in a pilot to provide the budget, then if a

budget is found elsewhere it should ideally be transferred to the customer at the start of the process.

4.10

Another key practical issue is the question of who manages the pre-commercial procurement process. This task will require a good understanding of procurement practices and regulations, but because of the distinct character of pre-commercial procurement compared to mainstream procurement it is probably not appropriate for a mainstream procurement body (the Central Services Agency in the case of a healthcare pilot) to undertake it. Instead, existing procurement expertise should probably be provided through the establishment of a steering group that brings together the customer with the management body and relevant mainstream procurement organisation(s).

4.11

In the healthcare sector an intermediate body such as HSC Innovations could in principle be considered for the management, but if the first pilot is successful there will be further precommercial procurement involving other Government Departments, which means that there would be benefits in using a more generic intermediate body. In the Dutch example, the SBIR processes are managed on behalf of the Ministries involved by SerreNovem, which is an agency of the Ministry of Economic

Affairs charged with promoting innovation and sustainable development through the management of support programmes for various Ministries as well as the European Commission, the International Energy Agency and foreign governments. An approximate equivalent in Northern Ireland would be Invest Northern Ireland, and consideration should therefore be given to involving Invest Northern Ireland in the pilot.

4.12

In order to determine the scope of the pilot, the recommended approach would be to arrange an 'early engagement' discussion between the customer and prospective providers of ideas and solutions. Although the ultimate intention is that the suppliers will be small and medium-sized businesses, at this stage it is probably desirable that the discussion includes relevant university groups, research centres and prospective sources of ideas from within the customer organisation. In the context of a healthcare pilot, these discussion partners would include Biobusiness Northern Ireland and selected SMEs from the (sub-)sectors in which solutions may be found, the DHSSPS (potentially including clinicians with ideas for possible solutions), the MATRIX Life & Health Sciences Horizon Panel as well as research groups in the relevant subject area.

4.13

Such early engagement would not only inform

key elements of the process such as the required budget and the functional specification of the solicitations, but also provide insights into potential collaborations between SMEs and other parties that have relevant ideas, capabilities to develop them and/or access to further markets.

4.14

In this context, even large companies may form a useful part of the solution and consideration should be given to involving them at an appropriate stage in the process. As discussed above, the recommended model for the European-style SBR relies on third-party financing during Phase Three and the Dutch experience has shown that frequently it is large companies with an interest in the outputs of the development process that take an interest in the (part-)financing of Phase Three projects.

4.15

Clarity will need to be provided on Intellectual Property issues. By default, ownership of the IP rights should rest with the supplier, with the customer receiving exploitation rights. Any agreements with third parties such as large companies that express an interest in commercialisation will need to be negotiated between the supplier and the large company. It is of course possible that a large company will buy the IP rights or even buy the small company, in its entirety, and that the ultimate supplier of the innovative product will then be

the large company. Consideration should be given to this possibility and whether action should be taken to try to discourage or prevent it. The Dutch experience may be of limited value in this regard because the Netherlands has more of a history of consensus agreements between the public and private sector than the UK does.

4.16

Another issue to consider at this stage is that of the timescales involved and the implications for expanding the pilot into a mainstream scheme. The process of preparing for the solicitation, publicising it, accepting and assessing submissions and signing contracts is likely to take around six months. Phase One projects would typically take six months to complete and subsequent Phase Two projects two years, with at least three months between the end of the Phase One projects and the start of Phase Two. After this, in most cases the prototyped solutions will have to go through a Phase Three development before the end product(s) can be offered for mainstream procurement, which could take another two years or so. This means that it is likely that mainstream procurement won't take place until perhaps five years after the start of the pilot. Not only does this mean that there has to be commitment from the parties involved over that timescale, but that consideration needs to be given to the timescales on whether any further pilots or a wider roll-out should start before the

initial pilot has run its complete course.

4.17

Finally, to increase the likelihood of success it is advisable to try to establish an ongoing dialogue with SenlerNovem, which is the only organisation in Europe with detailed hands-on experience of an SBR pilot and which can no doubt provide much valuable further information and insights.



ANNEX A



REFERENCES

THE FOLLOWING DOCUMENTS AND WEBSITES WERE CONSULTED IN THE DESK RESEARCH:

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- 21 Achtergrondnotitie SBR voor juridisch overleg (background note on SBR for legal consultation), Netherlands Ministry of Economic Affairs, March 2006 (in Dutch)
- 22 Communication from the European Commission DG Internal Market & Services on whether R&D contracts can be reserved for SMEs, 2006, provided by SenterNovem
- 23 Private communications with Mrs Carla Dekker, SBR Pilot Manager, SenterNovem
- 24 Websites:
US Small Business Administration - SBR and STTR: www.sba.gov/SBR/index-sbr-sttr.html
US Department of Health & Human Services - SBR and STTR: http://grants.nih.gov/grants/funding/sbrsttr_programs.htm
Department for Business Enterprise & Regulatory Reform - SBR: www.berr.gov.uk/innovation/sbr/index.html
Department for Business Enterprise & Regulatory Reform - Public Procurement Policy: www.berr.gov.uk/innovation/public_procurement_policy/index.html
European Public Procurement Network: www.publicprocurementnetwork.org/index.htm

² This was an unpublished advanced draft provided on the understanding that no specific references to the content would be made.

ANNEX B

B

CONSULTEES

THE FOLLOWING INDIVIDUALS AND ORGANISATIONS WERE CONSULTED FOR THIS STUDY:

Central Procurement Directorate
Blenden O'Neill

Central Services Agency
Sam Blakely

Invest Northern Ireland
Derval Mooney
Marshall Adkiss
Mandy Mills
Paul McCoy

BioBusiness Northern Ireland
Peter Donnelly

HSC Innovations
David Downie

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Mr Paul Maskey
Chairman
Public Accounts Committee
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BELFAST
BT4 3XX 6 October 2009

Dear Paul

PAC COMPOSITE REPORTS

Thank you for your letter of 16 September.

I attach answers to the questions asked and a summary which was provided to the Finance and Personnel Committee which has undertaken its own review of legal challenges on procurement.

Yours sincerely



Stephen Peover

Partenaire Challenge against the Department of Finance and Personnel (DFP)

Q1. Paragraph 6.3.6:

In the legal challenge taken against the Department by Partenaire in the Workplace 2010 Project, the legal costs seem to be very high. Please outline the respective roles of the Programme's legal advisors, the Department Solicitors Office and Legal Council and the breakdown of costs between them.

The total legal costs in respect of the Partenaire legal challenge were £1.018m. The breakdown of these costs is as follows:

- Legal Advisers: £907k
- Departmental Solicitors Office: £52k
- Barristers: £59k

It was decided that the programme's London-based legal advisors were best placed to lead the defence to the challenge due to the complex nature of the procurement. This work included collecting and preparing evidence statements, managing the collection and administration of detailed information to be exchanged with the plaintiff as part of the court process, obtaining

specialist procurement-related legal advice and support in preparing for the judicial review hearing, briefing barristers and attending the hearings.

The Departmental Solicitor's Office was responsible for overseeing the Department's preparation of its defence and all interaction with the local courts.

The barrister costs were related to both preparation for, and attendance at, the judicial review hearing.

Q2. Paragraph 6.3.12

Did the Department of Finance and Personnel take legal advice in deciding to establish a framework agreement for Integrated Supply Teams to design and build a range of projects across the wider public sector? If so, was this advice in-house or external and how much did it cost?

Framework agreements are provided for under the EU Directives on public procurement and in the UK Public Contracts Regulations 2006 that implement the EU Directives.

OGC produced a guidance note on framework agreements for procurement practitioners. This guidance was developed with input from legal advisors at OGC. In addition, the EU Commission has issued an Explanatory Note on framework agreements.

Framework agreements are widely used in the public sector in GB and NI and CPD has successfully established a number of these. In the light of the above, CPD did not take specific legal advice in deciding to establish a framework agreement for Integrated Supply Teams.

Q3. Paragraph 6.3.20

During the process to appoint firms to a framework agreement for the design and construction, or construction only, of schools or other education projects in Northern Ireland, 11 clarification notes were issued to firms. What were the subjects of these clarification notes?

Did Central Procurement Directorate take legal advice on the content of these notes, particularly note 4 and, if so, was the advice in-house or external and how much did it cost?

A summary of the contents of the 11 clarification notes is set out in the Annex below.

The Department of Education established a team to take forward the procurement of the framework agreement. This team included external procurement advisers and external legal advisers. Strategic advice was provided to the team by SIB and CPD provided the interface with the construction market place for the procurement process.

External advisers were responsible for drafting the clarification notes. As legal advisers were available within the DE team, CPD did not take additional legal advice on the clarification notes.

Q4. Paragraph 6.3.25

The C&AG's report makes the point that Government, by its nature, is likely to be involved in a wide range of potential litigation. This seems to be particularly the case on contract issues. What steps have been taken to ensure that Government has access to good quality, cost effective legal advice in this area?

On contract issues, CPD relies on the Departmental Solicitors Office (DSO) for legal advice. DSO are the in-house legal advisers to NI Government departments and are familiar with the public law setting matters like contract and procurement law. Their budget and costs are subject to public accounting rules. Although DSO is normally the primary 'port of call' for legal advice by NI government departments it is normal, either for reasons of the specialist skills required or the manpower needed, or a combination of these factors, to appoint external legal advisers for larger scale projects. The appointment of external legal advisers would normally be by way of a public procurement exercise to ensure good quality cost effective legal advice is secured.

Q5. Paragraph 6.3.26

Please provide details of any other legal challenges involving public sector contracts which Departments have settled out of court in each of the past five years.

CPD provided information on legal cases to the DFP Committee in April 2009 (please see attached).

It is not possible to provide a definitive list of other legal challenges which have been settled. There are a wide range of contracts in place and disputes over contractual terms and obligations often arise. Many of these are settled in the normal routine of contract management, sometimes incurring costs.

Social Economy Network - Draft Summary Oral Presentation to the Committee of Finance & Personnel

Social Economy Network summary briefing paper to the Committee for Finance & Personnel

The Social Economy Network is a membership organisation (current membership 117) drawing its members from social enterprise initiatives throughout Northern Ireland.

The presenting panel comprises Anne Graham, Director of SEN, Derek Alcorn, Chief Executive, Citizens Advice and Marie Marin, Director, Employers for Childcare - both members of the SEN who have direct working experience of tendering for public contracts.

We intend to focus this presentation on the following three aspects of the DFP Committee's Inquiry:-

- the extent to which government contracts make provision for social clauses;
- the scope for increasing the capacity of SMEs and SEEs to compete for public contracts; and
- Public procurement processes and procedures.

1. Many Social Economy Enterprises (SEEs) are experienced in delivering high quality public services through SLAs and contracts with Government Departments, their second step agencies and Local Councils. The introduction of the competitive tendering process for such services puts SEEs at a disadvantage and jeopardises the quality of service provision as often those responsible for drawing up the tender specification have little or no understanding of what is required beyond the specific expected outputs and monetary aspects of the service/s and little or no knowledge of SEEs as potential suppliers. The result is tender specifications which take no account of expected outcomes and social value/community benefits. If these aspects are not

included in the tender specification there is no mechanism for scoring them in the assessment process.

2. Policy direction is needed to clarify which services should /need to go to competitive tendering. The method of purchasing should be proportionate to the services, commodities and works needed and the method and the determination of the method of purchasing should be made clear to all parties. "If commissioners are convinced that using the third sector is the best way to deliver some public services and that SEEs/Voluntary Organisations are able to deliver added value linked to their particular qualities, then they can positively create a market. (Commissioning Public Services. CIPFA. 2009)

3. Where it is deemed appropriate to purchase services through the public procurement process all aspects, impacts, costs and benefits of what is required re service/s delivery should be considered. Where possible all costs and benefits should be valued in monetary terms however where this is not practicable or cost effective –in the case of social, health, and environmental affects such non-monetary costs and benefits should still be taken into account. The NI practical guide to the Green Book (2003 edition) allows for consideration of non-monetary impacts and impresses the point that they may be crucial to the decisions made. In practice however, this does not happen. The emphasis tends to be narrowly focused on the specific outputs and monetary aspects of the service required.

4. Despite the Programme for Government recognising the valuable role procurement can have in reducing inequalities and promoting social inclusion Social clauses still do not feature in public procurement contracts. The lack of progress on the inclusion of social clauses into the procurement process is one of the most significant problems facing the development of SEEs in Northern Ireland. SEEs operate their businesses in a market place which does not recognise or take account of the added value they create and this puts them at a disadvantage when competing for public sector business. According to a Social Economy Scotland Briefing- the Scottish Government has produced guidance on including social issues in public procurement, including the ability to purchase wider social benefits as part of procurement. The guidance concludes that it is entirely possible to recognise wider social issues within a procurement process, as long as they are part of the primary purpose of the contract and they are incorporated into the specification.

5. Pressure on public bodies to secure efficiencies by aggregating contracts discriminates against small businesses, which includes many social enterprises. Little cognisance is given to the expertise and ability of SEEs (with local knowledge and understanding of needs and how best to address them) to deliver services effectively. It should not be assumed that larger suppliers offer better value for money. Large single contracts are not always the best value for money. There are many advantages of using smaller enterprises which include greater responsiveness to changing needs and ability to "tailor "goods and services. Where single large contracts are considered the preferred option procurement practitioners should consider asking contractors to open a given percentage of the contract sum for sub contracts to small businesses- a practice which is lawful.

- If the goal, as it should be, is to improve and increase the capacity of SEEs to access the £2 billion public procurement marketplace it is essential to address the barriers they face in competing for public contracts. This will be achieved through:
- awareness raising of the SEE sector among public procurement practitioners in both central and local government;
- inclusion of social clauses into tender specifications; investment to develop tendering skills
- the establishment of a public procurement brokerage service for social enterprises.

- the ongoing collection of data on the number of SEEs competing for and securing public sector contracts.
- The development of a commissioning framework for adoption by the new Councils.

Bryson Charitable Group Oral Presentation

I would like to begin our evidence by echoing our Chairman's welcome to the Committee to Bryson and I think your willingness to meet off-site and consider evidence is a clear signal of your interest and intention to improve public procurement, maximising the benefits to the economy, the tax payer and NI society in general.

Bryson, like other organisations, is drawing to the Committee's attention the importance of social enterprise to the local economy and the significant potential for it to provide greater value for money, and indeed best value, in the delivery of a broad range of public services.

It is frequently presumed that social enterprise is a recent phenomenon, only now coming to the attention of Government. This is far from the case; enterprise with a social purpose or objectives has been around longer than Bryson, which was founded in 1906. Much of what we now take as common place in society, our hospitals, our schools, etc, were developed from enterprising social action. For example, in Belfast the delivery of clean drinking water into the City was as a result of the Belfast Charitable Society raising public funds for its installation. Voluntarism and indeed enterprising voluntarism has been at the heart of social change on this island and across these islands, for hundreds of years.

If you look in particular at Bryson's pedigree, over the last 100 years, you will see it littered with enterprise designed to support and encourage Government to evolve policy and service provision that best meets the needs of society, but in particular for those suffering the greatest levels of deprivation.

For example, in the 1920s / 30s Bryson, through funds donated, built model homes in Belfast to demonstrate to the Belfast Corporation, then responsible for social housing provision, what good quality housing should have – electric lighting, hot running water, inside toilets and front and back gardens to encourage people to grow vegetables – all common place in modern housing stock now. Those homes were rented to tenants with rents set based on ability to pay – a very modern concept and ahead of its time - the rent revenues contributed to the upkeep of those properties with profits funding the Charity's works – social enterprise.

Bryson's rich heritage is littered with similar examples. In the 1930s the piloting and development of the Poor Man's Lawyer scheme, a precursor to free legal aid/advice; in the 1940s developing and privately funding the Citizens Advice Bureau network in NI; in the 1960s developing the first adventure playgrounds and community development support programmes; in the 1970s and 80s the first programmes to address fuel poverty in NI and more recently organisations like Home Start, Extra Care and Victims Support, etc are all products of the enterprise that sits within this social goal focused organisation. I don't emphasise these to suggest that Bryson is different or better, only that the Sector and there are many other examples, has had enterprise at its heart and it is all the more important that public procurement should create the conditions which support the development of the social economy when, for purely practical reasons, it can provide better added value than either the public or the private sectors.

We explained in our written evidence that we have moved from our initial view that the 'Green Book' assessment processes was an impediment to a position where we view the 'Green Book' process as providing real opportunity to encourage the development of social enterprise,

because the 'Green Book' process can register and assess a range of benefits delivered, if the need for those benefits is recognised. If those who use it and those who write specifications for bids that will be assessed by it, are better trained and are required to extract maximum value across a fuller range of Government priorities, not only will it be good for the economy but also for social enterprise..

Let me explain:

It is wholly understandable that there should be purchasing rules and a common purchasing system for Government departments in order to ensure that their purchasing is consistent, delivers value for money and treats all perspective suppliers fairly. However, it is our experience that in practice other issues can sometimes have a debilitating effect, stunting the process, for example the desire by people making the purchasing decisions to minimise their risk of subsequently being criticised for their actions or decisions. In essence, it is our view that our procurement process tends more to be designed to procure what can be defended rather than what is best value.

We all understand the need for probity within procurement and the need for making correct decisions, but making decisions correctly is not necessarily the same thing as making the correct decisions. If this sounds complicated, I apologise. To explain: the problem isn't the Green Book assessment process because all procurement processes should begin with the need to define the objects and the constraints (point 3 in the Green Book's 10 Key Steps), and this is at the heart of our public procurement problem. It is because, instead of recognising objects (our aims) and constraints (ie why we want something), we specify rigidly what we want in order to exclude ambiguity and defend eventual decisions. As a result, we miss the opportunity to get best value from the process.

It is generally the case that a product or service is bought, not in order to have the product or service itself, but for the benefits that having it is expected to provide – you buy a drill not to have a drill but to be able to put a hole in a wall. However, if the item or service which is purchased is specified very tightly, it can make it easy to see if what is offered meets the specification, but it might mean that an alternative offering, which does not meet the tight specification but which might nevertheless deliver the underlying object and provide additional benefit also, would be rejected. I leave it later for my colleague Brian McGinn to explain from our experiences in procurement using variant bids to encourage innovative thinking, but I am reminded of one particular example, which I think highlights this point:

In 1935 both the army and the air force were concerned with a common problem – detecting enemy aircraft at a greater distance than the existing search lights or sound rangers could do. Each sought to procure a solution from the scientific establishment, but each viewed the problem in a different way. The army specified search lights that could pick up aircraft 10,000 feet higher than currently available and sound rangers that could pick up aircraft 10 miles further than the current limit and in due course they got what they asked for – stronger search lights and better sound rangers. In contrast the air force defined their object less tightly but more accurately: to detect and track aircraft from as great a distance as possible – they got radar. I think the point is clear; I don't think it needs laboured, we need intelligent procurement processes to secure, for the tax payer, best value and to include in that consideration, meeting broader ranges of Governments objectives through the inclusion of social clauses.

It is understood that Government departments purchase goods and services to enable them to achieve their aims and objectives. But what if, as well as meeting their prime objective, what is sought could also help to achieve other Government objectives, either for the same department or for another department or all departments. This is the essence of intelligent procurement ie tenders should look for the widest possible community/social benefits to be taken into

consideration, if it can clearly be shown that the benefit assists Government to meet one or more of its aims, even if that aim is not the primary subject of the contract in question. For example, when we commit to infrastructural spend we think of roads, schools, hospitals, sewage works etc. More recently there has been talk about a 'Green New Deal' for NI, such a programme would, if procured by DETI or DSD, address the energy efficiency improvement of homes, embed generation within those homes, fit smarter metering in homes, fit energy/water saving devices to homes. Such a programme would also create substantial local employment, sourcing potential employees from people who are currently on the unemployed register, contracting installations through small local firms, given the nature of the work, reduce carbon emissions, enhance our security of supply and diminishing our dependence on fossil fuels and contribute to eradicating fuel poverty – that's the challenge that needs to be addressed, developing a modern intelligent public procurement process, which seeks to maximise the socio-economic benefits for NI.

My final point, before I hand over to my colleague Brian McGinn, is concerned with procurement being an important tool for stimulating the NI economy. We mentioned in our written submission the suggestion that the review of public administration (RPA) is designed to deliver leaner Government and that we believe that RPA must put in place a presumption on Government departments, but in particular on local Councils, to outsource for service development and service provision, using its purchasing power to provide opportunity for all sectors of the economy, but in particular social enterprise. We are concerned that in the new social economy enterprise strategy, currently in consultation, suggests a substantive role for Councils in the development of social enterprise. Our experience suggests that Councils are gearing up to enlarge their staffing complement to provide support for the development of social enterprise, more staff, more advice and more business plan producers. This misses the point! We are not convinced that the Councils have the skills or expertise to develop social enterprise, but what they do have is spending power and it is our view that the thrust of the draft strategy should focus on the procurement role and procurement skills within local authorities to enable them to use their spend to create opportunity, which not only would advantage social enterprise but indeed Private Sector enterprise and as such hold closer to the intention of RPA: leaner Government looking towards the added value it gets from its spend as a commissioner of services, rather than a deliverer of services.

In recent years Bryson has been quite successful in winning high value contracts through the Government procurement process, for example, DEL prime contractor award; the Warm Homes Programme management award and a significant number of recycling contracts with individual Councils and Council waste management consortia. While we have been successful, it hasn't been easy and I am going to ask Brian to take you through some of the key issues we believe we should draw to your attention which result from our engagement in these processes.

Brian McGinn

Bryson has purposefully sought to increase its contractual income to allow us to gain independence, build reserve balance sheet strength, provide for reinvestment in the Charity and allow for long term planning. To this extent we now have 89% of our total income as contractual with the remaining 11% coming from grants and donations. 10 years ago only 40% was received from contracts. We now have contract periods of 1 to 8 years. Our longer term contracts are secured through our training company, North City Training – £2M pa and Bryson Recycling £5.6M + £3.6M in shared sales, unfortunately Health Trusts (@ £2.7M) continue to offer contracts of only 1 year duration, although we believe and hope this will soon change. In the coming year we expect our contractual income to rise to 95% as we have been successful in winning the Warm Homes tender procured by DSD/NIHE (a 5 year, £10M pa contract).

All these contracts are with some form of Government – Councils, Health Trusts or Government Departments. Many have been secured through European Journal Tender and we have no fear of this process. We believe we can work closely in partnership with Government bodies while maintaining the contractor relationship.

It is this relationship to which John has previously referred and the best example of this working in practice is with the 'Materials Recycling Facility' contract with arc21. The original tender asked for price for treatment of mixed waste only with tonnage from 13M to 50M tonnes per annum, for a period of 8 and 15 years. Bryson offered the compliant cost bid for each term, plus 4 other options and also a 20 year model. Our variant options introduced 'source separated' waste collections into the bid plus the option to share risk and profit on the material sales price. The successful bid accepted was for 8 years plus a potential 7 year extension with material sales price share. This allows the value of material sales to be split 50:50 between Bryson and arc21, together with Bryson's ability to provide high quality output materials and secure long term price deals, both Bryson and arc21 have profited immensely. We continue to work in partnership with arc21 and recently allowed the contact to expand to include source separated materials, while also reducing fines to Councils for delivery of contaminated stock. We have similar material sales price share deals in place with Councils independently for collection of materials.

It is worth noting that while grants have an important role to play, survival on grants does not allow profits and therefore growth of reserves with associated balance sheet strength. While Bryson has been able to grow, with turnover to soon reach £30M+ and reserves of £7M, others may not be in the same position and may be precluded from bidding for tenders due to size and lack of balance sheet strength.

It is important that Government recognize the contribution that can be made by Social Enterprises such as Bryson and the added values that can brought to local Society.

Social Economy Network - Special Contracts Arrangements

22nd October 2009

Dear Shane,

Re: Public Procurement Inquiry: Evidence Session

I wish to thank the Committee for Finance and Personnel for the opportunity to present oral evidence into the inquiry on public procurement.

Special Contracts Arrangements (SCA) only applies to supported factories/businesses - defined as a company where more than 50% of the workers have a disability. Ulster Supported Employment Ltd is the only company that holds this status in Northern Ireland and they are registered on the UK list of Social Firms. Public contracts can be reserved under SCA for supported firms. Contracts cannot be reserved for a specific organisation but are open to supported firms from anywhere in the EU.

Where supported firms have tendered for general contracts and are equal to the successful tender in everything but price, the SCA allows the public body to return the tender to the supported firm for a revision of costs – "offer back system". They are given no information about the costs of the competing company.

I have attached some background information on the Special Contracts Arrangements and also a copy of a letter, issued by Jobcentre Plus (the company with responsibility for registering supported firms) to registered supported firms for their use with public bodies and Government buyers. USEL has issued this letter with tender submissions. There is little or no knowledge or understanding about the SCA as on one occasion the letter was returned with a note stating that it had been sent in error and on other occasions Government bodies stated that they did not take part in the scheme.

I trust that this information provides the clarification needed.

Yours Sincerely,



Special Contracts Arrangements

Background

The " Special Contracts Arrangements" (SCA) was introduced in November 1994 to replace the Priority Suppliers Scheme (PSS). The SCA was developed to assist eligible employers of severely disabled people in the European Economic Area (EEA) to compete for contracts from UK Government departments and agencies. The scheme is managed by Jobcentre Plus, Disability Support Division.

For a company to apply to join the register they must be a non-profit distributing company that has at least 50% of the workforce registered as severely disabled.

The company's disabled employees must make a genuine contribution to the business; they should not be there simply for therapeutic activities.

Disabled staff must be paid the equivalent wage as a non-disabled colleague.

The SCA involves guidance to Government buyers to give special consideration to buying products and services from registered suppliers. The scheme also involves a system known as "offer back" under which a registered supplier whose tender is unacceptable on price alone (i.e. quality, volume and delivery are acceptable) should be given an opportunity to submit a revised tender for part or all of a contract.

If on such "offer back" the registered supplier is able to match the best offer, its revised tender should be accepted.

The Scheme relates only to contracts that are not suitable to EC/WTO (World Trade Organisation) rules. The threshold for EC/WTO is £104,435 or £160,670 for some supplies bought by the Ministry of Defence. If a contract is subject to those EC/WTO rules, the SCA does not apply, even if a registrant under the arrangements competes for and wins the contract.

There are approximately 139 organisations registered under SCA

Next Steps

If you are interested in joining the SCA register you must make sure your company satisfies the eligibility criteria below:

- It is established within the European Economic Area (which includes the EC);
- It is required by its constitution to apply its profits or income in promoting its objects and prohibited from paying a dividend to members, shareholders or equivalent proprietor.

Job Centre Plus

We are registered under the Special Contracts Arrangements (SCA) scheme, which assists eligible employers of severely disabled people to compete for business from central and local UK Government buyers.

As a Government buyer, you can:

- Award contracts to a Special Contracts Arrangements registered supplier if their tender is no higher than any other tender
- Give an SCA supplier the opportunity to submit a revised offer (an "offer back") if all factors except their tender price are acceptable, and
- Accept the revised SCA supplier's tender if they can then match the previous best offer.

Special Contracts Arrangements apply to ALL Government buyers, including NHS Trust and Local Authority buyers. They only apply to contracts below the relevant EC/GATT thresholds.

USE OF SPECIAL CONTRACTS ARRANGEMENTS IS CONSISTENT WITH CURRENT PUBLIC PROCUREMENT GUIDELINES AND EC LAW.

If you use Special Contracts Arrangements, you should contact Jobcentre Plus to register your Department/Agency details. More information on Special Contracts Arrangements is available from:

Jobcentre Plus
Level 3, Rockingham House
West Street
Sheffield
S1 4ER
Telephone 0114 259 6394

Correspondence from Committee for the Environment

Committee for the Environment
Room 245
Parliament Buildings

Tel: +44 (0)28 9052 1347
Fax: +44 (0)28 9052 1795
Fax: +44 (0)28 9052 1083

To: Shane McAteer
Clerk to the Finance and Personnel Committee

From: Alex McGarel
Clerk to the Committee for the Environment

Date: 26 October 2009

Subject: Procurement methods used by the Department of the Environment's Local Government Division to appoint consultants or agencies

1. At its meeting on 15 October the Environment Committee considered a Departmental reply on procurement methods used by its Local Government Division to appoint consultants or agencies.
2. Members were concerned that while the information provided by the Department gave them a factual account of the procedures that are undertaken, it failed to indicate how the more subjective decisions of the process are taken. For example, the parameters on which a judgement is made by the Department following the receipt of quotations or tenders.
3. The Committee is concerned that there is a perception that the same large firms are selected on a regular basis while newer/smaller firms appear to be less successful when tendering and the Committee has asked the Department for reasons why this might be the case.
4. The Committee was advised that the Finance and Personnel Committee is in the process of a review into procurement across government. It asked me to forward members' concerns on this issue to you and to ask that you keep the Environment Committee informed of the progress of the inquiry.

Alex McGarel
Clerk
Committee for the Environment

Information on Gauge Social Return on Investment Tool

NOW are a company limited by guarantee with charitable status set up in 2001 to provide quality training and employment services for people with learning difficulties in North and West Belfast . We support over 200 individuals per year who are often disadvantaged get the job they want and keep it. NOW also operate a successful social enterprise business called Loaf Catering which consists of three Cafes and an outside catering delivery service for the Great Belfast area. We are an award winning organisations with a very clear mission and we can see that our work really does make an impact on the lives of local people and their families.

NOW have been involved with the model of Social Return on Investment since 2005 and have found it an extremely useful tool to measure the difference our work makes to people's lives whilst also helping us hone and develop our business practices. With initial support through DSD Modernization Fund we have invested in embedding the model within the organisation and now annually measure and report on the impact our work has on our stakeholders, especially local people with learning difficulties and their carers.

Over the past 2 year we have been watching the development of the model in England and Scotland with great interest and have been amazed at the buy in from Government there. The

SROI Network has done excellent work to raise awareness of the model and has worked with the Cabinet Office and Commissioners to understand the value of SROI as a tool for measuring the added value of engaging/contracting with our sector in service delivery. In a Northern Ireland context it has been somewhat more difficult to see any uptake from local Government in relation to the SROI Model and recent discussions with key stakeholders has highlighted a nervousness and lack of clarity around the subject of social outcomes especially in relation to procurement or Government contracting. We are keen to push this debate forward and encourage further discussion as to how social enterprises and SME's can use models such as SROI to demonstrate how their businesses can deliver a professional, cost effective service within contracts whilst having a positive impact on the lives of local people in need.

In 2008 NOW decided to develop Gauge a social enterprise business designed to help organisations understand, measure and communicate their value. We believe passionately that as the economic and political climate in NI is changing there is an urgent need for the SME and SEE sector to regroup and develop new skills which mean that we are very clear about how the work we do changes lives. It is essential that we are able to demonstrate to commissioners how our work delivers a high impact whilst also being good value for money.

Gauge can provide two very valuable services:

- Develop the capacity of the sector to understand, measure and communicate their value
- Engage and educate local commissioners and procurers to increase opportunities to contract with the SEE sector whilst also being able to measure and report on social outcomes.

Our business launched in September 2009 and we are currently promoting our service to the public, private and third sectors. More information about NOW and our social enterprises can be found at:

Gauge - www.gaugeni.co.uk

NOW – www.nowproject.co.uk

Loaf Catering – www.loafcatering.com

Our Impact

Programme Outputs 2008 - 09

Programme participants		External referrals	
Employment service	83	Referred to Government schemes	15
Transition programme	16	Referred to further education	5
Catering programme	23	Total external referrals	20
Skills programme	61	Catering training outputs	
Total	183	Essential food hygiene certificate	18
Employment outputs:		Barista certificate	6
Entering paid employment	11	NVQ level 1 (full qualification)	15
Entering voluntary work	19	NVQ1 (unit accreditation)	24
Entering work experience	84	Total catering outputs	63
Completing profiling/jobsearch	107	Skills training outputs	
Entering vocational training - Catering	47	Foundation to Employment - OCN	34
Entering classroom training	24	Money management - OCN	12
Total	292	Independent Travel Training - OCN (full)	4
		Independent Travel Training (units)	15
		Total skills outputs	65

Value of selected SR01 indicators for work carried out by NOW in 2008 - 2009

	Total for all yrs 1	Total all after 5 yrs
Added value for people with learning difficulties		
More money in participants pockets due to being in work:	£17,425.03	£153,968.79
Cost savings to local government / exchequer		
Reduction in social security benefits claimed	£5,959.31	-£55,616.76
Tax paid back to the exchequer	£1,144.00	£5,953.42
Day care savings due to our transition service	£44,739.84	£232,827.92
Day care savings due to participants being in paid work	£48,639.94	£253,124.18
Day care savings due to our training and employment service	£216,010.27	£1,124,126.13
Reductions in supported / Ind. living costs	£36,392.00	£189,385.43
Savings in trust transport due to travel training	£5,615.00	£29,220.69
Reduced cost for social work services	£290,713.60	£1,512,885.25
Employers		
Annual savings in recruitment/training costs	£65,772.00	£76,484
Annual increase in business & positive PR	£15,061	£171,140

Our SR01 results for 2008 - 09

Cost of intervention: £201,405 Total added value: £2,861,843.67 SR01 ratio: 1 : 13.46

The SR01 ratio is 1:13.46. This means that for each pound invested in NOW over 12 months, the project will return an amount of £13.46 over the next five years.

These results show a dramatic increase from last year (07-08) and are due to ongoing work we are carrying out to streamline our processes within SR01. As part of the work for this report we have consulted with all our key stakeholders using a range of different tools and have strived where possible to gain a financial value for all aspects of work we do.



NOW SROI REPORT 2007-2008

Participants on each Programme as of 31st March 2008

Employment Service	67
Transition Programme	23
Catering Programme	31
Essential Skills Programme	77
Total	230

Employment outcomes

Entering Employment	16
Entering Voluntary Work through NOW	14
Entering Work Experience	30
Entering Transition	26
Total	125

External Referrals

Referred to Government Schemes	15
Referred to Further Education	8
Early leavers	1
Total External Referrals	24

Catering Training Outcomes

Essential Food Hygiene certificate	17
Barista certificate	8
NVQ level 1 (full qualification)	10
NVQ1 (unit accreditation)	21
Total Catering Outcomes	63

Skills Training Outcomes

Foundation to Employment - DCN	12
Money Management - DCN	22
Independent Travel Training - DCN (full)	7
Independent Travel Training (units)	10
Total skills Outcomes	51

Measuring Our Impact in 2008

In this report we are keen to showcase all the work we do and the successes we have had in helping people with learning disabilities get the job they want and keep it. On a daily basis we witness the hard work and effort of our trainees and marvel at their achievements. In 2007/08 NOW supported the following achievements: (see table to left).

We have improved the lives of people with learning disabilities, and trainees who have come through our

programme and moved into paid employment have said that they are financially and socially better off.

We believe that our work on SROI is instrumental in helping us to assess the impact our services have on our key stakeholders and the local community. In 2008/09 our Board will continue to refine our work using this model. We will also continue to lobby local decision-makers to raise awareness of the model and demonstrate the true financial value of the work we do.

Here at NOW we know we are good at what we do, but we also realise that it is important for us to measure our impact on people with learning disabilities, the local community and our other stakeholders.

Our SROI results for 2007/08

Cost of intervention: £253,386

Total added value: £1,345,627.20.

SROI ratio: 1.37

The SROI ratio is 1.37. This means that for each pound invested in NOW over 12 months, the project will return an amount of £3.70 over the next five years.

Value of selected SROI indicators at the NOW Project (for 2006/07)

Added value of earnings from paid employment for participants	140,703
Cost savings to Day Care due to spaces no longer needed	603,124
Value created by young people accessing transition services rather than going directly to Day Care	36,061
Value of people not using supported accommodation	49,076
Value created for individuals by trusting them to travel independently	63,117
Value created for employers as a result of work with NOW	55,673



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Tel.Nos:-(02890) 370327
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Mr David McNarry
UUP

8th May 2009

Dear Mr McNarry

To provide the NICS with the best possible procurement outcomes, in terms of providing the end user with the right software systems that meets their needs and at the same time providing value for money, I believe that the methods used to procure IT Software Systems for the NICS should be re-assessed and modified.

It has been my experience that each time procurements takes place, a selection or procurement board/committee is generally set up and established. This is usually made up of individuals, trained to be administrators, who often have little or no knowledge of IT in general nor of the range of software system types available, their functionality, their applied use or where these systems can be found.

The procurement body then has to determine the needs of users within very large departments, or even across the whole of the civil service, and match these needs to relevant systems and the appropriate suppliers. Once more, it has been my experience that few, if any, members of these bodies appear to have the skills to do this job effectively.

I know of three procurements that are currently underway where this is the case. By co-incidence, each of these organisations is considering similar systems, as their work environments are similar, yet they are not in contact with each other. I have been involved with other procurements where similar circumstances have been the norm rather than the exception.

Each procurement project appears to be managed on a one-off basis, and in isolation, by each, individual procurement body and there is generally no one within the NICS that this body can turn to for advice or support in relation to procurement of software. In addition, when the project is completed, the Procurement Body is disbanded and all the experience that the procurement body has built up is lost. It has been my experience that this is always the case.

The problem appears to be that there is no body that can advise potential Software Users, before the setting up of the procurement body, as to –

- (a) the range of systems available
- (b) the functionality and applied use of these systems
- (c) the range of systems that potential users might wish to consider
- (d) how various systems compare to each other
- (e) how these systems might be used to improve the relevant administrative and management processes within the NICS
- (f) how they might be linked to other systems to provide enhanced functionality.

Often Consultants are brought in at a very high cost to fill this void. There is no logical reason why the NICS cannot effectively undertake this work themselves at a reasonable cost.

Whether or not the software procured meets user's needs often seems to be a bit or miss affair and there appears to be no formal, robust, methodology in place to assess the success of each procurement in relation to objectives set and to determine if the procurement value for money.

For instance, in relation to current projects,

- (a) With regard to the role out of a Document Management System, it appears that the selected system/s may have difficulties handling embedded documents such as Excel Spreadsheets, CAD/CAM Files, Photographs, etc. In addition, the users I have spoken to appear to find it difficult to use and don't see its relevance.
- (b) With regard to the Role Out of an HR/Payroll System, I have been given to understand that this system might not handle Flexi Time Management; something that I would think would be a mandatory requirement within any Civil Service System. I have a contact within the organisation installing the system and their attitude was that it met the client specification.
- (c) The role out of the NI Accounts System, based on Oracle, has Cognos stated as the Reporting Tool within the contract. This is not a disaster, by any means, but the market has moved on and Oracle now has its own suite of Business Intelligence/Reporting Systems, as does Microsoft, which is already found within nearly every government department. These products should also have been considered, particularly Microsoft as it is low cost, has already been purchased and has a wide range of functionality in terms of Business Intelligence/Reporting, etc.

We all know that very few IT Software Projects are perfect and that most of the above projects are, by and large, doing what was expected of them.

The question that must be asked, however, is 'Are these systems working to their full potential and could they be improved?'. Could, for instance,

- Time Management Systems be used to front end the Payroll/ HR Systems to provide Flexi Time Management plus other useful functions.
- Could other front end software be added to the document management software to make this system easier to be used by and be relevant to the end users?
- Could the NICS move toward considering how Business Intelligence might be considered as a concept in its own rather than as a series of reporting tools against a single system i.e. Cognos against Oracle Accounts.

An additional question should be also be asked as to what systems, currently available, are not being considered for use within the NICS, systems which might improve the efficiency of the NICS.

Potential users, who are keen to use software systems to improve the administrative and management processes within their organisation, have to decide often with little support and less experience what they might computerise and then have to find the appropriate systems themselves.

In addition, POTENTIAL SUPPLIERS have no-one that they may contact to have their systems evaluated and assessed for potential applied use within the NI Civil Service.

From my own position, I have a number of systems that I would like to have assessed and considered for use within the NICS but have found the lack of this facility to be a major problem. A few of these systems are already being used, in a small way, within the NICS.

To conclude, there appears to be a need for a methodology to be put in place to advise potential users as to:-

- what can be computerised
- what system types are available
- what is the functionality of the various systems
- how they compare to each other

- what benefits might accrue to the user through use of various software systems
- how these systems could be used to improve administrative and general management processes
- how various systems might be linked to provide enhanced system functionality
- where such systems might be obtained,
- how they can be procured, installed and managed
- how procurements might be assessed and evaluated in relation to the objectives set out in the procurement criteria after the systems are up and running
- which systems offer value for money

I feel any facility that is established to provide this support should only be an advisory and support body and that the final decisions as to which system/s will be procured should always remain with the organisation/department/body that makes the procurement and which will be using the software.

I trust that you will find this letter and other information included with this letter to be of interest. Thank you for taking time to speak to me.

Yours Sincerely

George Simpson
BSc Hon, DBA, MCIM
Tel Nos – 028 90 370327



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Sourcing
of
IT Systems
&
Associated Services

System Sourcing

SCM assists organisations to source and find software systems best suited to their needs and, through this activity, help clients develop a strategy for computerisation.

Projects have been undertaken and completed for organisations, large and small, which operated within a wide range of business sectors, with the systems sourced ranging in cost from a few thousand pounds up to over £1 million.

A project would be taken through a number of stages that cover: -

- Assessment of Existing Systems and Proposed Improvements •
 - Preparation of Requirement Overview •
 - Research the Market for Appropriate Systems •
 - Evaluate Research Findings •
 - Initial System Selection and Viewing •
 - Final System Short listing and Viewing •
 - Selection of System for Purchase and Installation •
 - Management of Implementation Process •

An organisation need only undertake those stages appropriate to their needs, with the service provided being tailored to their own specific requirement.

Benefits derived from use of this Sourcing Service are: -

- (a) Having direct access to specialist help and assistance in your search for systems that will meet the needs of your organisation.
- (b) Obtaining data on potential suppliers, with associated System information, which is relevant to your requirements.
- (c) Not having to liaise with potential suppliers until you wish to do so.
- (d) Avoiding the hassle and distractions associated with organising presentations and demonstrations.
- (e) The time saved in not having to source the software yourself, thus freeing you to make effective and pertinent use of your time with other, more pressing issues.
- (f) An appropriate solution found quickly and at a relatively low cost

Corporate Marketing, Management Practice, Business Management & IT Strategy Planning

Computerised Systems now address almost every aspect of the business administration process. They can provide the base systems for business planning, management and control within the core concepts of Corporate Marketing, Business Administrative Processes & Practices and Business Planning & Control.

IT systems provide, through their functionality, a complete and panoramic view of the business environment that might cover:-

The Internal Administrative Processes – Financials, Sales, Purchasing, Stock Management, Distribution, Warehousing, Manufacturing, Payroll, Personnel, Time Management, Asset & Property Management, Resource Management, etc plus

The External Market Related Operations – Market Size & Structure, Client Base, Sales Activity & Management, Project Management, Quotations, Client Management, Customer Care, Help Desk, Web Promotion and so forth.

along with

The information management needs of the organisation through the use of appropriate Business Intelligence Systems.

Application Software falls into two broad product groupings, namely Vertical Market Systems for use within specific market/work environments and Generic Systems, that any company might use, which would sit around the core system.

Vertical Market Systems might cover: -

Clothing	Textiles	Classical Manufacture
Process Manufacture	Construction Supply	Construction
Retail/EPOS	Supply Chain Logistics	Distribution
Service Management	Resource Management	Call Centres
Hospitality	Catalogue/Web Selling	Maintenance Management

Generic Systems, for instance, could include: -

Information Management	Helpdesk	CRM/Marketing
Payroll	Plant Maintenance	Time & Attendance
Financials/Ledgers	Document Management	GPRS Integration
Facilities Management	Project Management	Human Resources
Business Intelligence	Business Improvement	Quality Management

The IT Toolset selected must, as previously stated, be an integral part of an organisation's Corporate Marketing, Management Practice and Business Management Strategy/Plan and meet the needs of this.

Consequently:-

- **Systems must cover all the functional areas of all or a selected part of an Organisations administrative and business processes.**
- **They must also provide the control mechanisms for management.**
- **These systems, in addition, must provide comprehensive and accurate information reporting for effective decision making.**
- **All this must be provided with relevance to and within the context of a particular market sector work environment and for each of the functional needs of the organisation operating within that sector.**

Would-be and actual IT System Users often have an incomplete knowledge of the range of systems available for use within various work environments and market sectors. Their understanding as to where these functional systems fit within the overall Corporate Marketing, Management Practice and Business Management Strategy may also be limited.

SCM fills this void through providing a range of support services within the context of developing IT Solutions that are part of an integrated, coherent Corporate Marketing, Management Practice and Business Management Strategy and Plan.

These services encompass:-

Consultancy Services to aid clients develop their Corporate Marketing, Management Practice and Business Management Strategy and Plans should this be required.

Clients being assisted, as part of a programme to develop their computer strategy, to source software systems that are best suited to their needs, their work environment, their pockets and their market place.

Assessment of software for clients, providing an opinion as to its fitness for use within their organisation with existing systems being compared to other similar systems in terms of cost, functionality and so forth.

SCM also market a number of Software Systems into the Northern Ireland Market on behalf of selected system suppliers. These can be used as standards against which other systems can be compared and assessed.

Systems sourced have ranged in price from a few thousand pounds up to £1 Million and have been found for organisations, large and small, operating within a wide range of business sectors, both within the Public and Private Sectors. A wide range of Corporate Marketing related projects have also been undertaken and completed for numerous clients.

SCM provide a range of services that are unique, which enable clients to source, acquire and develop practical solutions for their IT needs. These will be solutions that meet both the requirements of each function within the organisation plus the requirements of the market place. They will be an integral part of the organisations Corporate Marketing, Management Practice and Business Management Strategy.



BT3 Business Centre
Dargan Crescent,
Belfast. BT3 9JP
Tel.Nos:-(02890) 370327
Fax.Nos:-(02890) 776906

Directory

that

Lists and Describes

various

Software Systems Types

available for potential use within

an

Organisation

**Contact – George Simpson
Tel Nos- 02890 370327**

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Other Systems

Business Intelligence

Consultancies dedicated to providing clients with Information Management Solutions that improve their client's business performance. Their objective is to assist forward thinking organisations achieve management advantage by integrating and unlocking the information held within their various IT Databases and other data sources.

They have the experience of having successfully developed Business Intelligence Solutions across a wide spectrum of work environment, they are skilled in the use of a broad range of products, they can provide relatively low cost solutions and they have an extremely good reputation.

They have undertaken and completed many projects within the financial sector and have very close working relationships with Oracle, Hyperion, Business Objects and Microsoft BI Systems.

Surveys & Research

A complete survey solution that enables anyone to carry out professional surveys. This software covers questionnaire creation and design, distribution of questionnaires in printed or electronic form, the entering and processing of the responses and the analysis and presentation of the results.

Helpdesk

A sophisticated application that enables your helpdesk to provide support desk services to both internal (IT, Facilities, Etc) users and external customers. This system manages Helpdesk Processes within an organisation with Call Logging, Call Allocation, Call Escalation, Knowledge Base, CRM and other related functionality.

CRM, Marketing, Contact Management, Client Care, Virtual Office

These systems cover Database Management, Contact Activity Management, Virtual Office Administration, Project Management, Process Management, Campaigning, List Management, Help Desk, Case Management, Client Management, Sales Person Management and so forth.

RESOURCE MANAGEMENT

A system that has been traditionally used within the Public Sector for the management of Resources (People, Time, Assets, Expenditure, etc.) against Project/Jobs.

The Professional Resource Management Systems has been designed to satisfy the needs of service providers, working with their clients, by providing a powerful and flexible suite of management tools to assist in the management and control of resource and service costing, client charging and business planning.

Functionality covers Cost Modelling, Resource & Overhead Analysis, Service Costing, Time Recording, Service Charging and Invoice Production, Service Monitoring (Costs, Charges, Viability & Events), Business Unit Trading/Cross Charging, Trading Accounts, Service and Resource Planning, Service Budgeting & Estimating.

Facilities, Estates and Plant Management

Various systems, the functionality of which can cover a wide range of application that can include Property Register, Asset Management, Call Logging, Response Maintenance, Planned Maintenance, Work Allocation and Management, Job Costing, Tenders Management, Approved List Management, Human Resource Management with Work Scheduling, Project Control, Contracts and Contractor Management, Stores Management and so forth.

Payroll and Human Resource Management Software

This Software combines Payroll (Both UK and ROI) with Human Resource Management Software that covers Personnel Records Administration, Establishment Management (Posts, Jobs, Vacancies, Budget Modelling, etc), Recruitment, Staff Appraisal & Development, Disciplinary & Grievance Management, Training, Health & Safety Reporting and Absence Reporting. This system also includes Time & Attendance Management, Web Based Self Service and Equality Commission Reporting required specifically for N Ireland.

This software is designed to be used within organisations employing 150 to 5000 Personnel.

Expense Management

These systems cover Expense Capture, Submission & Reclaim, Re-imbursment, Allocation to Jobs, Projects & Work, Expense Policies, Credit and Fuel Cards, Mileage Management, Group Expenses, Approval & Escalation Flow, Electronic Payments, Automatic VAT Management, Nominal Ledger Integration, Mobile Purchasing and so forth.

Document & File Management Systems

Various established suppliers of Document Management Software. They supply a range of systems, aimed at the small to medium sized organisations that cover all aspects of document management and related systems. More advanced systems would also cover Content Management, Workflow and Process management, Document Change Control and Workgroup Management, Project Management and so forth.

Management of Physical Files & Documents

A unique range of systems designed to provide high density storage for the management of physical Document Files and Folders, integrating the Physical Storage Systems (Filing Cabinets, etc) with IT Software Systems designed to manage the issuing, tracking and management of the individual files stored within the system.

This organisation also specialises in the bulk scanning of Documents into Document Management Systems and the preparation of Documents for long term Archive Storage.

Time Management

Time and Attendance software covers three main areas, namely Access Control, Payrule Implementation and Job Costing.

A standalone Time & Attendance System with additional Human Resource Management Functionality. T&A Systems can interface into practically any Payroll or ERP

System. The functionality of these systems can address Check In/Out Control, Access Control, Standard Time Database, Recording of Attended Hours, Staff Rostering,

Shift Management, Holiday Planning & Reporting, Absence Recording & Reporting, Performance Reporting, Piece Work Recording, Bonus Payment Calculations, Build Up to Gross Pay Calculation, EU Working Time Directive Monitoring, Shop Floor Data Capture, Machine Monitoring, Employee Tracking (Job to Job, etc.), Job Costing/Project Costing, Work Booking

Work & Resource Management

This type of system allows you to define your personnel skill base in terms of type and availability of skill by each individual. You may also define the Projects that must be undertaken and completed by phase and timescale.

This Software also facilitates the definition and booking of tasks within the project and project phase, with critical start and end dates, that must be completed by individuals, or groups of individuals who are selected for a specific task from the personnel database subject to their availability, workload, skill and so forth.

The selected personnel will be expected to complete these tasks within a defined workload schedule. This is monitored by the recording by individuals or workgroups through timesheet recording of their work completed by project, phase, task, Cost and skill.

Accounting, Distribution, Manufacturing Software & Construction Systems

Accounting/Distribution These self-contained solutions can include the financial Ledgers, CRM, Quotations, Sales Order Processing, Stock Management, Purchase Order Processing, Bill of Materials, Material Requirement Planning and Works Order Processing. They may also include Payroll and Business Intelligence. Because they are usually modular, you do not need to overspend now in order to gain flexibility for the future. You can start small and then add additional users and functionality at a pace that suits your business and your budget.

Process Manufacture – Food, Pharmaceuticals, Chemicals, Foundries, etc.

Tropos – A high level ERP System designed specifically for Process Manufacturing. Tropos is particularly suited to the needs of the Food, Pharmaceutical, Chemical, Foundry and Milling Industries. Within these work environments, in terms of functionality, Tropos would compete with products such as SAP but Tropos would be a more competitive product in terms of cost.

General Manufacturing & Distribution Systems

Various Manufacturing Systems based on the Classic BOM/MRP Methodology. Their functionality can cover Finance Ledgers, CRM, Quotations, Sales Order Processing, Stock Management, Purchase Order Processing, Job Costing, Bill of Materials, Material Requirement Planning, Capacity Planning, Routing, Scheduling together with other related functionality required within the manufacturing work environment.

Systems are available from Sage 50 Add-Ons costing a few thousand pounds upward.

Construction Software

These systems can cover preparation of Bills of Quantity, Estimating, Accounts, Contract Budgeting & Costing, Payroll Management, Sub-Contractors Management, Purchase Management, Asset & Fleet Management, Plant Hire and Management, Document Management, Workflow/Process/Project Management and so forth.

Other Software

Quality Management/Process Mapping/Document Management
Enterprise Application Integration
Enterprise Information Integration
Virtual Warehousing
Strategy Mapping/Scorecard/KPI Metrics Management/Dashboard Reporting
Infrastructure Management/Disaster Recovery/Continuity Planning/VM Ware
Distribution/Supply Chain Logistics/Warehousing
Fleet Management
Route Accounting/Van Sales
E-Procurement
Business Improvement
Programme, Project & Resource Management
Business Process Management
Business Activity Monitoring
Workflow
Collaboration
Document Management
Issue & Risk Management
Maintenance & Service Management
Charity Management Systems
Web Design & E-Business

Plus Many More

Correspondence from Stakeholder

Stakeholder

The Newsroom
FORNZA COURT
BELFAST BT1 6DT
T: +44 (0) 28 9033 9840
E: info@stakeholdergroup.com
www.stakeholdergroup.com
www.stakeholdermedia.com

Dawn Purvis MLA
Parliament Buildings, Stormont
Belfast
BT4 3XX

17th November 2009

Re: Advertising Policy Undermining Viability of Local Press

Dear Dawn,

I am contacting you on behalf of some of the leading media groups operating in Northern Ireland who are deeply concerned that the Executive's current advertising campaign procurement policy is undermining the economic viability of the region's daily and weekly press.

Local papers are an invaluable part of community life, supporting all aspects of society from sport through to the arts and local charities. In turn, the commercial viability of these titles is, to a significant degree, dependent on advertising revenue generated from Central Government.

While the Executive is duty bound to maximise value for money, the current approach focuses on price to the exclusion of targeting and effectiveness. It will lead to sections of society being denied the opportunity to see Government campaigns and is, therefore, undemocratic. To insist on uneconomic rates, below what any other customer receives, is threatening the viability of the entire sector. Indeed, some in the local industry are of the opinion that such a strategy is tantamount to an abuse of a monopoly position.

The Scottish Affairs Committee recently published a report on the effect of the Scottish Government's policy to divert advertising revenue from print media to online platforms. The report (attached) concluded that it was vital that Central Government didn't render the Scottish newspaper industry "unviable through overbearing competition from public sector advertising".

Northern Ireland has the opportunity to learn from Scotland's unhappy experience and the industry is currently collating an independent report to quantify the contribution of the local press to the local economy. The report will be presented to Ministers/MLAs in due course, but if you have any queries, please don't hesitate to contact me at the above address. Experience suggests that once local titles are lost they are rarely replaced. Such an outcome would be a great disservice to our local communities.

Yours sincerely



Tom Kelly

Registered in Northern Ireland
No. 817666
Registered Office
The Newsroom,
FORNZA COURT, BELFAST BT1 6DT
Company Secretary: James McKeown
Tom Kelly, General and Executive
Member of the Board, Managing Director
Richard McKeown, Managing Director
Jeffrey Carter, Director
Angela Smith, Director

Crisis in the Scottish Press Industry: Government Response to the Scottish Affairs Committee's Fourth Report

Government

response

Decline in Advertising

1. Whilst it is understandable that local authorities will want to reduce costs in the current economic climate, there are concerns that advertising jobs on public sector portals only was likely to limit the field of applicants to those already in the public sector rather than the wider audience of traditional print media. (Paragraph 9)

While this recommendation is mainly addressed to local authorities, the Government takes the view that there should not be a policy of publishing notifications only online. Part of the duty when placing notices, such as job advertisements, is that they are effective in reaching their target population.

The Government recognises that online can be a good and effective means for accessing information, but individual bodies are also expected to place notifications, such as job advertisements, by other appropriate means, if necessary.

2. We are concerned at suggestions of a move to publish public notices on public sector portals whilst broadband take-up remains relatively low in some areas of Scotland. We would ask the Convention of Scottish Local Authorities and the Scottish Executive to produce evidence that substantial parts of the population would not be excluded before removing public notices entirely from print media. (Paragraph 10)

As above, the Government's view is that there should not be a policy of publishing public notices only online. While notifying bodies have a duty to be efficient, they must also use appropriate means to reach their target audience, and should not adopt a policy of publishing online simply to save money.

The Communications Market Report, published by Ofcom, on 6 August 2009 noted that the proportion of households in Scotland with a broadband connection increased from 53% in Q1 2008 to 60% in Q1 2009, compared with 68% across the UK as a whole. It should be noted that while broadband is, in general terms, a great benefit for its

users and the economy, it is not strictly required to access online-published notifications, or job advertisements.

Wellbeing of newspaper staff

3. We are concerned at the reported levels of stress in the current press industry and we welcome the Johnston Press's commitment to act upon the results of the health and safety audit made by the National Union of Journalists. We would urge the National Union of Journalists to share the results of the audit with the management of all Scottish newspaper groups as soon as possible to enable those groups to respond with an action plan to tackle the problems highlighted by the audit. (Paragraph 14).

This recommendation is a matter for the press industry.

Effect of the current situation on the industry

4. We note the concerns that have been raised that the restructuring of the industry may have put at risk the Scottish press industry's ability to deliver the high level of quality of journalism that the public has grown to expect and that is necessary to properly scrutinise local and regional affairs. (Paragraph 26).

This is ultimately a matter for the press industry, however your Report does reference the final reports of Digital Britain and the Review of local and regional media merger regime.

In respect of the regional and local online and offline press, the Interim Digital Britain Report invited the OFT, in conjunction with Ofcom to review the operation of the newspaper media mergers regime.

During that Review, there were representations from industry and others that regional and local newspapers are in crisis. Structural changes brought about by the advent of the Internet, coming together with the economic challenges of the current international climate, have created very significant changes in the markets in which local and regional titles have operated.

The OFT's conclusions, published in parallel with the Final Digital Britain report, acknowledge the very significant structural and cyclical changes facing local and regional media. The OFT set out a number of clarifications to the operation of the regime which should be helpful to the sector and propose to amend its guidance to ensure a

new Local Media Assessment, conducted by Ofcom, takes place in cases relating to local media mergers involving one or more local or regional newspapers which raise *prima facie* competition concerns.

Representations were made to the OFT that the media public interest provisions should be altered, for example to include the need for 'independent investigative journalism' as a consideration. The review notes that public interest considerations have never so far been used in respect to regional or local press mergers, but the OFT recommends that BIS should consider these representations, as well as take account of the ongoing Ofcom review of Media Ownership Rules.

The Government has discussed this point about the public interest test with the OFT and Ofcom. The Government has concluded that the existing framework provides an adequate mechanism for considering the importance of having a source of independent news and reporting at a local and regional level across the UK. At the most basic level the competition authorities' guidance suggests it is unlikely that they would reach a finding of a substantial lessening of competition (SLC) in a situation where, in the absence of a specific proposed merger, the last remaining title or titles in an area would close. This should protect communities against the risk of losing their independent reporting voice as a result of the merger control process.

The Communications Act 2003 requires Ofcom to conduct a statutory review of the media ownership rules every three years. Ofcom are now undertaking such a review and are expected to report back later this year.

The Government has asked Ofcom in this current review to consider specifically the impact of the current local ownership rules on the longer term sustainability of the local media market. The media ownership rules are a layer of constraint over and above the competition rules set out in the media mergers regime. The Government believes that an arguable case could now be made for greater flexibility in the local radio and cross-media ownership rules to support consolidation of local media groups which taken together would allow for greater economies of scale and a sustainable local voice alongside that of the BBC. For example, a local radio station

and local newspaper could consolidate and share news gathering resources, reduce overheads and help build local brands through cross-promotion.

The Government looks forward to the evidence based recommendations from Ofcom's review and stands ready to bring forward an Order to give effect to any necessary changes to the local media ownership rules.

Independently funded News Consortia

The Digital Britain Report also set out proposals to create independently funded news consortia to ensure continued high quality independent national, local and regional news in addition to the BBC's provision.

The Report says the Government intends to pilot IFNCs in Scotland, Wales and one English region. The emphasis will be on quality and independence. Such consortia will be more than just a replacement for regional television news. However, while multiplatform news will be a crucial feature, it makes sense to continue to take advantage of the Channel 3 licence schedule for news across each nation, locally and regionally to build on the existing reach and scale of access to audiences.

The Government is currently consulting on funding options which also looks at the possibility of a contained contestable element of the television licence fee to fund IFNCs in the longer term. This consultation closes at the end of September.

Conclusion

5. We conclude that the Scottish newspaper industry is an integral part of Scottish culture which is highly valued both by its readers and by the institutions that it scrutinises. Under pressure from the current economic climate, diminishing advertising revenues and the explosion of alternative news and information sources in electronic format, the industry has been forced to dramatically restructure itself, often at great cost to its dedicated and knowledgeable staff. It is vital that both the Scottish Executive and the UK Government ensure that the Scottish newspaper industry is not made unviable through overbearing competition from public sector advertising, and that the industry is able to adapt itself to create sustainable business models, through consolidation and mergers subject to appropriate

safeguards, whilst maintaining high quality, varied and independent journalism that reflects the Scottish identity. (Paragraph 2?)

The Government's view is that the provision of news content needs to reflect changing consumer patterns, and that people must be able to access news in a variety of ways such as on the web and by mobile phone, as well as in print.

Maintaining varied and independent journalism to provide high quality news content that reflects the Scottish identity is a high priority.

Scotland Office

September 2009

Correspondence from Northern Ireland Local Government Association

Shane McAteer
Committee Clerk
Committee for Finance and Personnel
Room 419
Parliament Buildings

Stormont
Belfast BT4 3XX

Unit 5B
Castlereagh Business Park
478 Castlereagh Road
Belfast BT5 6QB

19th November 2009

Dear Shane,

Thank you for your letter dated 5th November which referred to the committee's inquiry into Public Procurement Policy and Practice in Northern and providing the opportunity for the Northern Ireland Local Government Association (NILGA) to make a contribution.

Presently NILGA, in conjunction with local councils and supported by the DoE, is in the process of engaging external consultants to undertake an assignment for the development of a procurement strategy for local government within Northern Ireland. NILGA in developing the terms of reference for the assignment identified the following broad requirements for the strategy:-

- the promotion of a culture of collaboration between councils, local and central government and the wider public service;
- the development of a related procurement management system to underpin effective decision making and better support communication across local government and partners;
- an assessment of current procurement arrangements, systems, resources and support in local government to consider the scope for savings and to highlight and extend good working practices;
- a review of the current operational arrangements to make recommendations regarding priorities, resource requirements and governance arrangements; and
- a review of policy and processes, considering best practice regarding quality management, sustainable procurement, risk management and effective contract management.

In agreeing the terms of reference elected members expressed concerns regarding the development of a central procurement strategy and the implications for small and medium enterprises (SME) within the context of their local economy.

NILGA is of the opinion the opportunities to maximise savings can only be achieved through closer collaboration within local government and between local and central government.

A Local Government Procurement Group made up of professionally qualified officers provides a strategic vehicle to highlight and extend examples of good practice throughout the sector. The group has been successful in developing collaborative procurement and increased cooperation between councils.

Newry and Mourne District Council provide an example of best procurement practice. The Council received two Excellence in Public Procurement Awards in 2004 and 2005. Anecdotal evidence suggests the policies and procedures adopted by the council has led to the highest ratio of SME suppliers within local government in Great Britain. Such policies include:

- the procurement process has been on line since 2003. Being web based allows greater openness, competitiveness and increased savings.
- undertaking collaborative procurement with and on behalf of other local authorities.
- adopting a dynamic purchasing approach where tenders are broken down to ensure local SME's can compete.
- adopting a proactive communications policy removing the barriers hindering SME involvement within the council's procurement process.
- providing detailed and constructive feedback to any unsuccessful SME ensuring they are better informed when bidding for future tenders.

I hope you find this letter is some use and provides some guidance on the local government procurement policy. NILGA would be prepared to present oral evidence to the committee should this be required.

We also look forward to reading the final report of the committee to help inform the local government approach in the development of the procurement strategy.

Yours sincerely

Sheena Mairs
Director of Improvement

Sellafield Supply Chain

In addition, Sellafield Ltd has the only Supply Chain Ombudsman in the UK nuclear industry; a relatively recent concept, the role was developed in 2005. The current Ombudsman, Zoe Whittle has been in post since April 2009, with almost 20 years experience at Sellafield.

Zoe explains that the role of Supply Chain Ombudsman is multi-faceted – as expected, one vital part of the role is to be an independent, confidential route for the supply chain to voice their concerns and raise any complaints or issues that occur when dealing with Sellafield Ltd. As well as owning the Code of Ethics in Procurement for Sellafield Ltd, if required, formal sanction of the Ombudsman's complaint investigations are taken at Executive Director level, which emphasises the importance Sellafield Ltd place upon continued development of successful supply chain relationships. 'In this role, it is reassuring to know that I have the full support of my Commercial Director, Keith Case, should I need it'.

Zoe says 'in open forum I always invite the supply chain to come to me with any issues, worries or concerns before they escalate into formal complaints. My aim is to work with the supply chain and Sellafield Ltd and wherever possible to reach a professional and amicable solution. Last year Sellafield Ltd spent £737M in the supply chain so it is absolutely vital that our relationship with the supply chain is nurtured. Sometimes Zoe is called upon to liaise between other supply chain members or even between suppliers and other Site Licence Companies 'they often have no-one else to turn to, so a quick call from me is often all that is required to get that engagement back on track: with no sanctioning authority my role is to aid relationship-building and communication'.

Working closely with the Nuclear Decommissioning Authority [NDA] as well as regional and national supply chain support agencies, no week is the same. Zoe has also established a link between all of the other nuclear Site Licence Companies across the UK and with NDA support, is

keen to progress that informal network further 'after all, we utilise the same supply chain and face the same issues, so there will be generic learning points for all of us'.

Another facet of the role is to act as first point of contact for the supply chain who want to understand how Sellafield Ltd conduct their procurement activities. Sometimes these suppliers are new to the nuclear market, or maybe they are established suppliers seeking to raise their profile within Sellafield Ltd.

'With my assistant Leanne Ditchburn, we work hard to meet our suppliers, engaging with new potential suppliers as well as organising the twice yearly Supplier Forum [next one 25th November] where the supply chain can engage with Sellafield Ltd as well as each other. We arrange capability demonstrations where the supply chain can market their competencies, and work closely with the Supply Chain Innovation Manager to encourage and identify suppliers of innovative solutions to Sellafield Ltd's technical challenges. My role is about developing the supply chain, not just being a complaint route'.

I am already in contact with NOF through the NDA National Tier 3, Tier 4 and SME Supply Chain forum, and am engaging with NOF to further explore the synergies between our supply chains. There are exciting times ahead for us all.

For further information, visit www.sellafieldsites.com/suppliers

Duties

- Provides a confidential and unbiased route for the supply chain to raise issues pertaining to Procurement at Sellafield, which will be managed in an open, transparent and equitable manner, making recommendations for improvement where necessary.
- Promotes the Code of Business Ethics and conduct, and helps provide assurance that Sellafield Ltd staff and suppliers act in an ethical manner.
- Acts as the first point of contact for the supply chain and develops improvements to Sellafield Ltd's supplier communication and engagement, through holding events such as the Supplier Forums, and the Supplier area of the Sellafield Ltd web site.
- Provides an easily accessible "Business Office" at the Sellafield Centre, holding one to one meetings as requested with suppliers, and arranging meetings and presentations to relevant Commercial Managers and site personnel.
- Acts as interface between Sellafield Ltd and various business support and development agencies such as West Lakes Renaissance, West Cumbria development Agency, Cumbria Inward Investment, North West Regional Development Agency, The Welding Institute and other parties such as Copeland and Allerdale Borough Councils, and Cumbria County Council.
- Represents Sellafield Ltd on associated Supply Chain projects at both local and regional levels.
- Encourages new entrants to the market through various means such as publishing the "How to do Business with Sellafield" brochure, holding regular Supplier Forums, and doing presentations at various events for groups such as ONE North East, Scottish Enterprise, UKTi.
- Acts as the front office for Supplier Suggestions and Innovations.
- Looks to develop the Supplier area of the web site to provide useful, relevant and timely information for suppliers.

- The Ombudsman's Office is located in the Sellafield Centre (previously the Visitors Centre) just outside the Sellafield Site.

If you have any questions about how to do business with Sellafield Ltd, or have any feedback or suggestions regarding the content of this area of our web site, please contact the Ombudsman

External Memberships:

- West Cumbria Business Cluster
- North West Nuclear Decommissioning Supply Chain Project [Regional]
- North West Supply Chain Project [Local]
- Sellafield Contractors Group
- Supply Chain Working Group
- National NDA Forum for Tier 3/Tier 4 and SMEs

Internal Membership:

- Sellafield Supply Chain & Contractors Suggestion and Innovation Scheme Panel
- Decommissioning Supply Chain Forum

Ad-hoc Attendance/Presentations

- Chamber of Commerce
- Furness Enterprise
- Business Link
- Development Agencies
- Relevant Supply Chain Events
- Nuclear Industries Association
- NOF Energy

Etc, etc



Introduction to Working with Sellafield Ltd

Zoe Whittle, Supply Chain Ombudsman

Thursday 29th October 2009

Commercial & Contract Management



Safety Share

We actively care for each other's safety

Supply Chain Ombudsman



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Role of Supply Chain Ombudsman

- New role introduced in 2004 by former Commercial Director
- The only Nuclear Supply Chain Ombudsman in the UK
- Independent [unbiased] and confidential route for complaints/issues
- Owner of Sellafield Ltd's 'Code of Ethics in Procurement'
- Supply Chain 'engagement':
 - First point of contact for the Supply Chain, especially initial contact
 - Supply Chain relationship management:
 - Interface between Sellafield Ltd and the Supply Chain
 - Encouraging new entrants into the market
 - Market intelligence

Supply Chain Ombudsman



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How Do I Engage with the Supply Chain

- Being visible and accessible
- Presence at Forums/Groups, as appropriate
- Sellafieldsites.com website – Suppliers area
- Hosting Events
- Visiting Suppliers



Supply Chain Ombudsman

Supply Chain Engagement

Being visible and accessible	Based at Sellafield Centre
Presence at Forums/Groups	<p>ie: Today</p> <p>West Cumbria Business Cluster</p> <p>North West Supply Chain Project – local & regional</p> <p>Furness Enterprise</p> <p>Conferences, ie: EBOC09</p> <p>Sellafield Contractors Group</p> <p>Supply Chain Working Group</p> <p>NDA National Tier 3, 4 & SME Forum</p> <p>etc</p>

Supply Chain Ombudsman

Supply Chain Engagement

Sellafieldsites.com website



Commercial Opportunities incl.
Procurement Plan Schedule
Supply Chain Network [687 members]
Supply Chain Innovation Route
Complete Tender Management [CTM]
Sellafield Policies
Supplier Events Calendar
Resident Engineers' Department Info
Security in the Supply Chain
Useful Links

Supply Chain Ombudsman



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Supply Chain Engagement

Events



Supplier Forums:
Next Forum 25th November

Meet The Buyer:
Next Event 26th November

Register for both:
<http://www.sellafieldsites.co.uk/page/suppliers/supplier-events/supplier-news-and-events-register>

Supply Chain Ombudsman



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Sellafield Ltd: How We Do Business

- Open tendering is the 'norm' – notices advertised via OJEU and the Complete Tender Management [CTM] system [see link below]:

<https://ctm.sharedsystems.co.uk/transactions.asp?B=SELLAFIELD&page=transactions.asp&PS=1&LF=1&PU=1>

- We publish a Procurement Plan Strategy, updated regularly, showing awarded Frameworks and Projects as well as forthcoming Procurements – continually being reviewed and updated, so keep checking it!

<http://www.sellafieldsites.com/suppliers/commercial-opportunities/procurement-plans>

Supply Chain Ombudsman



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Tender Management: CTM & Procurement Plan

The screenshot shows a web browser window displaying the 'Ongoing public tenders' section of the CTM system. The page title is 'Sellafield Ltd'. Below the title, there is a search bar and a table of tenders. The table has columns for 'No.', 'Category', 'Description', 'Site', and 'End Date/Qualification'. The 'End Date/Qualification' column includes a 'View' button and a date range selector. The table lists several tenders, including 'Feltwell Boiler Fuel Project', 'Fuel Storage Tank Maintenance Project', 'Decommissioning, Demolition and Trade Practices', 'Lease of Allocated R&D Mill Air Trade Units', 'CCO00328 - Health Safety Linked Effluent Facility', 'Decommission Fuel Elements and Facilities Maintenance Remediation Services', 'PS446 - 3.4.2009-06-30', and 'CCO00321 - PFCS Decommissioning Services Decommissioning'.

No.	Category	Description	Site	End Date/Qualification
2707		Feltwell Boiler Fuel Project CCO00320	WREAV	201109 1230
2870		Fuel Storage Tank Maintenance Project Plant Remediation	WREAV	091109 1230
2927		Decommissioning, Demolition and Trade Practices	WREAV01	111209 1230
2930		Lease of Allocated R&D Mill Air Trade Units	WREAV	091109 1130
2940		CCO00328 - Health Safety Linked Effluent Facility	WREAV01	201109 1130
2971		Decommission Fuel Elements and Facilities Maintenance Remediation Services	WREAV01	201009 1230
3027		PS446 - 3.4.2009-06-30	WREAV01	201009 1230
3040		CCO00321 - PFCS Decommissioning Services Decommissioning	WREAV	201009 1130

Supply Chain Ombudsman



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Examples of Projects to be competed 2009/2010 FY

Contract Description	Approx Value	Forecast Contract Award Date
Detail Design & Build of Crate Breakdown Facility	£50m	Nov 2010
PFCS Civil Superstructure & Control Room Construction	£15m	Aug 2010
Flask Maintenance Facility Refurbishment	£7m	October 2010
Flasks & Gamma Gates	£9m	October 2010
Fellside Heat & Power Plant Boiler Park Completion	£5m	August 2010

Supply Chain Ombudsman



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Examples of Frameworks to be competed 2009/2010 FY

Framework Description	Approx Value	Forecast Contract Award Date
Decommissioning & Demolition Framework [4 Year Duration]	£140m	June 2010
Machined & Fabricated Spares [4 yrs]	£20m	Sept 2010
Environmental Services [3 yrs]	£3m	Aug 2010
Materials Repairs Operation (MRO) Requirements 3 Frameworks [4 yrs each] Proprietary Components/Consumables/ Instrumentation	£20m each	July 2010

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Further Information

To find out more about the commercial opportunities with Sellafield Ltd (including key contacts), Visit the website:

www.sellafieldsites.com/suppliers

Or Contact the Sellafield Ltd Supply Chain Ombudsman:

Zoe Whittle

Email: ZVW1@sellafieldsites.com

Tel: +4419467 71268



Supply Chain Ombudsman



22 December 2009 15

Correspondence from Dr. Stephen Farry

24 November 2009

Shane

Please accept my apologies for the meeting on 25/11.

With the coming consideration of the Committee Report on public procurement, I think that there a number of perspective that it is important that we consider.

I am happy to consider social clauses. Public spending is more than simply about the provisions of goods, facilities and services, but can be used to achieve other public policy outcomes and public goods e.g. sustainable development. Social clauses in procurement/tenders can be seen in this context. Some companies could address some social aspects by themselves through corporate social responsibility clauses, but it is more likely to be only to be bigger companies which would do so.

I think the Committee needs to be careful to avoid recommending anything that could be viewed as being anti-competitive or a breach of the EU Single Market, including trying to tilt the playing field in terms of local companies. Indeed, we should be encouraging local companies to be able to compete better for contracts outside NI.

There is a wider issue over the economic and financial value and efficiency of social clauses. Companies may add to their costs in other to meet the extra compliance asked through the contracts. Therefore overall costs could go up, with a financial premium for the public purse. There is a question whether it is better for government to accept the mark-up costs in public procurement in return for the social gains that could come from social gains, or to invest directly in those issues instead.

We should also be conscious of any potential cost implications that may arise from other recommendations, including from a desire to break-up contracts. These factors may not in themselves be reasons not to recommend, but we should acknowledge any such side-effects.

There is also an issue over how to police the delivery and implementation of social clauses, once contracts are awarded.

Best wishes

Stephen Farry

NILGA - Letter to Committee for Finance and Personnel - Procurement

Shane McAteer
Committee Clerk
Committee for Finance and Personnel
Room 419
Parliament Buildings
Stormont
Belfast BT4 3XX

Unit 5B
Castlereagh Business Park
478 Castlereagh Road
Belfast BT5 6QB

19th November 2009

Dear Shane,

Thank you for your letter dated 5th November which referred to the committee's inquiry into Public Procurement Policy and Practice in Northern and providing the opportunity for the Northern Ireland Local Government Association (NILGA) to make a contribution.

Presently NILGA, in conjunction with local councils and supported by the DoE, is in the process of engaging external consultants to undertake an assignment for the development of a procurement strategy for local government within Northern Ireland. NILGA in developing the terms of reference for the assignment identified the following broad requirements for the strategy:-

- the promotion of a culture of collaboration between councils, local and central government and the wider public service;
- the development of a related procurement management system to underpin effective decision making and better support communication across local government and partners;
- an assessment of current procurement arrangements, systems, resources and support in local government to consider the scope for savings and to highlight and extend good working practices;
- a review of the current operational arrangements to make recommendations regarding priorities, resource requirements and governance arrangements; and
- a review of policy and processes, considering best practice regarding quality management, sustainable procurement, risk management and effective contract management.

In agreeing the terms of reference elected members expressed concerns regarding the development of a central procurement strategy and the implications for small and medium enterprises (SME) within the context of their local economy.

NILGA is of the opinion the opportunities to maximise savings can only be achieved through closer collaboration within local government and between local and central government.

A Local Government Procurement Group made up of professionally qualified officers provides a strategic vehicle to highlight and extend examples of good practice throughout the sector. The group has been successful in developing collaborative procurement and increased cooperation between councils

Newry and Mourne District Council provide an example of best procurement practice. The Council received two Excellence in Public Procurement Awards in 2004 and 2005. Anecdotal evidence suggests the policies and procedures adopted by the council has led to the highest ratio of SME suppliers within local government in Great Britain. Such policies include:

- the procurement process has been on line since 2003. Being web based allows greater openness, competitiveness and increased savings.
- undertaking collaborative procurement with and on behalf of other local authorities.
- adopting a dynamic purchasing approach where tenders are broken down to ensure local SME's can compete.
- adopting a proactive communications policy removing the barriers hindering SME involvement within the council's procurement process.
- providing detailed and constructive feedback to any unsuccessful SME ensuring they are better informed when bidding for future tenders.

I hope you find this letter is some use and provides some guidance on the local government procurement policy. NILGA would be prepared to present oral evidence to the committee should this be required.

We also look forward to reading the final report of the committee to help inform the local government approach in the development of the procurement strategy.

Yours sincerely

Sheena Mairs
Director of Improvement

Correspondence from Citizens' Advice

From: alcornd@citizensadvice.co.uk [mailto:alcornd@citizensadvice.co.uk]

Sent: 02 December 2009 11:35

To: McAteer, Shane

Cc: Jardine, Karen

Subject: DFP Committee inquiry into procurement fro Social Economy organisations

Shane

We gave evidence to the committee's inquiry in October, as part of the Social Economy network delegation. At the time we had a court case ongoing against DETI and CPD in respect of a further procurement exercise for face to face debt advice which we could not discuss at that stage.

Among the points we made in October were

- a) The fact that there is no process of due diligence in the procurement process for Part B procurement contracts and
- b) In the absence of an appeal mechanism , there is no remedy except court action.

We withdrew from the court action on an undertaking from Counsel for CPD and DETI that there was a further stage to their procurement process a " governance review" which they would undertake to ensure that " the wool has not been pulled over the Department's eyes"

It is reasonable to ask when this became part of the Department's procedures, and why it was not undertaken as part of the process of assessing the tenders.

I am attaching the relevant cutting from the Belfast Telegraph and would refer you to the passage marked in bold.

I would be happy to speak to you , the committee, or individual members in more detail about the issues raised, or tot he committee itself. Essentially since Part B contracts are

" light touch procurement " there appears to be no due diligence , and no attempt to validate the written claims of suppliers made in tender documents.

Regards

Derek

Derek Alcorn
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Citizens Advice

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Debt advice service funding at risk

Wednesday, 21 October 2009

Belfast telegraph

What are these?

Change font size: A A A

Government funding for a debt advice service in Northern Ireland is at risk, due to a delay in a contract award and a subsequent legal challenge.

The High Court heard yesterday that time was tight for the retention of the public money allocated to the project.

The major Department of Enterprise, Trade and Investment (DETI) contract for face-to-face debt advice to the public was to have taken effect from April this year. However, the timetable slipped to the beginning of this month. It has now been further delayed by a court challenge from the Northern Ireland Citizens Advice Bureau (CAB).

The charity's bid for the contract was unsuccessful, with DETI opting instead for Advice NI, an umbrella body for a number of groups.

A preliminary hearing in the case was held yesterday, dealing with the CAB's request for the disclosure of documents from the Government's tendering process.

The barrister for the department, David McMillen, warned against the full hearing being moved from the set date of October 29. He said the funding for the advice service had to be spent by the end of March next year.

"We are holding on by our finger nails," Mr McMillen said.

"We have to start the contract and expend the monies this financial year. Every day we go on we have one day less of money to spend."

The CAB is requesting documents relating to DETI's consideration of issues within the contract tendering process, including data protection and quality assurance.

Brett Lockhart QC, representing Citizens Advice, said Advice NI's list of members included specialist organisations who deal with specific sectors like disability, one-parent families and mental health.

He said, by their nature, such bodies would be restricted on the people they could advise on debt.

Mr McMillen said DETI's tendering process included a "good governance" stage which had still to take place. It would check data protection and quality assurance matters to "make sure the wool has not been pulled over the Department's eyes".

The judge hearing the case, Mr Justice Deeny, is to inspect the documents being sought by CAB before ruling next week on the disclosure issues.

The contract could be worth as much as £2.5m if its is extended beyond its initial period.

The case continues.

Read more: <http://www.belfasttelegraph.co.uk/news/local-national/debt-advice-service-funding-at-risk-14537225.html#ixzz0UYjnDY70>

Appendix 6

Assembly Research

Research and Library Services



24 November 2008

Public Procurement and SMEs

Dr Robert Barry

This briefing paper provides a general overview of SME performance in securing public procurement contracts. It also looks at some of the barriers encountered by SMEs in relation to the public procurement process, including the particular problems faced by the social economy sector.

Library Research Papers are compiled for the benefit of Members of The Assembly and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.

Public Procurement and SMEs

Introduction

Public procurement covers a wide range of supplies, services and works required by governments, local authorities and public organisations, utilities and agencies. The size of such contracts varies hugely. Whilst some are beyond the capabilities of SMEs^[1] to fulfil, a significant proportion of the public procurement opportunities in Europe are well within the scope of SMEs. With a market in the EU estimated at around 16% of GDP, or about €1,800 billion in 2006, public procurement contracts represent a major opportunity for very many enterprises.^[2]

The public sector in Northern Ireland spends approximately £1.7bn out of a total budget of £7bn each year on public procurement. While it is impossible to detail the full range of works, goods and services that these public bodies purchase, the most common procurement are: Accountancy/Audit; Banking; Bottled Water; Catering Equipment; Catering Services; Cleaning Services; Clothing and Footwear; Construction/ Maintenance Services; Facilities Management; Food Products and Beverages; Furniture and Fittings; ICT Equipment; Information and Computer Technology Services; Laundry Services; Legal Services; Medical and Laboratory Devices; Medical Surgical Equipment and Supplies; Office Machinery; Pharmaceuticals; Plant and Machinery; Post Office Counters; Protective Wear; Repair, Maintenance and Installation Services; Tools, Equipment and Building Materials; Training Services; and Uniforms.^[3]

The Experiences of SMEs in Public Procurement

SMEs' access to public procurement varies from one Member States to another. In 2005, SMEs secured 42% of the value and 64% of the number of contracts above the thresholds fixed by the EU directives on public procurement.[4] The directives cover roughly 16% of the EU public procurement market. SMEs tend to perform better in bidding for central government contracts and less well in the old Member States compared with the new. It is also interesting to note that medium sized companies perform much better than small and micro companies.[5]

In 2004, the EU Council and Parliament adopted a package of directives on public procurement designed to reduce the administrative burden and costs related to tendering, make procurement systems more transparent and easier for SMEs (in particular) to access, and encourage the use of information technology systems (e-procurement) to simplify the process. These directives were due to be transposed into national law in all Member States by January 2006.

To facilitate this ongoing process, within the framework of the European Small Business Act (introduced by the Commission on 25 June 2008)[6] the European Commission proposed a Code of Best Practices to assist SMEs in the public procurement process. The Code encourages Member States to learn from each other as they implement the new rules under the public procurement directives. The Small Business Act also includes 10 principles to guide the conception and implementation of policies at EU and Member State level. These policies include granting a second chance for business failure, facilitating access to finance and enabling SMEs to turn environmental challenges into opportunities.[7]

Despite actions taken at both EU and national level, there are still many barriers which discourage SMEs from responding to these EU-wide tenders. These include basic difficulties in finding information about tenders, or about the procedures for bidding, or there are problems in understanding jargon; too short a deadline for responding and/or the costs of responding are too high; the administrative procedures are too complex, or particular certification is required; a high financial guarantee is required to bid; or companies may face discrimination on the basis that they are located in a different country from the contracting authority.[8]

A recent report on the experience of European SMEs, entitled "Evaluation of Small and Medium-Sized Enterprises' (SMEs') Access to Public Procurement Markets", highlighted the problems faced by SMEs. The study was undertaken by GHK and Technopolis between April and September 2007 on behalf of Directorate-General Enterprise and Industry.[9]

The study found that the most frequent problem faced by European SMEs in bidding for public procurement tenders is the over-emphasis placed on price by awarding authorities (52% of the companies encountered this either 'regularly' or 'often'). Onerous paperwork requirements were also mentioned as a common problem (46%).

The use of e-mails as a preferred channel of communication, improving tender specifications and documentation, as well as improving information on tenders in general were seen as the three most helpful actions that awarding authorities could do. Training for companies, the use of framework agreements and contracts, and more time to draw up tenders were less frequently emphasised.

Overall the study findings suggest that there is still scope for improvement in the performance of SMEs in public procurement. The report therefore recommended that steps should be taken to: reduce differentials in access between SMEs, and in particular small and micro-enterprises, and larger companies; exchange experience and encourage peer learning activity amongst Member States and awarding authorities; and, improve the information and research base.

Within the UK, there has been a decline in recent years in the number of contracts being awarded to SMEs following an initial leap in 2002/03 in reaction to the work carried out by the

Office of Government Commerce (OGC) and government reviews (Figure 1). Whilst the number of contracts awarded to SMEs has been relatively high, the total value has consistently remained around the 20% mark (Figure 2).^[10]

Figure 1. Share of number of UK public sector contracts awarded by company size

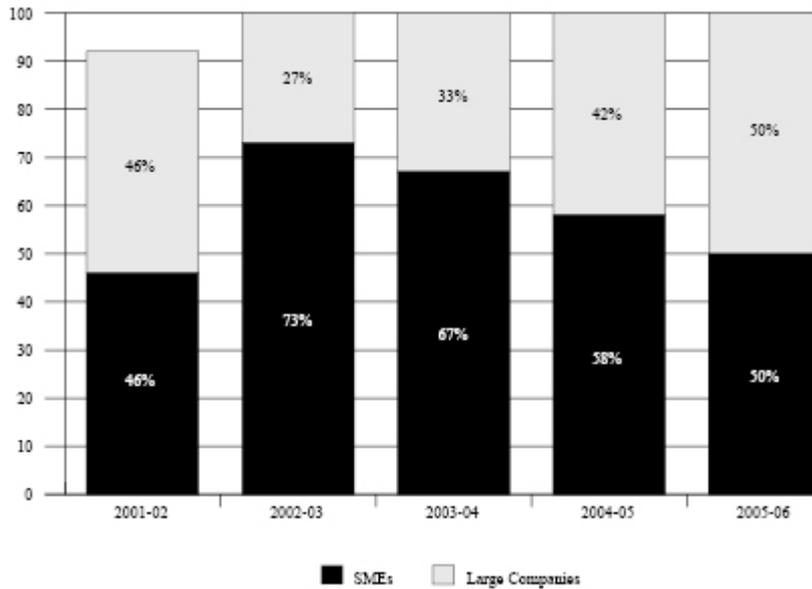
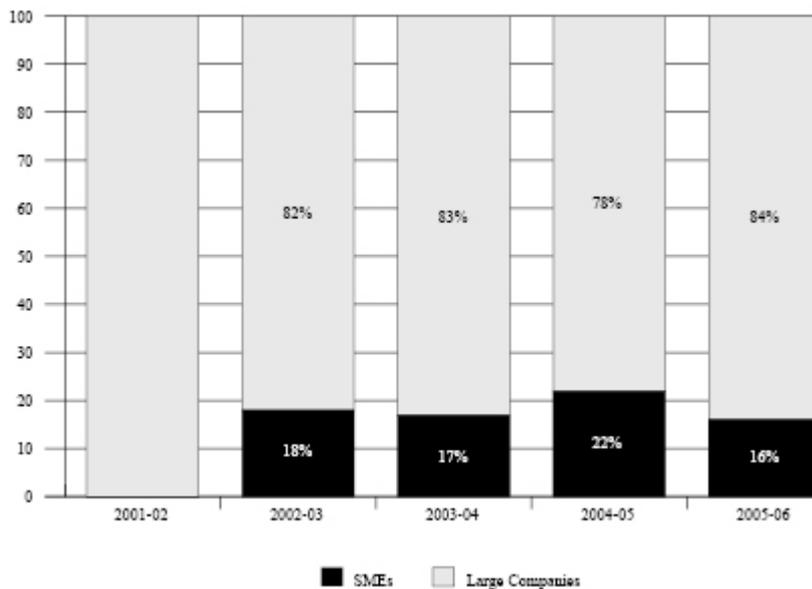


Table 2. Share of value of UK public sector contracts awarded by company size



In 2003, the Better Regulation Task Force (BRTF), in collaboration with the Small Business Council (SBC), set out with the aim to “counter the excessive burdens on small businesses”. Their report “Government: Supporter or Customer?” was produced in reaction to the fact that whilst SMEs are very important to the UK economy (99% of all businesses) they are underrepresented in public procurement contracts. The report aimed to consider the barriers that face SMEs when doing business with the public sector and the wider benefits to the

economy when procuring from SMEs. Eleven recommendations were put forward in the report to be carried out by procurement offices both at the national and local government levels.^[11]

Recommendation 1

- The DTI should ensure adequate resources for the "Supplying Government" web portal project. The portal should advertise lower value contracts from across central government and include information on future contract opportunities. There should be a named contact for each advertised contract. The portal should be set up and piloted by spring 2005.

Recommendation 2

- The Office of the Deputy Prime Minister and the Local Government Association should encourage local authorities to develop "selling to the council" websites by 2005. Websites should include information on contracts for tender, forthcoming contract opportunities and guidance on how to do business with the council. There should be a named contact for each advertised contract.

Recommendation 3

- Within the context of small business support, the Small Business Service should provide advice and training for small and medium-sized enterprises on how to do business with central government and local councils. The Business Links Operators should deliver this by spring 2004.

Recommendation 4

- Regional Development Agencies should ensure by spring 2004 that, as part of the supply chain development work for which they are already funded, they work with prime public sector contractors to develop opportunities for small and medium-sized enterprises.

Recommendation 5

- The public sector should develop a common core pre-qualification information document for lower value contracts so that businesses do not have to put together different information in different formats to get past the expression of interest stage. The Office of Government Commerce and the Office of the Deputy Prime Minister working with the Local Government Association should develop and pilot this by spring 2004.

Recommendation 6

- The Small Business Service should publicise the mechanism for reporting non-compliance with the Office of Government Commerce "Government Procurement Code of Good Practice" that firms can use to ensure that they receive adequate debriefing.

Recommendation 7

- The Office of Government Commerce, the Office of the Deputy Prime Minister with the Local Government Association should consider how to promote the wider use of the Government Procurement Card, recently extended by the Office of Government

Commerce, to include local authorities and other non central civil Government bodies, in order to improve prompt payment by the end of 2003.

Recommendation 8

- The Office of Fair Trading should carry out research to identify the characteristics of those markets where it is important to ensure that small and medium-sized enterprises are able to compete to ensure competition, particularly where this may have an impact on innovation and value for money achieved by public sector procurement. Within this, it should also assess the impact of framework agreements and contract aggregation on small and medium-sized enterprises.

Recommendation 9

- Where public sector procurers opt for prime contractors, they should ensure that their business case for doing so in those particular markets brings value for money. Public sector procurers should ask prime contractors during the procurement process to demonstrate their track record in achieving value for money through effective use of their supply chain – including use of small and medium-sized enterprises. This should also be examined as part of the on-going contract management. Public sector procurers should ensure that prime contractors pay subcontractors on time and that when paying progress payments to prime contractors the payments flow down through the supply chain. In order to make subcontracting opportunities more transparent to small and medium-sized enterprises, Government Departments and local authorities should list details of prime contractors and contracts on their websites.

Recommendation 10

- The Local Government Procurement Forum, with input from the Small Business Service, should develop an SME-friendly procurement concordat. All local authorities should be able to sign up to this by 2005.

Recommendation 11

- The Office of the Deputy Prime Minister and the Local Government Association should encourage local authorities to set out in their procurement strategies the steps they are taking to engage with small and medium-sized enterprises by the end of 2003. Government Departments should include in their procurement policy statements the steps they take to engage with small and medium-sized enterprises by the end of 2003 or publish this information in their annual reports.

Most of these recommendations have now been acted upon by local and national bodies. Guidance has also been published by the OGC and by the respective regional procurement bodies with the aim of overcoming the barriers faced by SMEs and to help realise the benefits of involving them in public procurement contracts.

Recent research, however, by a company called Freshminds, suggests that more still needs to be done to address the problems faced by SMEs in relation to public procurement. Their findings included the following:^[12]

- Nearly three quarters of SMEs rarely or never bid for government work.

- Over three quarters of SMEs believe that there are barriers to awareness of government opportunities.
- Over half of SMEs feel that the process of tendering for government contracts requires more time and resource than their business can allow.
- On average, SMEs find the private sector easier to sell to than the public sector – their rate of success in winning private sector contracts is double their rate of success in winning public sector contracts.
- Nearly three quarters of SMEs feel that the public sector is more difficult to deliver work to than the private sector, due to a greater amount of formality, a lack of responsiveness and unrealistic timescales.

In addition to recommending a number of practical steps for SMEs to take (in terms of identifying opportunities, preparing for bids, and meeting customer needs), the researchers recommended a number of ways in which Government could continue to work to improve the procurement process for SMEs:

- Improve SME access to information on public procurement opportunities - Whilst considerable progress has been made, it is imperative to develop one single point of reference for SMEs to find information about bidding opportunities available to them.
- Simplify and clarify the bidding process - Existing portals are known to confuse some applicants. The Government needs to move towards simplifying the procurement process from start to finish, both in terms of the administrative burden and the use of accessible language.
- Reduce bureaucracy (compliance demands) - Efforts to reduce the bureaucracy for SMEs should impact both the time spent to amalgamate information required in bids as well as the level of contractual compliance required by procurers, which is often prohibitive for small companies.
- Make the process more transparent - Some SMEs still perceive some procurement bias, particularly towards lower cost options. Procurement needs to continue to become more transparent, selecting on the basis of value for money.
- Provide appropriate support schemes for SMEs - Guidance documents and 'Meet the Buyer' events can be extremely valuable for SMEs in improving their chances of winning a contract.
- Introduce innovative measures such as performance bonds and contract banding to combat the perceived risk associated with SMEs - Any reduction of the risks associated with contracting with SMEs would likely result in an increase in procurement from these companies.
- Provide constructive and clear feedback on lost bids - Some public sector organisations are still not providing timely and appropriate feedback to SMEs, which makes improving their future chances of winning bids more difficult.
- Support the expertise of public sector procurement professionals - The greater the skills and experience that procurement professionals can apply to their job, the more likely the process is to be transparent and appropriate.
- Make delivery terms and conditions more adaptive to the needs of the SME supplier - SMEs are often less able to cope with prolonged periods of financial insecurity; simply paying invoices in a timely manner and speeding up the contractual process would benefit smaller companies.

The Social Economy Sector

The social economy includes co-operatives, mutual societies, non-profit associations, foundations and social enterprises. From the village farmers who set up a co-operative to market their produce more effectively to the group of savers who set up a mutual to ensure they each receive a decent pension, by way of charities and organisations offering services of general interest, the social economy touches a huge range of individuals across Europe. There are around 10 million jobs in the social economy across Europe, but membership of social economy enterprises is much wider, with estimates ranging as high as 150 million.^[13]

Different Member States have different traditions, so the forms of enterprise and the fields in which they are active vary across Europe, but there are few areas where the social economy has no interest. Co-operatives are prominent in fields such as banking, craft industries, agricultural production and retail. Mutual societies are found in the insurance and mortgage sectors, whilst associations and foundations are active in health and welfare services, sports and recreation, culture, environmental regeneration, humanitarian rights, development aid, consumer rights, education, training and research.

Whilst some social economy enterprises provide services on behalf of or instead of the public sector, for example healthcare and social services, others produce products or services sold on the open market in competition with investor-driven companies. In such circumstances, the social economy is an important player in ensuring effective competition and it is therefore vital that regulation takes full account of the specific characteristics of such enterprises.

The social economy sector is big business in the U.K. with at least 15,000 social enterprises contributing some £18 billion to the economy. While Northern Ireland has some baseline data for nearly 400 SEEs with a turnover of just over £355 million (DETI Survey 2007), information on the actual size of the sector is limited.^[14]

The social economy sector in Northern Ireland includes a range of organisations such as credit unions, housing associations, local enterprise agencies, community businesses, co-operatives, employee-owned businesses, community development finance initiatives, social entrepreneurs and social firms. Given its relatively low visibility to date and diversity, no firm figures are available to quantify the overall size and scale of the sector. A rough estimate of employment was carried out in June 2000 which indicated a range of between 30,000 and 48,000 jobs (5 - 8% of total employment). However, this was based on different definitions. It is now recognised that this is a relatively limited way of measuring the sector and work is now underway to develop a robust set of baseline figures for the size and scale of the sector as a way of benchmarking against the social economy in the UK and in other regions and to measure growth.^[15]

According to the Social Economy Network (SEN), the sector is not as well developed in Northern Ireland as in England and Scotland.^[16] They believe that one of the most significant problems facing the development of Social Economy Enterprises (SEEs) in Northern Ireland is the lack of progress on the inclusion of social clauses into the procurement process.

SEN also argue that there is evidence that social enterprises, particularly smaller ones, are at a disadvantage compared with private sector businesses in this arena. There is a limited knowledge of the social economy sector and its potential as a provider of goods and services among public sector procurement personnel. A programme of awareness raising and training is required to ensure that social economy enterprises are equally considered with the private sector in procurement considerations.

Social enterprises with little or no experience of doing business with the public sector also need practical advice and training on procurement procedures and writing tenders so that they can acquire the necessary skills to enable them to take advantage of the opportunities presented.

SEN welcomes the actions proposed by the Central Procurement Directorate to provide information and advice sessions on the tendering process and to organise "Meet the Buyer" events to increase opportunities for SEEs to do business with the public sector.

However, it is their view that SEEs operate their businesses in a market place which does not recognise or take account of the added value they create and this puts them at a disadvantage when competing for public sector business.

The social economy sector is further disadvantaged by the emphasis in consideration of tenders, on financial capacity demonstrated by a build up of reserves in assessing the financial health of companies. This particularly affects those companies in the early stages of development who were prohibited from building up reserves while in receipt of grants. SEN argues that if there is to be equality of opportunity in accessing tenders then it must be acknowledged that existing means and criteria are exclusionary to SEEs and that amendments to criteria must be introduced to create a level playing field.

Some additional problems faced by SEEs who have successfully secured tenders for the delivery of services include the length of time the process takes; and the fact that the level of finance available for service delivery this year, in the health and social care field, is set at 3% less than the cost of delivering the same service last year. Departmental efficiency savings were not intended to affect front line services but it appears that in such instances they will. It is also argued that pressure on public bodies to secure efficiencies by aggregating contracts will discriminate against small businesses, including many social enterprises.

The Social Economy Network (SEN), in its recent presentation to the Enterprise, Trade and Investment Committee, proposed the following actions to help SEEs:

- Inclusion of social clauses into public procurement specifications to ensure a more equal playing field;
- Adoption of a consistent approach to the measurement of social value which can be embedded in the practice and processes of public procurement; and
- Exploration of innovative ways of increasing business opportunities for SEEs through public/social partnerships and private/social partnerships.^[17]

[1] Companies classified as small and medium-sized enterprises (SMEs) are defined officially by the EU as those with fewer than 250 employees and which are independent from larger companies. Furthermore, their annual turnover may not exceed €50 million, or their annual balance sheet total exceed €43 million. This definition is critical in establishing which companies may benefit from EU programmes aimed at SMEs, and from certain policies such as SME-specific competition rules.

[2] "Opening public procurement to SMEs", European Commission Enterprise and Industry DG - http://ec.europa.eu/enterprise/entrepreneurship/public_procurement.htm

[3] "Public Procurement – a guide for social economy enterprises", Central Procurement Directorate, Department of Finance & Personnel - <http://www.cpdni.gov.uk/social-economy-enterprises-guidance-pdf.pdf>

[4] See OGC website for information on latest EU procurement thresholds - http://www.ogc.gov.uk/procurement_policy_and_application_of_eu_rules_eu_procurement_thresholds_.asp

[5] "Opening public procurement to SMEs", European Commission Enterprise and Industry DG - http://ec.europa.eu/enterprise/entrepreneurship/public_procurement.htm

[6] See http://ec.europa.eu/enterprise/entrepreneurship/sba_en.htm

[7] See European Commission Press Release IP/08/1003 - <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1003&type=HTML&aged=0&language=EN&guiLanguage=en>

[8] "Opening public procurement to SMEs", European Commission Enterprise and Industry DG - http://ec.europa.eu/enterprise/entrepreneurship/public_procurement.htm

[9] "Evaluation of SMEs access to public procurement" Final Report produced by GHK and Technopolis on behalf of European Commission Directorate General Enterprise and Industry http://ec.europa.eu/enterprise/entrepreneurship/docs/SME_public_procurement_Summary.pdf

[10] Annex to Final Report "Evaluation of SMEs access to public procurement" produced by GHK and Technopolis on behalf of European Commission Enterprise and Industry DG, Section on United Kingdom - http://ec.europa.eu/enterprise/entrepreneurship/docs/SME_public_procurement_Annex.pdf

[11] Annex to Final Report "Evaluation of SMEs access to public procurement" produced by GHK and Technopolis, Section on United Kingdom - http://ec.europa.eu/enterprise/entrepreneurship/docs/SME_public_procurement_Annex.pdf

[12] "Evaluating SME experiences of Government procurement", Report by Freshminds for the Scorecard Working Party – a joint initiative between the British Private Equity and Venture Capital Association (BVCA), Federation of Small Businesses (FSB), and Confederation of British Industry (CBI), October 2008.

[13] "Europe's social economy", European Commission Enterprise and Industry DG - http://ec.europa.eu/enterprise/entrepreneurship/public_procurement.htm

[14] Social Economy Network briefing to Enterprise, Trade & Industry Committee, 13 November 2008.

[15] "Public Procurement – a guide for social economy enterprises", Central Procurement Directorate, Department of Finance & Personnel - <http://www.cpdni.gov.uk/social-economy-enterprises-guidance-pdf.pdf>

[16] Social Economy Network briefing to Enterprise, Trade & Industry Committee, 13 November 2008.

[17] Social Economy Network briefing to Enterprise, Trade & Industry Committee, 13 November 2008.

Research and Library Services



Public Procurement and the Social Economy

Dr Robert Barry & Aidan Stennett

This briefing paper looks at some of the barriers encountered by Social Economy Enterprises (SEEs) in securing public procurement contracts. It also draws some lessons on the use of social clauses from experiences in Scotland and the Cabinet Office's Social Clauses Project

Library Research Papers are compiled for the benefit of Members of The Assembly and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.

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Summary of Key Points

Social Economy Sector

- There are around 600 Social Economy Enterprises in Northern Ireland, employing somewhere in the region of 10,000 people.

- About half of these are community businesses; around a quarter are credit unions; and the remaining quarter is made up of housing associations, local enterprise agencies and 'others'.

Problems faced by Social Economy Enterprises in Public Procurement

- Difficulties in finding information about tenders.
- Difficulties in finding information about the procedures for bidding.
- Problems in understanding jargon.
- Too short a deadline for responding.
- Costs of responding too high.
- Administrative procedures too complex/onerous paperwork requirements.
- Particular certification required for some contracts.
- High financial guarantee required for some contracts.
- Over-emphasis placed on price by awarding authorities.
- Discrimination because of location.
- Length of time the process takes.
- Pressure on public bodies to secure efficiencies by aggregating contracts and using Framework Agreements (similar to call-off lists, which tend to favour larger organisations).
- Uncertainties on the status of social clauses and EU procurement rules.
- Difficulties in formulating social clauses as a core contractual requirement.
- Difficulties in measuring social value.

Lessons from Scottish Experience

- Social issues should be considered at the outset, at the advertising stage, at the selection stage, and after the contract is awarded.
- Social issues may be addressed under the 'duty to promote' in equality legislation.
- Under public procurement legislation public bodies may restrict participation in a tendering exercise to only those organisations defined as supported businesses.
- Targeted recruitment and training can be achieved without negatively affecting value for money requirements.

Lessons from Cabinet Office Project

- Further guidance on the use of social clauses is required to clarify the processes and the legal issues under European and UK procurement policies.
- Social clauses must be tailored so that they relate to the performance of the specific contract and must offer value for money.

Introduction

Public procurement policy in Northern Ireland is the responsibility of the Procurement Board chaired by the Minister of Finance and Personnel. Membership of the Board comprises the Permanent Secretaries of the 11 Government Departments, the second Permanent Secretary in OFMDFM, the Treasury Officer of Accounts, 2 external experts without a specific sectoral interest, the Director of the Central Procurement Directorate and a representative of the Comptroller and Auditor General as an observer.^[1]

The Central Procurement Directorate, within the Department of Finance and Personnel, is the core professional procurement body. It is responsible for developing policy and supporting the Procurement Board's role in all aspects of public procurement policy. The Directorate will where appropriate directly procure strategic requirements, provide expertise, advice and a coordinating role.

In addition to the Directorate there are a number of centres with specialist procurement expertise across the public sector (including the Education and Library Boards and a number of public bodies and agencies).^[2] The Executive is of the view that considerable added value can be derived from these Centres of Procurement Expertise (CoPEs), both in developing operable policies and providing a more integrated procurement service to public bodies in general.

Departments, their Agencies, NDPBs and public corporations are expected to carry out their procurement activities by means of documented Service Level Agreements with the Central Procurement Directorate or a relevant Centre of Expertise.

The public sector in Northern Ireland spends around £2 billion each year on public procurement. Most of this, however, is spent on road maintenance, major construction work, medical/surgical equipment and supplies, consultancy services, energy and other areas where Social Economy Enterprises (SEEs) would not normally be involved or in a position to compete (see Annex A for a breakdown of procurement expenditure by Departments, their Agencies and Non-Departmental Public Bodies by category and by Department over the last three years).^[3]

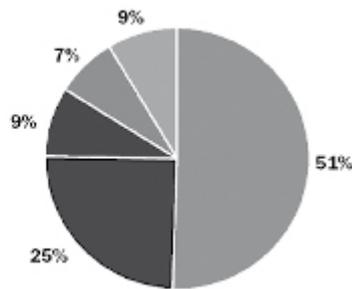
The Northern Ireland Social Economy

A Social Economy Enterprise is defined by the Department of Enterprise, Trade and Investment (DETI) as 'a business that has a social, community or ethical purpose, operates using a commercial business model and has a legal form appropriate to a not-for-personal profit status'.^[4] Based on this definition, only 396 organisations in Northern Ireland identified themselves as SEEs in response to a DETI survey carried out in 2006/07. An earlier UK-wide survey, however, estimated a total of around 600 SEEs in Northern Ireland.^[5] Given the 61% response rate to the DETI survey, the figures are in fact consistent and an estimate somewhere around 600 for the total number of SEEs in Northern Ireland seems reasonable. Based on the DETI survey figures, the total number of paid employees in these enterprises is likely to be somewhere around 10,000.^[6]

The DETI survey also provided some useful information on the nature of these enterprises (see Figure 1 below for a breakdown by type). On average, two-thirds of the income of SEEs was earned from trading activities, while 28% was received from grants and donations and 4% came from other sources. Most of them (73%) reported an annual turnover of less than £500k.

Figure 1: Types of Social Economy Enterprise in NI

51%	Community Business
25%	Credit Union
9%	Housing Association
7%	Local Enterprise Agency
9%	Other



Source: DETI

Problems Facing SEEs in Securing Public Procurement Contracts

Many SEEs are simply not in a position to compete for public procurement contracts because of their size or because they simply do not provide the type of services that Government Departments are looking for e.g. Credit Unions, Housing Associations, or organisations offering local training/education or child care. Those who are in a position to compete for some Government work face similar problems to those faced by all small to medium sized enterprises (SMEs):[\[7\]](#)

- difficulties in finding information about tenders
- difficulties in finding information about the procedures for bidding
- problems in understanding jargon
- too short a deadline for responding
- costs of responding too high
- administrative procedures too complex/onerous paperwork requirements
- particular certification required for some contracts
- high financial guarantee required for some contracts
- over-emphasis placed on price by awarding authorities
- discrimination because of location

Some additional problems faced by SEEs who have successfully secured tenders for the delivery of services include the length of time the process takes, and the potential impact of Departmental efficiency savings, which although not intended to affect front line services may do so in some cases. It is also argued that pressure on public bodies to secure efficiencies by aggregating contracts and using Framework Agreements (similar to call-off lists) will discriminate against small businesses, including many social enterprises.

The Social Economy Network (SEN), in its recent presentation to the Enterprise, Trade and Investment Committee, proposed the following actions to help SEEs:

- Inclusion of social clauses into public procurement specifications to ensure a more equal playing field;
- Adoption of a consistent approach to the measurement of social value which can be embedded in the practice and processes of public procurement; and
- Exploration of innovative ways of increasing business opportunities for SEEs through public/social partnerships and private/social partnerships.[\[8\]](#)

The EU Legal framework

The EC Treaty applies to all public procurement activity regardless of value, including contracts below the thresholds at which advertising in the Official Journal of the European Union is required and including contracts which are exempt from application of the EC Procurement Directives.

Fundamental principles arising from the Treaty include:[\[9\]](#)

- transparency - contract procedures must be transparent and contract opportunities should generally be publicised;
- equal treatment and non-discrimination - potential suppliers must be treated equally;
- proportionality - procurement procedures and decisions must be proportionate;
- mutual recognition - giving equal validity to qualifications and standards from other Member States, where appropriate.

EC Procurement Directives 2004/17/EC and 2004/18/EC set out detailed procedural rules which are based on the principles outlined in the EC Treaty and which are intended to support the single market by harmonising procedures for higher value contracts, ensuring that they are advertised in the Official Journal of the European Union in standard format.

The EU Public Procurement Directive (2004/18/EC) and the Utilities Procurement Directive (2004/17/EC) were implemented in England, Wales and Northern Ireland by the Public Contracts Regulations 2006 and the Utilities Contracts Regulations 2006, which came into force on 31 January 2006.

The Use of Social Clauses[\[10\]](#)

Social clauses have been defined by the Cabinet Office as:

"...requirements within contracts or the procurement process which allow the contract to provide added social value through fulfilling a particular social aim. For example, a social clause in a public contract could prioritise the need to train or give jobs to the long-term unemployed in the community as part of the contracting workforce."[\[11\]](#)

Social clauses need to be carefully considered to ensure that they meet the requirements of EU procurement rules and general EU law. Such clauses should not give rise to direct or indirect discrimination. Contracting authorities must have a legal and policy basis for incorporating social benefit requirements into their procurement processes.

The Office of Government Commerce (OGC) has produced guidance on how to address social issues in public procurement. The guidance points out that "all public procurement is required to achieve value-for-money and is subject to the principles of the EC Treaty, around a level playing field for suppliers from the UK and other member states, and the UK regulations implementing the EC Public Procurement Directives." In addition, OGC recommend that:[\[12\]](#)

- Social issues addressed in procurement should be relevant to the subject of the contract.
- Actions to take account of social issues should be consistent with the government's value-for-money policy, taking account of whole-life costs.
- Any social benefits sought should be quantified and weighed against any additional costs and potential burdens on suppliers, which are likely to be passed onto the public sector.

- Contracting authorities should be careful not to impose unnecessary burdens that would seriously deter suppliers, especially small and medium sized enterprises (SMEs), from competing for contracts.
- They should also consider whether any social legislation, such as public sector equality duties, are relevant to a procurement and take appropriate action to address this.

The Use of Social Clauses in Scotland

The Scottish Executive's Public Procurement Handbook addresses social inclusion by making it mandatory for public bodies to:

"...pro-actively manage and develop the supplier base, including small and medium-sized enterprises (SMEs) and third sector and voluntary sector organisations, identifying and managing any supply risks or value added opportunities".^[13]

The clause forms part of the Executive's drive to ensure "social issues" are taken into consideration during public procurement processes. The term social issue in this context is broadly defined as:

"Issues which impact on society or parts of society and cover a range of issues including equality issues (i.e. age, disability, gender, race, religion and sexual orientation), training issues, minimum labour standards and the promotion of small and medium-sized enterprises (SMEs), including black and minority ethnic enterprises and the third sector including social enterprises." ^[14]

Overriding this social issues imperative is the prioritisation of Value for Money (VFM). VFM is considered to go beyond cost implications and is more broadly interpreted to include: "the best possible balance between price and quality in meeting the customer's requirements". Such requirements must include the promotion of sustainable development and corporate social responsibility, which includes social, economic and environmental objectives, including:

- social elements, such as, the "duty to promote" under discrimination legislation;
- economic issues, such as, removing barriers preventing social enterprises, local suppliers and SMEs competing for public business;
- supported businesses – under public procurement legislation public bodies may restrict participation in a tendering exercise to only those organisations defined as supported businesses;^[15]
- fair trade issues – whilst it is not permissible to specify in a tender opportunity that only fair trade options will be offered public contracts, it is permissible to say that fair trade options would be welcome;^[16] and
- environmental considerations such as conserving resources, reducing waste, phasing-out ozone depleting substances, encouraging the use and manufacture of environmentally friendly materials, sourcing material from sustainable resources and meeting regulatory environmental codes, should all form part of the procurement process.^[17]

An example of where the consideration of social issues during the procurement process is likely to be appropriate is where a public authority has obligations of a social nature in relation to a particular function, the performance of which it is contracting out. For example the "duty to promote" under discrimination legislation can legitimately be passed on to a contractor where the contractor is carrying out a service which would have been subject to the duty were it being performed in-house.^[18]

In addition to the above, there may be occasions where the procurement process might consider "wider social benefits". An example of such a consideration is the awarding of grants for an urban regeneration project and evaluating how those contracts might aid the regeneration project itself, by providing training opportunities for the unemployed.^[19]

The Scottish Government recommends that social issues should be considered during the following stages of the procurement process:

- at the outset, to ensure the social dimension is fully taken into account when requirements are drawn up;
- at the advertising stage;
- at the selection stage, where thought should be given to ensure the target audience is aware of requirements and how to respond; and
- after the contract is awarded, where cooperation with contractors can help to improve the social focus and send a "clear signal to suppliers about the public body's objectives in this area".^[20]

Community Benefits in Public Procurement in Scotland

In the context of public sector procurement community benefits are "contractual requirements which deliver a wider social benefit in addition to the core purpose of the contract". Community benefit requirements often have particular focus on training and employment outcomes. Since 2003 the Scottish Government has operated a pilot programme to examine the operation of community benefit issues in a practical context. The pilot scheme operated across five authorities; Glasgow Housing Association; Raploch Urban Regeneration Company; Inverclyde Council; Dundee City Council; and Falkirk Council. The findings of the pilot scheme were recently published in the Community Benefits in Public Procurement report (2008).

The report outlines a number of model clauses which may act as a guide to public bodies. The clauses, which cover procurement policy statements, procurement strategies, pre-qualification questionnaires and specifications, are outlined in Annex B.

The pilot projects outlined in the report serve as case studies for the wider community benefit programme. A brief synopsis of each programme is provided followed by an overview of the pilot's findings.

Glasgow Housing Association (GHA) - GHA's medium-term procurement strategy, which was utilised during a large-scale regeneration programme, established the following principles:

- each building supplier or contractor should make proposals for their commitment to employment and a 'partnership training initiative';
- GHA's Neighbourhood Renewal Team should advise and support the procurement process to that it maximises social and economic benefits;
- GHA will not be the main funder of social and economic initiatives but would act as an enabler and facilitator.

Raploch Urban Regeneration Company – Raploch is an area of Sterling noted for below average incomes, low levels of qualifications and high unemployment. The area is also home to poor quality public sector buildings and environment (including housing and health) due to proximity to the city's road network. Raploch Urban Regeneration Company was established to address these problems. The group's vision, outlined in their 2004 corporate plan is to "build a

community where people want to live, work and visit... within an economically sustainable environment". The vision outlined in the corporate plan (which includes ambitious education, employment and average income targets for the period 2004 – 2012), has resulted in the inclusion of targeted recruitment and training requirements in the group's procurement processes and documentation.

Inverclyde Council – The Scottish Index of Multiple Deprivation (2004) notes that Inverclyde has the second highest concentration of deprivation, next to Glasgow. The key factors which have resulted in this deprivation were identified as health, unemployment, education and income. The regions problems led to it being selected amongst the Scottish Executive's "Closing the Opportunity Gap" areas. The aim of the initiative is to reduce the number of people on benefits from 12,100 (2004) to 3,000 (2010). The strategic framework for achieving this target was set out in the Inverclyde Alliance's Regeneration Outcome Agreement and the Council's Economic Development Strategy. Amongst the strategies stated aims is the following:

"For Inverclyde to achieve sustainable economic progress, it is vital that residents and communities are connected to economic opportunities and feel able to contribute to and benefit from them".

This led the council to target the recruitment and training opportunities arising from its development and investment activities towards social development for the first time.

Dundee City Council – Dundee Council's application of community benefit principles is based upon powers conferred on it through the Local Government in Scotland Act 2003. Prior to implementing its community benefit pilots the council established the "Community Benefits in Procurement Group". The group, made up of numerous local actors in the social sector, agreed to run pilots in the construction and social care sectors.

Falkirk Council – Falkirk Council's strategic aim is to mainstream community benefits across all its policy mechanisms. The initial step of this process was the appointment of consultants who began by examining the council's procurement expenditure, with the ultimate result of outlining a set of "Organisational Strategic Objectives" designed to expand community benefits. These included:

- increasing the level of spend with local suppliers across all areas of procurement;
- increasing the percentage of local labour used in Council contracts;
- achieving an increase in youth attainment;
- decreasing the level of long-term unemployment;
- increasing the number of training opportunities in the local area;
- increasing inward investment; and
- embedding community benefit requirements in the procurement process to ensure they are viewed as an integral, rather than a separate, initiative.

The relative success or failure of the above projects was measured across a number of factors: the organisation's culture and resources; their ability to clearly demarcate roles and responsibilities; the clarity of requirement specification; developing a systematic approach, particularly in incorporating targeted recruitment and development; developing an appropriate supply-chain; and preventing training and funding mismatches. The report noted that the length of the contract may also indirectly determine its success, particularly when the timetable is uncertain.

Based on this analysis, the report sets out a number of key findings across specific areas.

- Targeted Recruitment and Training (TRT) – TRT may be achieved without negatively affecting VFM requirements, however success depends upon:
- high-level commitment to the new approach which leads to changes in cultures and practices within procurement teams;
- a commitment of resource by the client body. In this area the best deployment of resource was deemed to be the employment of a “Project Champion” to act as an advisor to the procurement team.
- Achieving Community Benefits – the drafting of Community Benefits Requirements should take into account;
- the objectives of Community Benefit Clauses;
- the design of requirements to fit with supply side funding and services;
- the monitoring and reporting requirements which will enable the contracting authority to use the above effectively.
- Alignment of TRT with existing services – Community Benefits Requirements should allow contractors to utilise existing training and job matching services. Difficulties may arise, however, should inclusion of Community Benefits require existing providers to change their working methods.
- Commissioning Skills – Community Benefits Requirements necessitates the development of skills amongst the procurement’s stakeholder group. Not least in developing an understanding of the “entitlement to procure”.

Cabinet Office Social Clauses Project

The Partnership in Public Services Action Plan was launched in 2006 by the Cabinet Office to enable an increase in public service delivery by the third sector.^[21] The action plan identified four different elements of the government’s engagement with the third sector: commissioning; procurement; learning from the third sector; and accountability.^[22]

The action plan required the Office of the Third Sector to examine the use of social clauses, barriers to their use, and the potential for template clauses. The social clauses project was consequently established in conjunction with the North East Centre of Excellence.

The aims of the project were to: consolidate knowledge on the existing use and best practice of social clauses; provide clarity on the merits of using social clauses; and support good commissioning and procurement by producing user friendly materials to help decision makers.

The main barriers to the use of social clauses were identified as confusion about when they can be legally used, concern about the processes needed to include them in any contract specification and how to evaluate them.

Survey results confirmed that legal uncertainties on the status of social clauses and EU procurement rules, as well as lack of information and understanding, were barriers to their use. Additionally, stakeholders reported difficulties in formulating social clauses as a core contractual requirement, and difficulty in measurement at the evaluation stage.

Some survey recipients suggested that further guidance on the use of social clauses was needed from central government in order to clarify their use and the legal issues under European and UK procurement policies.

Feedback was also obtained from comments received from individuals, phone interviews with local authorities and discussions which were held with a wide range of agencies. Based on this feedback, it was decided that the creation of template clauses should not be considered, as it seemed clear to the project team that any contract terms need to be tailored to the particular procurement, must relate to the performance of the specific contract and be assessed on whether their inclusion represents value for money.

The project therefore moved from the original aim in the action plan of creating template contract conditions to exploring how and when social issues could be addressed in the procurement process and what package of support should be created for commissioners looking to address social issues through procurement activities.^[23]

Conclusion

Problems faced in public procurement by SEEs are similar to those faced by SMEs. Whilst the use of social clauses would certainly help their position, there appear to be some uncertainties on the status of social clauses and the potential conflict with EU procurement rules. Contractors have also reported difficulties in formulating social clauses as a core contractual requirement and difficulties when it comes to measuring social value.

Some useful lessons can perhaps be learned from the Scottish experience. It has been shown, for example, that targeted recruitment and training can be achieved without negatively affecting value for money requirements. The Scottish Government have also set out a number of 'model' social clauses to act as a guide to public bodies.

The Cabinet Office Social Clauses Project identified some confusion about when social clauses can be legally used, and also concern about the processes needed to include them in any contract specification and how to evaluate them. This suggests, as was felt by some participants in the project, a need for further guidance on the use of social clauses in order to clarify the processes and the legal issues under European and UK procurement policies.

Annex A: Public Procurement Expenditure by Category

Procurement Expenditure incurred by Departments, Agencies and NDPBs

Category	2005/06	2006/07	2007/08
	£m	£m	£m
Construction/Maintenance Services	794	711	897
Medical/Surgical Equipment and Supplies	187	186	235
Consultancy Services	121	102	115
Energy	100	125	140
Public Utilities	77	71	
Transport and Travel Services	53	63	72
Repair/Maintenance Services	53	60	67
Plant and Machinery (including tools and equipment)	45	43	59
Facilities Management	44	52	63
Rental, Leasing or Hire Services	42	24	54

Category	2005/06	2006/07	2007/08
	£m	£m	£m
Office Machines and Supplies	41	72	99
Transportation Equipment	30	61	78
Postal and Telecoms Equipment and Supplies	29	35	36
Food Stuffs	27	27	37
Chemicals/Reagents	23	21	21
Financial Services	22	17	21
Furniture and Fittings	13	17	19
Printing/Reprographic Services	13	14	14
Environmental Services	11	10	14
Publications	10	14	24
Clothing and Accessories	7	7	8
Land			19
Advertising			16
Recruitment and Personnel Services			15
Research and Development			8
Public Relations (including events/conferences)			6
Other Expenditure	70	162	65
Totals	1812	1895	2202

Source: Central Procurement Directorate Annual Reports to Procurement Board

Annex B: Scottish Government's Model Community Benefit Clauses

The following model clauses are recommended for use as a starting position for procurements.^[24] They are drafted on the basis that the contractor will have supplied a service delivery plan/method statement satisfactory to the Authority, concerning how they will generate training and employment opportunities. Alternative clauses may be drafted depending on the requirements that have been included in the specification.

- The [Contractor/Developer] agrees to secure the creation of training opportunities in connection with the [Project] of a total of [number] training weeks in accordance with the [Service Delivery Plan/Method Statement for economic development activities].
- The [Contractor/Developer] agrees to secure the creation of at least [number] employment opportunities in connection with the [Project] which are aimed specifically at [detail target group, for example, people who have been unemployed for at least 6 months (including people who first take advantage of training opportunities created under Clause X.1)] and use all reasonable endeavours to fill those posts with such persons.
- The [Authority] undertakes to assist the [Contractor/Developer] and their sub-contractors to provide training and employment opportunities by providing lists of agencies that can assist in the recruitment of suitable trainees/employees, and the identification of potential sub-contractors and suppliers. Any action taken by the

Authority or their agents does not imply, and must not be deemed to imply any promise to provide suitable labour/firms/agencies, and does not imply and must not be deemed to imply that any individuals/ firms/agency referred to the contractors or sub-contractors are suitable for engagement.

- The Contractor is required to complete weekly labour monitoring forms in a format to be provided by the Authority, and is responsible for obtaining accurate data from all sub-contractors on site for entry onto the forms. The weekly labour monitoring form must be completed and supplied to the Authority or their agent within 7 days of the end of the week to which it relates.
- To the extent it has not already done so the [Contractor/Developer] shall enter, and shall procure that its Sub-Contractors enter, into the [enter name] Construction Initiative's Employment Charter at the same time as entering into this Agreement.

[1] DFP Public Procurement Policy Summary Statement - http://www.cpdni.gov.uk/pdf-public_procurement_policy_summary.pdf

[2] See <http://www.cpdni.gov.uk/index/current-opportunities.asp/centres-of-procurement-expertise.htm>

[3] Based on information provided by DFP Central Procurement Directorate Annual Reports.

[4] "Findings from DETI's First Survey of Social Economy Enterprises in Northern Ireland", DETI, July 2007 - <http://www.detini.gov.uk/cgi-bin/downutildoc?id=1967>

[5] "A Survey of Social Enterprises Across the UK", Research Report prepared for the Small Business Service by IFF Research Ltd, July 2005 - <http://www.socialeconomynetwork.org/PDFs/Publications/SurveySEAcrossUK.pdf>

[6] The total number of paid employees in the 396 SEEs surveyed was 6,683.

[7] See Assembly Research Paper 119/08 "Public Procurement and SMEs" - <http://archive.niassembly.gov.uk/io/research/2008/11908.pdf>

[8] Social Economy Network briefing to Enterprise, Trade & Industry Committee, 13 November 2008.

[9] Source: Scottish Government Public Procurement Handbook - <http://www.scotland.gov.uk/Resource/Doc/256155/0076031.pdf>

[10] See also NI Assembly Research Paper 03/09 "Social Clauses in Public Contracts", February 2009 – <http://archive.niassembly.gov.uk/io/research/2009/0309.pdf>

[11] Cabinet Office - http://www.cabinetoffice.gov.uk/third_sector/public_services/social_clauses.aspx

[12] Office of Government Commerce, "Buy and make a Difference: How to Address Social Issues in Public Procurement" - http://www.ogc.gov.uk/documents/Social_Issues_in_Public_Procurement.pdf

[13] Scottish Government Public Procurement Handbook - <http://www.scotland.gov.uk/Resource/Doc/256155/0076031.pdf> p8

[14] The Scottish Government Social Issues in Public Procurement: A guidance note by the Scottish Procurement Directorate -
<http://www.scotland.gov.uk/Resource/Doc/116601/0053331.pdf>

[15] Businesses with more than 50% of the workforce being disabled, who, by reason of their disability, are unable to take up work on the open labour market

[16] The Scottish Government Sustainable Procurement summary note
<http://www.scotland.gov.uk/Topics/Government/Procurement/policy/corporate-responsibility/susdevsummarynote> (accessed 03/02/09)

[17] The Scottish Government Public procurement and sustainable development
<http://www.scotland.gov.uk/Topics/Government/Procurement/policy/corporate-responsibility/13744#a4> (accessed 03/02/09)

[18] Scottish Government Broad Summary Note on Sustainable Procurement -
<http://www.scotland.gov.uk/Topics/Government/Procurement/policy/corporate-responsibility/susdevsummarynote>

[19] The Scottish Government Social Issues in Public Procurement 0 A guidance note by the Scottish Procurement Directorate
<http://www.scotland.gov.uk/Resource/Doc/116601/0053331.pdf> (accessed 02/02/09)

[20] The Scottish Government Social Issues in Public Procurement 0 A guidance note by the Scottish Procurement Directorate
<http://www.scotland.gov.uk/Resource/Doc/116601/0053331.pdf> (accessed 02/02/09)

[21] Cabinet Office, Office of the Third Sector -
http://www.cabinetoffice.gov.uk/third_sector/public_services/public_service_delivery.aspx

[22] Cabinet Office, Office of the Third Sector, Report of the Social Clauses Project 2008 -
http://www.cabinetoffice.gov.uk/media/107238/social_clauses_report_final.pdf

[23] Cabinet Office, Office of the Third Sector, Report of the Social Clauses Project 2008 -
http://www.cabinetoffice.gov.uk/media/107238/social_clauses_report_final.pdf

[24] Scottish Government "Community Benefits in Public Procurement", February 2008 -
<http://www.scotland.gov.uk/Resource/Doc/212427/0056513.pdf>

Research and Library Services



The Integration of Social Issues in Public Procurement

**Colin Pidgeon
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The integration of social issues into public procurement has been an issue of interest in Northern Ireland for some years. This paper seeks to provide relevant information for the Committee for Finance and Personnel's inquiry into public procurement by setting out the legal framework and drawing on experience from other parts of Europe.

Library Research Papers are compiled for the benefit of Members of The Assembly and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.

Key Issues

- The European legal framework for public procurement allows the integration of social issues. But care must be taken in how this achieved to avoid infringing the procurement Directives or the fundamental principles.
- There have been some examples of the use of social clauses in Northern Ireland. An unemployment pilot project appears to have been successful and the Central procurement directorate continues to use similar contractual provisions.
- The difficulty of monitoring compliance with contractual clauses is a recurring theme across Europe. This was also raised by CPD officials in their evidence session to the Committee of Finance and Personnel on 19 April 2009.
- An integrated approach to encourage social inclusion is taken in France. Contractors can be assisted by facilitators with experience of the particular social needs of certain sections of the community. The facilitator, paid by social service agencies, not only helps firms to manage the integration element of the workforce but also monitors implementation of the clauses.
- There is a relatively high level of policy commitment to using social clauses in Northern Ireland. It is questioned the extent to which this has been translated into their use in practice. There have been a number of legal challenges to the public procurement process which may have led to contracting authorities being cautious. It is also possible that a level of inertia in the system has led to uptake of their use being slow.
- In France there is also a high level of policy commitment. But the domestic courts have interpreted European requirements very strictly (due in part to a legal heritage that places great weight on "égalité") and has struck down some contract awards. Legal and cultural heritage appears to be important in this respect - the Italian courts, for example, take a much less strict view. An understanding of how the Northern Ireland courts have interpreted social clauses in contracts may be beneficial.
- The case studies in Northern Ireland do not indicate a use of variant tenders – allowing for parallel bids to be submitted with higher levels of social integration than the minimum. This approach is seen as useful in some Member States.

- It is for Member States to determine what constitutes 'grave professional misconduct' - which allows for potential bidders to be excluded if they do not meet the level of social compliance determined. It may be that there are certain objectives in the Executive's Programme for Government that could be strengthened by procurement policy taking them into account – for example, the use of child or forced labour in the supply chain.

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1. Introduction

The integration of social considerations into public procurement has been on the European agenda for quite some time. The Commission issued an Interpretative Communication on the topic as far back as autumn 2001. This was intended to clarify the range of possibilities for integrating social considerations under the Community legal framework that was in operation at that time.

Since that time European law on public procurement has been updated. The Directives that are most relevant are what is known as the "classic" or "public sector" Directive^[1], and the "utilities"

Directive of 2004.^[2] Above and beyond the specific provisions of the Directives, there are fundamental principles with which all procurement exercises must comply.

Fundamental principles deriving from Treaty provisions:

- Equality of treatment
- Obligation of transparency
- Proportionality
- Mutual recognition

One means of integrating social considerations into public procurement is through the use of 'social clauses'. The terms of reference for the Committee for Finance and Personnel's inquiry into public procurement practice in Northern Ireland include consideration of 'the nature, extent and application of social clauses within public contracts'.

There is some policy commitment to such integration both within the devolved government of Northern Ireland and at the UK level. The Office of the Third Sector (within the Cabinet Office) has undertaken a study examining the use of social clauses, barriers to their use, and the potential for template clauses.^[3]

The Cabinet Office has defined social clauses as:

...requirements within contracts or the procurement process which allow the contract to provide added social value through fulfilling a particular social aim. For example, a social clause in a public contract could prioritise the need to train or give jobs to the long-term unemployed in the community as part of the contracting workforce.^[4]

The Northern Ireland Executive's Programme for Government (PfG) for 2008-11 contains commitments that indicate support for the use of social clauses in appropriate circumstances. In relation to the Executive's reform programmes, for example, the PfG states that:

We are committed to taking forward key reform programmes in areas such as health, education, water and planning and will shortly announce our plans for the reform of local government. These will result in significant changes to both the structure and the delivery of public services, reducing bureaucracy and enabling us to focus our energy and resources on frontline services. We will ensure that the reforms and restructuring will be compliant with recognised best practice in social procurement guidelines.^[5]

The Central Procurement Directorate (CPD) of DFP has included the need to consider the social aspect of procurement in its twelve guiding principles for purchasers. The seventh principle states:

Integration: in line with the Executive's policy on joined-up government, procurement policy should play due regard to the Executive's other economic and social policies, rather than cut across them.^[6]

Across Europe there are different levels of emphasis on the integration of social considerations into public procurement. In some instances (notably in Germany) there is some interest in pursuing not just the domestic social agenda but also wider social issues such as Fair Trade and the prevention of child labour.

This paper considers the European legal framework and issues that relate to the use of social clauses. It also details some case studies from across the EU and concludes with some case studies from Northern Ireland and elsewhere in the UK.

2. The European Legal Framework for Procurement

Procurement represents about 16% of EU gross domestic product (GDP) and in 2007 the value was estimated at €2,000 billion (including procurements both above and below EU thresholds) and in 2006 nearly 32,000 contracting authorities published public contracts worth €380 billion.^[7] It is perhaps not surprising then that the EU has legislated significantly in the field of public procurement for a number of years. It is seen as an important single market issue.

At around 3% of total procurement, direct cross-border procurement is relatively low. (Direct cross-border procurement is where a company based in Germany, for example, wins a contract in the Netherlands.) When indirect cross-border procurement is also considered (this includes, for example, a French national company with a subsidiary in Spain wins a contract in Spain) it accounts for around 10%.^[8] With free movement of goods being a fundamental purpose of the European Union, this is perhaps surprisingly low.

There are three aspects of EU law that apply to procurement. Primary law is essentially the Treaty; secondary law is the various relevant Directives, and; case law of the European courts. The European Court of Justice (ECJ) often places importance on free movement because there is a clear legal basis to do so in the EC Treaty.

The establishment of a single market is the key factor in relation to procurement: all other objectives (such as sustainability) are secondary. As a result, there remains a tension between the single market and the social policy arenas. The EU has limited competence in the social area which has caused problems of legal uncertainty for procurement practitioners.^[9] It is notable that this is less the case in the environmental area and there have been direct interventions by the European Commission – for example the Energy Labelling Directive and the Energy Performance in Buildings Directive.

The 'fundamental principles' are important because it is possible that social or ethical considerations could operate as a disguised barrier to the free movement of goods, and therefore become a form of protectionism. For example, a technical specification of goods to be provided which refers only to a national standard (for example, a British Standard in construction) would be discriminatory unless it allows equivalent standard from other Member States. It is therefore essential that contracting authorities pay attention to these principles in their procurements or they run the risk of legal challenge.

2.1 Directive 2004/18/EC on the Coordination of Procedures for the Award of Public Works Contracts, Public Supply Contracts and Public Service Contracts

This is the so-called "classic" or "public service" directive. Amongst other things, it deals with the scope of application (thresholds, specific situations and exclusions, and special arrangements), arrangements for public service contracts, technical specifications, procedures (open, restricted, negotiated or competitive dialogue) framework agreements, advertising and transparency, selection of contractors and the award of contracts.

Whether all or only some of the provisions of the Directive apply to a particular contract depends upon the objects of the contract. 'Part A' contracts are subject to the full procurement regime. 'Part B' contracts are subject to only some of the provisions. Health and social services are

classified as 'Part B'^[10] so it is the more limited procurement regime that generally applies to the inclusion of social considerations if they are the subject of the contract. If, however, social considerations are included in a contract which itself is a 'Part A' contract, then the full regime applies.

Under the "classic" Directive it is possible for contracting authorities to state in a contract notice that a particular contract or element of the contract is to be reserved specifically for sheltered workshops or sheltered employment programmes. Such workshops or programmes are defined as those where "most of the employees concerned are handicapped persons who, by reason of the nature or the seriousness of their disabilities, cannot carry on occupations under normal conditions."^[11] The Directive explains that "such workshops might not be able to obtain contracts under normal conditions of competition" and special provision is made because "sheltered workshops and sheltered employment programmes contribute efficiently to the integration or reintegration of people with disabilities in the labour market."^[12]

It must be noted that the requirement for competition is not removed by this process of reserving contracts. A contract can't be reserved for a particular sheltered workshop but for sheltered workshops in general, thereby allowing a number of such workshops to compete for the tender.

For contracts that the contracting authority does not choose to reserve, there is varying scope to address social issues (which are relevant to but not the direct purpose of the procurement) depending on the stage of the public procurement process. The UK Office of Government Commerce (OGC) sets out those stages as follows:

1. pre-procurement – when identifying the need, approaches and considering the market;
2. when deciding the requirement – the specification stage;
3. when selecting suppliers to invite to tender – the selection stage;
4. when awarding the contract – the award stage; and
5. in the performance of the contract – contract conditions and relationship management.^[13]

2.2 The Stages of Procurement and the Integration of Social Considerations

The following section is set out in the order of the procurement processes set out by OGC.

A) the pre-procurement stage

This stage is when a contracting authority is considering what needs it wishes to fulfil and what benefits it wishes to define from the works, services or goods it is to purchase. Social issues may be addressed both through what is bought (for example, a service catering specifically for a particular group with specific social needs such as Irish travellers or young people with a history of offending) and less directly through how it is bought (for example, by making the requirement easily accessible to Small and Medium-sized Enterprises (SMEs) in particular communities).

OGC guidance specifies that in developing a business case, contracting authorities "should take account of wider benefits including social ones, in accordance with the Treasury Green Book."^[14] (The 'Green Book' is the guidance that must be followed by departments in

conducting economic appraisals and constructing business cases.) This is the stage when contracting authorities are able to consult widely with stakeholders to help them understand fully what is needed and consider which social issues or obligations are relevant to what they plan to buy. Additionally, this is the stage when consultation with potential suppliers will help contracting authorities to understand what the market can readily provide.

B) the specification stage

At this stage, the contracting authority sets out exactly what it wishes to buy. The specifications must be set out in all the relevant documentation – notices, contract documents, etc. Definitions of certain technical specifications are provided in the “classic” Directive. Specifications define the characteristics of a material, product or supply and “shall include levels of environmental performance, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety”^[15] and other information such as dimensions, test methods, packaging, production methods and so on.

The specification should allow equal access for tenderers (due to the fundamental principles) and may contain references to technical characteristics or equivalents and/or output specifications. These outputs may concern environmental characteristics such as maximum levels of emissions, for example. But they may not specify a particular make, source, process, trade mark, patent or label. However, CPD guidance states that “Public bodies should not impose unnecessary burdens or constraints on suppliers or potential suppliers.”^[16]

Specifications must be relevant to the subject matter of the contract. OGC guidance states that “a social issue can be a core requirement and reflected in the specifications provided it is central to the subject of the procurement.”^[17] It gives an example of where the specification may require helpdesk staff to have fluency in languages other than English.

Also, an authority wishing to buy furniture made from fair trade wood could specify that wood should be sourced in accordance with specific environmental, social or employment standards. But it could not refer to a specific ‘fair trade’ label.

Variant tenders

The “classic” Directive also allows variant tenders to be submitted.^[18] This technique could be used in conjunction with social criteria to allow for a kind of parallel bidding. For example, a specification could specify a minimum level of environmental or social protection and then allow second bids which meet a higher level than the minimum. In the event that the parallel bids do not meet the criteria of being most economically advantageous, the contracting authority may then fall back to the regular tender which meets the minimum requirement. This process can allow for market-led innovation.^[19]

Again, it must be stated in the contract documentation from this early stage that this approach is to be used.

Sub-contracting

A final permutation allows the contracting authority to ask tenderers to indicate a percentage of the work to be sub-contracted to SMEs and/or Social Economic Enterprises (SEEs).^[20] It should be noted, however, that generally it is not permitted for a contracting authority to limit a tender specifically to non-profit service providers (and SEEs would fall into this category). In relation to the “classic” Directive the Commission has stated:

Individual contracting authorities can not decide themselves to limit a tender procedure to non-profit service providers. The Directive is based on the principle that all economic operators are treated equally and non-discriminatorily. It is therefore not possible under the Directive to reserve tenders to specific categories of undertakings, such as non-profit organisations. The provisions mentioned in this paragraph apply to all services, including those only partially covered by the Directive, such as social services.^[21]

C) the selection stage

This is the point at which suppliers are selected for the next stage of the procurement process e.g. invitation to tender.

Potential suppliers can be required to demonstrate technical capability in relation to the contract in question.

OGC guidance states that "if a contract requires specific know-how in the 'social' field, specific experience may be used as a criterion to prove the suitability of potential suppliers in regard to technical or professional ability."^[22] A possibility might be to ask for evidence of, for example, language skills or cultural awareness or sufficient research capacity to meet a social criteria.

At this stage it is also possible for the contracting authority to consider a potential supplier's track record with similar contracts. It is permissible to exclude tenderers on the basis of 'grave professional misconduct'.^[23] This allows contracting authorities to pursue wider social objectives. For instance, a potential supplier could be excluded on the grounds of a breach of health and safety or equality legislation.

It is for Member States to determine what behaviour constitutes grave professional misconduct and this may be proven by any means – there is no specific standard set by the Directive. A Member State could determine that the use of child labour, for example, constituted such behaviour.

The OGC guidance provides an example that a contracting authority could require potential suppliers to demonstrate the adequacy of their recruitment and training as these may be relevant to the ability to deliver the contract in question. Such assessment may only be done, however, on a case-by-case basis: criteria requiring firms to identify and address imbalances in job applicants or employees on a gender or community background basis may be relevant to an individual contract but they are unlikely to be relevant to all contracts. Imposing such criteria in a blanket fashion would run the risk of legal challenge.^[24]

D) the award stage

At this stage the contractor is selected on the basis of the award criteria. It is for the contracting authority to decide the method. It may choose to award on lowest price only or it may choose to award on the most economically advantageous tender (MEAT). Using the lowest price only method leaves no scope for any consideration other than price. Using MEAT opens up small possibilities for the integration of social considerations.

The "classic" Directive presents a non-exhaustive list of criteria that may be used. These include price, quality, technical merit, aesthetic and functional characteristics, and environmental characteristics among other things.^[25] Social considerations are not explicitly mentioned in the articles. But, Recital 1 states:

...This Directive is based on Court of Justice case-law, in particular case-law on award criteria, which clarifies the possibilities for the contracting authorities to meet the needs of the public concerned, including in the environmental and/or social area, provided that such criteria are linked to the subject-matter of the contract...[\[26\]](#)

Which tender is most economically advantageous and therefore presents best value for money is interpreted from the point of view of the contracting authority.[\[27\]](#) This suggests a wider public interest interpretation is not applicable.

OGC guidance confirms that social considerations may be given a weighting at the award stage "where they provide an economic advantage for the contracting authority which is linked to the product or service which is the subject matter of the contract."[\[28\]](#) Similar to other considerations, any weighting that is to be applied to social criteria at this stage must be stated in the contract documentation, must not confer unrestricted freedom of choice on the contracting authority and must comply with the fundamental principles.

It is recommended by the European Commission that contracting authorities are very cautious about using giving high weightings to social criteria because best value is the main consideration. If social considerations are given a high weighting, a contracting authority may end up with economically disadvantageous tenders. It is considered less risky to put social considerations into the contract-performance criteria.[\[29\]](#)

E) contract conditions and relationship management

This stage of the procurement process offers considerable scope for the integration of social considerations. Contracting authorities may lay down special conditions relating to the performance of a contract, as long as they are not incompatible with EC law and have been indicated in the contract notice or specifications. The "classic" Directive says explicitly "the conditions governing the performance of a contract may, in particular, concern social and environmental considerations."[\[30\]](#)

The Directive also provides further clarification:

Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory and are indicated in the contract notice or in the contract documents. They may, in particular, be intended to favour on-site vocational training, the employment of people experiencing particular difficulty in achieving integration, the fight against unemployment or the protection of the environment. For instance, mention may be made, amongst other things, of the requirements – applicable during the performance of the contract – to recruit long-term job-seekers or to implement training measures for the unemployed or young persons, to comply in substance with the provisions of the basic International Labour Organisation (ILO) Conventions, assuming that such provisions have not been implemented in national law, and to recruit more handicapped persons than are required under national legislation.[\[31\]](#)

It is important to note that social conditions may only refer to the contract in question. They may not, for example, require a contractor to hire the long-term unemployed for all other works that they undertake. OGC guidance states that "care should be taken to avoid the imposition of blanket clauses on suppliers, which could be regarded as burdensome and might deter suppliers from competing for government work."[\[32\]](#) Value for money is maintained as a central consideration.

Almost all kinds of consideration (such as measures for equality between men and women or ILO standards) could be included at this stage, as the strict requirement to relate the social conditions to the subject of the contract is not applied as it is, for example, in the specification stage. This is not about what is bought, or about the process of procurement but about the performance of the contract in a way that the contracting authority is happy with.[\[33\]](#)

Finally, OGC guidance suggests that "there may be opportunities post-award for contracting authorities to work outside the formal procurement process, on a voluntary basis, to promote the importance of social issues...to their suppliers and supply chain"[\[34\]](#). For example, a contracting authority may let its facilities management company's staff attend in-house equality training.

3. Experiences from other EU Member States

The Directorate General for Employment, Social Affairs and Equal Opportunities commissioned a study on the incorporation of Social Considerations in Public procurement in the EU which was finalised in the summer of 2008. This study was to inform the development of practical Guide to taking account of social considerations in public procurement. The Guide is currently in preparation and is likely to issue in the autumn of 2009.[\[35\]](#)

The study resulted in the publication of four reports:

1. Legal and Policy Review of Socially Responsible Public procurement (SRPP) frameworks in selected EU Member States.[\[36\]](#)
2. Overview of typical applications of SRPP Practices in the EU Member States as collected through the survey questionnaire.[\[37\]](#)
3. Six studies on SRPP Practices in the EU Member States.[\[38\]](#)
4. Study on the incorporation of Social Considerations in Public Procurement in the EU.[\[39\]](#)

These reports contain some useful information about the practice of incorporating social considerations into public procurement. A summary of these European experiences is presented below.

3.1 Denmark

- High awareness of socially responsible procurement and future potential
- Guidance in forms of manuals
- Lack of legal guidance: uncertainty
- Lots of plans but not so much happening on the ground
- Concern over measurement of outcomes

In June 2008 unemployment in Denmark was below 2%. More than 38% of the total workforce is employed in the public sector and, on average, a Danish municipality employs about 10% of its population. Taxation is the highest in the world.[\[40\]](#)

Promotion of employment opportunities

Works and services contracts that require a local presence of at least parts of the workforce involved in the execution of the contract may include as contract conditions requirements to promote employment opportunities for the unemployed. Across Denmark the usual level is 5% (the City of Aarhus requires 10%) of the workforce to be recruited for a certain minimum period of time from the unemployed.

Between 50 and 75% of the salary is paid by the tenderer. The state pays the remainder of the salary which creates an incentive for the tenderer. The policy is not directly prescribed by law although each municipality must produce a four-year strategy on the policy. There is provision for administrative enforcement of this requirement but Local Government Denmark reports that no action has ever been taken.

There is anecdotal evidence that the policy has brought many unemployed into employment. The hope is that after the period of funded employment is over the tenderer will keep the formerly unemployed persons in their employment but "there are no reliable statistics and no test of the efficiency of the policy in practice."[\[41\]](#)

It is often difficult to satisfy the contract clauses precisely because the rate of unemployment is so low. There is concern that the policy artificially raises transaction costs and so there is a reluctance to use social clauses. Contracting officers feel overburdened by the additional requirements – staff time in writing additional clauses into contracts is considerable. Also, as people in the most challenging unemployment categories are difficult to integrate, the employment often lapses after the minimum period.[\[42\]](#)

Promotion of decent work

As above, requirements for 'decent work' are integrated only as conditions of the contract not in the technical specifications. Decent work is defined in terms of International Labour Organisation standards. However, contracting authorities reported that it was difficult to implement in practice because of a lack of relevant documentation or instruments for evaluating existing documentation. Controlling whether or not contractors adhere to the contract clauses was therefore reported to be impossible.[\[43\]](#)

Promotion of SMEs

In Denmark an SME is a company with fewer than 250 employees. Municipalities use initiatives to encourage their participation in public procurement (such as holding information meetings prior to call for tender) but SMEs are not singled out in the technical specifications.[\[44\]](#) Also, large contracts are sometimes split according to geographical criteria to encourage SME participation.

The perception of this process amongst both procurement practitioners and SMEs is split. Some SMEs regard social and environmental initiatives as a chance to distinguish themselves from their competitors (branding) whereas others see them as a burden.[\[45\]](#)

Fair and ethical trade

There is political desire to use Fair Trade labels but this is obstructed by the legal uncertainty. This is further complicated by the fact that SMEs often can't meet the costs of accreditation.[\[46\]](#) Also, there is a limited range of Fair Trade products available – it is mostly in the food/coffee sector with some construction items.

There were two political scandals relating to the construction of a new opera house and TV2 studios in Copenhagen. Granite stones that were used in the construction were produced in developing countries using slave and child labour.

Enforcement

Whilst in theory the Danish Competition Authority can inspect whether suppliers adhere to the standards they have agreed to (potentially leading to annulment of the contract or even the closing down of the company) in practice this does not happen.[\[47\]](#)

Secondly, there are no common standards or systems for monitoring compliance. Also, the lack of legal certainty leads to contracting authorities to be very cautious in their approach to integrating social considerations.[\[48\]](#)

Conclusions

Socially responsible procurement is likely to gain in importance as contracting authorities produce information websites, guidelines and brochures to raise awareness. Also they are training procurement officers and there is an internet dispenser for standardised contract specifications.

3.2 Germany

- The inclusion of social considerations is highly political.
- Federalised nature means procurement is spread across federal level (limited), 16 authorities at state (or regional) level and thousands at municipal level.
- Social considerations better addressed by instruments other than procurement.

Germany is the largest public and utilities procurement market in the EU. But due to the fragmented nature of structure of public procurement only 7.5% of contracts are advertised in the Official Journal – the lowest of all member States.[\[49\]](#)

Generally speaking both policy makers and contracting authorities are opposed to the integration of social considerations into procurement.[\[50\]](#) (Note that this does not apply to the promotion of SMEs which is not seen as a social issue in Germany. Politically the promotion of SMEs is important.) This is not because the objectives are disputed but because social clauses are feared to compromise value for money and transparency.[\[51\]](#)

Social considerations are considered to be more appropriately enforced through other aspects of German law such as employment law, child law or constitutional law. The use of social clauses is also the subject of much political debate, with the country divided on political lines at federal, state and municipal levels. Reservations are often put forward that procurement officers (especially at the municipal level) are already stretched by a complex procurement process.[\[52\]](#)

Contracts for workshops for the disabled

From 2005 a Federal Decree requires federal procurement authorities to reserve a part of their contract budget for contracts that can be awarded to workshops for the disabled. Note that federal procurement is rather limited to the police, the army and some road construction.[\[53\]](#) This can even apply to large supply and services contracts, although the workshops are required to compete and come up with economically sound tenders.

Prisons, youth work institutions, vocational training or similar institutions

A Procurement Order allows the restricted procedure set out in the "classic" Directive to be used – even for contracts where the Directive does not apply – if the contracting authority intends to award contracts to any of the institutions listed above. The restricted procedure is defined by the Directive as:

Those procedures in which any economic operator may request to participate and whereby only those economic operators invited by the contracting authority may submit a tender.^[54]

Promotion of SMEs

Germany has a complex definition of an SME which is on the basis of a combination of turnover and number of employees that varies according to the sector in which the SME operates (i.e. retail, wholesale, professional or crafts or industrial). A Procurement Order requires that, at the federal level, "whenever it is economically feasible, contracts should be divided into lots to facilitate the participation of SMEs."^[55] There is also a general SME initiative with the objective of reducing bureaucracy and unnecessary regulations, though this is not legally binding.^[56]

At the state level, there are two techniques open to contracting authorities aimed at achieving the same objective. The first is comparable to the federal requirement to split contracts into lots. The second is to include a clause in the main contractor's contract providing for the participation of SMEs as subcontractors as long as this can be reconciled with the general requirements of the contract in question.^[57]

Finally, some states have a general rule to allow SMEs a fair share of public contracts or requiring SMEs to be specifically asked to bid for contracts as part of the restricted and negotiated procedures. There is no data, however, on how these techniques work in practice. There is no overall control of how this fair share works and so it could be legally questionable.^[58]

The state of North Rhine Westphalia is currently intending to introduce amendments to its procurement laws that will: introduce a general requirement to consider SMEs; a requirement to split contracts into lots; a requirement for bidders to carry at least 50% of the contract within their own company; simplify pre-qualification; ensure that consortia are not disadvantaged compared to single bidders; specify at least 14 days for the submission of bids; abolish tender securities; require acceptance of electronic tenders; and introduce a new review procedure. These are all aimed at increasing SME participation.^[59]

Prevention of exploitative child labour

Some German states have moved to use public procurement as a tool against exploitation in developing countries. The Bavaria and Saarland state parliaments have passed motions asking their state governments not to procure supplies produced through exploitative child labour. However, these are motions, and not laws. The state of Hamburg requires a declaration from contractors that the contract is performed in accordance with ILO standards.

A number of municipalities have also introduced policies in this field however this is often criticised as being a profile-raising exercise by politicians rather than as a serious policy which will be monitored. In any case, it would be difficult to monitor and enforce.^[60] But it is thought that they will probably have a positive impact in practice because companies that are known to have supplied goods produced by child labour are likely to find it hard to win contracts. It is

unclear, however, whether these regulations and practices comply with EU and German procurement law.[\[61\]](#)

Promotion of the Employment of Women

The state of Brandenburg has a specific law on the promotion of the employment of women which applies below the EC procurement thresholds. If two bids are economically equally competitive and one of the bidders has a high percentage of female employees, that bid will get preference. The law includes provisions to ensure equal treatment and transparency but there is no information on its operation in practice.[\[62\]](#)

Conclusions

The prevention of exploitation has been subject to much press coverage. Workshops for the disabled and long-term unemployed are often at least partly owned by the municipalities which directly award many low value contracts to these establishments. The promotion of SMEs is seen as a separate issue but is embedded in the different levels of public procurement.[\[63\]](#)

3.3 France

- Centralised political structure with strong policy commitment over a number of years
- Considerable use of social clauses by local contracting authorities
- Strong cooperation between contracting authorities and social services
- Legal establishment not enthusiastic about social clauses and case law is strict

French procurement law is about choosing the best combination of efficiency and the meaningful use of public money. The legal Code, however, does contain references to sustainable development although this is balanced by the requirement that public procurements must answer the needs of the contracting authority.

The integration of social issues is politically popular. But administrative case law has determined a strict approach. The most important case considered works in the municipality of Graveline where the local authority attempted to integrate a requirement for job creation into the contract. Bids over the available budget were received, so the municipality began a negotiated procedure which abandoned the overall pricing method for award and used a maximum price with a system of deductions. Neither bidder presented a proposal for job creation.

Following a legal challenge on the basis that the award criteria had been changed, the contract award was quashed. The central concept is that any criterion linked to the bidder cannot also be considered to be linked to the object of the contract. The courts held that long-term unemployment was not related waste clearance, which was the purpose of the contract.[\[64\]](#)

Further, the French courts struck down legislation which reserved a portion of public procurements to social enterprises. The judgement was on the basis that the resulting infringement of the principle of equality was disproportionate to the public interest aims pursued. Essentially, social considerations are not considered to be a strong enough reason to restrict the equality principle.[\[65\]](#)

Despite the legal cases, the French government is pursuing a sustainable procurement strategy that will have some social aspects integrated. For example an objective is that 50% of contracts

awarded in relation to parks and other public green spaces will be awarded to social enterprises or those hiring handicapped workers.[\[66\]](#)

Contracts for workshops for the disabled

A statute from 2005 requires public law entities to hire a certain percentage of people with disabilities. This duty can be in part fulfilled by "sub-contracting the duty". In essence, the contracting authority can use the numbers of disabled workers employed by a contractor on their behalf to count against their obligation. This creates a strong incentive for contracting authorities to use the reserved procedure for sheltered workshops under the "classic" Directive.[\[67\]](#)

Promotion of employment opportunities

Social clauses targeted at job formation and offering job opportunities to people with particular social needs (such as the long-term unemployed or young people with low levels of qualifications) are often inserted in many contracts awarded by local contracting authorities. These are typically in building procurements and services contracts such as cleaning and maintenance. If the successful bidder is not itself an organisation aiming to promote social inclusion it may either sub-contract part of the contract or hire a number of disadvantaged workers directly.[\[68\]](#)

An example may be a clause that requires the contractor to hire 20% of the workforce from the long-term unemployed with a history of substance abuse problems. In this instance the contracting authority can be assisted by a 'facilitator' who helps the contractor to manage the workforce involved. The successful bidder may have no experience of managing individuals with particular social needs, so the facilitator is paid by social services to help the firm. This can include tailored vocational training which procurement officers may not have the relevant expertise to identify.[\[69\]](#)

Public institutions with responsibility for social inclusion are involved in the procurement process from an early stage. The promotion of social awareness is raised with bidders through meetings facilitated by these agencies and local associations provide training. Such agencies are also involved in monitoring compliance with the social clauses, as it is common that contracting authorities don't have the capacity or expertise.[\[70\]](#)

Promotion of SMEs

French case law has ruled out the possibility of giving preferential treatment to SMEs. However, this can be, and is, achieved by subdividing procurements into lots. This is not an obligation but is an option available to contracting authorities if the subject of the procurement is suitable to sub-division. Alternatively, the contracting authority may require bidders to state the share of the procurement that they intend to sub-contract.[\[71\]](#)

Further - more rigorous - provisions to set a quota of SMEs that had to be invited to bid were quashed by the courts on the grounds that they would discriminate against some potential bidders.[\[72\]](#)

Prevention of exploitative child labour

There is a specific mandatory social requirement in relation to schools procurement. No child labour products may be used in schools, but this legislation is in relation to schools management and so does not apply generally.[\[73\]](#)

Conclusions

The strong policy direction in France to include social considerations in procurements has been restricted by the judgements of the courts. This has made sure that social considerations do not get in the way of the transparency of the procurement process..[\[74\]](#)

The holistic approach taken by contracting authorities working with those agencies responsible for social inclusion allows for monitoring and support that seems to be absent in many other of the case studies. These agencies can also act to certify social compliance.

3.4 Italy

- Little political commitment at central level to social clauses
- The best value principle may be derogated for social and environmental considerations
- Social cooperatives and those on regional lists may benefit from reserved contracts
- Barriers to SME involvement to prevent corruption

Italy is a centralised state gradually devolving more competencies to regional and local level. However, legislation and regulation of procurement remains at the central level. The legal and procurement culture of Italy is aimed at preventing corruption more than encouraging SME involvement or the use of social clauses.[\[75\]](#)

For example, the provision of the "classic" Directive in relation to reserved contracts for sheltered workshops has been transposed into Italian law. But it is not used.

There are some provisions that do regulate procurement in relation to social rights. Examples include the exclusion of potential bidders from competition who have breached rules on social security contributions or health and safety requirements (because of the thriving black economy in Italy).[\[76\]](#)

Promotion of employment opportunities

Specific kinds of firms may be classified as social cooperatives and they may benefit from their special status in the procurement process. There are two kinds: those operating in health and education where social objectives are met by providing services to the most needy sections of the public and; cooperatives that aim to help disadvantaged people to gain employment. To qualify at least 30% of the workforce must be disadvantaged. Disadvantage is defined in terms of disability, former mental health patients, substance abusers and young people with difficult family backgrounds, though this may be widened by the regional authorities.[\[77\]](#)

Italian law allows contracting authorities to award contracts below the European thresholds to such cooperatives without the usual procurement rules being applied – including possibly the fundamental principles of EC law. Contracts may also be set aside for cooperatives on regional lists. Again it is questionable whether this is compatible with EC law.[\[78\]](#)

Promotion of SMEs

In the other case studies, procurement rules are designed to encourage SME participation in tendering. In Italy the opposite is the case.

Italian legislation is very strict on sub-contracting. Contracting authorities must specify in the contract documentation whether sub-contracting will be allowed. For works procurements a maximum of 30% of the contract may be sub-contracted. But the contracting authority may allow no sub-contracting at all. If it is allowed the winning bidder must send a copy of the sub-contract to the contracting authority along with evidence to prove that the sub-contractor meets necessary requirements such as health and safety.^[79]

Joint participation in consortia is also prevented. This makes things easier for the contracting authority in an environment where prevention of criminality is a prime consideration. It is questionable whether or not this is compatible with EC law

Conclusions

Particular social considerations are specific to certain areas of Italy with the result that procurement law does or policy does not directly encourage the use of social clauses. Efforts to keep criminal organisations from benefiting from public procurement also act as strong barriers to SME participation. The social and legal heritage of Italy is very important: the law is concerned with repressing blatant abuses but at the same time permitting lesser abuses.^[80]

3.5 Public Private Partnerships: A Case Study from the Netherlands

Most of the experience of using social clauses from across Europe seems to relate to conventional procurement. However, it is also possible to integrate social considerations into PPP projects.

Development of the A2 in Maastricht

The A2 is a major arterial highway that runs from Amsterdam to Genova in Italy. Over the whole length of the road there are only six sets of traffic lights. These are all situated in Maastricht, where the highway cuts a significant part of the city off from the centre. The lights are pedestrian crossings.

The authorities have identified a need to develop the road in a way that it can pass through Maastricht without cutting off the inhabitants who live to the eastern side. It was also identified that the areas abutting the road are in need of both economic and social redevelopment.

Four individual branches of government have come together to form the contracting authority: the national government, two local authorities and the municipality of Maastricht. They chose to use an innovative approach to getting an integrated solution to the problems posed by the A2 – in terms of reducing traffic congestion; reducing emissions within the city and; reducing the social and economic isolation of part of the city.

The contract sum was fixed before tendering, at a sum of €1.2billion, for what is expected to be a 20-year project. This fixed contract sum is considerably less than the total estimated cost of the construction work, which will involve not re-routing the road but tunnelling beneath its present route.

Because the sum is fixed, bidders could not win extra points for lower costs. The winning bid will be the one that demonstrates the best level of quality and sustainability. The market will provide the remainder of the financing. In exchange, an area of public land will be handed to the winning contractor for the sum of €1, but of course is worth considerable more. The zoning and infrastructure plan allows for around 1000 housing units to be built as well as a commercial area to be developed, which is how the contractor will make its profits.

Six award criteria were set:

- Synergy of the city of the plan (with the character of the city)
- Effect on the mobility and accessibility of Maastricht
- Quality of the city and country development
- Environment and liveability
- Soundness of technology
- Situation during realisation (how will the 20-year reconstruction be managed to allow access to and from the city)

The criteria were kept as abstract as possible to allow the market to come up with the best possible integrated solution but giving the state agencies sufficient comfort that appropriate standards will be met. Each consortium had to provide a report on the environmental impacts – emissions, particulates, noise and so on, and were awarded extra points for lower impacts.

Social aspects of the procurement are firstly related to creation of local employment opportunities (stipulated in the contract clauses). Secondly, they come in under the award criteria of synergy of the city. The contracting authorities are focussed on reducing difficulties in people with restricted mobility and children crossing a four-lane highway as well as creating a social amenity for the local population. The current land area taken up by the road will become a city boulevard for cyclists and a green space where once were cars.

Conclusion

The procurement directives give all the scope that is needed for innovative procurement of large capital contracts. The A2 project will transform what is currently an unpleasant social and economic barrier into a liveable and usable green space with the highway passing underneath.

4. Northern Ireland

- Little difference in procurement law from the rest of the UK
- Legislation outside the field of procurement that is particularly relevant to procurement policy regarding social issues
- Clear policy guidance
- Major constraints lie in inertia in the system

As noted in the introduction, the Executive's Programme for Government (PfG) for 2008-11 contains commitments that indicate support for the use of social clauses in appropriate circumstances. This is picked up in the Central Procurement Directorate's twelve guiding principles for procurement, under the seventh principle. In addition, Public Procurement Policy states:

The concept of "best value for money" is defined as "the optimum combination of whole life cost and quality (or fitness for purpose) to meet customers' requirements". While "best value for money" will be the primary objective of procurement policy, this definition allows for the inclusion, as appropriate, of social, economic and environmental goals within the procurement process"[\[81\]](#)

This commitment is reflected in the Investment Strategy for Northern Ireland 2008-18 which states:

We will seek opportunities to promote social inclusion and equality of opportunity in the procurement of infrastructure programmes. This will impact through employment plans; building apprenticeships into major delivery contracts – helping those eager to develop key skills valued in the workplace and through a tendering process that prioritises the most economically advantageous option in this context. Through the procurement process, we will seek to maximise the social and employment opportunities for all our people, addressing existing patterns of socio-economic disadvantage and using prosperity to tackle poverty.^[82]

These principles have been incorporated into the Code of Practice introduced by the Construction Industry Forum NI.^[83]

4.1 Legal Issues in Northern Ireland

Northern Ireland procurement law (like that of the rest of the UK) follows the EC procurement directives closely but there are three pieces of legislation outside procurement law that are seen as being of particular importance regarding social issues. These are the Fair Employment and Treatment Order 1998, section 75 of the Northern Ireland Act 1998 and the sustainable development duty of the Northern Ireland (Miscellaneous Provisions) Act 2006.^[84]

Beyond these considerations and the EC Directives, there are also obligations at common law:

The so-called two contract theory provides that where a contractor submits a tender at the request of an employer the employer is then obliged to consider that tender reasonably, equally, fairly and objectively.^[85]

There have been a number of challenges to public procurement in Northern Ireland – some of which have been successful or were settled by the contracting authority. The level of litigation may in part be due to too much emphasis on quality marks. CPD guidance suggests quality should make up 20-40% of award criteria, but some maintenance contracts are awarded on 70% quality. Another problem may be the size of frameworks (for example the IST and Schools Frameworks) which are very large. Finally, there appear to have been failures on the part of the contracting authority to comply with the regulations. Such failures have included criteria not being set out in advance, unequal treatment and failing to publish correct notices.^[86]

4.2 Case Studies in Northern Ireland

Fair and ethical trade

The Procurement Board (which consists of NI Departmental Permanent Secretaries and is chaired by the Minister of Finance) has issued a guidance note on the procurement of fair trade products.^[87] This defines fair and ethical trade and details the range of products currently available and recognised. It also provides guidance

When CPD itself is purchasing coffee, it is part of the catering contract requirements that fair trade coffee is used. When CPD is not directly paying, but a contract was being let for a café for staff to purchase coffee, the contract specified that fair trade coffee had to be made available as one of the options for customers.^[88]

Promotion of SMEs

The Procurement Board has published guidance for SMEs.^[89] This aims to raise awareness amongst SMEs of what contracting authorities might purchase. "Meet the buyer" events are also held.^[90] Further guidance has been issued to buyers that specifically addresses the barriers that SMEs may face in tendering and suggesting measures to overcome them.^[91] Similar to the approach taken elsewhere in Europe, this guidance suggests breaking contracts into lots to make them more accessible.

A barrier SMEs face is also related to obtaining information about tendering opportunities. A web portal has been established through which all public procurement is channelled.^[92]

Finally programmes to support SMEs and SEEs have been run, aimed at increasing awareness amongst suppliers in relation to cross-border contracts and develop skills in winning public sector work, amongst other things.^[93]

In a recent evidence session to the Committee for Finance and Personnel, CPD officials commented that too much advertising and encouragement of SME involvement can create over-interest – the more pre-qualification questionnaires that are completed, the more resources are required to assess them.^[94]

Health and safety

An initiative called Buildsafe NI brought together purchasers, industry, trade unions and the health and Safety Executive in a safety initiative. Unions and construction employers developed a code of practice on health and safety through the Construction Industry Forum as part of the public sector's commitment to social responsibility as a part of sustainable development.

These negotiated standards are now used as the basis for specifications used in the tender. This is seen as a good example of how government can use its purchasing power to pressurise two sides of an industry to come up with an industry-wide agreement.^[95]

Promotion of employment opportunities

Addressing unemployment in Northern Ireland has the potential to be an important means of combating inequalities resulting from the socio-religious divide.

A pilot project was undertaken following the Review of Public Procurement in 2002 and which was managed by CPD. Fifteen contracts (construction, security and cleaning) were awarded to a value of £45.9m.^[96] The tender documentation required each bidder to provide an Unemployed Utilisation Plan. This plan had to set out the firm's social policy and give details of specific proposals for utilising the unemployed on the contract. They also had to detail their experience and their capacity to implement the proposals.

The main aim of the pilot was social: helping the unemployed back to work and improving their career prospects. Additional benefits identified were economic – reducing social welfare payments and making supplier markets more responsive to government objectives.

The evaluation of the pilot scheme found that in relation to social goals, public procurement policy can achieve benefits "economically, efficiently and effectively".^[97] The result was 51 formerly unemployed people finding work, at a rate of approximately one person employed for every £900,000 spent. It found that there were not significant increases in costs for suppliers, nor in workload for contracting authorities.

The approach of stimulating apprenticeship provision in this way was commented on by CPD officials in a recent evidence session to the Committee for Finance and Personnel. The number of apprenticeships required is tied to industry forecasts on the number of apprentices needed. It is seen as important not to end up with oversupply, because trainees might then find no work at the end of their period.^[98]

Conclusions

The barriers to the integration of social issues in public procurement in Northern Ireland are not thought to lie in budgetary constraints – the evaluation of the Pilot project found no significant increase in costs. The constraints appear to lie in “getting procurement professionals and clients to focus on social issues.”^[99] There has been much guidance produced both by CPD and the Office of Government Commerce which should overcome any lack of clarity with sufficient investment in training.

5. The UK Cabinet Office Social Clauses Project

The Office of the Third Sector (part of the UK Cabinet Office) published a report on a Social Clauses Project in 2008. The project was set up to:

- consolidate knowledge on the existing use and best practice of social clauses;
- provide clarity on the merits of using social clauses; and
- support good commissioning and procurement by producing user friendly materials to help decision makers.^[100]

The project was based on the work of three local authorities in England following a survey that was undertaken over the summer of 2007.

The initial survey highlighted a number of issues in relation to the integration of social considerations:

Survey results confirmed that legal uncertainties on the status of social clauses and EU procurement rules, as well as a lack of information and understanding, were barriers to their use. Additionally, responses from stakeholder frequently identified a further two barriers to the use of social clauses:

- difficulty in formulating the social clause as a core contractual requirement; and
- difficulty in measurement at the evaluation stage.^[101]

Since that time, further guidance has been published by the Office of Government Commerce, as referred in previous sections of this paper. This guidance should have gone some way to addressing the concerns raised and to provide further clarity.

An original aim of the project was to provide template clauses. But as a result of the feedback from the survey, it was decided this aim should be dropped “as it was clear that any contract terms need to be tailored to the particular procurement, must relate to the performance of the contract and be assessed on whether their inclusion represents value for money.”^[102] Instead the project explored how and when social issues could be addressed and what support procurement officers would need.

5.1 Pilot Projects

Leeds City Council

This pilot initiated by the council's Environmental Services Directorate looked at using social clauses in the development of a re-use shop in East Leeds. It was planned that the shop would be operated by an organisation – possibly from the community or voluntary sector. The aims were to increase recycling and re-use; increase public awareness of waste issues; provide added social benefits to the community through providing jobs and increasing social inclusion for vulnerable groups, and; supporting Housing/Social Services clients in the provision of good quality household items at low cost.[\[103\]](#)

Cumbria County Council

This pilot looked at the wider use of social issues in procurement. The council introduced a policy-led approach to procurement and wished to use the Social Clauses Project to develop its work and increase awareness in the wider Cumbrian procurement community. It also had a project to develop the third sector's capacity to respond to procurement opportunities; develop an intelligent procurement process to allow communities to access responsive services, and; to improve the value for money of services delivered through procurement.

Under this project, the council aimed to secure wider community benefits by ensuring that social clauses were used in every appropriate contract and to facilitate the exchange of good practice between procurement teams and develop a deeper understanding of how to monitor and evaluate council contracts.[\[104\]](#). A time-limited role for an officer was created to further this work.

This Third Sector Officer then engaged with all the procurement teams and worked with the procurement officers on a specific contract (for Integrated Youth Support Services) to support the process of using social clauses as part of the tender evaluation criteria. Stakeholders were involved in the service specification process, allowing community benefit to be embedded at every stage of the procurement.

Finally, the Third Sector Officer examined the contracts register to identify contracts coming up for renewal that would be appropriate for the use of social clauses. This process of familiarisation with the range of forthcoming contractual work enabled early identification of opportunities for social clauses in a strategic manner.[\[105\]](#)

Findings and Outputs

The Project found that an integrated approach improved understanding of social clauses and their role in maximising social value from procurement. Not just procurement officers needed to be involved but also heads of service, service managers and legal advisors. "Support for procurement officers from senior managers was integral to the success of the work"[\[106\]](#) This echoes the view from the German study that procurement officers found the integration of social issues to be an added burden on already stretched staff; by taking an integrated approach it seems that procurement specialists felt supported through the process.

5.2 Social Return On Investment

The Social Clause project identified that a barrier to using social clauses was difficulty in measuring outcomes and the associated costs of their use in procurements. The Office of the Third Sector is addressing this through a programme on measuring social value. The Scottish Government is also running a complementary project.

It is hoped that these projects will result in new guidance to using the tool of Social Return on Investment (SROI), which is a means of understanding and managing the wider impacts of a project, organisation or policy. SROI puts a financial value on impacts identified by stakeholders that do not have market values. This may help with the economic appraisal of social clauses in the future.^[107]

[1] 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (as amended) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2004L0018:20080915:EN:PDF>

[2] 2004/17/EC coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sector (as amended) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2004L0017:20080915:EN:PDF>

[3] http://www.cabinetoffice.gov.uk/media/107238/social_clauses_report_final.pdf

[4] http://www.cabinetoffice.gov.uk/third_sector/public_services/social_clauses.aspx

[5] Programme for Government 2008-11 (page 18) <http://www.pfgbudgetni.gov.uk/finalpfg.pdf>

[6] <http://www.cpdni.gov.uk/index/guidance-for-purchasers/12-procurement-principles.htm>

[7] Presentation by Rita Beuter, Senior Expert, EIPA, Maastricht.

[8] Presentation by Rita Beuter, Senior Expert, EIPA, Maastricht.

[9] Presentation by Rita Beuter, Senior Expert, EIPA, Maastricht.

[10] See article 21 of and Annex II B to Directive 2004/18/EC

[11] 2004/18/EC article 19.

[12] 2004/18/EC recital 28

[13] OGC 'Buy and make a difference' (2008) page 4
http://www.ogc.gov.uk/documents/Social_Issues_in_Public_Procurement.pdf

[14] OGC 'Buy and Make a Difference"(2008) page 5
http://www.ogc.gov.uk/documents/Social_Issues_in_Public_Procurement.pdf

[15] See 2004/18/EC Annex VI 1(a) and (b)

[16] CPD's 6th Procurement Principle <http://www.cpdni.gov.uk/index/guidance-for-purchasers/12-procurement-principles.htm>

[17] OGC 'Buy and Make a Difference"(2008) page 7
http://www.ogc.gov.uk/documents/Social_Issues_in_Public_Procurement.pdf

[18] 2004/18/EC article 24

[19] Presentation by Bert Lejeune, Legal Expert, Paulussen Advocaten, Maastricht.

[20] 2004/18/EC article 25

[21] European Commission 'Frequently asked questions concerning the application of public procurement rules to social services of general interest' (2007) page 11
http://ec.europa.eu/services_general_interest/docs/sec_2007_1514_en.pdf

[22] OGC 'Buy and Make a Difference"(2008) page 8
http://www.ogc.gov.uk/documents/Social_Issues_in_Public_Procurement.pdf

[23] 2004/18/EC article 45 2.(d)

[24] Presentation by Loredana Puiu, EC Directorate General Internal Market and Services.

[25] 2004/18/EC article 53

[26] 2004/18/EC recital 1

[27] 2004/18/EC article 53 1.(a)

[28] OGC 'Buy and Make a Difference"(2008) page 9
http://www.ogc.gov.uk/documents/Social_Issues_in_Public_Procurement.pdf

[29] Presentation by Loredana Puiu, EC Directorate General Internal Market and Services.

[30] 2004/18/EC article 26

[31] 2004/18/EC recital 33

[32] OGC 'Buy and Make a Difference"(2008) page 9
http://www.ogc.gov.uk/documents/Social_Issues_in_Public_Procurement.pdf

[33] Presentation by Loredana Puiu, EC Directorate General Internal Market and Services

[34] OGC 'Buy and Make a Difference"(2008) page 11
http://www.ogc.gov.uk/documents/Social_Issues_in_Public_Procurement.pdf

[35] Presentation by Loredana Puiu, EC Directorate General Internal Market and Services

[36] <http://ec.europa.eu/social/BlobServlet?docId=693&langId=en>

[37] <http://ec.europa.eu/social/BlobServlet?docId=694&langId=en>

[38] <http://ec.europa.eu/social/BlobServlet?docId=695&langId=en>

[39] <http://ec.europa.eu/social/BlobServlet?docId=1477&langId=en>

[40] European Commission (2008) <http://ec.europa.eu/social/BlobServlet?docId=693&langId=en>
Denmark case study page 2

[41] European Commission (2008) <http://ec.europa.eu/social/BlobServlet?docId=693&langId=en>
Denmark case study page 4

[42] Presentation by Martin Trybus, Professor of European Law and policy, Birmingham Law School.

[43] European Commission (2008) <http://ec.europa.eu/social/BlobServlet?docId=693&langId=en> Denmark case study page 4

[44] European Commission (2008) <http://ec.europa.eu/social/BlobServlet?docId=693&langId=en> Denmark case study page 5

[45] Presentation by Martin Trybus, Professor of European Law and policy, Birmingham Law School.

[46] Presentation by Martin Trybus, Professor of European Law and policy, Birmingham Law School

[47] European Commission (2008) <http://ec.europa.eu/social/BlobServlet?docId=693&langId=en> Denmark case study page 6

[48] Presentation by Martin Trybus, Professor of European Law and policy, Birmingham Law School

[49] European Commission (2008) <http://ec.europa.eu/social/BlobServlet?docId=693&langId=en> Denmark case study page 4

[50] European Commission (2008) <http://ec.europa.eu/social/BlobServlet?docId=693&langId=en> Denmark case study page 16

[51] Presentation by Martin Trybus, Professor of European Law and policy, Birmingham Law School

[52] European Commission (2008) <http://ec.europa.eu/social/BlobServlet?docId=693&langId=en> German case study page 2

[53] Presentation by Martin Trybus, Professor of European Law and policy, Birmingham Law School

[54] 2004/18/EC article 1 11.(b)

[55] European Commission (2008) <http://ec.europa.eu/social/BlobServlet?docId=693&langId=en> German case study page 5

[56] Presentation by Martin Trybus, Professor of European Law and policy, Birmingham Law School

[57] European Commission (2008) <http://ec.europa.eu/social/BlobServlet?docId=693&langId=en> German case study page 8

[58] Presentation by Martin Trybus, Professor of European Law and policy, Birmingham Law School

[59] European Commission (2008) <http://ec.europa.eu/social/BlobServlet?docId=693&langId=en> German case study page 8

[60] Presentation by Martin Trybus, Professor of European Law and policy, Birmingham Law School

[61] European Commission (2008) <http://ec.europa.eu/social/BlobServlet?docId=693&langId=en> German case study page 11

[62] European Commission (2008) <http://ec.europa.eu/social/BlobServlet?docId=693&langId=en> German case study page 9

[63] European Commission (2008) <http://ec.europa.eu/social/BlobServlet?docId=693&langId=en> German case study page 13

[64] European Commission (2008) <http://ec.europa.eu/social/BlobServlet?docId=693&langId=en> French case study page 3

[65] European Commission (2008) <http://ec.europa.eu/social/BlobServlet?docId=693&langId=en> French case study page 4

[66] European Commission (2008) <http://ec.europa.eu/social/BlobServlet?docId=693&langId=en> French case study page 7

[67] European Commission (2008) <http://ec.europa.eu/social/BlobServlet?docId=693&langId=en> French case study page 7

[68] European Commission (2008) <http://ec.europa.eu/social/BlobServlet?docId=693&langId=en> French case study page 10

[69] Presentation by Dr Robert Caranta, School of Law, University of Turin

[70] Presentation by Dr Robert Caranta, School of Law, University of Turin

[71] European Commission (2008) <http://ec.europa.eu/social/BlobServlet?docId=693&langId=en> French case study page 14

[72] Presentation by Dr Robert Caranta, School of Law, University of Turin

[73] Presentation by Dr Robert Caranta, School of Law, University of Turin

[74] European Commission (2008) <http://ec.europa.eu/social/BlobServlet?docId=693&langId=en> Italian case study page 2

[75] Presentation by Dr Robert Caranta, School of Law, University of Turin

[76] Presentation by Dr Robert Caranta, School of Law, University of Turin

[77] European Commission (2008) <http://ec.europa.eu/social/BlobServlet?docId=693&langId=en> Italian case study page 11

[78] Presentation by Dr Robert Caranta, School of Law, University of Turin

[79] European Commission (2008) <http://ec.europa.eu/social/BlobServlet?docId=693&langId=en> Italian case study page 12

- [80] Presentation by Dr Robert Caranta, School of Law, University of Turin
- [81] CPD Procurement Policy Summary Statement (2002) http://www.cpdni.gov.uk/pdf-public_procurement_policy_summary.pdf page 2
- [82] NI Executive 'Investment Strategy for Northern Ireland (2008) <http://www.pfgbudgetni.gov.uk/index/investment-strategy-for-northern-ireland.htm> page 5
- [83] Interim report of the Procurement Task Group presented to the Committee for Finance and Personnel on 29 April 2009.
- [84] European Commission (2008) <http://ec.europa.eu/social/BlobServlet?docId=693&langId=en> Northern Ireland case study page 3
- [85] Evidence presented by Quigg Golden to the Committee for Finance and Personnel, page 2
- [86] Evidence presented by Quigg Golden to the Committee for Finance and Personnel, page 3
- [87] http://www.cpdni.gov.uk/02-06_procurement_of_fair_trade_products-2.pdf
- [88] European Commission (2008) <http://ec.europa.eu/social/BlobServlet?docId=693&langId=en> Northern Ireland case study page 10
- [89] http://www.cpdni.gov.uk/index/guidance-for-suppliers/sme_guidance.htm
- [90] European Commission (2008) <http://ec.europa.eu/social/BlobServlet?docId=693&langId=en> Northern Ireland case study page 10
- [91] http://www.cpdni.gov.uk/pdf-sme_purchasers
- [92] <https://e-sourcingni.bravosolution.co.uk/web/login.shtml>
- [93] European Commission (2008) <http://ec.europa.eu/social/BlobServlet?docId=693&langId=en> Northern Ireland case study page 11
- [94] Evidence presented by CPD to Committee for Finance and Personnel 29 April 2009, unpublished
- [95] European Commission (2008) <http://ec.europa.eu/social/BlobServlet?docId=693&langId=en> Northern Ireland case study page 12
- [96] CPD 'Pilot Project on Utilising the Unemployed in Public Contracts' (2005) http://www.cpdni.gov.uk/pilot_case_study_on_integration-2.doc page 12
- [97] CPD 'Pilot Project on Utilising the Unemployed in Public Contracts' (2005) http://www.cpdni.gov.uk/pilot_case_study_on_integration-2.doc page 6
- [98] Evidence presented by CPD to Committee for Finance and Personnel 29 April 2009, unpublished
- [99] European Commission (2008) <http://ec.europa.eu/social/BlobServlet?docId=693&langId=en> Northern Ireland case study page 22

[100] http://www.cabinetoffice.gov.uk/third_sector/public_services/social_clauses.aspx

[101] Office of the Third Sector 'Report on the Social Clauses Project' (2008)
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[102] Office of the Third Sector 'Report on the Social Clauses Project' (2008)
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[103] Office of the Third Sector 'Report on the Social Clauses Project' (2008)
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[104] Office of the Third Sector 'Report on the Social Clauses Project' (2008)
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[105] Office of the Third Sector 'Report on the Social Clauses Project' (2008)
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[106] Office of the Third Sector 'Report on the Social Clauses Project' (2008)
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[107] Office of the Third Sector 'Report on the Social Clauses Project' (2008)
http://www.cabinetoffice.gov.uk/media/107238/social_clauses_report_final.pdf page 10

Research Paper: Public Procurement and SMEs – an Update

Background

This paper provides a short update to research paper 119/08. Since that paper was produced there have been two significant developments in the public procurement field which are of relevance to the Committee for Finance and Personnel's Inquiry into Public Procurement.

Part A) 'Accelerating the SME economic engine: through transparent, simple and strategic procurement' was published by the UK Treasury in November 2008.^[1] This was the report of the Glover Committee, which was an advisory committee tasked by the Chancellor to provide recommendations on reducing barriers to SMEs competing for public contracts.

Part B) 'Using Public Procurement to Stimulate Innovation and SME Access to Public Contracts' was published by the ROI Department of Enterprise, Trade and Employment in July 2009.^[2] This was the report of the Procurement Innovation Group, established by DETE with the objectives to:

- Raise awareness of the benefits of using public procurement to stimulate research and innovation;
- Identify obstacles or problems in the current procurement process which impede opportunities for innovation;
- Examine the potential of the Public Procurement Directives to ensure a level playing field for all innovative companies wishing to participate in public tendering;
- Create an environment in which the potential of innovation for public procurement can be realised; and

- Make recommendations on how objectives may be achieved.

Part A: Accelerating the SME economic engine

The report contained twelve recommendations for improving SME participation. These are summarised in the box below:

Box 1.A: Summary of recommendations

Improving SME participation in public procurement is best achieved by making the market work effectively to allow SMEs to compete effectively for contracts. This requires that opportunities should be transparent, the process as simple as possible, and that a strategic approach to procurement encourages innovation and gives SMEs a fair deal when they are sub-contractors. In detail:

Transparency

1. By 2010, contract opportunities above £20,000 across the whole public sector should be advertised electronically with standard indicative contract value ranges, and accessible through a single, free, easy to search online portal.
2. Government should issue all tender documentation electronically by 2010 and this should be kept as brief as possible. Businesses should be permitted to tender electronically for all public sector contracts by 2010; no "paper only" tenders should be required after this date, with an ambition for all tenders to be electronic by 2012.
3. Details of contract awardees should be published online in a standard format within 48 days of contract signature, accessible via the single portal by 2010.
4. Tendering opportunities thought especially suitable for SMEs or consortia of SMEs should be flagged by the procurer during the advertising process. Government should provide strategic and detailed guidance for procuring authorities on assessing suitable contracts for flagging, based on risk, value and market maturity.

Simplicity

5. Qualification criteria that are not specific to a sector should be standardised and incorporated in all pre-qualification questionnaires so that businesses do not need to repeatedly submit the same core information in different formats.
6. Procurers should give businesses the opportunity to provide details of all previous relevant experience when bidding for contracts, not just public sector experience. This should be taken into account when selecting successful tenderers.
7. Procurers should ensure that, where they rely on a particular accreditation scheme or standard as part of the process of prequalification or contract award, that they take a flexible approach. Businesses should be given the opportunity to provide evidence that they can meet the contract requirements by reference to other similar equivalent accreditations or standards they may already hold – especially where these have been recognised or required by other public sector procurers.

Strategic Procurement

8. Departments should use their Innovation Procurement Plans to set out how procurement aligns with their overall commercial strategy, encourages innovation and gives advanced notice of long-term procurement plans.
9. Government should encourage wider use of outcome-based specifications across the public sector, as a means of driving innovation.
10. Government should expect and enable prime contractors to make their sub-contracting opportunities accessible through the single, online portal created in Recommendation 1.

11. Through contract management, Government should ensure that SMEs and other firms acting as sub-contractors obtain contract conditions, including promptness of payment terms, that are no worse than those applicable to the prime contractor.

Measurement

12. The Committee recommends that all central government departments should report annually on the value of their contract spend with SMEs, creating a reliable single source of quantitative data which can be used to inform future policy decisions and evaluate the recommendations in this report.

The UK Government accepted all of the recommendations.^[3]

How the Recommendations Relate to the CFP Inquiry

It is immediately apparent that a number of the recommendations are designed to address issues that have been raised by witnesses in the course of the Committee's current inquiry. In the analysis below, references are made to particular stakeholder's evidence. This is not intended to be an exhaustive analysis but instead to give a flavour of the range of issues raised locally by a variety of witnesses. The full text of the written evidence is/will be available on the Committee's web pages

at: http://archive.niassembly.gov.uk/finance/2007mandate/finhome_07.htm

Recommendations One to Three are all related to the accessibility and timeliness of information in relation to tender documentation. These issues were raised by Lestas Consulting in its written evidence. Among others things it called for "consistency in approach across public bodies when tendering under EU thresholds and [...] an open, objective and transparent procurement process".

Similarly, the Royal Institution of Chartered Surveyors called for "consistent application of evaluation and assessment criteria, tender documentation and constructive debriefs" across all Centres of Procurement Expertise.

The Chartered Institute of Purchasing and Supply stated its support for "clear guidance written from the supplier's viewpoint in plain English."

Recommendation Four is aimed at increasing visibility of contracts that are thought to be especially suitable for SME through a process of flagging. The Independent Consultant Adviser Group argued that contracting authorities should "identify specialised components of projects and consider tendering them separately".

The Chartered Institute of Purchasing and Supply highlighted the CompeteFor website created by the Olympic Delivery team that is intended to match companies to opportunities in the London 2012 supply chain. This was identified by them as an area for immediate action in Northern Ireland.

The NI Construction Industry Group suggested that "consideration should be given to separate minor works frameworks."

Recommendation Five suggests standardisation of some pre-qualification information to reduce the need for repeated re-submission of the same information. The CBI Northern Ireland reported that its survey of business highlighted this issue in Northern Ireland. It called for "reduced information demands" and noted that "businesses applying for public work across a number of procurement bodies are faced with different requirements and formats, even for submitting the most basic company information".

In a similar vein, the Federation of Small Businesses NI called for the introduction of a "universal pre-qualification questionnaire that [...] would only have to be filled in once and then logged for future bids."

Recommendation Six suggests that all relevant experience should be taken into account when assessing a bid, not just public sector experience. This issue was raised by The Independent Consultant Adviser Group in its written evidence. It was argued that "relevant and demonstrably applicable transferrable experience" should have equal value in the assessment process.

Similarly, the Law Society of Northern Ireland suggested that when assessing relevant expertise contracting authorities placed "an overemphasis [...] on experience of having provided legal services relating to large scale Government projects in other jurisdictions" and that "expertise gathered on a smaller scale Government projects and even large scale private client projects in this jurisdiction often is underestimated."

Recommendation Seven requires contracting authorities to take a flexible approach to accreditation schemes or standards in the bidding process. Bryson House highlighted a lack of independent accreditation as a particular barrier to social enterprises. It recommended "lower thresholds or greater flexibility [...] to encourage social enterprises to participate."

Recommendation Eight relates to Innovation Procurement Plans which each UK Government department is required to produce. There appears to be no equivalent requirement in Northern Ireland.

Recommendation Nine encourages use of outcome-based rather than process-based specifications. The NI Council for Voluntary Action stated that the public sector "is not good at focussing on outcomes" and that after a contract is signed and being delivered "they demand information on many process issues and may audit the same project up to four times per year."

Recommendations Ten and Eleven relate to the accessibility of sub-contracting opportunities and the terms of sub-contracts. The Federation of Small Businesses NI argued that "if large contractors are used, they should in turn be required to advertise for their subcontractors, and to select from them on a Value-for-Money basis."

Similarly, the Chartered Institute of Purchasing and Supply suggested that "making awarded contracts more publicly available could allow SMEs access at the second tier supplier level."

Recommendation Twelve advised that all central government departments should report annually on the value of contracts with SMEs. Lestas consulting argued central government in Northern Ireland "needs to provide statistics on how successful small companies are on getting onto the framework but more importantly, how successful small companies are at securing contracts from the framework."

Implementation of the Recommendations

Recommendation One was implemented through the removal of the registration fee on www.supply2.gov.uk which carries notices in relation to below-threshold tenders.^[4]

The Office of Government Commerce (OGC) has taken forward implementation of Recommendation Seven. It produced 'procurement policy notes' on accreditation^[5] and standards^[6] in August 2009. It is clearly too soon to assess whether the policy intention of implementing the recommendation will be effective and what improvements might result for potential suppliers.

A number of other draft documents were published for consultation in relation to Recommendations Two to Seven under the following titles: contract award notification; electronic tendering guidance; contract flagging and supplier selection guidance, and; below threshold pre-qualification questionnaire guidance.^[7] These consultations closed on 18 September 2009, so these items remain works-in-progress.

The remaining Recommendations (Eight to Twelve) relate more to strategic than to technical issues. Responsibility for implementation is spread across government and over a longer timeframe.

Part B: Using Public Procurement to Stimulate Innovation and SME Access to Public Contracts

This report contained a number of key findings:

1. Public sector officials are very often risk averse.
2. Obstacles such as risk aversion arise from lack of practical experience and expertise on the part of procurers rather than from any legal considerations.
3. There is little hard empirical evidence to assess the precise effects of current public procurement practices regarding stimulating innovation.
4. It is frequently the supplier who identifies and initiates the innovation, rather than the procuring organisation.
5. Engagement with the market prior to tender is an essential component of SMART procurement as it enables the procurer to understand and identify what is available and whether alternative solutions exist.
6. Current trends in public sector procurement towards larger and longer contracts, and rationalizing the number of suppliers, means that smaller businesses often find the resulting contracts too large for them.
7. Laying down overly restrictive selection criteria could exclude young, innovative enterprises

The conclusions and recommendations based on these findings are contained in the box below:

1. A key to successful procurement for innovation is the "intelligent customer" who is able to demand, source and identify potential new solutions, and can specify and manage contracts of this kind throughout their lifecycle.
2. Professionalise the procurement function within the public sector and thereby raise the role and profile of the function.
3. Each public sector organisation with a substantial procurement budget should embed the "Buying Innovation - 10 Step Guide" into its procurement procedures.
4. Measures to improve the quality of procurement information available would reduce perceived disadvantages experienced by, in particular, small and micro enterprises.
5. Sub-dividing contracts into lots and thereby further opening the way for SMEs to participate will broaden competition.
6. Subcontracting opportunities should be encouraged and made more visible.
7. The eTenders website should include a highly visible section to advertise low value contracts.

8. Contracting authorities should avoid disproportionate qualification and financial requirements in their tender documents.

Also published in July 2009 was a ten-step guide to procuring innovative products – mentioned above in recommendation three.^[8] This guide sets out how contracting authorities in the Republic of Ireland should approach their procurements.

In relation to SMEs there are a number of identified key steps, such as being open to consortia bids from SMEs; splitting tenders into lots; making sub-contracting opportunities more available and so on, which echo the recommendations contained in the box above.

How the Recommendations Relate to the CFP Inquiry

Examination of the key findings and recommendations shows that many are aimed at addressing similar issues as the Glover recommendations considered above. A number of the key findings are also similar to the issues raised by witnesses in the course of the Committee's Inquiry, although the focus of this work was somewhat different: there is a focus in the terms of reference on innovation, rather than the Committee's focus on improving wider social outcomes.

Implementation

The report and its findings were only published a short time ago, so any assessment of its impact is not yet possible.

A number of specific aims has been identified in relation to the report. These are to:

1. redesign the e-tenders website and facilitate more detailed reporting of statistics. The new website will also be more SME friendly;
2. draft new policy guidance in relation to issues such as financial criteria and other qualification requirements;
3. organise networks of procurement professionals;
4. develop targeted and accredited procurement training and education measures, and;
5. streamline tender and contract documentation across the public sector.

Responsibility for implementation rests with the National Public Procurement Operations Unit (NPPOU) in the Office of Public Works. No overall timeline for implementation has yet been established but the Procurement Innovation Group will continue to meet every six months to monitor implementation and will report on progress to the Tánaiste.^[9]

October 2009

[1] The document can be downloaded from the Treasury website at: http://www.hm-treasury.gov.uk/glover_review_index.htm

[2] The document can be downloaded from the DETE website at: <http://www.entemp.ie/publications/trade/2009/procurementinnovationgroup.pdf>

[3] Source: HM Treasury

[4] <http://nds.coi.gov.uk/content/detail.aspx?NewsAreaId=2&ReleaseID=405668&SubjectId=2>

[5] http://www.ogc.gov.uk/documents/commodities_database/PPN_09_09_Third_Party_Accreditors.pdf

[6] http://www.ogc.gov.uk/documents/commodities_database/PPN_10_09_Policy_on_Standards_and_References.pdf

[7] http://www.ogc.gov.uk/creating_opportunities_for_smes_and_third_sector_organisations_access_for_all_-_documentation_for_consultation.asp

[8] <http://www.entemp.ie/publications/trade/2009/buyinginnovation.pdf>

[9] Source: communication from DETE

Research and Library Services



Research Paper

20 November 2009

Collaborative Procurement in Local Government

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Research and Library Service**

This paper considers the evidence of the benefits of collaboration in local government procurement. Structural developments in England, Scotland and Wales are presented to provide a comparative background. Proposals for future policy on collaboration between Northern Ireland's councils are then considered in the light of a theoretical framework before the implications for the Committee for Finance and Personnel's Inquiry into Public Procurement in the light of the Review of Public Administration are considered.

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Key Points

- Future policy on local government procurement and the potential for collaboration, standardisation and aggregation of contracts is of considerable interest to the small businesses of Northern Ireland. According to the results of a recent Federations of Small Businesses it is likely to become of increasing importance in the short term.
- There is a weight of evidence supporting the argument that collaboration between local authorities can deliver significant savings in terms of price and transaction costs.
- There are other possible results from collaboration and these could deliver benefits to local SMEs. For example, the standardisation of approaches to below-threshold procurements and to giving regular and constructive feedback. These would help overcome some of the barriers to SME involvement that have been identified to the Committee.
- There is a variety of different models for collaborating in procurement. These have corresponding pros and cons.
- Policy in relation to the promotion of future collaboration after local government reorganisation in 2011 is within the remit of the Department of the Environment. Some work has been undertaken but it is unclear how far this has progressed and to what level of detail.
- There are already some collaborative efforts made between councils – formally and informally. There does not appear to have been any evaluation of these processes. Nevertheless, there is some evidence of local SME involvement in the supply chain. If general barriers to SME involvement can be overcome, then these efforts could lead to benefits.
- There is a clear need for a strategic approach to procurement policy. At present there is no evidence of a strategy for local government, but this may be what is required.
- The effects of collaborative procurement on localised economies does not seem to have been the focus of much detailed research but in the context of the Committee's Inquiry, it would be useful to know whether DFP has evaluated the impacts of the Northern Ireland Public Procurement Policy on local businesses.

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1. Introduction

During the Committee for Finance and Personnel's recent Stakeholder Conference on Maximising the Economic and Social Benefits from Public Procurement^[1] the Committee heard some evidence in relation to collaborative procurement between district councils.

Concern was expressed by some participants that following the 2011 reorganisation of local government in Northern Ireland, there may be a push towards councils procuring supplies, services and works jointly, possibly through a shared service. It was assumed at the time that logic behind such a move would be to attempt to increase value for money (VfM) by letting larger, more centralised contracts. An argument was presented that larger contracts may not always deliver more efficiency, although this is sometimes assumed to be the case.

The purpose of this paper is to explore evidence of efficiency gains through collaborative procurement; this is achieved through consideration of a number of case studies from England and other published sources. Consideration is also given to the effect on small businesses of local authorities procuring collaboratively and other issues in relation to local government reorganisation resulting from the Review of Public Administration.

2. The Committee for Finance and Personnel's Inquiry into Public Procurement in Northern Ireland

The Terms of Reference for the Committee's Inquiry are to:

- examine the experience of SMEs and SEEs in tendering for and delivering public contracts;
- consider the nature, extent and application of social clauses within public contracts;
- identify issues to be addressed and which are within the remit of Department Finance Personnel (DFP);
- assess progress by DFP in achieving associated objectives and targets, including those contained in the Programme for Government and related Public Service Agreements; and
- make recommendations to DFP for improvements to public procurement policies and processes, aimed at increasing access to opportunities for SMEs and SEEs and maximising the economic and social benefits for the local community, whilst taking account of the principles governing public procurement.

Consideration of collaboration in local government procurement is particularly relevant to the final bullet point of the Terms of Reference which refers specifically to public procurement policies. It was apparent from contributions at the Stakeholder Conference that many participants did not distinguish a difference between local and central government procurement: it is all public procurement.

Further, a recent survey by the Federation of Small Businesses Northern Ireland found that the majority of SMEs "bid for contracts below £50,000 with most of the work being provided to Local Authorities."^[2] It is perhaps unsurprising, therefore, that the issue of centralisation of local government procurement after reorganisation in 2011 was a topic of interest to participants at the Stakeholder Conference. Also, the survey found that:

tendering to the public sector in Northern Ireland is becoming increasingly important to SMEs for income generation. Over 50 of those responding stated that they expect the proportion of their business from the public sector to significantly increase in the next two years.^[3]

The total value of local government purchasing per year is estimated to be around £220m. This figure must be treated with some caution as it was based on returns from only 17 of the 26 district councils. Consultants then extrapolated this figure. Officials in DoE's Local Government Policy Division advised that, if anything, the figure is likely to be a little higher. A previous estimate by different consultants a year earlier had estimated total spend at in the region of £300m.^[4]

3. Case Studies: Does Collaboration Deliver Efficiency Savings?

There has been considerable work in England on collaborative local authority procurement. The fundamental argument for collaboration is that it can realise benefits to contracting authorities in terms of getting better deals from the market and reducing internal transaction costs.

The policy and structural framework for collaboration in England is presented in detail in section 5 below. Before considering those issues, however, it is helpful to look at the potential within the local government sector for delivering efficiencies in this area.

Regional Improvement and Efficiency Partnerships (RIEPs) were established in April 2008 (building on the work of regional centres of excellence) with a three-year funding package from the Department of Communities and Local Government worth £185m. According to the Improvement and Development Agency (IDEA) they "harness the expertise of councils to add new capacity to local government in order to accelerate the drive for greater improvement and efficiency."^[5]

The IDEA website has a host of materials and case studies relating to good practice in collaborative procurement. A number of the case studies are presented below to illustrate the potential for efficiency savings. The case studies cover a range of procurement exercises, from purchase of capital goods such as vehicles to services such as insurance and temporary staffing.

It should be borne in mind when considering these case studies that they are published by an agency that is involved in promoting good practice in local authority management. It is in the interests of the authorities involved to sell their achievements as good practice and they submit them to the IDEA for publication. It is not clear exactly how much quality assurance of case studies there is beyond compliance with the style guidelines.

That said, given that local authorities have to report on efficiency savings as part of their Comprehensive Area Assessment, it is only possible to assume that the reported savings are accurate.

3.1 Procurement Lincolnshire

Procurement Lincolnshire^[6] is a partnership between eight local authorities and part of the Lincolnshire Shared Services Partnership.

Engagement with local communities

The partnership engages with local suppliers and the third sector through supplier engagement days which allow local businesses to meet procurement officers and learn about the tendering process. Also workshops are held to educate the local community and involve it in planning.

A joined-up approach

The governance of Procurement Lincolnshire ensures each partner authority is equal. Each district can get specific and professional procurement advice, rather than have to rely on consultants which they previously would have done.

One-stop services

A one-stop interactive website for all internal and external customers and a dedicated procurement helpline provide advice and support throughout the tender process. Internal customers (from the partner contracting authorities) have a defined liaison person to contact.

Rationalised processes

Procurement policies and procedures are harmonised across partner authorities; e—tendering and a procurement card have been developed. A common set of Contract and Procurement Rules has been implemented to ensure uniformity. A single sustainable procurement strategy has been adopted across all partner authorities. Previously each had its own; this reduces replication of work and increases commonality of approach.

Efficiency savings

In its first year of operation Procurement Lincolnshire delivered cashable savings^[7] of over £1m in its first year. Forecasts in the business case predicted that gross savings of just over £9m will be generated over the first 5 years of operation but this is now thought to have been a conservative estimate.

Non-cashable process savings in the first year exceeded £400k; a single tender is now undertaken instead of eight individual tenders that would have been carried out previously.

3.2 The East Midlands Centre of Excellence: joint procurement

This case study^[8] relates to a partnership of eight local authorities in the Nottingham area of England.

Joint procurement of refuse collection vehicles

The eight partners initiated a single tender process, in recognition that maximum efficiency would be achieved through development of a single common specification. The objectives were to:

- obtain a financial saving per vehicle below the benchmark price
- procure a single specification chassis, refuse body and bin lifter
- achieve added value by reducing the cost of spares and training
- obtain additional technical support from the supplier
- have a local source of impressed stock
- deliver a standardised, countywide fleet that ultimately allows vehicles to be shared.

Efficiency savings

Under the contract 27 vehicles were purchased at a saving of £4,125 per vehicle. This delivered total cashable savings of £114k.

Also, the suppliers undertook to provide a technical fitter, operator and training programme at a central location at no additional cost – a benefit worth around £13k. Additional technical support is provided through a dedicated service engineer who is available to carry out diagnostic and minor repair work – a benefit estimated at around £35k.

Other benefits were identified in relation to the objectives although the value of these is more difficult to estimate. In total, one-off cashable savings of £114k are added to non-cashable efficiency gains of up to £143k during the first year of the contract.

3.3 The East Midlands Centre of Excellence: collaborative working and shared services

This case study^[9] centres on a partnership of Chesterfield Borough Council, North East Derbyshire Borough Council and Bolsover District Council. The councils were grant aided by the East Midlands Centre of Excellence to develop shared working in four areas: internal audit; building control; procurement, and; corporate services.

Collaborative procurement

District councils who have set up collaborative procurement units typically claim savings of approximately 2% of spending. It was estimated that the introduction of fully integrated e-procurement solution resulted in transactional savings of up to £40k per authority.

The shared procurement unit was established in May 2007 as was expected to deliver £200k cashable savings across the three authorities.

3.4 The Hampshire and Isle of Wight Procurement Partnership

This is a partnership^[10] of all the county, borough and district councils in the Hampshire and Isle of Wight region which reports to the region's Strategic Procurement Board.

Collaborative procurement of insurance

The councils created a framework arrangement for insurance services, led by a procurement officer of a participating council. Fareham Council and Gosport Council were looking to re-tender for insurance services as they had a requirement to renew existing arrangements. The opportunity was taken to broaden the scope and include other councils with expectation of getting better VfM.

The framework

The Framework Agreement does not guarantee any value of expenditure to the supplier. It serves instead as a vehicle to source services from the supplier as and when the need arises. Councils can approach the supplier for a quotation but are not obliged to use the framework provider. This is seen as having the advantage of stimulating a competitive offer from the provider on the grounds that the purchaser could still go elsewhere. The supplier is required to quote:

- a) best market rate premiums; and
- b) a collaborative discount matrix

Efficiency savings

Fareham council achieved overall premium savings of 26% and Gosport 45% when compared with their previous contracts. The collaborative discount element achieved by both councils under the framework will realise cashable savings of around £300k over the contract term.

A non-cashable benefit is that all parties of the framework are no longer required to tender individually for insurance services. This results in saving staff time and reducing duplicated effort. It should also be noted that from a global perspective it also benefits the supply market in terms of reduced tendering costs as they do not have to respond to a number of tenders.

3.5 The Eastern Shires Purchasing Organisation

This case study^[11] is a collaboration of 14 local authorities which formed a partnership to procure temporary staffing in a way that reduced the time and effort involved, whilst maximising the potential service-delivery options and cutting costs.

The Vendor Neutral Service Model

A managed service provider sits between the partner councils and the agencies used to source temporary workers. This provider is the single point of contact for communicating and handling requirements and also for reporting back on agency performance. It is thought that this encourages participation by the local supply base, including SMEs.

Efficiency savings

In the first year of the contract, eight authorities ordered over 200,000 hours of work by temporary staff. They saved, on average, 6% of their temporary staffing spend. By the end of 2008, 15 authorities had from contract delivery savings of nearly £695k, based on just over £9.6m worth of orders (a saving of over 6.4%).

Non-cashable benefits are reported as including: improved compliance with legislative and policy requirements; improved accuracy in the provision of management information and a

reduction/elimination of unapproved/off-contract spend by hiring managers through the application of tighter controls and improved communication.

Additionally, less officer time was spent in sourcing agencies and in handling cold calls from agencies. Use of paper timesheets was reduced and a single consolidated weekly invoice for the participating authority was introduced.

3.6 The Potential for Savings in Northern Ireland

From the case studies presented above, it does appear that the evidence supports the assertion that Northern Ireland's district councils could achieve savings by pursuing a more collaborative approach to procurement. The extent to which there is already collaboration (and in the area of waste collection and disposal there is a lot) is considered in more detail in sections 8 to 10 below. It would be possible to present a large number of further case studies: it is my view, however, that this would simply repeat the lessons from those shown above and that the case for some level of collaboration is sufficiently well made.

It is also important to note that even after reorganisation in 2011, Northern Ireland's district councils will have a much narrower range of responsibilities than many of their counterparts in England. Their level of spend is lower, and consequently the potential for large savings is likely to be correspondingly lower.

4. Different Ways of Collaborating in Procurement

There is not a large body of academic work on procurement as a shared service between local authorities. Nevertheless it is possible to identify three structural options for the organisation of procurement:^[12]

1. Traditional models:
 - a) centralisation
 - b) decentralisation
 - c) hard core/soft core
2. Consortia
3. Shared services

Table 1 below summarises some of the features of these models with analysis of some of the pros and cons of each approach.

An important note of caution is raised by academic research on collaboration between local authorities - albeit in relation to corporate services rather than service delivery. Huxham and Vangen noted a number of rationales for collaboration: access to resources; shared risk; efficiency; co-ordination and seamlessness; shared learning and moral imperative – there is no other way. (This 'no other way' compulsion seems to have been at least an element in the formation of the waste management partnerships in Northern Ireland – at least in part because of the large scale of infrastructure and capital investment required.)

Despite this, the authors arrived at the following conclusion:

[T] he overwhelming conclusion from our research is that seeking collaborative advantage is a seriously resource-consuming activity so is only to be considered when stakes are really worth pursuing. Our message to practitioners and policy makers alike is don't do it unless you have to.^[13] (emphasis added)

In other words, the process of collaborating itself takes a lot of inter-organisational effort and therefore is not always the best approach. This evidence suggests a need to take an incremental approach to collaboration – starting small and building on successes. As authorities are sharing risk and resources when they collaborate, there is also a need to build trust between those authorities.

Table 1: Models of Collaboration

Collaborative Model	Description of structure	Advantages	Disadvantages
Centralisation of procurement within an authority	All procurement handled by a specialised procurement service or office. This unit develops and implements procurement strategy and organises tenders and lets the contracts.	Concentration of expertise in one place. Maximisation of 'leverage' and ability to extract best deals from the market.	Recruitment and retention of relevant expertise requires business case justification that may not be sustainable at council level. Assumes there will be sufficient internal demand.
Centralisation of procurement between authorities	As above, except the centralised unit serves a number of authorities.	Ability to aggregate larger volumes of demand. Single point of contact for suppliers. Expense of expertise more likely to be justified	Potential for disagreement on strategic political and socio-economic priorities between councils and the centralised unit. Buying power and expertise sacrificed.
Decentralisation within an authority	The opposite of centralisation. Procurement is handled by individual functional areas.	Localised control – better understanding of business areas' needs.	Officers distracted from specialised work by need to organise procurement.
Hard core/soft core within an authority	A blend of centralisation and decentralisation. Strategy is centralised in the 'hard core'. The actual buying practice of operational procurement	Economies of scale Expertise can be built up in the hard core	Recruitment and retention of relevant expertise for the hard core requires business case justification

Collaborative Model	Description of structure	Advantages	Disadvantages
	is devolved to the 'soft core' of business areas.	<p>which can move from project to project.</p> <p>Soft core staff are able to remain specialists in their own disciplines but can also draw on the experience of the hard core through project specific teams that deliver business-specific procurements when required</p> <p>Economies of scale</p> <p>Expertise can be built up in the hard core which can move from project to project.</p>	<p>that may not be sustainable at council level.</p> <p>Assumes there will be sufficient internal demand.</p>
Hard core/soft core between authorities	Rather like central government procurement structure in Northern Ireland with CPD as the hard core and the CoPEs as the soft core	Soft core staff are able to remain specialists in their own disciplines but can also draw on the experience of the hard core through project specific teams that deliver business-specific procurements when required	Potential for disagreement on strategic political and socio-economic priorities between councils and the centralised unit.
Consortia	Various possible forms of consortium. They could be buying organisations that have a catalogue of framework contracts from which member organisations can choose. Or they can be formed for very specific one-off purposes – either formally or informally	<p>Aggregation of demand and economies of scale</p> <p>Reduced transactional costs.</p> <p>Could be more flexible than formalised models.</p>	<p>Relies on good information exchange – authorities need to know what the others are buying and when for one-off procurements.</p> <p>Small authorities may not have sufficient expertise to make an informed judgement about when it makes sense to use a</p>

Collaborative Model	Description of structure	Advantages	Disadvantages
			consortium and when it does not.
Shared service	A number of authorities jointly employ dedicated procurement resources which handle both strategic and tactical procurement.	<p>Unlike tactical consortia, provides access to expertise which can also handle strategic issues on a shared cost basis.</p> <p>Shared risk, potential for efficiency and strategic coordination</p>	<p>Time may be required to build trust in the organisation.</p> <p>Strong justification required of benefits over risks.</p>

5. Local Government Procurement Structures in England

The National Procurement Strategy for Local Government 2003-2006 was produced jointly by the Office of the Deputy Prime Minister and the Local Government Association. It set out a programme to improve local government procurement – at that time there were more than 400 councils in England, spending over £40bn per year.

Regional Centres of Excellence

The objectives of the strategy^[14] were that, by 2006, councils would be:

- Delivering significantly better quality public services that meet the needs of all local citizens through sustainable partnerships they have forged with a range of public, private, social enterprise and voluntary sector organizations
- Confidently operating a mixed economy of service provision, with ready access to a diverse, competitive range of suppliers providing quality services, including small firms, social enterprises, minority businesses and voluntary and community sector groups
- Achieving continuous improvement from all categories of procurement expenditure, by putting in place an appropriate procurement strategy and the necessary resources for implementation
- Obtaining greater value for money by collaborating with partners at local, regional, national and European levels
- Realising economic, social and environmental benefits for their communities through their procurement activities
- Demonstrating improvement in equality and opportunity for businesses, service users and council staff
- Stimulating markets and using their buying power creatively to drive innovation in the design, construction and delivery of services.

There was a two-pronged approach to meeting these objectives. Firstly, Regional Centres of Excellence were established. Secondly, a national programme of training and development was initiated for members and senior managers.

The Regional Centres of Excellence had the remit to:

- Develop centres of procurement and project management expertise;
- Communicate the key messages in the National Procurement Strategy for Local Government
- Disseminate good practice in procurement, project management and partnering;
- Provide high quality procurement advice to authorities in the region including, in particular, smaller authorities without procurement resources of their own;
- Promote collaborative procurement where this could lead to improved value for money in the acquisition of assets, services and supplies;
- Promote the development of e-Procurement in the region in collaboration with the National e-Procurement Project;
- Develop, manage and co-ordinate a pool of experienced procurement professionals and project managers to be shared between councils in the region;
- Act as a focus for training and development in procurement and project management skills extending beyond the 3 year horizon of the proposed national skills training programme (see below);
- Streamline and co-ordinate pre-qualification procedures in the region;
- Gather market intelligence and disseminate it in the region;
- Collate and publicise information on bidding opportunities; and
- Capture learning from projects for sharing across the region and nationally.[15]

This strategy was developed against a backdrop where many authorities did not have a systematic approach to procurement. For example in 2003, only 20% of authorities had a procurement strategy in place that was being implemented:

Local authorities development of procurement strategies 2003



[16]

The strategy put in place a number of objectives in relation to partnering and collaboration, with the overall aim of the "delivery of better services to citizens through the creation of sustainable partnerships between councils and suppliers." [17]

Collaboration was defined as "the various ways in which councils and other public bodies come together to combine their buying power, to procure or commission goods, works or services jointly or to create shared services." [18]

Evaluation of the National Procurement Strategy (NPS)

A report by the Department of Communities of Local Government (that replaced ODPM) and the Local Government Association assessed the NPS.^[19] Headline findings included:

- £3.1 billion efficiency gains achieved by end 2006/07, exceeding the target for the spending review period a year early.
- 46% of councils now working with their Regional Centre of Excellence on improving procurement performance (from 14% in 2004).
- 54% (i.e. more than half of councils) involved in joint commissioning of services (not including health and social care). This compares with 31% in 2004.
- 38% of councils involved in a shared procurement function with other councils.
- 24% (i.e. a quarter of councils) involved in sharing of other corporate functions.
- 65% of councils have adopted the Small Business Friendly Concordat.^[20]

Analysis of the specific time-bound milestones found that only three of the 23 set in 2003 were "not being actively implemented across the sector".^[21] So from the perspective of the Government and the LGA, the strategy was judged to have been positive and that there had been "a high level of officer and member-level buy-in on procurement."^[22] Further, a strategic approach to procurement had become "firmly embedded with the support of the national programmes and the Regional Centres of Excellence."^[23]

Regional Improvement and Efficiency Partnerships (RIEPs)

Nine RIEPs were established in April 2008 to assist local authorities in meeting the targets for efficiency savings set out in the Comprehensive Spending Review 2007. Essentially, the RIEPs merged the Regional Centres of Excellence and the former Regional Improvement Partnerships.

RIEPs are led by councilors and advised by groups drawn from council chief executives. Each also has a small team of dedicated staff to support the work of the partnership.^[24] RIEPs are local councils' "first port of call" for support on the efficiency agenda.^[25] As well as guidance, they are able to fund projects designed to secure efficiencies.

The LGA published a summary of the RIEPs' key achievements in the 2008-2009 year. It reported over £100m of efficiency gains in the first year on an initial funding investment of just under £50m.^[26] Further efficiency gains through collaborative procurement are projected by 2011.^[27]

It should be noted that this is not an independent report – the Local Government Association and the Department of Communities and Local Government established the RIEPs through the National Improvement and Efficiency Strategy of December 2007.

Nevertheless, it is useful to consider the findings of the report in the context of this paper. Key messages are:

- RIEPs are led and owned by Councillors and local authorities
- RIEPs reported over £100m efficiency gains in their first year on an initial funding investment of just under £50m
- RIEPs communicate with all English local authorities and have engaged with over 95% of local authorities in their first year

- RIEPs are supporting authorities to respond to the economic downturn and deliver savings to operate within the next financial settlement
- RIEPs have supported 36 authorities facing difficulties over the past year
- RIEPs have facilitated innovative approaches so that authorities can take forward collaborative projects they may not otherwise have done

6. Local Government Procurement Structures in Scotland

Collaborative procurement has been happening also in Scotland over a relatively lengthy period. But there has not been, until fairly recently, a co-ordinated approach. In total, the public sector spends approximately £8bn on goods and services per year; a “significant part of this is spent by local government.”^[28]

In 2005, the Scottish Executive commissioned a review of public procurement in Scotland. This review (the McClelland Review) found that:

there is [...] poor utilisation of fragmented yet substantial effort, with the same or similar commodities being procured by multiple public-sector organisations and often through separate contracts with the same supplier. As well as being a poor utilisation of scarce procurement skills this situation does not capture the other advantages listed above including in particular delivery of cost savings from aggregated spend.

An unparalleled effort is therefore required to improve the infrastructure to support collaboration and in defining, once established, how support and utilisation can be guaranteed.^[29]

It recommended that Centres of Expertise should be established, not on a geographical basis, but on a commodity-by-commodity basis.^[30]

The Centres of Expertise would operate a system of categorised commodities and services:

Category A – national contracts

A small number of high-value commodities and services which should be provided by a call-off national contract. These national contracts should be established centrally by the Scottish Executive’s Procurement Directorate and used on a mandatory basis by all public sector authorities.

Category B – sector-specific contracts

These commodities and services should be provided by call off from common ‘sector-specific’ contracts which should be centrally established within each sector. This recommendation aimed to prevent individual sectoral organisations performing the same function multiple times without the advantage of procurement volumes or value consolidation. Examples suggested were the Scottish Health Service; Local Authorities, Tertiary education and the wider Scottish Executive (including NDPBs).

Category C – general contracts

All contracts not categorised as A or B would fall into category C and conducted within the remit of a single organisation. The report states this would give rise to “a substantial opportunity for

local economic benefits as local suppliers are developed and encouraged to compete to win business in the C category."[\[31\]](#)

Category C1 – local/regional contracts

The final category provides an opportunity for items that are not consolidated as category A or B to be "consolidated in a region to the benefit of purchasing power and optimisation of resources."[\[32\]](#) Essentially this is a recommendation that authorities form regional consortia or collaborate in other ways.

The remit of Improvement Scotland seems to be rather similar to the IDEA in England, and similarly its client bodies are local authorities. It is not specifically a procurement-oriented body.

Scotland Excel

Scotland Excel was established as a Centre of Procurement Expertise following the McClelland Report. Its purpose is to:

raise procurement standards in Scotland in collaboration with local authorities and suppliers to secure best value for our customers and in doing so, will build a reputation for being the Centre of Expertise for Procurement for Local Authorities offering a comprehensive, professional and customer-focused approach to working.[\[33\]](#)

It has a strategic procurement team that is responsible for creating and delivering a procurement strategy for category B commodities and for managing contracts for all member councils (currently 28 of Scotland's 32 local authorities are paid-up members for an initial period of three years).

The organisation sets up rationalised frameworks and provides training and development. Prior to embarking on this, a process of detailed analysis was undertaken. This used IT to examine the spend profiles of local authorities which enabled the prioritisation of which areas of procurement the effort needed to be focused. There was also a marketing process required to convince authorities of the benefits.[\[34\]](#)

Evaluation of progress

In July 2009, Audit Scotland produced a report on the reform of public procurement[\[35\]](#) that began in response to the McClelland Report. The report examined progress over the period 2006/7 to 2008/9.

The key messages found by the review were:

- The Programme has made significant progress putting in place the processes, guidance and structures needed to improve publicsector purchasing. However, some parts of the Programme have been delivered later than planned and it is not clear that it has yet achieved the level of improvement and impact sought at the outset. The Scottish Government intends to put in place a new plan from summer 2009 to help the Programme achieve its full potential.
- At the outset the Programme anticipated that, with urgent attention, better purchasing could deliver cumulative savings of £740 million in the three years to 2008/09.
- At the time of our audit there was no systematic basis for reporting savings directly attributable to the Programme – only 41 of 177 bodies had reported savings using the

agreed indicators. However, around £327 million of savings reported under the Scottish Government's wider Efficiency Programme may be attributed to the Programme for the two years to 2007/08. This is broadly in line with the original Programme target for this period (£340 million), but owing to changes and delays in collecting and reporting savings data it is unclear how progress towards the third year target (£400 million) will be monitored.

- Savings from new collaborative contracts, a key feature of the Programme, are being achieved more slowly than expected. The health sector, which has the longest standing procurement centre of expertise, has been most successful, introducing 150 new contracts over the two years to 2007/08, with savings of £54 million.
- Overall, the wider impact of the Programme appears positive. It has helped purchasing on a number of levels – from promoting and developing purchasing skills and awareness to increasing the use of electronic purchasing. The Programme has improved cross-sector working.
- There are wide variations across public bodies in the quality of purchasing data, practice and skill levels. Best Practice Indicators (BPIs) to help improve purchasing have been agreed but many public bodies are still in the process of completing and using them. The Scottish Government is working with the centres of expertise and public bodies to encourage further improvement in these areas^[36].

Overall, this seems to be a pretty positive assessment of the improvements despite the criticisms of data collection and reporting and the speed of benefit realisation compared with the initial targets.

Efficiency Savings

Audit Scotland assessed the level of cumulative efficiency savings from the programme over £327m over the first two years. This is about 4% of the total public-sector spend of £8bn. While this did not meet the ambitious target, it is clearly significant progress.

Of this figure, for 2006/07 reported savings for local government were £30m. For 2007/08 reported savings were £59m. Over the two years that's over a quarter (27.2%) of the total savings being delivered by local government.^[37]

By April 2009, Scotland Excel had introduced 12 new collaborative contracts. These ranged from catering supplies to specialist audio equipment, from cars to light commercial vehicles. These contracts have an estimated annual value of £55m, and Scotland Excel's estimate was an annual saving of £2.7m to councils.^[38] It was reported that the set-up and running costs for Scotland Excel were £5.5m over 2007/08 to 2008/09.^[39] £4.5m of this was provided from by Scottish Executive, but over time the body is required to be self-financing.

Wider benefits

The Audit Scotland report notes a number of benefits of the reform programme including:

- The foundations for better purchasing are now in place;
- The Scottish government has introduced clearer guidance on purchasing policy;
- The programme has improved cross-sector collaboration;
- Public bodies are increasingly using e-purchasing; and,
- The programme is encouraging improved relations with suppliers.

It also identified some weaknesses:

- More assurance is needed on purchasing practice;
- Purchasing information needs to be improved, particularly at a local level; and
- Shortages of skilled staff and high staff turnover are risks for the programme.

Importantly in the context of this paper, it also found that the impact of the programme on supporting the Scottish economy is unclear. [\[40\]](#)

7. Local Government Procurement Structures in Wales

The Welsh Assembly Government has taken a slightly different approach to collaborative procurement. Instead of introducing new structures the approach is more about enhancing collaboration within and between existing structures.

A review of public services in 2004 identified the potential for £120m VfM savings by 2007/8 from smarter procurement – on an estimated annual public sector procurement spend of £4bn. [\[41\]](#)

In 2006, a consultation was launched on the Welsh Public Sector Sourcing Plan 2006-2009 [\[42\]](#). In the Executive Summary, the difficulties of collaborative working are noted:

Collaboration is not an easy option. It requires much greater communication across sectors, greater clarity on business needs and the willingness to take the 'leap of faith' to allow decisions to be taken outside individual organizations and often sectors. However research has indicated that the production of a Welsh Public Sector Sourcing Plan which clearly states the planned approach to each expenditure area, will overcome some of the practical issues.

Collaboration is not suitable for all expenditure areas. Some areas will deliver better results from an all-Wales cross sector approach, others from a single sector or regional approach, while others are best approached locally. [\[43\]](#)

UK-wide agreements are established by the Office of Government Commerce (OGC). All-Wales national contracts are agreed by Value Wales [\[44\]](#) and are available to all public or publicly-funded bodies.

Sectoral Contracts are established by consortia (such as Welsh Health Supplies and the Higher Education Purchasing Consortium Wales, for example) acting on behalf of their members.

Regional contracts are developed and managed by regional entities such as the North Wales Forum or sector-based shared services – such as the Gwent Joint Procurement Unit.

The approach is underpinned by a Document of Understanding whereby the procurement groups and consortia are guided by certain principles:

- Collaborative procurement covers a range of activity from sharing best practice and joint supplier management, through to letting and managing collaborative framework agreements or contracts.
- To obtain the best overall result, different collaborative contracting models are required for different areas of expenditure, based on the pattern of demand for the goods and services and on the characteristics of the supply market place in which the procurement takes place.

- For some types of goods and services the Welsh public sector can often make better use of its resources through different consortia specialising in letting and managing contracts on behalf of identified user groups.
- Whilst collaboration is an important tool, it is recognised and accepted that each individual organisation's primary duty is to fulfil its' own remit effectively and work towards its' own policies, objectives and operational goals, to address local issues and provide the best outcome to its' organisation.
- Collaborative frameworks need not mean large contracts with large suppliers; aggregation of demand does not always require aggregation of supply.
- To be successful in the long-term collaborative procurement frameworks must be let and managed using professional procurement skills and must seek the best outcomes for all participating organisations – taking into account long term wider issues, such as sustainable development, on-going market development, and service standards as well as price.
- Different contract timetables exist and individual organisations may migrate to new arrangements at different times.^[45]

In turn, these principles result in a Collaborative Procurement Protocol.^[46] The protocol requires signatory bodies to:

- recognise the commodity allocation which states which commodities are to be procured at which level;
- agree to openly share information;
- consider the impact of their decisions on the Welsh public sector as a whole;
- where appropriate, work together to agree all-Wales procurement policies; agree to play an active part in wider collaborative work (such as allowing access to contracts to other users); and
- encourage usage of agreements let by other consortia to avoid duplication of effort.

8. Collaboration between District Councils in Northern Ireland.

There have been in place for some time formal collaborative procurement structures in Northern Ireland. All 26 district councils are members of one of three sub-regional Waste Management Partnerships (WMPs) : arc21 (the eastern region), SWaMP 2008 (the southern region) and the North West Regional Waste Management Partnership. Each is a joint committee of the participant councils and the first two of these are formally established as bodies corporate under legislation.

There is an element of moral imperative that brought the WMPs together: the scale of infrastructure investment required to meet EC Landfill Directive targets for reducing waste sent to landfill seems to have played a large part in the impetus for their formation. The Department of the Environment also encouraged the formation of the WMPs and for some time distributed a Waste Management Grant to help with the implementation of the WMPs' waste plans.

The DoE has acknowledged the achievements of the WMPs, although no published evaluation of their effectiveness or efficiencies seems to be available:

The Department recognises that the 3 existing Waste Management Groups are making good progress towards the provision of major new waste treatment facilities in line with this timetable

[to meet EC landfill directive targets]. Accordingly, the Department is fully committed to supporting local government in delivering the necessary infrastructure.^[47]

There are also informal collaborations under the auspices of a Local Government Procurement Group (LGPG). The LGPG came together to consider ways of collaborative working and also with a learning and development remit where best practice is shared between officers.

While there is no published analysis of this process available, the experience has been that opportunities to form consortia have arisen and consequently savings have been made.^[48]

9. Future Procurement Policy for Local Government in Northern Ireland

DFP's Central Procurement Directorate (CPD) is responsible for supporting the Executive's Procurement Board^[49] in developing and reviewing procurement policy. It also aims "to develop and promote best practice in procurement within the Northern Ireland Public Sector."^[50]

On the strength of this statement, there is a valid role for the Committee for Finance and Personnel considering issues that relate to local government procurement. A policy of collaboration between district councils would fall under the umbrella of the wider public sector.

Nevertheless, it should be noted that CPD's Northern Ireland Public Procurement Policy does not apply to district councils. On this issue, the policy states:

As regards District Councils, the Executive accepts that their different and separate framework of accountability must be recognised and, under existing legislation, compliance can only be on a voluntary basis.^[51]

All of Northern Ireland's district councils are able to access CPD's contracts and framework agreements but it is their choice to do so, not a requirement.

Policy relating to local government falls within the remit of the Department of the Environment. It has undertaken a considerable amount of work on local government reform. In particular, it has recently published for consultation an economic appraisal of options for local government service delivery.^[52]

In his statement to the Assembly on 20 October 2009, Minister Poots stated that:

A regional business services organisation will be formed that is wholly owned, operated and run by local government, which will enable collaborative solutions across local government. A single waste disposal authority wholly owned and operated by local government will be created, aimed at delivering efficiencies in future procurement and contract-management activities.^[53]

There are two separate strands to this in relation to procurement:

1) Business Services Organisation

The 'preferred option' presented in the economic appraisal is that the Business Services Organisation (BSO) "will initially focus on procurement, support services (such as ICT) and transactional services (within areas such as Payroll, Finance and Human Resources)."^[54] It is suggested by the consultants who prepared the report that the BSO should be established as a mandatory joint committee of all the eleven new councils.

The Economic Appraisal assumes that in relation to procurement a regional Centre of Procurement Excellence will be established in 2011, which each council retaining local procurement. There is no recommendation made on the design of the collaborative model. Instead, "design of the collaborative model(s) to be applied to areas is a matter for the BSO implementation team and in conjunction with the 11 new councils". [55]

A case study in relation to procurement is included in the DoE Economic Appraisal, which is included as Appendix 2 for information. The most pertinent message from that case study could be: "clearly the achievement of these benefits will depend on the way in which procurement is organised within the new authorities." [56]

2) Waste Disposal Authority for Northern Ireland

The DoE recently consulted on a proposed Waste Bill [57] which would, among other things, transfer the statutory responsibility for waste planning and disposal to a Waste Disposal Authority (WDA). Councils would retain responsibility for waste collection.

DoE has proposed that an enabling power should be included in legislation to allow for the establishment of a WDA in the future. An expressed aim of the WDA would be to "help to generate efficiencies through economies of scale, enhancing purchasing power and centralising procurement expertise." [58]

Policy Development

At present the development of policy is ongoing through the DoE/Local Government Strategic Leadership Board.

The DoE's Economic Appraisal of options for service delivery raises a number of questions and recommendations. These highlight a need for further work on both the BSO and the WDA in terms of the consideration of models, governance arrangements, impact on existing arrangements and the exact specification of the services that should be delivered collaboratively.

In context of procurement alone, these are big issues. In relation to potential savings from the proposed WDA, the economic appraisal states:

The main benefit of this approach would be a centralised disposal function which could potentially generate efficiencies through economies of scale, providing enhanced purchasing power and take responsibility for facilitating integrated waste management planning. Whilst these benefits could be potentially derived, there is insufficient evidence to quantify this benefit at present. [59]

To what extent such developments would lead to increases in contract values (and therefore the potential exclusion of SMEs from the supply market) remains to be seen. From the evidence in the economic appraisal, it is not possible to make much of a judgement on potential savings from the preferred delivery option. But is clear that there is a certain impetus toward increased centralisation in pursuit of efficiencies and economies of scale.

For the purposes of the Committee's Inquiry, therefore, it is too soon to assess which of the collaborative models presented in table 1 above the proposed structures may fit into – it could be a mixture of a number.

10. Questions for Future Development of Policy Regarding Local Government Collaboration

As noted above, the development of policy for local government procurement is ongoing. For that reason, it is unclear how much work has been done on different models of collaboration and the impact these might have, either in terms of potential savings or the impact on Northern Ireland's SMEs, SEEs or micro businesses.

1) low-value tenders

Written and oral evidence to the Inquiry has raised the issue of low-value procurement beneath the EU thresholds. The FSB's survey evidence was raised in section 2 – it is the contracts below £50,000 that local SMEs mostly bid for. In relation to these contracts, Lestas consulting argued "there is a need for the Committee to ensure there is consistency of approach across public bodies when tendering under EU thresholds and to ensure an open, objective and transparent process."^[60]

This evidence argued that the information provided in relation to low-value contracts was of poor quality and that award criteria are not published. This results in a lack of clarity in how award decisions are reached.

The Local Government Audit Office confirmed that district councils have different thresholds set through their standing orders.^[61] These thresholds determine when the council will go out to tender and when it may choose to invite quotations from three or more potential suppliers. These are not standardised levels, which makes sense with the range in size of the current 26 councils: clearly, a small authority like Moyle District Council will have a different level of spend from Belfast City Council and it is reasonable that thresholds are set with regard to those differences.

After reorganisation, however, the new 11 councils will be more similar in terms of scale. It may make sense, therefore, to pursue a policy of standardisation.

2) aggregation of contracts

The Value for Money argument presents the case that aggregated demand can deliver better prices to purchasers through larger deals. Yet it should be noted, that this does not appear to necessarily be the case and there are possible flexibilities – note, for example, the third principle from the Welsh Document of Understanding:

- Collaborative frameworks need not mean large contracts with large suppliers; aggregation of demand does not always require aggregation of supply. (emphasis added)^[62]

It follows that opportunities can still exist for smaller suppliers. A counter argument to aggregation of supply is presented by the OGC in its publication *Smaller supplier... better value?* This states:

- Bringing in more suppliers will often bring greater competition to the market place, so reducing the costs of procurement from all suppliers
- SMEs have lower administrative overheads and management costs than larger firms. Depending on the nature of the procurement, this can result in lower prices.^[63]

It is also argued that SMEs can provide better quality of service (through responsiveness, willingness and ability to tailor services to meet needs and the added importance of a contract to a smaller business in terms of proportion of total revenue) and innovation.

In waste procurement, for example, SWaMP2008 recently tendered for infrastructure (mechanical and biological treatment) with a capital value of £150m. Of the four bidders shortlisted, 100% of these contained a local element – all of them planned to use a local construction contractor for example.^[64]

When it comes to ongoing operation and maintenance, the preferred supplier will have to either bring in an entire workforce or recruit one locally – which would probably be a local facilities management company. But in large procurements such as waste infrastructure, the technology is generally provided by large companies on a pan-European basis. Also, because of the PPP procurement route, the initial equity investment is unlikely to be local – but this means the risk also sits outside Northern Ireland.

It was the view of SWaMP2008's procurement advisor that the dynamics would not be very different in other sectors. Delivery would usually be expected to be locally based and scaling up does not necessarily disbenefit local players.

A smaller scale example was provided by arc21.^[65] Provision of training is usually through a local supplier – costs from suppliers in GB tend to be higher because of additional travelling can push costs up. On bigger procurements such as the arc21 organics contract, a local supplier from Keady was successful. Even in the big residual (i.e. non-recyclable) waste contract which is being delivered by an international consortium, there are local firms further down the supply chain.

On the basis of this evidence, of course, it is not possible to generalise about the whole picture of local government procurement in Northern Ireland. The lesson from Scotland Excel's work is that a process of pursuing formalised collaboration should be underpinned by detailed analysis of spend profiles and the rationalisation of products to increase volumes, but not necessarily the rationalisation (i.e. reduction in number) of suppliers.

It would be interesting to know how much work DFP has done in this area in relation to central government spend and also if DoE progressed detailed work in this area before suggesting the Business Services Organisation.

3) the process of collaboration

Policy aimed at encouraging more collaboration between district councils in Northern Ireland might recall the assertion of Huxham and Vangen (see section 4 above) that collaboration should not be pursued unless essential. Even if it is essential (and the case does not seem totally proven on the basis of the DoE Economic Appraisal), an incremental approach was advocated by the literature.

This suggests not taking a 'big bang' approach in 2011 but allowing the proposed structures to develop and build confidence. The DoE economic appraisal seems to suggest that the Business Services Organisation should be established as a mandatory joint committee of the new eleven councils. Nor does it imply that time will be taken to build trust.

Perhaps a lesson can be drawn from the approach of the Welsh Assembly Government to collaborative procurement. Is there really a good case for investing the effort in new

collaborative structures, when an alternative would be to develop principles of co-operation and a binding memorandum of understanding?

It is an accepted maxim of change management that too much change should not be attempted at once. There is surely a question about the ability of officers to cope with being part of new organisations with new priorities and working environments as well as new methods of collaborative working.

4) procurement strategy

Whatever model for collaboration is established, it seems from the theoretical framework that there is a clear need for the development of procurement strategy to be concentrated in the hands of those with a high level of expertise. In the socio-political context of Northern Ireland, great care may be needed in generating a strategy that fits the diverse range of social and economic priorities of councils.

It was suggested by one of the commentators at the Stakeholder Conference that a crucial element of public procurement policy was missing at the strategic level in relation to the goal of maximising social and economic benefits, as these goals do not appear to have been clearly articulated, let alone permeating down to practitioners in CPD and the CoPEs. Simply put, if it is unclear what social objectives are being pursued, it will be difficult for procurement specialists to design social clauses or other means to deliver them.

It would be unfortunate if this same mistake was repeated at the local government level. It seems that the best approach to this strategic development would be through NILGA (seeing as it was the LGA in England that developed the National Procurement Strategy) working with DoE, all councils and –importantly – stakeholders from the small business community and the third sector.

Appendix 2 – Extract from Local Government Service delivery – Economic Appraisal

[7] 'Cashable savings' release financial resources to be deployed elsewhere, whilst maintaining outputs. 'Non-cashable gains' relate to productivity or quality increases without releasing financial resources. For more information see [http://www.ogc.gov.uk/documents/Measurement_of_SR04_Efficiencies\(1\).pdf](http://www.ogc.gov.uk/documents/Measurement_of_SR04_Efficiencies(1).pdf) (box 1)

[8] The case study can be found online at: http://www.eastmidlandsiep.gov.uk/documents/news_info/Refuse_Vehicles_FINAL.pdf

[9] The case study can be found online at: [http://www.eastmidlandsiep.gov.uk/documents/case_studies/Collaborative_Working_and_Shared_Services_in_Derbyshire_\(REDUCED_FINAL\).pdf](http://www.eastmidlandsiep.gov.uk/documents/case_studies/Collaborative_Working_and_Shared_Services_in_Derbyshire_(REDUCED_FINAL).pdf)

[10] The case study is available online at: <http://www.southeastiep.gov.uk/uploads/files/CollaborativeprocurementofInsuranceProcurement.pdf> (accessed 11 November 2009)

[11] The case study is available online at: <http://www.southeastiep.gov.uk/uploads/files/EastMidlandsAgencyStaffCaseStudy.pdf> (accessed 10 November 2009)

[12] For a helpful treatment of the structural options see Murray et al 'Procurement as a shared service in English local government' International Journal of Public Sector Management Vol. 21 No.5 (2008) pp. 540-555 (presented as Appendix 1)

[13] Quoted in Murray et al 'Procurement as a shared service in English local government' International Journal of Public Sector Management Vol. 21 No.5 (2008) pp. 540-555 (page 544)

[14] ODPM/LGA 'National Procurement Strategy for Local Government' (2003) see page 11

[15] ODPM/LGA 'National Procurement Strategy for Local Government' (2003) see page 16

[16] ODPM/LGA 'National Procurement Strategy for Local Government' (2003) see page 27

[17] ODPM/LGA 'National Procurement Strategy for Local Government' (2003) see page 33

[18] ODPM/LGA 'National Procurement Strategy for Local Government' (2003) see page 34

[19] The full report is available at: <http://www.communities.gov.uk/documents/localgovernment/pdf/135268.pdf> (accessed 16 November 2009)

[20] <http://www.communities.gov.uk/documents/localgovernment/pdf/135268.pdf> see page 6

[21] <http://www.communities.gov.uk/documents/localgovernment/pdf/135268.pdf> see pages 7 and 8

[22] <http://www.communities.gov.uk/documents/localgovernment/pdf/135268.pdf> see page 4

[23] <http://www.communities.gov.uk/documents/localgovernment/pdf/135268.pdf> see page 45

[24] A guide to the RIEPs is by the LGA (2008) 'Accelerating the Improvement and Efficiency Drive' is available at <http://www.lga.gov.uk/lga/aio/1105713> (accessed 16 November 2009)

[25] Department of Communities and Local Government 'Delivering Value for Money in Local Government: Meeting the Challenge of CSR07': <http://www.communities.gov.uk/documents/localgovernment/pdf/value.pdf> (see page 29) (accessed 16 November 2009)

[26] LGA 'RIEPs: One year on': <http://www.lga.gov.uk/lga/aio/1908547> (see page 4) (accessed 16 November 2009)

[27] See for example: <http://www.lga.gov.uk/lga/aio/1908547> page 9 (accessed 16 November 2009)

[28] Source: <http://www.improvementservice.org.uk/procurement>

[29] The McClelland review is available online at: <http://www.scotland.gov.uk/Publications/2006/03/14105448/0> (see page 39) (accessed 16 November 2009)

[30] <http://www.scotland.gov.uk/Publications/2006/03/14105448/0> (see page 40)

[31] <http://www.scotland.gov.uk/Publications/2006/03/14105448/0> (see page 42)

[32] <http://www.scotland.gov.uk/Publications/2006/03/14105448/0> (see page 42)

[33] <http://www.scotland-excel.org.uk/about/about.asp>

[34] Source: personal communication with Owen Patterson, Head of Relationship Management at Scotland Excel

[35] Audit Scotland 'Improving public sector purchasing' (2009) available online at: http://www.audit-scotland.gov.uk/docs/central/2009/nr_090723_improving_purchasing.pdf (accessed 17 November 2009)

[36] Audit Scotland 'Improving public sector purchasing' (2009): http://www.audit-scotland.gov.uk/docs/central/2009/nr_090723_improving_purchasing.pdf (see page 4)

[37] Audit Scotland 'Improving public sector purchasing' (2009): http://www.audit-scotland.gov.uk/docs/central/2009/nr_090723_improving_purchasing.pdf (see Exhibit 10, page 17)

[38] Audit Scotland 'Improving public sector purchasing' (2009): http://www.audit-scotland.gov.uk/docs/central/2009/nr_090723_improving_purchasing.pdf (see page 18)

[39] Audit Scotland 'Improving public sector purchasing' (2009): http://www.audit-scotland.gov.uk/docs/central/2009/nr_090723_improving_purchasing.pdf (see Exhibit 14 page 20)

[40] Audit Scotland 'Improving public sector purchasing' (2009): http://www.audit-scotland.gov.uk/docs/central/2009/nr_090723_improving_purchasing.pdf (see pages 23 to 29)

[41] Welsh Assembly Government 'Making the Connections' (2006) available online at: <http://cymru.gov.uk/dpsp/publications/policies/delivering/responsee.pdf?lang=en> (accessed 19 November 2009) see page 35

[42] Available online at:

<http://new.wales.gov.uk/topics/improvingservices/bettervfm/publications/sourceplan/;jsessionid=mvc2K8WLOp2P98NJJQytbNcJmVsddtD109qftYRbTbTcJQLWGXSh!-973892656?cr=7&lang=en&ts=4> (accessed 19 November 2009)

[43]

<http://new.wales.gov.uk/topics/improvingservices/bettervfm/publications/sourceplan/;jsessionid=mvc2K8WLOp2P98NJJQytbNcJmVsddtD109qftYRbTbTcJQLWGXSh!-973892656?cr=7&lang=en&ts=4> (see page 1)

[44] Value Wales is a division of the Department for Public Services and Procurement established after a review of public services in 2004.

[45] A copy of the document is available at: <http://www.buy4wales.co.uk/PRP/10728.file.dld> (accessed 19 November 2009) see section 4

[46] <http://www.buy4wales.co.uk/PRP/10728.file.dld> see section 5

[47] http://www.doeni.gov.uk/draft_consultation_paper_5_.pdf see page 52

[48] Source: personal communication with the Chairperson of the LGPG

[49] Membership of the procurement board comprises the Permanent Secretaries of the 11 Northern Ireland Departments, the Treasury Officer of Accounts, the Director of Central Procurement Directorate, observers from the Northern Ireland Audit Office and the Strategic Investment Board as well as 2 external members.

[50] <http://www.cpdni.gov.uk/index/about-cpd.htm>

[51] CPD Northern Ireland Public Procurement Policy (2009) http://www.cpdni.gov.uk/pdf-public_procurement_policy.pdf see page 12

[52] The full document is available at

http://www.doeni.gov.uk/index/local_government/local_government_service_delivery-2.htm (accessed 10 November 2009)

[53] The full text of the statement is available at:

http://www.doeni.gov.uk/ministers_statement_20.10.09.pdf (accessed 10 November 2009)

[54] See Executive Summary

http://www.doeni.gov.uk/index/local_government/local_government_service_delivery-2.htm (page 2)

[55] Identification of Options http://www.doeni.gov.uk/lgsd_-_section_4_-_identification_of_options.pdf see page 64

[56] Identification of Options http://www.doeni.gov.uk/lgsd_-_section_4_-_identification_of_options.pdf see page 66

[57] DoE Consultation Document – Proposals for a Waste Bill

http://www.doeni.gov.uk/draft_consultation_paper_5_.pdf (accessed 19 November 2009)

[58] http://www.doeni.gov.uk/draft_consultation_paper_5_.pdf see page 52

[59] See under the heading 'Transformation benefits' in section 5.50
http://www.doeni.gov.uk/index/local_government/local_government_service_delivery-2.htm
(page 132)

[60] Written evidence to CFP 26 February 2009 see paragraphs 1.9 and 1.12.

[61] Personal communication with Denver Lynn, Deputy Chief Local Government Auditor

[62] <http://www.buy4wales.co.uk/PRP/10728.file.dld> (accessed 19 November 2009) see section 4

[63] Available online at:
http://www.ogc.gov.uk/documents/CP0083_Small_supplier_better_value.pdf (see page 6)

[64] Information relating to the SWaMP2008 procurement provided by Martin Bowens, Head of Infrastructure Advisory, Ernst and Young, Ireland.

[65] Information relating to arc21 procurement provided by Ricky Burnett, Policy and Operations Director.

Appendix 7

Public Procurement Stakeholder Conference



Northern Ireland
Assembly



Maximising Economic and Social Benefits
from
Public Procurement

Conference for Northern Ireland
Small Medium Enterprises (SME) and
Social Economy Enterprises (SEE)

21st October 2009



Social Research Centre
Independence Integrity Excellence

Social Research Centre's Project Team

The following were members of SRC's team for the conduct of this work:



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ACKNOWLEDGEMENT

A high profile event, as complex as this, is not a success because of the efforts of one individual. At the Social Research Centre, we are conscious of, and wish to formally acknowledge, those who supported us in making this important conference insightful, valuable and rewarding.

Our thanks firstly to the members of the Finance and Personnel Committee who helped us shape the event overall.

The contributions from the six experienced commentators truly enriched the debate and provided us all with extra 'food for thought'. We extend our thanks to them.

We would like to thank the participants for investing their time with us to share their views so openly.

We are deeply grateful to the three members of the Assembly Team who provided guidance and support in the design of the event, the identification of speakers and, who along with a number of other Assembly officials, assisted directly in the organisation of the all important logistical arrangements on the day. We also wish to extend our sincere thanks to the note takers who provided us with a comprehensive account of the points made on the day.

DISCLAIMER

This report has been prepared for and only for the NI Assembly in accordance with the terms of reference in the Social Research Centre's (SRC) proposal dated 11th August 2009 and for no other purpose.

The opinions expressed by the commentators and the participants are strictly those of the person who gave them and not SRC.

SRC is conscious that it is possible some of the points made by the commentators and / or the participants could differ from the views of SRC and the NI Assembly. However, in order to protect the integrity of the research, we have (in the body of this report) simply presented the points made by commentators and the participants, as they were presented to us.

During the conference, the Social Research Centre used **digital voting** to seek the views of participants at various points throughout the day. However, we would stress that the scores recorded using this technique reflect only **the views of those who voted at the conference**. This sample of individuals was **not designed to be**, nor could it be, a statistically valid sample of SMEs, SEEs, members of the procurement community or members of the NI Assembly. In addition, there were a number of situations where, given the time constraints on the day, we did not have the opportunity to allow participants to 'vote on' either all of the issues and or all of the proposed solutions we identified. (All of these have been noted in the report. However, not all have corresponding voting records). We have embedded the scores from the voting sessions in this report because **they accurately reflect the views of participants who voted on the issues and proposals put to them**. (The reader will note that differing numbers and a differing profile of participants voted on different issues as the event proceeded). Consequently, given all of the above constraints, we would wish to point out that the ratings shown are **NOT generalisable** and the Assembly and other readers need to bear this in mind when interpreting this data.

The Social Research Centre does not accept or assume any liability or duty of care for any other purpose or to any other person to whom this report is shown or into whose hands it may come save where expressly agreed by our prior consent in writing.

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Social Research Centre

Independence Integrity Excellence

EXECUTIVE SUMMARY

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1 INTRODUCTION AND BACKGROUND

1.1 BACKGROUND

The Social Research Centre (SRC), (<http://www.srcentre.co.uk>) was appointed in August 2009 to assist the Northern Ireland Assembly Finance and Personnel Committee to design, deliver and report on a one-day conference as part of the Committee's formal inquiry into public procurement in Northern Ireland.

1.2 THE INQUIRY INTO PUBLIC PROCUREMENT

In 2009, the Northern Ireland Assembly Committee for Finance and Personnel initiated an inquiry into the public procurement process in Northern Ireland. The aim of the Inquiry (which at the time of writing, October 2009, was still ongoing) is to improve public procurement policies and processes in Northern Ireland with a view to increasing the involvement of local Small and Medium Enterprises (SMEs) and Social Economy Enterprises (SEEs) in the public procurement market and to maximising the economic and social benefits from public procurement for the local community.

The Committee has undertaken some initial consideration of public procurement policy and practice and, arising from this work, has identified a range of concerns. These include, for example, issues regarding: the robustness of the process; compliance with legal requirements; the extent to which government contracts make provision for social clauses; the scope for increasing the capacity of SMEs and SEEs to compete for public contracts; and on the consequences of undue delays in progressing procurement contracts, especially in terms of the impact on the construction sector of delays in planned capital expenditure.

As a result of its initial work, the Committee will undertake a focused scrutiny of public procurement policy and practice in Northern Ireland which will:

- Examine the experience of SMEs and SEEs in tendering for and delivering public contracts;
- Consider the nature, extent and application of social clauses within public contracts;
- Identify issues to be addressed and which are within the remit of Department Finance Personnel (DFP);
- Assess progress by DFP in achieving associated objectives and targets, including those contained in the Programme for Government and related Public Service Agreements; and

- Make recommendations to DFP for improvements to public procurement policies and processes, aimed at increasing access to opportunities for SMEs and SEEs and maximising the economic and social benefits for the local community, whilst taking account of the principles governing public procurement.

1.3 RATIONALE FOR THE CONFERENCE

By the end of the summer of 2009, the Committee had received a number of written submissions and heard oral evidence from a range of stakeholders. See http://www.niassembly.gov.uk/finance/2007mandate/inquiry_public_procurement.htm

Based on this, the Committee identified:

- A range of issues facing SMEs and SEEs in relation to public procurement; and,
- A variety of suggestions on how the public procurement process might be revised in order to enhance the involvement of local SMEs and SEEs.

To further support the work of the inquiry the Committee decided to hold a one-day Stakeholder Conference on *Wednesday 21 October* at the *Dunsilly Hotel, Antrim*.

The conference was designed to attract participation from SMEs, SEEs, members of the procurement community and Committee members. The aim was to facilitate an exchange of ideas and, through this, to identify a range of policy interventions and practical measures that had the potential to address the key issues raised in the evidence sessions to date.

The feedback from the conference (Section 2 of this report) is intended to be used to inform the recommendations of the Committee inquiry, which, in turn, will inform future government policy on public procurement in Northern Ireland.

1.4 TERMS OF REFERENCE FOR THE CONFERENCE

The intended outcomes of the conference were to:

- *Develop further evidence leading to the prioritisation of the key issues to be addressed;*
- *Generate options and outline proposals for the improvement of procurement policies and processes in relation to access for SMEs and SEEs; and in respect of*

achieving social aims; and,

- o *Test stakeholder opinion on proposals put forward through an active consultation process. These could be used as the basis to generate the recommendations of the Committee inquiry.*

1.5 SUMMARY OF SOCIAL RESEARCH CENTRE'S APPROACH

The methodology used by the Social Research Centre for this exercise is detailed in our proposal to the NI Assembly dated August 2009). In summary, the approach involved:

	<p>Stage 1: Project Initiation (August 2009) SRC met Committee Chairperson and Assembly Team Agreed methodology and timescales. Identified key background documentation and contacts etc.</p>
	<p>Stage 2: Design Event (September – October 2009) Liaison with Committee Members, Assembly Team, Commentators and SRC Team to identify the key issues and proposals from the evidence submitted to date, design the event, manage invitations and agree logistics.</p>
	<p>Stage 3 : Host Conference (21st October 2009) SRC facilitated the Conference in the Dunsilly Hotel, Antrim. Support from Assembly Staff on logistics and note taking.</p>
	<p>Stage 4 : Produce Report (November 2009) SRC compiled final report of key findings.</p>

1.6 PROGRAMME FOR THE EVENT

The design for the event was developed collaboratively between SRC, the Committee members and the Assembly Team. *A copy of the conference programme is contained in Appendix A. Appendix B contains a pen picture for each of the commentators.* As the reader will see from Appendices A and B, the conference involved input from six experienced commentators on public procurement processes both locally and further afield. It gave participants (government purchasers and representatives from the local SME and SEE sectors) the opportunity to provide feedback on a number of issues pertinent to the Committee inquiry through breakout and open forum sessions. It also gave Committee members the opportunity to engage directly with those involved in all sides of the procurement process. A copy of SRC's presentation for the event can be found at:

http://www.niassembly.gov.uk/finance/2007mandate/inquiry_public_procurement.htm

1.7 PROFILE OF THE PARTICIPANTS

The budgetary constraints for the event determined that around 100 people could participate in the conference. However, efforts were made to ensure that as diverse a range of opinion as possible was reflected in the debates. The participants who attended the conference included individuals from SMEs, SEEs, the local procurement community and members of the Committee for Finance and Personnel. *Further details of how the list of invitees was developed are set out in Appendix C. A list of those who participated is included in Appendix D.*

1.8 EVALUATION OF THE CONFERENCE

SRC used digital voting to record participants' perceptions of the usefulness of the conference overall and the helpfulness of the various formats used (i.e. presentation, commentators, breakout sessions, open forum and digital voting). The results suggest **very high levels of satisfaction** amongst participants with both the conference overall and the various formats used.

See Appendix E for details.

2 KEY ISSUES AND PROPOSED SOLUTIONS

2.1 OVERVIEW

When SRC and the Assembly Team examined the evidence submitted to the Inquiry¹, the issues raised fell into three related categories:

- Improving policy and processes;
- Maximising social value; and,
- Building the capacity of purchasers and suppliers.

Within the first category, “Improving Policy and Processes”, we identified three streams of issues. We classified these as:

- *Framework Agreements and Contracts;*
- *Opportunities to bid; and,*
- *Tendering and delivering.*

Throughout the conference, we sought to improve our collective understanding of these issues and seek views on and prioritise potential solutions. Although SRC was required to report only on the feedback from the conference (and not the evidence already given), we considered that we could best support the deliberations of the Committee in this important area by presenting all the key issues and proposals made (both by evidence givers and conference participants), together. Consequently, for clarity, we have set out in the tables overleaf.

- The key issues and proposals that were raised *before* the conference (i.e. in the written and oral evidence). These are shown in black; alongside,
- The *additional* key issues and proposals that were raised *during* the conference (i.e. in the written and oral evidence). These are shown in **blue**.
-  The results of the digital voting are also presented for information.

Appendix G contains the details notes from the Conference.

¹ See http://www.niassembly.gov.uk/finance/2007/mandate/inquiry_public_procurement.htm

SESSION 1: IMPROVING POLICY & PROCESSES

STREAM 1: FRAMEWORK AGREEMENTS AND CONTRACTS

KEY ISSUES RAISED	KEY SUGGESTIONS MADE
<p>Why have Frameworks in NI context? Are they effective? Do they favour larger companies?</p> <p>Recent increases in contract values for various reasons may prohibit SMEs/SEEs from tendering and may not be best interests of the local economy</p>	<p>Frameworks reduce bidding time and costs - more efficient method of procurement.</p> <p>Have a range of frameworks reflecting various sizes of works?</p> <p>Have regional frameworks so that, for example, if a company has been unsuccessful in tendering for a project in Belfast it might be possible to bid for a similar opportunity in a different region in Northern Ireland?</p> <p>Frameworks are not necessary in all contexts and on occasions it might be more appropriate and efficient to use other mechanisms to procure services e.g. Grant in Aid.</p> <p>Breaking into lots should be seen as the first recourse of any procurement tender</p>
<p>SMEs miss out on being main contractor.</p> <p>SMEs can be excluded from frameworks for a period of 3-5 years</p>	<p>Break up large contracts into smaller contracts which would be more appropriate for local SMEs</p> <p>The requirement for previous experience should be expanded to consider experience in the private sector, not just the public sector</p> <p>Joint ventures should be actively and explicitly encouraged.</p> <p>Procurement should be less risk averse as regards joint ventures when awarding contracts.</p> <p>Examine the full supply chain i.e. when contracts are awarded – it may be that SME / SEEs are already involved in delivering contracts, albeit not necessarily as main contractor.</p> <p>Have a directory of SEEs and one for SMEs to help to raise awareness (amongst purchasers) re capabilities of these organisations. Such a directory could be used as a resource by others.</p>

<p>Pre-qualification criteria, including turnover and insurance levels, specified are too high</p>	<p>Threshold should be proportionate to the contract</p> <p>The rationale for any stipulated thresholds for turnover, insurances etc needed to be stated clearly.</p> <p>Environmental Criteria should be included as standard – e.g. Carbon Footprint</p>
<p>Why have Design and Build Contracts?</p>	<p><i>No proposed solutions/ comments made in relation to this specifically.</i></p>
<p>Concern that Review of Public Administration (RPA) and possible merging / alignment of local authority procurement with current central government processes would create further barriers for SME /SEEs</p>	<p>Provide more information on how procurement is proposed to operate post-RPA.</p> <p>Provide assurances that processes will not be burdensome.</p>

Results of Digital Voting - FRAMEWORK AGREEMENTS AND CONTRACTS

	Issue The issue of most concern was the perceived risk aversion to SMEs/ SEEs .
	Proposed Solutions The three proposals that it was perceived would be most helpful were: <ul style="list-style-type: none"> • Break up large contracts; • Have a range of frameworks - various sizes; and, • Have rational pre-qualification thresholds (e.g. turnover, insurances etc)

STREAM 2: OPPORTUNITIES TO BID

KEY ISSUES RAISED	KEY SUGGESTIONS MADE
Where are the opportunities advertised?	Public procurement community to invest in single portal / dedicated web site for all public procurement opportunities. Have a centralised list of buyers/purchasers.
Concern about lack of consistency	Clarify and make consistent the thresholds applicable to NI public bodies in terms of thresholds that are used for advertising contracts (<€30k, >€100k etc)
Delays in the delivery of the Investment Strategy Northern Ireland – key issue for construction industry Increasing number of legal challenges has affected work flow	Publicise the planned capital spend of government departments. The promised Delivery Tracking System (through the Strategic Investment Board) should be implemented without delay. (The underlying issue appears to be the need to get Departments to commit to regularly updating the ISNI Delivery Tracking System)
Opportunities to bid even more important to SME/SEE in current economic climate If not successful on larger frameworks SMEs/SEEs are excluded from bidding for a period of years Government tends to use larger suppliers who then (2 nd stage) use their own subcontractors	Allow experience in private sector experience to be given the same weighting as that gained in the public sector for new contracts. Weighting of public and private sector experience – should be more equal. Consider whether the procurement process better need to reflect the current economic climate, particularly on issues around credit. Develop capacity to develop consortia, e.g. provide guidance on the legal and practical implications of joining consortia. Provide transparency and greater government control over sub-contract arrangements to ensure open competition. At the same time, acknowledge the need to recognise that for some contracts the place for some organisations could be further down the supply chain.

<p>Need to highlight the lower value opportunities</p>	<p>Wider publicising of contracts that fall under EU thresholds.</p> <p>Smaller contracts from the local government sector for example should be made more visible.</p> <p>Introduce a more transparent system/structure that allows contracts below £30k to be identified more easily</p>
<p>Lack of early and effective consultation with SMEs/SEEs</p>	<p>Increase purchasers knowledge and understanding of SMEs/SEEs</p> <p>Have 'Meet the Buyer' events.</p> <p>Create and actively encourage opportunities for applicants to meet buyers pre-advertisement to improve confidence, reduce risk aversion and notify the buyer of the goods/services available.</p> <p>Encourage risk sharing - a better principle than risk aversion. Encourage opportunities to share risk.</p>
<p>In the current economic climate are there concerns about availability of credit facilities for organisations. Programme for Government is a top priority was 'building the economy'. However, centralisation and standardisation of processes has the potential to keep contracts out of the reach of SMEs/SEEs. There is a clear tension</p>	<p>Pre-qualification criteria regarding credit facilities should take account of constraints on SMEs/SEEs.</p> <p>Consider the practice of purchasers in Republic of Ireland who have made upfront payments which help address the barrier to SME/SEEs re credit facilities.</p>

Results of Digital Voting – OPPORTUNITIES TO BID

	<p>Issue</p> <p>The issue of most concern was building capacity to bid.</p>
	<p>Proposed Solutions</p> <p>The three proposals that it was perceived would be most helpful were:</p> <ul style="list-style-type: none"> • Have a single portal / dedicated web site for procurement opportunities; • Increase understanding of SMEs/ SEEs amongst purchasers; and, • Provide access to smaller contracts.

STREAM 3: TENDERING AND DELIVERING

KEY ISSUES RAISED	KEY SUGGESTIONS MADE
<p>Onerous process – time intensive, duplication of information.</p> <p>Cost of tendering can be (a) disproportionate to the size of a contract and/or (b) prohibitive for smaller SMEs and SEEs.</p> <p>Tendering process can seem onerous and intimidating to organisations unfamiliar with the process</p>	<p>Have universal pre-qualification questionnaire / standard certificates etc.</p> <p>Standardise approach across Central Procurement Directorate (CPD) & Centres of Procurement Expertise (CoPEs) including consistency in procurement processes for tenders under the EU thresholds across CPD and CoPEs.</p> <p>Allow more time to bid.</p> <p>Tendering process should be simplified and streamlined. They should be made much less onerous on bidders. (e.g. eliminate need to repeat information already submitted in bids).</p> <p>Develop skills of supplier organisations to deal with the complexity of the procurement system and process including how to register on and use the various e-tendering platforms.</p> <p>Provide indication of grants/budgets after pre-qualification to allow practical proposals to be brought forward.</p>
<p>'One size fits all' selection criteria</p> <p>Government's VFM test too rigid</p> <p>Concern that there appears to be an assumption that value for money will be achieved through standardisation but evidence suggests that this may not be the case.</p>	<p>Price and duration should be dominant award criteria other than for complex, high value works.</p> <p>Non-monetary and non-costed benefits should be taken into account when evaluating bids</p> <p>All public procurement policies should be 'economy and sustainability proofed'</p> <p>In evaluating tenders, social economy sector expertise should be given the same weighting as public sector and private sector experience.</p> <p>Need to strike the correct balance between buying 'right' and getting the process 'right'.</p>

<p>Accessibility of guidance</p>	<p>Signpost suppliers to central source of information.</p> <p>Avoid jargon and tailor to SME/SEE needs.</p>
<p>Social benefit of contracts not given due regard</p>	<p>Social benefits need to be included in contracts</p>

Results of Digital Voting – TENDERING AND DELIVERING

	<p>Issue</p> <p>The issue of most concern was the assessment criteria / value for money test</p>
	<p>Proposed Solutions</p> <p>The three proposals that it was perceived would be most helpful were:</p> <ul style="list-style-type: none"> • Increase assessment competence amongst purchasers; • Streamline the process – no repeat information; and, • Take account of non-monetary and non-costed benefits.

Results of Digital Voting – QUESTION POSED BY COMMENTATOR: PAUL DAVIS

	<p>“Carbon foot print should be used as an award criteria to help local suppliers. What’s your view?”</p> <p>Of those who voted, the greatest number (41 out of 70) agreed that carbon foot print should be used as an award criteria to help local suppliers.</p>
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Results of Digital Voting – QUESTION POSED BY COMMENTATOR: PROFESSOR ANDREW ERRIDGE

	<p>“How much risk of legal challenge are you prepared to accept in order to assist local SMEs/SEEs win government contracts?”</p> <p>Of those who voted, the greatest proportion (27 out of 68) indicated that they would be prepared to accept a medium risk of legal challenge in order to assist local SME/SEEs win government contracts.</p>
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SESSION 2: MAXIMISING SOCIAL VALUE

KEY ISSUES RAISED	KEY SUGGESTIONS MADE
Is there any evidence of the use of social clauses in NI?	General need to fast track this debate.
Are social clauses being used and enforced effectively?	Have social clauses on all contracts
Concern that at times social clauses might be unhelpful.	Make social clauses project specific
Concern that inclusion of social clauses could be a constraint for micro enterprises.	Have social clauses that are apt and proportionate to the contract
	Should not be used to address ‘failures’ in Government policy.
	Mainstreaming equality e.g. inclusion of Section 75 guidance as a matter of course could create structured and proportionate social clauses.
	Allow compliant bids to be followed by variant bids. This has been helpful in securing higher levels of social value from contracts.
	Mandating social clauses perceived to have the potential for an adverse impact in the current economic climate.
	Be cognisant of the impact that social clauses may have on an export markets
Audit and monitoring requirements can be disproportionate to the size of the contract and tend to focus on processes rather than outcomes	Clarify whether CPD guidance should be treated as mandatory
	SEEs (and SMEs) should not be required to develop complex systems, for recording information and maintaining records for monitoring purposes, that are disproportionate to the contract awarded

<p>How to measure social value?</p> <p>Perceived to be poor understanding of social value and how to measure it amongst procurement officials and suppliers.</p> <p>Consequent concern that 'procurement' currently specifies 'social value' can be defended rather than what is needed.</p>	<p>Identify suitable metrics for the measurement of social outcomes.</p> <p>Try to redress the balance between focus on auditing processes vs. outcomes.</p> <p>Have a greater focus on outcomes.</p> <p>Build capacity of clients, purchasers and suppliers to understand what social value is and how to measure it.</p> <p>Encourage suppliers and purchasers to work collaboratively to develop an approach to measurability of social value. Incremental steps likely to be required.</p> <p>Build capacity of clients and purchasers so as to enable them to specify social value appropriately in tenders.</p>
<p>Wider concern about lack of clarity regarding Government's objectives in relation to social value.</p> <p>Concern that social value could be overlooked in favour of economic benefits.</p>	<p>Government needs to specify what it wants to be delivered in terms of social value and the relative importance of social vs economic benefits.</p> <p>Clarify the policy objectives around social value. E.g. Clarify what are the commitments (re social value) under the Programme for Government and the Investment Strategy for Northern Ireland</p>

Results of Digital Voting – SOCIAL VALUE

	<p>Issue</p> <p>The issue of most concern was the lack of definition of social value.</p>
	<p>Proposed Solutions</p> <p>The three proposals that it was perceived would be most helpful were:</p> <ul style="list-style-type: none"> • Have project specific social value clauses; • Ensure that there is a balance between measuring the social value (i.e. the process) vs the social value itself (i.e. outcomes); and, • Ensure that the social value clauses are appropriate and proportionate to the contract.

Results of Digital Voting – QUESTION POSED BY COMMENTATOR: JENNINGLIS

	<p>“What do you think would unlock further social value from public contracting? Select your top THREE”</p> <p>Those who voted perceived that the following three aspects had, relatively speaking, the greatest potential to unlock social value from public contracting:</p> <ul style="list-style-type: none"> • Developing an understanding of what social value is; • Developing suitable outcome measures; and, • Defining social value within the requirements of contracts.
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Results of Digital Voting – QUESTION POSED BY COMMENTATOR: MARTIN SYKES

	<p>“Considering community benefits clauses in contracts, what do you see as the priority policies? Select your top THREE...”</p> <p>Those who voted perceived that the following three areas were, relatively speaking, the greatest policy priorities (in the context of public procurement):</p> <ul style="list-style-type: none"> • Opening opportunities for local SMEs; • Training / apprenticeship opportunities for young people; and, • Reducing environment impact / carbon footprint.
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SESSION 3: BUILDING CAPACITY FOR PURCHASERS & SUPPLIERS

KEY ISSUES RAISED	KEY SUGGESTIONS MADE
<p>CPD and CoPE personnd under huge resource pressure</p> <p>Lack of clarity around what was meant by 'capacity'.</p>	<p><i>No proposed solutions/ comments made in relation to this specifically.</i></p> <p>Define the nature and scale of 'capacity' required. Need for bench marks to determine where we are 'starting from'. Need for monitoring and evaluation of progress.</p>
<p>Concern about lack of procurement related knowledge and skills across public procurement officials.</p>	<p>Adopt a licentiate approach with public procurement officials i.e. a licensing of procurement professionals. License could be scaled according to levels of contract.</p> <p>Ministers to provide direction to purchasers to address social value.</p>
<p>Negative perception of risk</p> <p>Lack of awareness/trust in SMEs/SEEs</p> <p>Can be confrontational environment for purchasers and suppliers. Purchasers and suppliers do not have in-depth knowledge of the pressures/challenges that each other face.</p>	<p>Educate purchasers about the potential benefits of contracting SMEs/ SEEs</p> <p>Provide Procurement personnel with opportunities to increase their knowledge of the SME/ SEE and Voluntary and Community Sectors, and in particular, the added benefits these organisations can bring. e.g. 'Meet the Buyer' events.</p> <p>Foster a collegiate approach - have joint training events (i.e. that purchasers and suppliers attend together).</p> <p>Refine the definition of 'SME' to recognise micro enterprises.</p> <p>Design and provide training to enable each 'side' to better understand the constraints of the other. Greater use of 'pre-consultation'-type processes prior to invitations to tender. These processes should include service users.</p> <p>Find ways to change the culture change in public sector procurement to make it more entrepreneurial</p>

<p>Building capacity is a good thing but only beneficial if SMEs/SEEs (and potentially local communities) are given appropriate opportunities and skills.</p>	<p>Increasing accessibility to public procurement and building capacity of SMEs/ SEEs to bid needs to be done in parallel.</p> <p>Local communities may also need appropriate capacity building. For example, if the 'social value' is 'employment' then local people need the skills to be able to take advantage of the opportunities provided in such contracts.</p> <p>Require procurement bodies to publish their procurement plans annually. This would help SMEs and SEEs to plan.</p> <p>SMEs/SEEs need to build up a better understanding of the market</p> <p>Improve access to the 'how to bid' resources. The information exists but needs to be there just needs to be more readily available.</p> <p>Increase awareness of help and support that is already available (e.g. through Invest NI and Intertrade Ireland).</p> <p>Foster a collegiate approach to capacity building amongst SMEs/SEEs e.g. Encourage the building of skills/capacity through partnerships with other SMEs and between SMEs and SEEs</p>
<p>SMEs are more successful in winning private sector contracts</p>	<p>Have a target for the awarding of contracts to SMEs/SEEs Or Take proactive measure to remove the barriers to procurement opportunities (real and perceived) rather than establish targets.</p>
<p>Perceived inconsistencies in the debriefing process across CPD and the CoPEs</p>	<p>Consistent approach needs to be introduced</p> <p>Feedback should be two-way and should inform the procurement process.</p> <p>Have an independent mediator between purchaser and supplier.</p>

<p>SEE sector under-capitalised, chasing government contracts to survive</p>	<p>Develop a social economy finance brokerage service</p>
<p>Cash flow / Reserve levels – SME/SEE special vulnerability to delays.</p>	<p>Allow SEEs to hold reserves up to a certain level</p>
<p>Lack of knowledge about how procurement will be impacted by the Review of Public Administration (RPA) both within local government and the other Centres of Procurement Expertise. Concern about risk of protectionism. Concern that RPA result in public bodies keeping services in-house and build capacity within their own organisations rather than stimulating the economy by outsourcing to SMEs and SEEs.</p>	<p>Ensure that approach to procurement is consistent across the public sector as a whole including central government, local government and other RPA bodies.</p> <p>Have a target for the awarding of contracts to SMEs/SEEs (or) Remove barriers to procurement opportunities (real and perceived) rather than establish targets</p>
<p>Encouraging SME joint ventures/consortia</p>	<p>Idea of a 'supplier ombudsman' to facilitate partnering between SMEs</p>
<p>Capacity for micro enterprises to compete (social and commercial) was thought to be poor</p>	<p>Need to find effective and efficient ways to build the capacity of this segment of suppliers.</p>

Results of Digital Voting – BUILDING CAPACITY OF PURCHASERS AND SUPPLIERS

	Issue The issue of most concern was the negative perception of risk .
	Proposed Solutions The three proposals that it was perceived would be most helpful were: <ul style="list-style-type: none"> • Have a consistent approach across Government • Have 'formative' sessions (i.e. the chance for purchasers and suppliers to explore the parameters of a project in a collegiate manner); and, • 'Educate' the provider.

Results of Digital Voting – QUESTION POSED BY COMMENTATOR: FRANK MCGLONE

	"An independent appeals process would help build the trust of SME's/SEE's. What is your opinion?" The greatest number of those who voted (38 out of 45) agreed that an independent appeals process would help build the trust of SME/SEEs.
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Results of Digital Voting – QUESTION POSED BY COMMENTATOR: DR GORDON MURRAY

	"Which of the following do you think needs to improve to maximise the socio-economic impact of procurement for SMEs / SEEs? Select your top THREE..." Those who voted perceived that, relatively speaking, the following three aspects were the most important to improve in order to maximise the socio-economic benefit for SMEs / SEEs: <ul style="list-style-type: none"> • Political and management commitment to make the changes; • Culture of public sector; and, • Competence of public sector procurement.
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3 WIDER CONSIDERATIONS

The conference generated debate across a wide range of issues. SRC suggests that the following additional issues might merit consideration in the context of the current inquiry:

- **Definitions** – There appears to be a need to define ‘SME’ (and ‘SEE’) in the context of the inquiry. For example, the vast majority of business in NI are already SMEs if they are defined (according to one definition) as having less than 250 employees. According to this definition, the vast majority of public contracts are already awarded to SMEs. However, might it be that the Assembly is interested in improving access to public procurement for micro enterprises (i.e. organisations with less than 10 employees) and if so, this needs to be clearly stated.
- **Policy Intent and Evidence** - If the policy intention is to enable greater access to public procurement for micro enterprises and in so doing, seek to maximise economic and social benefit, (presumably for NI as a whole), we would invite the Assembly to consider whether it is satisfied that there is sufficient evidence available to suggest that supporting large numbers of small organisations to access Government contracts will achieve this?
- **SME / SEE are Different** - The constraints of the conference (i.e. 100 participants) meant that the barriers and proposed solutions to accessing procurement opportunities were considered by SMEs and SEEs together. Whilst this has some advantages (and indeed it stimulated several very constructive and worthwhile exchanges) we consider that the ethos and goals of SMEs and SEEs are distinctly different (as one example, SEEs, in general, are more likely to be interested in social value than SMEs. SMEs, are more likely to be driven by profit than SEEs). Consequently, those considering the solutions to addressing their respective needs in the context of accessing public procurement opportunities need to be mindful of these differences.
- **Need for consistency** – There appears to be a need for greater consistent approach to procurement across all aspects of Government – i.e. both within and across central and local government, agencies and non-departmental public bodies.
- **Concern about the RPA and risk of protectionism** – There appears to be a general concern that the RPA could result in public bodies opting to keep services in-house and build capacity within their own organisations rather than stimulating the economy by outsourcing to SMEs and SEEs
- **Management Information** – Our preliminary enquiries with CPD and the CoPEs suggest to us that there would be benefit in reviewing the management information systems (i.e. and the associated systems for monitoring and evaluation of public procurement) and the related business process / reporting structures so that they can be better aligned with Ministers’ procurement policy objectives and interests.

Appendix A Conference Programme

Conference Programme

Committee for Finance and Personnel

Maximising the Social and Economic Benefits from Public Procurement

Wednesday 21 October 2009, Dundilly Hotel, Antrim

Time	Session
9.00 – 9.30	Registration
9.30 – 9.45	Opening Remarks: Ms Jennifer McCann MLA, Chairperson Committee for Finance and Personnel
9.45 – 10.00	Introductions
Session 1: Improving Policy & Processes	
10.00 – 10.20	What we already know...
10.20-11.00	Now let's hear from you - Breakout Sessions 1. Framework Agreements & Contracts 2. Opportunities to Bid 3. Tender Process
11.00-11.20	Plenary Feedback
11.20 – 11.30	Open Forum – Exchange between Participants and Commentators
11.30 – 11.40	Approaches used elsewhere... Paul Davis, Dublin City University Prof Andrew Erridge, University of Ulster
11.40 – 11.50	Open Forum – Exchange between Participants and Commentators
11.50 – 12.00	Digital Voting on Priorities and Suggestions
Session 2 : Maximising Social Value	
12.00 – 12.10	What we already know...
12.10 – 12.45	Now let's hear from you - Breakout Session
12.45 – 1.00	Plenary Feedback
1.00 – 1.45	Lunch
1.45 – 2.05	Open Forum – Exchange between Participants and Commentators
2.05 – 2.15	Approaches used elsewhere... Ms Jenni Inglis, SROI Network Martin Sykes, CEO, Value Wales
2.15 – 2.30	Open Forum – Exchange between Participants and Commentators
2.30 – 2.45	Digital Voting on Priorities and Suggestions
Session 3: Building Capacity For Purchasers & Suppliers	
2.45 – 2.55	What we know already know...
2.55 – 3.35	Now let's hear from you - Breakout Session
3.35 – 3.45	Plenary Feedback
3.45 – 3.55	Open Forum – Exchange between Participants and Commentators
3.55 – 4.05	Approaches used elsewhere... Frank McGlone, Procurement Adviser Dr Gordon Murray, IDeA
4.05 – 4.15	Open Forum – Exchange between Participants and Commentators
4.15 – 4.25	Digi-Vote on Priorities and Suggestions Event evaluation
4.25 - 4.30	Closing remarks: Ms Jennifer McCann MLA, Chairperson Committee for Finance and Personnel

Appendix B

Pen Pictures of Commentators

Pen Pictures of Commentators

Paul Davis - Paul Davis returned to Academia in 2002, after working in a number of Supply Management roles, to teach at Dublin City University (DCU) Business School, Business Strategy and Supply Chain Management. He worked in TCD from June 2003 to June 2005 where he lectured in Operations Management and Operations Strategy. He rejoined DCU Business School in February 2005, where he currently lectures in Strategic Procurement, Supply Networks and Operations Strategy. He is Chair of the MBS Strategic Procurement which is now in its fourth intake year. He is currently completing a PhD, in the area of the Impact of Technology on Procurement Processes. His research is focused on Public Procurement.

Professor Andrew Erridge - Andrew Erridge is Professor of Public Policy and Management in the School of Criminology, Politics and Social Policy at the University of Ulster. He has developed and delivered undergraduate and postgraduate courses mainly on public procurement which lead to full membership of the Chartered Institute of Purchasing and Supply, of which he is a member. His main research interest is in public procurement. He has contributed to a number of UK policy reviews including the Gershon Review of Civil Government Procurement, the National Audit Office study on Modernising Procurement and was a member of the Implementation Team for the NI Public Procurement Policy. He is currently leading a project on sustainable procurement on behalf of Purchasing and Logistics, part of the Business Services Organisation of the SHA. He has published 3 books, many book chapters and journal articles, and is a member of the editorial committees of the Journal of Purchasing and Supply Management and the Journal of Public Procurement.

Jenni Inglis - Jenni Inglis is a Director of the Social Return on Investment Network (SROI) Network and a consultant on social value in public service markets. Recent work includes a supplement for commissioners on the Social Return on Investment (SROI) Guide and a study of social value created by social enterprises supplying mainstream health and social care for DH. Previously at Social Enterprise East Midlands, she initiated and contributed to a major publication on commissioning from social enterprise and was a Board member for the Office of the Third Sector Social Clauses Project. She has an MSc in Responsibility and Business Practice from the University of Bath.

Martin Sykes - joined the Welsh Assembly Government in October 2006, as Chief Executive of Value Wales, working to support improvements in services for the people of Wales by helping the public sector achieve Value for Money. He was most recently Executive Director, Smarter Procurement at the Office of Government Commerce (OGC) in Whitehall, was Head of Profession for Government Procurement, and was also a non-Executive Director of OGC's Agency, Buying Solutions. In OGC he led the work on procurement policy, sustainable procurement, the engagement of SMEs, capacity and competition in key markets, e-procurement,

Appendix C Details of How List of Participants Was Developed

APPENDIX D: PROFILE OF THE PARTICIPANTS

At a meeting, involving the Committee, SRC and the Assembly Team (16th September 2009), the following proposals for inviting participants were agreed:

'Direct Invites'

Committee members – All 11 Committee members were invited directly to attend the event on the basis that participation in the breakout sessions and observation of the proceedings as a whole would provide a valuable contribution to members' thinking and help to shape the final inquiry report.

Evidence Givers - It was agreed that direct invites would also be sent to all 40 individuals / organisations who:

- Responded to the initial consultation;
- Had already provided either written or oral evidence
- Have departmental responsibilities (Department of Finance and Personnel (DFP) and Department of Enterprise, Trade and Investment (DETI))
- Have a scrutinising role within the Assembly (Committee for Enterprise, Trade and Investment (CETI)).

Commentators plus representatives of the local procurement community - The Committee had previously agreed a list of individuals (with experience and insight into the key issues) who could be called in support of the procurement inquiry. This list was compiled based on the following criteria:

- Sectoral interests;
- Expertise;
- Representation from a number of different jurisdictions; and,
- Balance of practitioners and academics.

A further 15 'direct invites' were identified on the basis of this.

Remaining places

This left in the region of 34 places remaining to be allocated. It was agreed that a variety of umbrella bodies representing SMEs and SEEs would be approached to put forward participants.

On the day, close to 100 participants took part in the conference. These spanned:

- Representatives of SMEs and SEEs;
- Members of the local procurement community;
- Commentators from NI, other parts of the UK and ROI; and,
- Committee members.

Appendix D List of Participants

Appendix D: List of Participants (in alphabetical order)

Delegate		Name Of Organisation
Alcorn	Derek	Citizens Advice
Armstrong	Des	Central Procurement Directorate
Armstrong	Kellie	Community Transport Association
Beamish	Eileen	Social Research Centre - Director
Betts	Jennifer	NIA Research
Bradshaw	Simon	DETE Enterprise Ireland
Brett	Eddie	Health Estates Investment Group - DHSSPS
Brown	Graeme	DRD - Roads Service
Buchanan	Richard	Social Research Centre - Associate
Burnside	Alan	ASG
Butler	Gregory	Southern Education & Library Board
Campbell	Mark	Randox Laboratories
Carvill	Jim	West Belfast & Greater Shankill Enterprise Council
Clarke	Michael	Goldblatt McGuigan
Creagh	Stephen	Department of Education
Cremney	Sean	Achilles Procurement Services
Cunningham	Tim	CAJ
Davis	Paul	Dublin City University
Dorrian	George	Federation of Small Businesses
Douglas	Stephen	Alliance Party
Erridge	Andrew	University of Ulster
Ferris	Claire	Work West Enterprise Agency
Flanagan	Anita	Rural Lift for South West Fermanagh
Friel	John	Federation of Small Businesses
Gibson	Ivor	NIA Business Trust
Gibson	John	NIA Procurement
Gill	Eleanor	ERGA Strategies Ltd
Glover	Dave	Central Procurement Directorate
Graham	Anne	Social Economy Network (NI) Ltd
Hamilton	David	Martin and Hamilton Ltd
Hamilton	Simon	Committee for Finance and Personnel
Haughey	Pat	Patrick McCaul Environmental Consulting Engineers
Hayes	Joanne	Translink
Heaney	Stewart	Central Procurement Directorate
Henry	Jackie	Deloitte MSC Ltd
Henry	Martine	Central Procurement Directorate
Howe	Brian	UCIT (Ulster Community Investment Trust Ltd)
Inglis	Jenni	SROI
Jardine	Karen	Assembly Secretariat
Law	Elizabeth	Equality Commission for NI
Lestas	Michelle	Lestas Consulting
Lyons	Pat	Quarry Products Association NI
Magee	Declan	Carson McDowell

Maguire	Tommy	Core Systems NI Ltd
Marks	Kevin	Assembly Secretariat
Martin	Dr Lynda	Professional College Construction Industry Group NI
Mathews	Cllr John	NILGA
McAleese	Anne	South Belfast Partnership Board
McAlpin	Jonathan	UCIT (Ulster Community Investment Trust Ltd)
McAteer	Shane	Assembly Secretariat
McCann	Jennifer	Chairperson, Committee for Finance and Personnel
McCloskey	Frank	Royal Society of Ulster Architects
McDade	Donal	Social Research Centre - Associate
McFadden	Eoin	MATRIX Secretariat, DETI
McGlone	Frank	Independent Consultant
McKee	Gillian	Business in the Community
McKee	Mary	Strategic Investment Board Ltd
McKee	David	Assembly Secretariat
McKinney	Donal	Falls Community Council
McKnight	Ian	Ministerial Advisory Group for Architecture and the Built Environment
McLaughlin	Mitchel	Committee for Finance and Personnel
McManus	Jim	NIA - Enterprise, Trade & Investment Committee
McMullan	John	Bryson Charitable Group
McNarry	David	Committee for Finance and Personnel
McTernan	Paul	Colin Buchanan
Mills	Mandy	Invest NI
Mitchell	Wilfred	Federation of Small Businesses
Monaghan	Maeve	NOW and Gauge
Moore	Tim	NIA Research
Murphy	Eleanor	Assembly Secretariat
Murray	Gordon	IDeA
Noonan	Paul	Equality Commission for NI
O'Farrell	John	Irish Congress of Trade Unions (NI Committee)
O'Hanlon	Kathy	Assembly Secretariat
O'Loon	Declan	Committee for Finance and Personnel
O'Neill	Brendan	Central Procurement Directorate
Pelan	Kevin	Assembly Secretariat
Pidgeon	Colin	Assembly Secretariat
Purvis	Dawn	Committee for Finance and Personnel
Quigg	Edward	Quigg Golden Ltd
Rea	Ruth	Belfast City Council
Roberts	Paul	Ashton Community Trust
Sharp	Ken	Triage Hospitality Ltd
Sherry	Irene	Ashton Community Trust
Simpson	George	SCM
Simpson	John	Belfast Telegraph Business
Smyth	Nigel	CBI Northern Ireland
Spratt	Peter	ASG Ltd
Stewart	Ann	Royal Institute of Chartered Surveyors
Stronge	Bob	Advice NI
Swallow	Jonathan	UNISON
Sykes	Martin	Value Wales

Walmsley	Jonathan	Federation of Small Businesses
Weiniger	Siobhan	Early Years - the organisation for young children
Weir	Peter	Committee for Finance and Personnel
Williamson	Christopher	NI Federation of Housing Associations
Williamson	Jenny	IntertradeIreland
Wilson	Alastair	Drilling & Pumping Supplies Ltd
Wilson	Peter	Procurement & Logistics Service, BSO

Appendix E

Evaluation of the Conference by the Participants²

² Note: The data overleaf represents the scores awarded by the 43 participants who were present at the closing of the conference.



Maximising Economic and Social Benefits from Public Procurement



Conference for Northern Ireland SMEs and SEEs

21st October 2009

Conference Evaluation

n=43

How satisfied or dissatisfied are you with the conference overall in terms of your...

Satisfied or Very Satisfied

Opportunity to contribute to the Committee inquiry generally	81%
Opportunity to suggest solutions to the issues identified	73%
Opportunity to identify further issues to be resolved	88%
Opportunity to learn from others	84%

How helpful or unhelpful did you find each of the formats used...

Helpful or Very Helpful

Presentations	84%
Contributions of Commentators	91%
Break-out sessions...	81%
Open Forum	77%
Digi voting...	86%

Appendix F Publications Cited by Commentators

Publications Cited by Commentators

Jenni Inglis – SROI

The following publications were referenced by Jenni Inglis during her presentation.

[Social Return on Investment and Commissioning.](#)

It may be downloaded from the 'Publications' link on SROI's web site. See www.thesroinetwork.org

Martin Sykes – Value Wales

The following publications were referenced by Martin Sykes during his presentation.

Three resources for the 'Can Do' Toolkit are available at:-
http://www.whq.org.uk/i2i/about_resources.php

Buy4Wales website - [The sourcing portal for the Welsh public sector](#) - and to the Procurement Route Planner, which encourages consistent, best practice to procurement throughout the Welsh public.

<https://www.buy4wales.co.uk>

<http://www.buy4wales.co.uk/prp/index.html>

Appendix G Detailed Notes from the Conference

APPENDIX G: DETAILED NOTES FROM THE CONFERENCE

OVERVIEW

When SRC and the Assembly Team examined the evidence submitted to the Inquiry, the issues raised fell into three related categories. These reflected evidence-givers' desires for improvements in:

- Policy and processes;
- Maximising social value; and,
- Building the capacity of purchasers and suppliers.

Consequently, the event comprised three main sessions.

A copy of SRC's presentation for the event can be found at:
http://www.niassembly.gov.uk/finance/2007/mandate/inquiry_public_procurement.htm

A core design principle of the conference was to seek to *build on / add to the body of knowledge* on the issues and proposed solutions rather than incur time revisiting topics that had already been identified.

Notwithstanding this, it was vital, and highly effective to our securing meaningful and maximum engagement, to invest a finite amount of time at the outset of each session summarising and re-capping the key issues and key proposed solutions under each heading.

In addition, in the interests of expanding participants' knowledge of the issues and encouraging participants and Committee members alike to think more widely, SRC invited each of the commentators to devise a question which we could use within our digital voting system. The question was required to:

- Relate directly to the issues covered in the commentator's session; and,
- Add real value in the context of the Inquiry overall i.e. in terms of helping the Committee better understand the priorities and preferences of the participants as regards the issues pertaining to that session.

Consequently, in each of the sections below, we present the feedback from each of the main sessions under the main headings, namely:

ISSUES RAISED BY PARTICIPANTS

- A.1 - What we already knew about the *issues before* the conference (i.e. from the evidence given);
- A.2 – Additional *issues raised during* the conference; and,
- A.3 – Results of digital voting on the *issues*.

COMMENTS FROM CPD

- B – Comments from Central Procurement Directorate (CPD) in relation to these issues.

SOLUTIONS PROPOSED BY PARTICIPANTS

- C.1 – What we already knew about *proposed solutions before* the conference (i.e. from the evidence given); and,
- C.2 – Additional *solutions proposed during* the conference; and,
- C.3 - Results of digital voting on proposals made by the participants.

INPUT FROM COMMENTATORS AND ADDITIONAL POINTS

This is sub-divided into two sections:

- D.1 – Summary of points made the commentators during their presentations;
- D.2 - Results of digital voting on questions posed by the commentators;
- D.3 – Further remarks from the commentators;
- D.4. – Feedback from participants following presentations by the commentators.

FURTHER POINTS

- E – Summary of further points made during open forum.

Note: Session 1, Improving Policy and Processes, had a significant number of issues and proposed solutions associated with it. Hence, for clarity and manageability, we opted to divide this Session into **three streams**, namely:

- *Stream 1: Framework Agreements and Contracts*
- *Stream 2: Opportunities to Bid*
- *Stream 3: Tendering and Delivering*

We report on the feedback from each these streams using the same structure above.

Session 1: Improving Policy & Process



STREAM 1 : FRAMEWORK AGREEMENTS AND CONTRACTS

ISSUES RAISED BY PARTICIPANTS

A.1 What we *already knew* about the issues before the conference

The following issues were identified by evidence givers before the conference:

- Why have frameworks? Are they effective? Can lead to SMEs being excluded from contracts for a period of 3 – 5 years with implications for further business opportunities.
- SME/SEEs often miss out on being main contractor.
- Pre-Qualification criteria, including turnover and insurance levels, can often be prohibitively high
- Why have design and build contracts?

A.2 Additional issues raised during the conference

A range of issues were identified in the breakout session:

- Review of Public Administration – There was a concern that the Review of Public Administration (RPA) would encourage a convergence of local government procurement procedures with central government procedures. Concern about more bureaucracy. It was perceived that SMEs/SEEs would find it more difficult to compete for public contracts in this larger ‘pool’.
- To be efficient frameworks need to be big. In a NI context, making frameworks on a regional basis might not be beneficial.
- Housing Associations were thought to be too small to have individual frameworks.
- What consideration is given to the supply chain i.e. as a way of assessing the extent to which SMEs / SEEs are actually involved in delivering government contracts, albeit not as prime contractor. The idea that SMEs/SEEs are not sufficiently involved in winning contracts may not be correct
- The question was posed, ‘How do you enforce achievement of objectives [in terms of maximising opportunities for SME/ SEEs] through the active management of the supply chain?’
- It is in the interests of SMEs to challenge framework decisions, if unsuccessful.
- It was perceived that joint ventures are not encouraged or ‘listened to’ in the same way as other single contract bids. Felt that joint ventures were perceived as riskier.
- Important that joint ventures are assessed appropriately and not just on the perceived ‘weakest link’.
- Also issue that joint ventures can get marked down if there is no previous experience of working together.

- There is no onus on a large contractor to subcontract.
- What strategies exist within Government to assess risk?

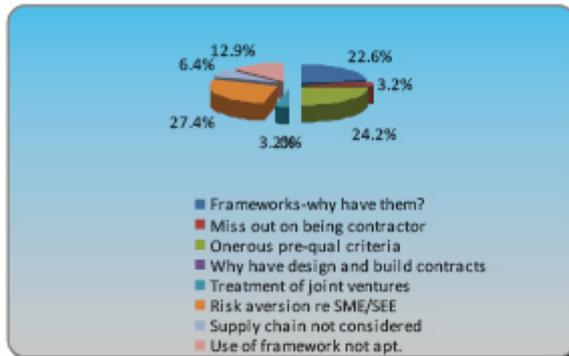
The following issues were relayed by one of SRC's facilitators in the subsequent verbal feedback from this break out session:

- Treatment of joint ventures is perceived to be an issue. Desire for joint ventures to be actively and explicitly encouraged;
- Perception that bids were evaluated on the basis of the 'weakest link' and not necessarily the 'fill' bid
- General sense of risk aversion;
- Not all parties in the supply chain are considered;
- Frameworks are not perceived as appropriate in all cases;

A.3 Results of digital voting on the issues

The issue of most concern to those who voted was the **perceived risk aversion to SMEs/ SEEs**.

Frameworks: Which ONE issue is of MOST concern for your organisation?	Responses	
Frameworks-why have them?	14	22.58%
Miss out on being contractor	2	3.23%
Onerous pre-qual criteria	15	24.19%
Why have design and build contracts	0	0%
Treatment of joint ventures	2	3.23%
Risk aversion re SME/SEE	17	27.42%
Supply chain not considered	4	6.45%
Use of framework not apt.	8	12.90%
Totals	62	100%



COMMENTS MADE BY CPD

B Comments from CPD in relation to these issues

- Policy based on delivery of 'Best Value for Money';
- Use of integrated procurement routes - design & build;
- Individual contracts
 - *Benefits for public sector clients and suppliers; and*
 - *Opportunities for SMEs.*
- Framework agreements
 - *Benefits for public sector clients and suppliers;*
 - *Duration, type and geographical scope;*
 - *Opportunities for SMEs; and,*
 - *Endorsed by Construction Industry Forum Northern Ireland (CIFNI) Procurement Task Group.*

SOLUTIONS PROPOSED BY THE PARTICIPANTS

C.1 What we already knew about proposed solutions before the conference

The following proposals were identified by evidence givers before the conference:

- Have a range of frameworks reflecting various sizes of works;
- Have regional frameworks;
- Break up large contracts;
- Expand requirement for previous experience; and,
- Pre-qualification threshold should be proportionate

C.2 *Additional solutions proposed during the conference*

A range of proposed solutions were identified in the breakout session:

- Frameworks are not necessary in all contexts and on occasions it might be more appropriate and efficient to use other mechanisms.
- Divide contracts into Lots so that an SME can be part of a framework but not necessarily in its entirety.
- Where SEEs are too small to bid for contracts, groupings of organisations should be able to come together.
- Greater emphasis should be placed up on encouraging larger contractors to subcontract work.
- Build capacity in the supply chain by supporting local SMEs/SEEs. Larger contractors using local expertise in the supply chain encourages local enterprise and enhances social value.
- In evaluating tenders, social economy sector experience should be given the same weighting as public sector and private sector experience.
- Pre-qualification thresholds (e.g. turnover, insurances etc) should be rational not just proportionate.
- Could a criterion be: 'How might you generate work for SMEs within a larger framework' or could you ask that local SMEs be used to fulfil contract obligations where appropriate?
- A directory of SEEs and one for SMEs would help to raise awareness (amongst purchasers) and be used as a resource by others.

The following proposed solutions were relayed by one of SRC's facilitators in the subsequent verbal feedback from this break out session:

- Desire for joint ventures to be actively encouraged;
- Threshold criteria should be rational (rather than proportionate); and,
- Desire for procurement to accept a greater level of risk when awarding contracts.

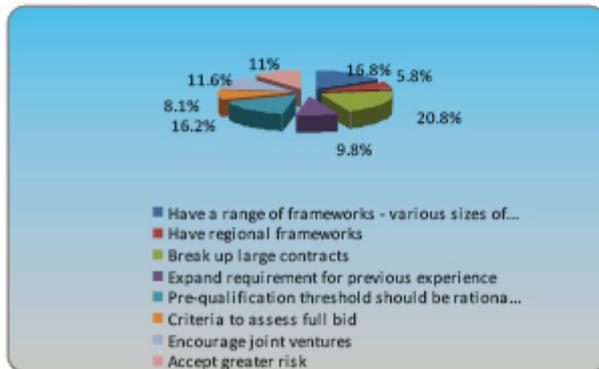
C.3 Results of digital voting on proposals made by the participants

The three proposals that those who voted perceived would be most helpful were:

- Break up large contracts;
- Have a range of frameworks – various sizes;
- Have rational pre-qualification thresholds (e.g. turnover, insurances etc)

Frameworks and Contracts: Your thoughts so far... Which THREE proposals do you feel would be most helpful?

	Responses	
		16.76
Have a range of frameworks - various sizes of...	29	%
Have regional frameworks	10	5.78%
		20.81
Break up large contracts	36	%
Expand requirement for previous experience	17	9.83%
		16.18
Pre-qualification threshold should be rationa...	28	%
Criteria to assess full bid	14	8.09%
		11.56
Encourage joint ventures	20	%
		10.98
Accept greater risk	19	%
	17	
Totals	3	100%



INPUT FROM COMMENTATORS AND ADDITIONAL POINTS

- D.1 Summary of points made by the commentators during their presentation**
See later at pages 65 - 68
- D.2 Results of digital voting on questions posed by the commentators**
See later at pages 65 - 68
- D.3 Further remarks from the commentators**
See later at pages 65 - 68
- D.4 Feedback from participants following presentations by the commentators**
See later at pages 65 - 68

FURTHER POINTS

- E. Summary of further points made during the open forum**
See later at pages 65 - 68

STREAM 2 : OPPORTUNITIES TO BID

ISSUES RAISED BY THE PARTICIPANTS

A.1 What we already knew about the issues before the conference

The following issues were identified by evidence givers before the conference:

- Where are the opportunities advertised?
- Delays in Investment Strategy for Northern Ireland (ISNI2) (especially construction);
- Impact of legal challenges on work flow;
- If not successful on larger frameworks SMEs/SEEs excluded from bidding for a period of years;
- Highlighting the lower value opportunities;
- Lack of early and effective consultation with SMEs/SEEs.

A.2 Additional issues raised during the conference

A range of issues were identified in the breakout session:

- Departments need to commit to regularly updating the ISNI Delivery Tracking System;
- There appears to be an unhelpful 'disconnect' between those managing the procurement process and the actual buyer (i.e. the client) in that those managing the purchasing process may not have sufficient knowledge of what is being bought and consequently risk not being able to discern a 'good' tender from a 'inadequate' one.
- Need greater clarity and consistency amongst NI local authorities in terms of thresholds that are used for advertising contracts (<£30k, >£100k etc);
- Difficulty registering with the existing procurement websites due to a lack of technical know-how;
- Development of expertise on accessing opportunities requires an investment of time on the part of small businesses;
- Low value contracts (<£30k) should be more easily identifiable;
- A key issue is ability to "get to" / make direct contact with the buyer when the contract is <£30k;
- Frameworks can work against bidders but those companies successful on frameworks can plan for the longer term;
- Some companies being omitted from contracts because some government departments are not recognising relevant and accepted experience; and,
- In the current economic climate are there concerns about availability of credit facilities for companies.

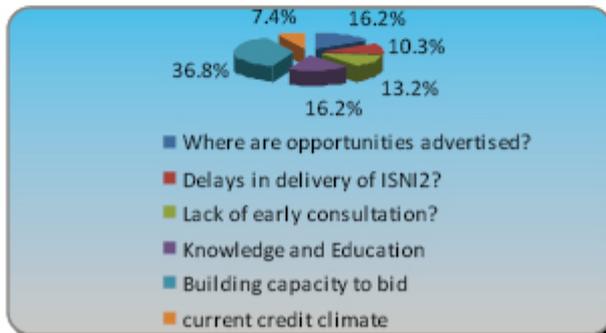
The following issues were relayed by one of SRC's facilitators in the subsequent verbal feedback from this break out session:

- Process can be intimidating for those in the Third Sector;
- Programme for Government a top priority was 'building the economy'. But centralisation and standardisation of processes has the potential to keep contracts out of the reach of SMEs. There is a clear tension.
- Are suppliers competent to jump through all the hoops?
- Disconnect between end buyer and purchasing personnel in terms of understanding what actually needs to be purchased. This limits capacity of buyers to understand statement of competitive advantage.
- Tension between buying 'right' and getting the process 'right'
- There is an assumption that value for money will be achieved through standardisation but evidence suggests that this may not be the case.

A.3 Results of digital voting on the issues

The issue of most concern to those who voted was **building capacity to bid**.

Opportunities to bid: Which ONE issue is MOST concern for your organisation?	Responses	
Where are opportunities advertised	11	16.18%
Delays in delivery of ISNI2	7	10.29%
Lack of early consultation	9	13.24%
Knowledge and Education	11	16.18%
Building capacity to bid	25	36.76%
Current credit climate	5	7.35%
Totals	68	100%



COMMENTS MADE BY CPD

B Comments from CPD in relation to these issues

- Opportunities advertised widely
 - *eSourcingNI*
 - *CoPE websites*
 - *Local press*
- Information on planned procurement demand
 - *Delivery Tracking System*
 - *ISNI Information Portal*
- Procurement and contract strategies
- Promotion of low value opportunities
- Benefits of market engagement

SOLUTIONS PROPOSED BY THE PARTICIPANTS

C.1 What we already knew about proposed solutions before the conference

The following proposals were identified by evidence givers before the conference:

- Have a single portal / dedicated web site;
- Publicise planned capital spend;
- Implement promised Delivery Tracking System;
- Allow experience in private sector experience same weighting;
- Wider publicising of contracts that fall under EU thresholds; and,
- Increase knowledge / understanding of SMEs/SEEs e.g. Meet the Buyer' events.

C.2 Additional solutions proposed during the conference

A range of proposed solutions were identified in the breakout session:

- Could NI bidding opportunities on *eSourcingNI* be integrated with the UK database 'Supply to Gov'?
- Establishing consortia may facilitate successful bids for contracts if skills and experience are pooled. Need for guidance on the legal and practical implications of joining consortia;
- A more transparent system/structure that allows contracts below £30k to be identified more easily
- Have a centralised list of buyers/purchasers;
- Provide access to the buyer prior to advertising the contract in order to notify the buyer of the goods/services available;

- Develop assessors' capacity to evaluate the private and the public sector on equal terms;
- Definition of experience for accessing frameworks should be wider to avoid SMEs being 'locked out' in particular private sector experience should be of equal value to public sector experience;
- Pre-qualification criteria regarding credit facilities should take account of constraints on SMEs. In some cases, purchasers in Republic of Ireland have made upfront payments which help address the barrier to SMEs re credit facilities;
- Investigate other avenues for public procurement other than frameworks; and,
- Build capacity about how to bid.

The following proposed solutions were relayed by one of SRC's facilitators in the subsequent verbal feedback from this break out session:

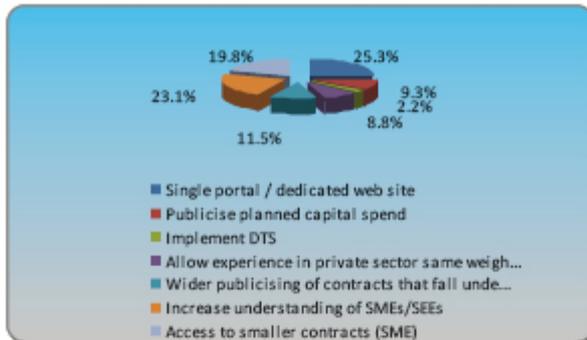
- ITT asks for same information all the time. A model to remedy this might be reminders for MOT/Car tax.

C.3 Results of digital voting on proposals made by the participants

The three proposals that those who voted perceived would be most helpful were:

- Having a single portal / dedicated web site;
- Increasing purchasers' understanding of SMEs/ SEEs; and,
- Providing access to smaller contracts (SME).

Opportunities to Bid: Your thoughts so far... Which THREE proposals do you feel would be most helpful?	Responses	
Single portal / dedicated web site	46	25.27%
Publicise planned capital spend	17	9.34%
Implement DTS	4	2.20%
Allow experience in private sector same weigh...	16	8.79%
Wider publicising of contracts that fall unde...	21	11.54%
Increase understanding of SMEs/SEEs	42	23.00%
Access to smaller contracts (SME)	36	19.78%
	18	
Totals	2	100%



INPUT FROM COMMENTATORS AND ADDITIONAL POINTS

- D.1 Summary of points made by the commentators during their presentation.**
See later at pages 65 - 68
- D.2 Results of digital voting on questions posed by the commentators**
See later at pages 65 - 68
- D.3 Further remarks from the commentators**
See later at pages 65 - 68
- D.4 Feedback from participants following presentations by the commentators**
See later at pages 65 - 68

FURTHER POINTS

- E. Summary of further points made during the open forum**
See later at pages 65 - 68

STREAM 3 : TENDERING AND DELIVERING

ISSUES RAISED BY THE PARTICIPANTS

A.1 What we already knew about the issues before the conference

The following issues were identified by evidence givers before the conference:

- Onerous process requiring duplication of effort and can often be time consuming;
- Difficult to find meaningful guidance;
- 'One size fits all' selection criteria; and,
- Government's Value for Money (VfM) test too rigid.

A.2 Additional issues raised during the conference

A range of issues were identified in the breakout session:

- Process is intimidating to small organizations, especially those who have not previously had much experience in procurement and tendering.
- Completion of forms too time consuming and onerous.
- The same information has to be repeatedly provided in tenders.
- Some (i.e. larger) companies have more resources/time/experience which enables them to give more detailed responses to non-generic questions.
- Expense of putting tenders together.
- Competence and/or knowledge of the subject area of those (a) writing the specifications and (b) assessing the submitted tenders.
- Need to ensure that 'standardisation' does not lead to 'centralisation' – which may lead to smaller numbers of larger value contracts. Danger that this process may have a detrimental effect on SME.
- Recent increases in contract values for various reasons may prohibit SMEs/SEEs from tendering.
- Combining contracts and increasing overall contract size/value does not necessarily work in the best interests of the local economy.
- Practicalities of partnerships can be onerous.
- Enforced amalgamations can result in loss of incomes, job losses etc.
- Focus appears to be more on process as opposed to outcome.
- Risk-averse – concern about litigation and accountability.
- Difference in the theory of value for money and delivery of value for money.
- NI not good at focussing on outcomes rather than outputs and processes. Monitoring thought to add 20% or more to value of contract – is this real Value for Money?

The following issues were relayed by one of SRC's facilitators in the subsequent verbal feedback from this break out session:

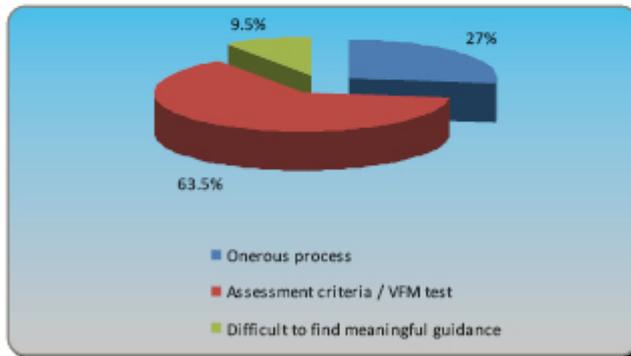
- Issue about being locked out particularly within a framework dominated;
- Weighting of public and private sector experience – should be more equal;
- Does the procurement process better need to reflect the current economic climate, particularly on issues around credit? and,

A.3 Results of digital voting on the issues

The issue of most concern to those who voted was the **assessment criteria / VFM test**.

Tendering and Delivery: Which ONE issue is MOST concern for your organisation?

	Responses	
Onerous process	7	26.98%
Assessment criteria / VFM test	4	63.49%
Difficult to find meaningful guidance	0	0%
Totals	11	100%



COMMENTS MADE BY CPD

B Comments from CPD in relation to these issues

- Standard pre-qualification questions.
 - *Supplies & Services*
 - *Works and Services*
- Realistic bidder response times
- Robust selection and distinct award processes proportionate to scale and complexity of contract
- Contracts awarded on MEAT - not lowest price
- Quality/Price weighting
- Guidance for tenderers
 - *eSourcingNI – clarification process*
 - *General and contract specific guidance*

SOLUTIONS PROPOSED BY THE PARTICIPANTS

C.1 What we already knew about proposed solutions before the conference

The following proposals were identified by evidence givers before the conference:

- Standardise pre-qualification questionnaire / standard certificates;
- Allow more time to bid;
- Award criteria other than for complex, high value works;
- Take account of non-monetary and non-costed benefits;
- Economy and sustainability proof policy; and,
- Sign post to guidance.

C.2 Additional solutions proposed during the conference

A range of proposed solutions were identified in the breakout session:

- Standardise the pre-qualification questionnaire.
- Generic information to be held centrally, updated annually or as circumstances change.
- Increase knowledge of available guidance. Have a one-stop shop for advice on processes for purchaser and supplier – a central point which can explain how system works (perhaps clinics run in Enterprise parks?)
- Promote CPD/Equality commission guidance on mainstreaming s.75 in procurement – and ensure it is implemented
- Focus more on what the contract is seeking to achieve – outputs/outcome.
- Have more rigorous monitoring and management of contract compliance.

- Provide education for CPD on the capacity and capability of SMEs to deliver on contracts.
- Investigate the effect of centralisation on SME opportunity to bid – SME predominantly contract with local government. However, larger value contracts will require partnerships and consortia which are thought to be more difficult to manage on the supplier side. Need to consider this now – post RPA might be too late for many SME/SEEs.

The following proposed solutions were relayed by one of SRC's facilitators in the subsequent verbal feedback from this break out session:

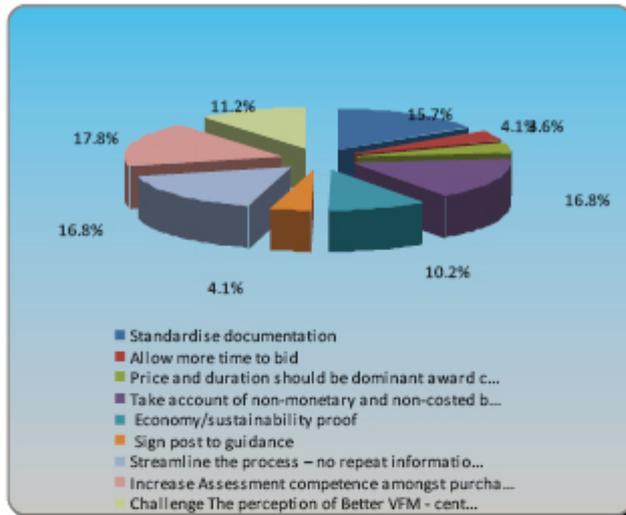
- Social benefits need to be included in contracts;
- Get applicants in front of buyers pre-advertisement;
- Develop skills of an organisation to deal with the complexity of the system;
- Develop capacity to develop consortia etc;
- Smaller contracts from the local government sector for example should be made more visible

C.3 Results of digital voting on proposals made by the participants

The three proposals that participants perceived would be most helpful were:

- Increase assessment competence amongst purchasers;
- Streamline the process – no repeat information; and,
- Take account of non-monetary and non-costed benefits.

Tendering & Delivery: Your thoughts so far... Which THREE proposals do you feel would be most helpful?	Responses	
Standardise documentation	31	15.74%
Allow more time to bid	8	4.06%
Price and duration should be dominant award c...	7	3.55%
Take account of non-monetary and non-costed benefits	33	16.75%
Economy/sustainability proof	20	10.15%
Sign post to guidance	8	4.06%
Streamline the process – no repeat information	33	16.75%
Increase assessment competence amongst purchasers	35	17.77%
Challenge the perception of Better VFM	22	11.17%
	19	
Totals	7	100%



INPUT FROM COMMENTATORS AND ADDITIONAL POINTS

D.1 Summary of further points made by the commentators

Paul Davis

- Breaking into lots – has been done in Republic of Ireland in relation to Lisbon treaty information. Printing, packaging and distribution were all awarded to local SMEs;
- People have to be willing to “bid in”. Procurement should be willing to use lots;
- Green/environmental criteria could be included as standard in contracts. If carbon footprint becomes an important factor can cause disadvantage for the export market?
- Licentiate approach – licensing of procurement professionals. License could be scaled according to levels of contract.

Prof Andrew Erridge

- Efficiency – quality maintained and improved – select the best suppliers;
- Environment – potential supply market to deliver environmental solutions;
- Enterprise – how can procurement develop capacity of SEEs and SMEs;
- Equalities;

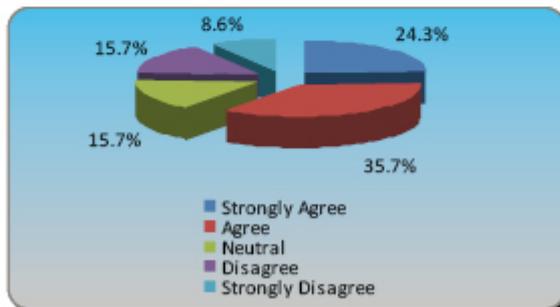
- Infrastructure development;
- Contract strategy – pull forward. Have a 9 -12 month lead in time;
- Difficult to drive these down through purchasing organisations;
- Reference to Glover report which only covers England;
- One stop shop to capture registration and qualifications;
- Opportunities for SMEs and SEEs help to guide people who do not have the experience. The guidance is out there. Just need help to access it.

D.2 – Results of digital voting on questions posed by the commentators

Question posed by Paul Davis

Of those who voted, the greatest number (41 out of 70) agreed that “Carbon foot print should be used as an award criteria to help local suppliers”.

“Carbon foot print should be used as an award criteria to help local suppliers”. What’s your view?	Responses	
Strongly Agree	17	24.29%
Agree	25	35.71%
Neutral	11	15.71%
Disagree	11	15.71%
Strongly Disagree	6	8.57%
Totals	70	100%

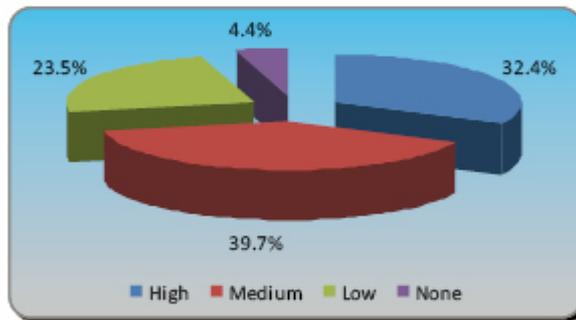


Question posed by Professor Andrew Erridge

Of those who voted, the greatest proportion (27 out of 68) indicated that they would be prepared to accept a medium risk of legal challenge in order to assist local SME/SEEs win government contracts.

How much risk of legal challenge are you prepared to accept in order to assist local SMEs/SEEs win government contracts?

	Responses	
High	22	32.35%
Medium	27	39.71%
Low	16	23.53%
None	3	4.41%
Totals	68	100%



D.3 Further remarks by the commentators
No further remarks made.

D.4 Feedback from Participants Following Presentations by Commentators

- Not too much resistance within Centres of Procurement Expertise (CoPEs) for professional license. Already consideration is being given to allowing only qualified professionals to handle contracts above certain thresholds;
- Professionalisation should not be confined to higher level contracts. There is not a homogeneous public procurement market in respect of goods and services that are purchased and provided;
- Not just about high value spend. There is a move from grant based funding to contract funding and purchasers need to know what they are buying;
- Moving from grants funding to a more contract-based approach has been very onerous for community and voluntary sector bodies;
- Innovative solutions require lead in time of 18 months – 3 years. Output specification is essential;
- One-stop-shop is not a new idea but could prove highly beneficial. Needs to handle advice to both sides. Should be seen as a mediator – no one wins through court action. Also require communication – could someone articulate the benefits of using frameworks?
- Outcomes rather than outputs – socio-economic benefits – not clear what benefits are being sought;
- Risk taking must strike a balance between the public and private sector; and,
- Is there funding available from the EU for contracting authorities to embrace risk?

E. Summary of further points made by the commentators

The open forum session yielded the following comments and questions:

- Many businesses in Northern Ireland are ‘micro-businesses’ which would have interest in contracts at levels below £25k. Are micro-businesses already undertaking work in a specific area and they then lose out through open competition?
- What environment is being created for SEEs/SMEs to be part of the export market?
- Frameworks are just one route available to purchasing bodies. Need to explore others.
- A feeling that frameworks may not be appropriate in current economic circumstances and for Housing Associations in particular
- More consideration is needed of design and quality; and,
- Dismissing frameworks outright would be to dismiss a huge amount of economic activity.

SESSION 2 : MAXIMISING SOCIAL VALUE

Session 2: Maximising Social Value



ISSUES RAISED BY THE PARTICIPANTS

A.1 What we already knew about the issues before the conference

The following issues were identified by evidence givers before the conference:

- How is social value measured?
- Are social clauses being used and enforced effectively?
- Audit and monitoring requirements can disproportionate to contract value
- Audit and monitoring tend to focus on processes rather than outcomes

A.2 Additional issues raised during the conference

A range of issues were identified in the breakout session:

- Mandating social clauses may have an adverse impact in the current economic climate – you can take on somebody who has been long term unemployed but then lose someone who had already been training and is doing the work already.
- Procurement currently specifies what can be defended rather than what is needed.
- Government needs to specify what it wants to be delivered.
- Feeling that SEEs are 'over audited and monitored'
- Capacity building required on both sides. Purchasers need to have a clear understanding of what they want.
- Inconsistencies amongst all parties over a definition of social value and approaches to including social clauses
- Social benefits can be overlooked in favour of economic benefits.
- No weighting applied to social value in contract specifications.
- Inclusion of social clauses could be a constraint for micro enterprises.
- What does social value actually mean?
- The procurer is only acting on behalf of the client/commissioner (e.g. a government department) therefore defining social value to be incorporated into the contract lies with the client not the procurer.
- Could social contracts be used to encourage companies outside NI to set up here as part of the contract awards.

The following issues were relayed by SRC's facilitators in the subsequent verbal feedback from this break out session:

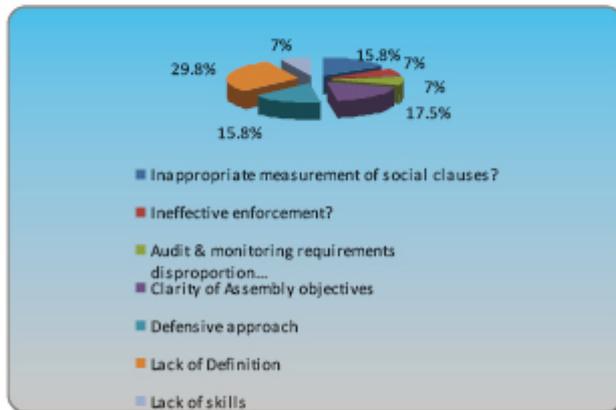
- What are the policy objectives around social value?
- Social value clauses are not often concerned with what can be defended rather than what is 'valuable'

- What are the commitments (re social value) under the Programme for Government and the Investment Strategy Northern Ireland?
- Issues around definition that need to be clarified
- Issues around measurement
- General need to fast track this debate
- Be cognisant of the impact that social clauses may have on an export market – i.e. if something is introduced here then another EU country to could introduce something similar that could impact on NI exporters e.g. carbon foot print as a social clause.

A.3 Results of digital voting on the issues

The issue of most concern to those who voted was the **lack of definition of social value**.

Maximising Social Value: Which ONE issue is MOST concern for your organisation?	Responses	
Inappropriate measurement of social clauses?	9	15.79%
Ineffective enforcement?	4	7.02%
Audit & monitoring requirements disproportion...	4	7.02%
Clarity of Assembly objectives	10	17.54%
Defensive approach	9	15.79%
Lack of Definition	17	29.82%
Lack of skills	4	7.02%
Totals	57	100%



COMMENTS MADE BY CPD

B Comments from CPD in relation to these issues

- Sustainability and the Programme for Government
- Application of social clauses within procurement process
- Implementation of Construction Industry Forum Northern Ireland requirements for delivery of social, economic and environmental objectives
- Measurement process within contracts
- Auditing and monitoring process
 - *Proportionate to scale of contract*
 - *Confined to contract requirements*
- Measuring Social Value?

SOLUTIONS PROPOSED BY THE PARTICIPANTS

C.1 What we already knew about proposed solutions before the conference

The following proposals were identified by evidence givers before the conference:

- All contracts should have social value clauses
- Social clauses should be project specific
- Social clauses should be apt and proportionate
- Social clauses shouldn't be used as a substitute for failures in Government policy
- CPD guidance is not mandatory but is treated as such.
- Identify suitable metrics
- Balance processes vs. outcomes.

C.2 Additional solutions proposed during the conference

A range of proposed solutions were identified in the breakout session:

- Educate SMEs in recognising the social benefits that they are already bringing to local areas but not capturing in their bids;
- Ask what impact a contractor will have on the local community through the particular piece of work;
- Clause should ask for demonstration of how contractor meets a range of social value criteria;

-
- Purchasing bodies need to be given space to be more imaginative and creative;
 - Supporting a compliant bid with variant bids has been helpful – there becomes a negotiation element. This leads to a tendering approach that is negotiated rather than specified;
 - An onus on political representatives to ensure that policy objectives are clear, concise and can be applied. Policies should be set at Executive level
 - Simplify social clauses within contract specification;
 - Greater focus on outcomes;
 - Define more precisely what might be achieved;
 - Risk sharing a better principle than risk aversion? Where are the opportunities to share risk?
 - Increasing the profile of guidance that is already available. Mainstreaming equality e.g. inclusion of Section 75 guidance as a matter of course could create structured and proportionate social clauses.
 - Stop jumping to tendering process as only option e.g. money debt advice – was a procurement process the best option?
 - More emphasis placed on the fact that it is ‘public money’ being spent and there should be a desire to maximise social benefits;
 - Wales has clearly focused on ‘not losing a generation’ in the recession – so focusing efforts on training and apprenticeships. NI needs similar political focus (albeit maybe on a different aim);
 - Clarity on social value must be provided by those drawing up the contracts. This must also include clarity on criteria against which bids will be measured in respect of their social value. This would help bidders to incorporate social values into the bids;
 - Social clauses are already on the table and the driver is the Programme for Government e.g. Belfast Schools Project;
 - Guidance required to specify what social value the contract is trying to achieve;
 - Need to think laterally about social value outcomes in respect of public procurement and acknowledge that there is a wider interpretation about value for money other than lowest price;
 - Should be social and environmental clauses. Suppliers and providers need to work hard and collaboratively to develop an approach to measurability of social value but that incremental steps are required. It is not possible to wait until validated metrics are developed and agreed; and,
 - Social clauses should only reflect Government policy.

The following proposed solutions were relayed by SRC's facilitators in the subsequent verbal feedback from this break out session:

- Are there other mechanisms for procuring social value other than tendering?
- Is there an opportunity for negotiation on how different values can be included after pre-qualification?
- There needs to be knowledge and guidance for social clauses
- Requires an agreed approach to the evaluation/measurement of social value must be developed
- More leadership, training and education needed around social value
- Same weight needs to be given to social value as is given to value for money.
- Social benefits should be built in and responded to by suppliers
- Need education and debate on the issues
- Metrics – need to have the capacity to measure
- Apparent dichotomy between community and commercial

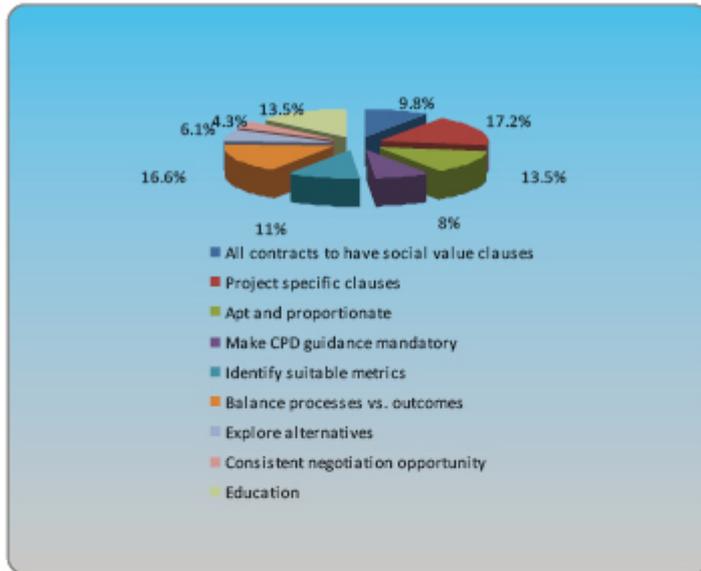
C.3 Results of digital voting on proposals made by the participants

The three proposals that participants perceived would be most helpful were:

- **Have project specific social value clauses;**
- **Ensure that there is a balance between measuring the social value (i.e. the process) vs the social value itself (i.e. outcomes); and,**
- **Ensure that the social value clauses are appropriate and proportionate to the contract.**

Maximising Social Value : Your thoughts so far... Which proposals do you feel would be most helpful? Select your top THREE...

	Responses	
All contracts to have social value clauses	16	9.82%
Project specific clauses	28	17.18%
Apt and proportionate	22	13.50%
Make CPD guidance mandatory	13	7.98%
Identify suitable metrics	18	11.04%
Balance processes vs. outcomes	27	16.56%
Explore alternatives	10	6.13%
Consistent negotiation opportunity	7	4.29%
Education	22	13.50%
	16	
Totals	3	100%



INPUT FROM COMMENTATORS AND ADDITIONAL POINTS

D.1 Summary of points made by the commentators during their presentation

Jenni Inglis

- Social value covers social, environmental and economic;
- SROI involved in national programme for 3rd sector commissioning;
- By the time we get to procurement we've missed the point – need to go back to commissioning and make these changes before procurement;
- Measurement of social value can be used to help service providers and procurers to define what they can provide and require (respectively);
- Need to restructure demand which in turn will impact on supply; and,
- Avoid negative change for stakeholders.
- The SROI project in Scotland has published case studies on how SROI can be used to measure and value social impact. (See Appendix F).

Martin Sykes

- Understand what you are trying to buy in the first place;
- In Wales they have a procurement body with different representatives from the procurement sector – no legal challenges yet. This forum also engages with legal experts;
- Developed an ‘all Wales purchasing code of practice’ – create an environment where Welsh companies can attract business; and,
- ‘Opening Doors’ initiative – Buy for Wales/Sell to Wales.

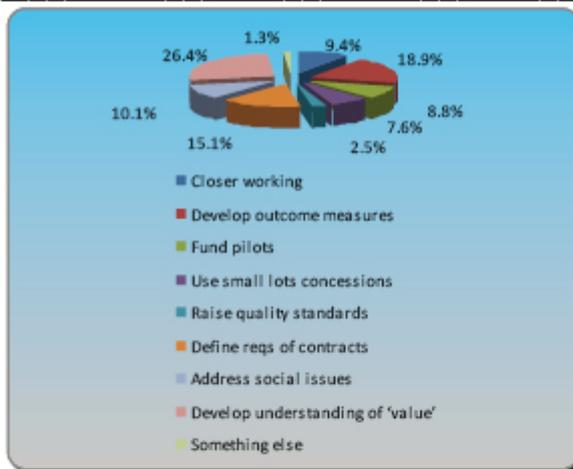
D.2 – Results of digital voting on questions posed by the commentators

Question posed by Jenni Inglis

Those who voted perceived that the following three aspects had, relatively speaking, the greatest potential to unlock social value from public contracting:

- **Developing an understanding of what social value is;**
- **Developing suitable outcome measures;**
- **Defining social value within the requirements of contracts.**

What do you think would unlock further social value from public contracting? Select your top THREE...	Responses	
Closer working	15	9.43%
Develop outcome measures	30	18.87%
Fund pilots	14	8.61%
Use small lots concessions	12	7.55%
Raise quality standards	4	2.52%
Define requirements of contracts	24	15.09%
Address social issues	16	10.06%
Develop understanding of ‘value’	42	26.42%
Something else	2	1.26%
	15	
Totals	9	100%



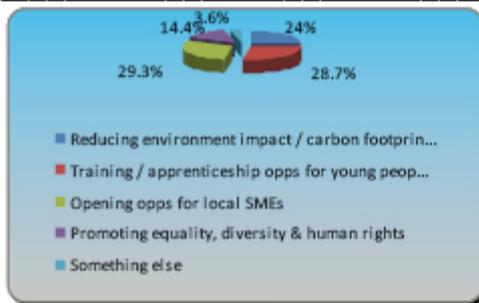
Question posed by Martin Sykes

Those who voted perceived that the following three were, relatively speaking, the greatest policy priorities (in the context of public procurement):

- **Opening opportunities for local SMEs;**
- **Training / apprenticeship opportunities for young people; and,**
- **Reducing environment impact / carbon footprint.**

Considering community benefits clauses in contracts, what do you see as the priority policies? Select your top THREE...

	Responses	
Reducing environment impact / carbon footprin...	40	23.95%
Training / apprenticeship opps for young peop...	48	28.74%
Opening opps for local SMEs	49	29.34%
Promoting equality, diversity & human rights	24	14.37%
Something else	6	3.59%
Totals	167	100%



D.3 Summary of further points made by the commentators

No further comments were made.

D.4 Feedback from Participants Following Presentations by Commentators

No further comments were made.

E. Summary of further points made by the commentators

The open forum session yielded no further comments or questions.

SESSION 3 : BUILDING CAPACITY FOR PURCHASERS AND SUPPLIERS

Session 3: Building Capacity, Purchaser & Supplier



ISSUES RAISED BY THE PARTICIPANTS

A.1 What we already knew about the issues before the conference

The following issues were identified by evidence givers before the conference:

- Resource pressure
- Negative perception of risk
- SMEs - winning private sector contracts
- Perceived inconsistencies in debriefing
- Under-capitalised / cash flow / reserve levels
- Review of Public Administration (RPA)?
- Joint ventures/consortia

A.2 Additional issues raised during the conference

A range of issues were identified in the breakout session:

- Capacity for micro enterprises to compete is poor.
- Can be confrontational environment for purchasers and suppliers with a lack of a bridge between the two.
- Inconsistent feedback given to unsuccessful bidders.
- Purchasers and suppliers do not have in-depth knowledge of the pressures/challenges that each other faces
- Lack of understanding about social enterprises – there is a perception that they do ‘nice things’ but don’t deliver.
- Capacity is built on experience but if locked out of a framework then there is no opportunity to build.
- Supplier side need a reality check – it’s a competition. That’s what drives you to make you better.
- Does contracting to SMEs really deliver maximum economic and social benefits? And does it add real value to the economic and social fabric of Northern Ireland?
- Review of Public Administration might encourage public bodies to keep services in-house and build capacity within their own organisations rather than stimulating the economy by outsourcing to SMEs and SEEs.
- Building capacity is a good thing but only beneficial if SMEs/SEEs given opportunities and a more open market to bid for contracts.
- Cost of tendering can be (a) disproportionate to the size of a contract and/or (b) prohibitive for smaller organisations and SEEs.
- Rules that apply to SMEs apply to all businesses but buyers often take the safest option.

- Government tends to use larger supplier e.g. BT who then use their own subcontractors but don't open this to competition. The secondary stage needs to be open to competition.
- Public sector not entrepreneurial and there needs to be a culture change to address this. There are opportunities for partnerships e.g. in R & D but the culture, risk-averse nature of NICS, is holding this back.
- The larger the contract the more risk associated with it but the larger the contract the more it lends itself to social clauses/value.
- Needs to be ministerial direction to purchasers to address social value.

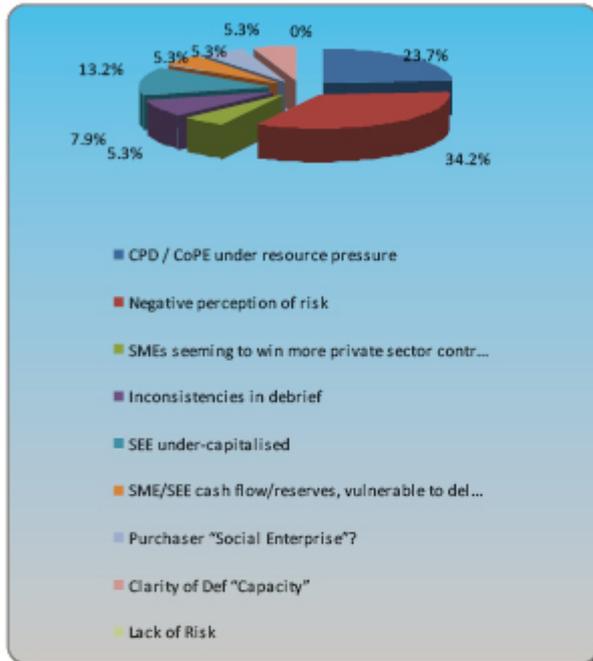
The following issues were relayed by SRC's facilitators in the subsequent verbal feedback from this break out session:

- Perceived lack of understanding of SEE;
- Concern about 'Protectionism';
- Concern around prime contractors – need for transparency and greater government control over sub-contract arrangements to ensure open competition;
- Needs to be capacity to take more risks;
- What is meant by capacity?
- Do we know where we are starting from? What is the benchmark?
- Ability to articulate needs and appreciate what can be contributed to capacity

A.3 Results of digital voting on the issues

The issue of most concern to those who voted was the **negative perception of risk**.

Building Capacity: Purchasers/Suppliers: Which ONE issue is MOST concern for your organisation?	Responses	
CPD / CoPE under resource pressure	9	23.68%
Negative perception of risk	13	34.21%
SMEs seeming to win more private sector contr...	2	5.26%
Inconsistencies in debrief	3	7.89%
SEE under-capitalised	5	13.16%
SME/SEE cash flow/reserves, vulnerable to del...	2	5.26%
Purchaser "Social Enterprise"?	2	5.26%
Clarity of Def "Capacity"	2	5.26%
Lack of Risk	0	0%
Totals	38	100%



COMMENTS MADE BY CPD

B Comments from CPD in relation to these issues

- Managing risk within the procurement process;
- Equal treatment of suppliers of all sizes;
- The role of the debrief in developing suppliers;
- Opportunities for SEEs;
- Payment terms and conditions;
- Supporting and assisting SMEs to bid for work as a consortium.

SOLUTIONS PROPOSED BY THE PARTICIPANTS

C.1 What we already knew about proposed solutions before the conference

The following proposals were identified by evidence givers before the conference:

- Educate re potential benefits / Increase knowledge of the SME / SEE;
- Recognise micro enterprises;
- Have a target for the awarding of contracts to SMEs/SEEs (or) Remove barriers to procurement opportunities (real and perceived) rather than establish targets;
- Have a consistent approach across Government;
- Have two-way feedback;
- Develop social economy finance brokerage service;
- Allow SEEs to hold reserves; and,
- Have a 'Supplier ombudsman'.

C.2 Additional solutions proposed during the conference

A range of proposed solutions were identified in the breakout session:

- A 'try it yourself' approach: A 'walk the floor' or secondment opportunity for both procurers and suppliers to spend time in each others environment.
- Greater training opportunities for purchasing bodies in relation to what a social enterprise is and what it can deliver.
- Greater use of pre-consultation processes prior to invitations to tender
- For larger contracts there should be an open meeting prior to issue – should be a formative interactive approach to briefing
- Early publication of intentions: Procurement bodies should annually present their plans without contract values – they should know what contracts are up for renewal in any given year. This would help SMEs and SEEs to plan.
- Increase prevalence of pre-contract dialogue and engagement. Pre-consultation stakeholders should include end-users
- Implementation of a 'brokerage service'
- Need better access to the 'how to' resources – the information is out there just needs to be more readily available.
- Increase awareness of help and support that is already available (e.g. through Invest NI and Intertrade Ireland)
- SMEs/SEEs need to build up a better understanding of the market
- Need to identify current baseline and encourage better data collection.
- Provide grants/budgets after pre-qualification to allow proposals to be brought forward.

-
- Introduce form of mediation between purchasers and suppliers
 - Need to recognise that for some contracts the place for some organisations could be further down the supply chain.
 - Opportunities for joint training events.
 - Recognise at high level need for collective change – not just one side or other.
 - Investment in training in those communities which the social value aspects of contracts aim to assist. If social value is employment then people need the skills to be able to take advantage of the opportunities provided in such contracts.
 - Build skills/capacity through partnerships with other SMEs and between SMEs and SEEs.
 - A database for smaller contracts should be established so that SMEs/SEEs can access these easily e.g. Contractline.
 - Pilot a procurement exercise to see how addressing social value might work.

The following proposed solutions were relayed by SRC's facilitators in the subsequent verbal feedback from this break out session:

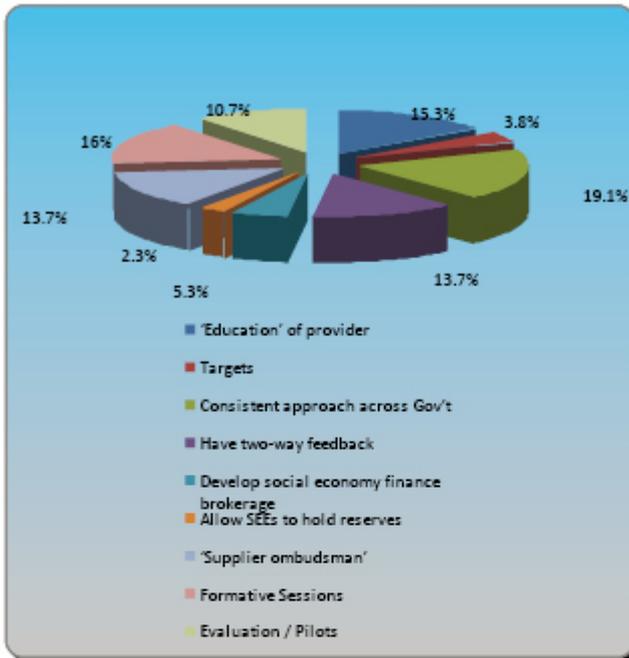
- A formative session might be helpful – no one has the monopoly on wisdom;
- Need to find creative ways of working in a collegiate way;
- Needs to build up capacity on both sides together;
- 'Try it yourself' opportunities;
- Make information guides more accessible;
- Potential for skills transfer within and between sectors;
- New ideas need to be communicated to government;
- Pilot projects;
- More evaluation;
- More partnership working between SMEs, community and government;
- Application and understanding of value for money is essential.
- Promote awareness of smaller contracts;
- Culture change required – 'can do' approach;
- Sharing responsibility;
- Reduce bureaucracy;
- Skills – should be relevant to scale of contracts and capabilities;
- Value for money in the context of award for a contract in longer term for NI economy;
- Pre-contract dialogues would be helpful.

C.3 Results of digital voting on proposals made by the participants

The three proposals that participants perceived would be most helpful were:

- A consistent approach across Government;
- Formative sessions; and,
- 'Education' of provider.

Building Capacity : Your thoughts so far... Which THREE proposals do you feel would be most helpful?	Responses	
'Education' of provider	20	15.27%
Targets	5	3.82%
Consistent approach across Gov't	25	19.08%
Have two-way feedback	18	13.74%
Develop social economy finance brokerage	7	5.34%
Allow SEEs to hold reserves	3	2.29%
'Supplier ombudsman'	18	13.74%
Formative Sessions	21	16.03%
Evaluation / Pilots	14	10.69%
	13	
Totals	1	100%



INPUT FROM COMMENTATORS AND ADDITIONAL POINTS

D.1 Summary of points made by the commentators during their presentation

Frank McGlone

- Need simplified and consistent approach to purchasing – e.g tick box exercise that is available in some US states
- Supplier/purchaser training
- Consistent feedback
- Independent appeals process – legal route – you can only take it if you can afford it
- Should be supplier focused payment model
- Supplier voice – can often feel like suppliers they are on their own. In Italy the Chambers of Commerce provide support – could something like the Federation of Small Businesses take this on?

Dr Gordon Murray

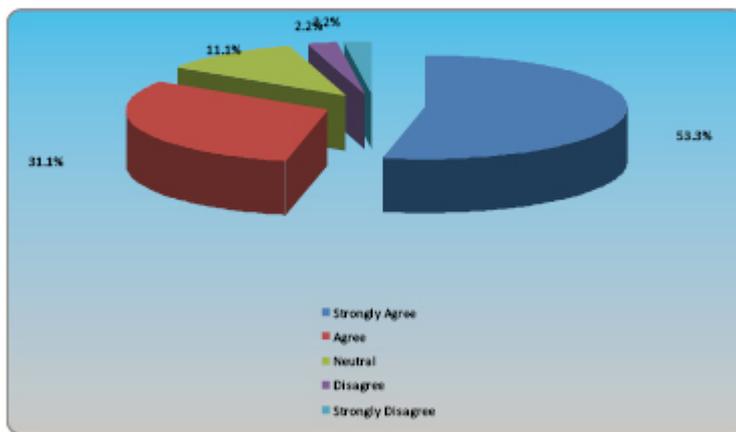
- Need to change the commitment from political leadership – drive for action
- Where is the measure that we are going to compare against
- Procurement people follow instructions – CPD are not the gatekeepers
- Changing CPD will not fix it – not sure what we're trying to fix
- Need cultural change
- Do the leaders believe it?
- Need to be clear about where we want to get to
- CIPS qualified – but is the qualification fit for purpose
- Training for elected members
- Pan-sector training – bring everyone in to the same room
- Inter-sector placements
- Long term decision making needed.

D.2 – Results of digital voting on questions posed by the commentators

Question posed by Frank McGlone

The greatest number of those who voted (38 out of 45) agreed that an independent appeals process would help build the trust of SME/SEEs.

An independent appeals process would help build the trust of SME's/SEE's. What is your opinion?	Responses	
Strongly Agree	24	53.33%
Agree	14	31.11%
Neutral	5	11.11%
Disagree	1	2.22%
Strongly Disagree	1	2.22%
Totals	45	100%



Question posed by Dr Gordon Murray

Those who voted perceived that, relatively speaking, the following three aspects were the most important to improve in order to maximise the socio-economic benefit for SMEs / SEEs:

- Political and management commitment to make the changes;
- Culture of public sector; and,
- Competence of public sector procurement.

Which of the following do you think needs to improve to maximise the socio-economic impact of procurement for SMEs / SEEs? Select your top THREE...

	Responses	
Political and management commitment to make c...	41	32.28%
Culture of public sector procurement	33	25.98%
Competence of public sector procurement	27	21.26%
Culture of supply market	7	5.51%
Competence of supply market	16	12.60%
Something else	3	2.36%
	12	
Totals	7	100%



D.3 Summary of further points made by the commentators

No further comments were made.

D.4 Feedback from Participants Following Presentations by Commentators

- Social economy not looking for favours
- Rich exchange across sectors
- Gordon Murray's business plan was spot on – when do we get practical application?

E. Summary of further points made by the commentators

The following additional issues were raised:

-
- Only one building contractor SME represented at the conference – this was seen to be a flaw
 - Where do we go from here in terms of all the data and information collected through the stakeholder event?
 - The Equality Commission has worked with CPD to produce guidance on maximising social value which included Section 75 tools to help SMEs.
 - Need to ‘pan-sector’ training across all sectors to encourage an equal playing field.
 - Government ‘talks the talk’ but doesn’t ‘walk the walk’ – what is the practical application?

Northern Ireland Assembly



Maximising Economic and Social Benefits from Public Procurement

Conference for Northern Ireland SMEs and SEEs

21st October 2009



Welcome!



Jennifer McCann

Chairperson

NI Assembly

Committee for Finance & Personnel

Committee Members



Chairperson
Ms Jennifer McCann



Deputy Chairperson
Mr Peter Weir



Dr Stephen Farry



Mr Simon Hamilton



Mr Fra McCann



Mr Mitchel McLaughlin



Mr David McNarry



Mr Adrian McQuillan



Mr Deolan O'Loan



Mr Ian Paisley Jnr



Ms Dawn Purvis



Social Research Centre

Independence Integrity Excellence

Facilitator

Eileen Beamish

Director, Social Research Centre

www.srcentre.co.uk

'Moving-forward-together' ethos...

- ✓ Listening to your concerns, views and suggestions
- ✓ Exchanging views - possible new ways of working
- ✓ Recording opinions interactively



Format



Session 1 – Improving Policy and Process
(3 Streams)



Session 2 – Maximising Social Value



Session 3 – Building Capacity – Purchasers & Suppliers



Introductions...

• SRC's Team

- Eileen Beamish
- Donal McDade
- Richard Buchanan
- David Robinson



• Assembly Team

- Colin Pidgeon
- Shane McAteer
- Karen Jardine
- Kathy O'Hanlon
- Eleanor Murphy
- Kevin Pelan



Introductions

Commentators



Session 1: Improving Policy & Process

- Prof Andrew Erridge, University of Ulster
- Paul Davis, Dublin City University



Session 2: Maximising Social Value

- Jenni Inglis, Social Return on Investment Network
- Martin Sykes, Value Wales



Session 3: Building Capacity of Purchasers & Suppliers

- Frank McGlone, Frank McGlone Consulting
- Dr Gordon Murray, IDeA



Session 1: Improving Policy & Process



Stream A – Frameworks and Contracts

Stream B – Opportunities to bid

Stream C – Tendering and Delivering



Frameworks and Contracts

What we already know...

- The issues
- Comments from CPD
- Your suggestions so far



Stream A – Frameworks and Contracts

Issues

- ❖ Why have Frameworks?
- ❖ SMEs miss out on being main contractor
- ❖ Pre-qualification criteria
- ❖ Why have Design and Build Contracts?



Stream A – Frameworks and Contracts

Comments from CPD

- ❖ Policy based on delivery of 'Best Value for Money'
- ❖ Use of integrated procurement routes - design & build
- ❖ Individual contracts
 - ❖ *Benefits for public sector clients and suppliers*
 - ❖ *Opportunities for SMEs*
- ❖ Framework agreements
 - ❖ *Benefits for public sector clients and suppliers*
 - ❖ *Duration, type and geographical scope*
 - ❖ *Opportunities for SMEs*
 - ❖ *Endorsed by CIPNI Procurement Task Group*
 - ❖ *Proportionate criteria for financial standing and insurance*
 - ❖ *Assessment based on experience – public and private*

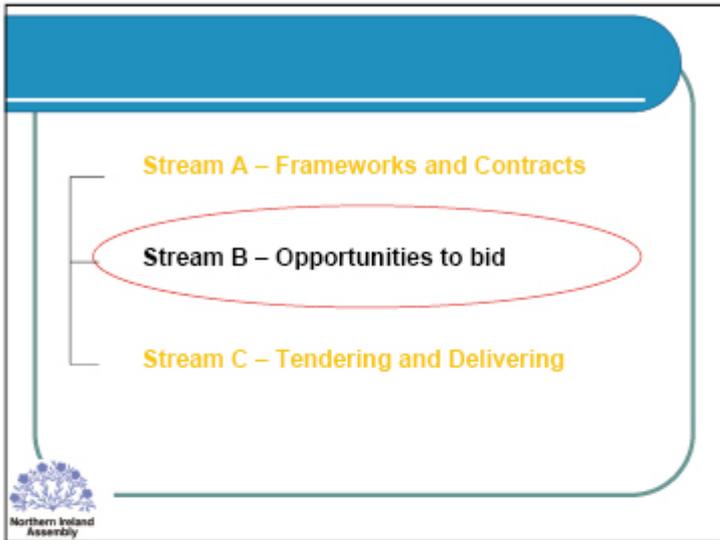


Stream A – Frameworks and Contracts

Your suggestions so far

- ❖ Have a range of frameworks reflecting various sizes of works
- ❖ Have regional frameworks
- ❖ Break up large contracts
- ❖ Expand requirement for previous experience
- ❖ Pre-qualification threshold should be proportionate





- ## Opportunities to bid
- What we already know...
- **The issues**
 - **Comments from CPD**
 - **Your suggestions so far**
-  Northern Ireland Assembly

Stream B – Opportunities to bid

Issues

- ❖ Where are the opportunities advertised?
- ❖ Delays in ISNI2 (esp. construction)
- ❖ Legal challenges affected work flow
- ❖ If not successful on larger frameworks SMEs/SEEs excluded from bidding for a period of years
- ❖ Highlighting the lower value opportunities
- ❖ Lack of early and effective consultation with SMEs/SEEs



Stream B – Opportunities to bid

Comments from CPD

- ❖ Opportunities advertised widely
 - ❖ *eSourcingNI*
 - ❖ *CoPE websites*
 - ❖ *Local press*
- ❖ Information on planned procurement demand
 - ❖ *Delivery Tracking System*
 - ❖ *ISNI Information Portal*
- ❖ Procurement and contract strategies
- ❖ Promotion of low value opportunities
- ❖ Benefits of market engagement
 - ❖ *Meet the buyer events/conferences/workshops*
 - ❖ *Market soundings*



Stream B – Opportunities to bid

Your suggestions so far

- ❖ Single portal / dedicated web site
- ❖ Publicise planned capital spend
- ❖ Implement promised Delivery Tracking System
- ❖ Allow experience in private sector experience same weighting
- ❖ Wider publicising of contracts that fall under EU thresholds
- ❖ Increase knowledge / understanding of SMEs/SEEs e.g. Meet the Buyer' events



Stream A – Frameworks and Contracts

Stream B – Opportunities to bid

Stream C – Tendering and Delivering



Tendering and Delivering

What we already know...

- The issues
- Comments from CPD
- Your suggestions so far



Stream C – Tendering & Delivering

Issues

- ❖ Onerous process – time intensive, duplication of information
- ❖ 'One size fits all' selection criteria
- ❖ Government's VfM test too rigid
- ❖ Accessibility of guidance



Stream C – Tendering and Delivering

Comments from CPD

- ❖ Standard pre-qualification questions.
 - ❖ *Supplies & Services*
 - ❖ *Works and Services*
- ❖ Realistic bidder response times
- ❖ Robust selection and distinct award processes proportionate to scale and complexity of contract
- ❖ Contracts awarded on MEAT - not lowest price
- ❖ Quality/Price weighting
- ❖ Guidance for tenderers
 - ❖ *eSourcingNI – clarification process*
 - ❖ *General and contract specific guidance*



Stream C – Tendering and Delivering

Your suggestions so far

- ❖ Standardise pre-qualification questionnaire / standard certificates
- ❖ Allow more time to bid
- ❖ Price and duration should be dominant award criteria other than for complex, high value works
- ❖ Take account of non-monetary and non-costed benefits
- ❖ Economy and sustainability proof policy
- ❖ Sign post to guidance



Let's hear from you...



- **Frameworks Group** (Eileen - Bracken)
- **Opportunities to Bid Group** (Donal-Malin)
- **Tendering and Delivery Group** (Richard-Lab2)



Report back...



Social Research Centre
Independence Integrity Evidence

- Eileen Beamish
- Donal McDade
- Richard Buchanan



Open Forum



Approaches used elsewhere...

Paul Davis
Dublin City University



Approaches used elsewhere...

- Breaking into lots should be seen as 1st recourse of any procurement tender
- Environmental Criteria should be included as standard – e.g. Carbon Footprint
- A licentiate approach should be taken with public procurement officials



Paul Davis Dublin City University

Approaches used elsewhere...

Prof Andrew Erridge
University of Ulster



Approaches used elsewhere...

COPEs to plan contract strategies 9-12 months ahead in order to allow time to:

- Identify contracts appropriate for SMEs/SEEs
- Involve SMEs/SEEs at an early stage
- Identify opportunities for partnering and/or subcontracting

Less onerous requirements re standards, experience, monitoring and reporting

One-stop shop for registration and qualification

SMEs/SEEs must take advantage of opportunities



Prof Andrew Erridge University of Ulster

Open Forum



Cast your vote...

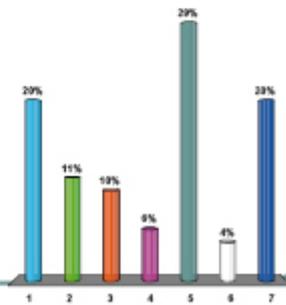


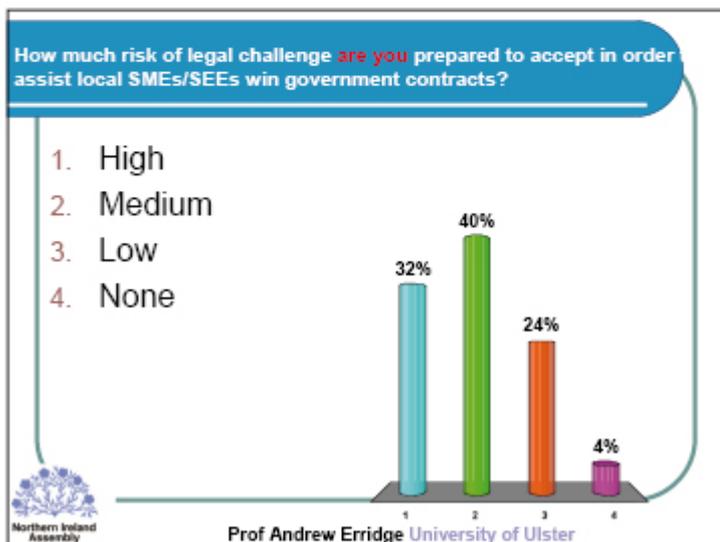
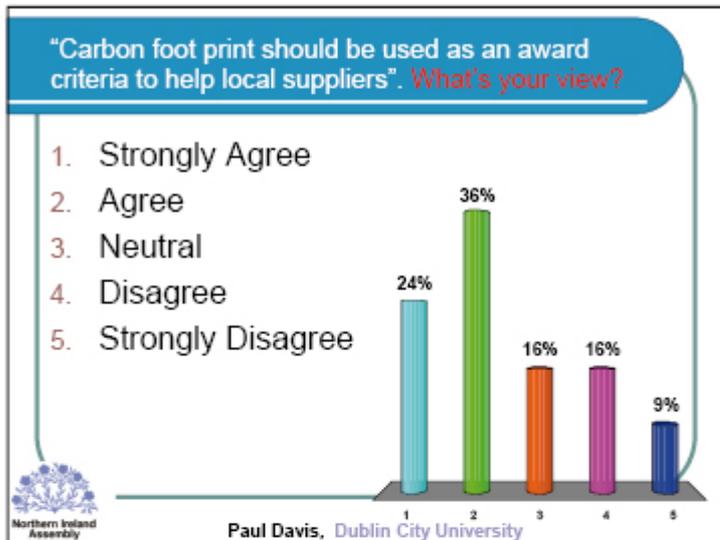
Your priorities...
Your preferences...



Which **ONE** of the following best describes your organisation?

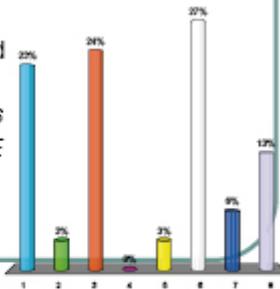
1. SME
2. SME Umbrella body
3. SEE
4. SEE umbrella body
5. Government
6. Academic Institution
7. Other





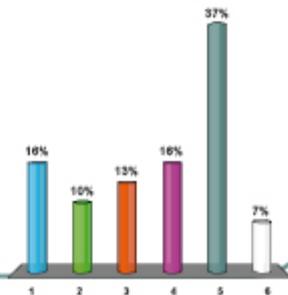
Frameworks: Which ONE issue is of MOST concern for your organisation?

1. Frameworks-why have them?
2. Miss out on being contractor
3. Onerous pre-qual criteria
4. Why have design and build contracts
5. *Treatment of joint ventures*
6. *Risk aversion re SME/SEE*
7. *Supply chain not considered*
8. *Use of framework not apt.*



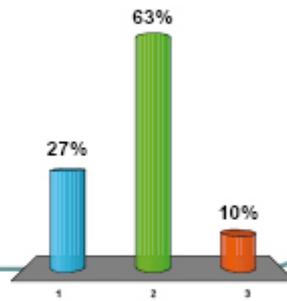
Opportunities to bid: Which ONE issue is MOST concern for your organisation?

1. Where are opportunities advertised?
2. Delays in delivery of ISNI2?
3. Lack of early consultation?
4. *Knowledge and Education*
5. *Building capacity to bid*
6. *current credit climate*



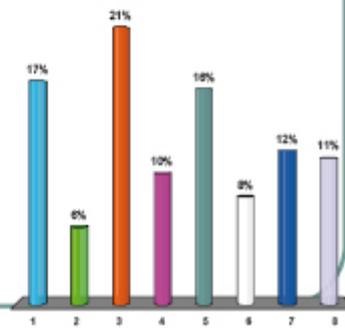
Tendering and Delivery: Which ONE issue is MOST concern for your organisation?

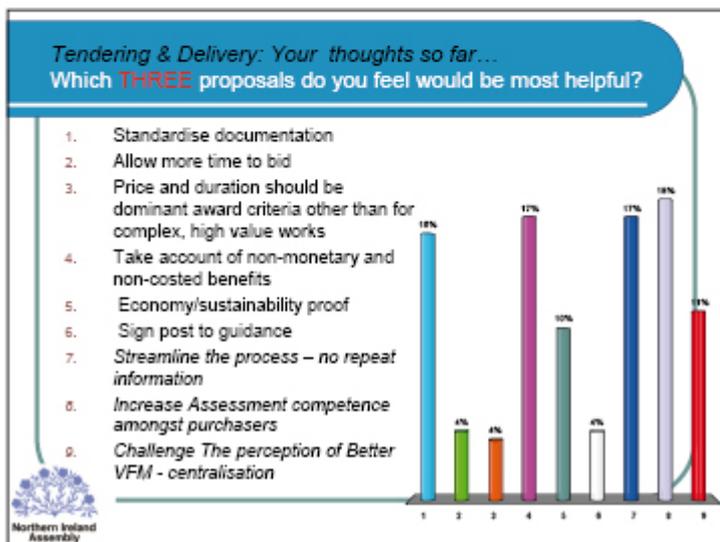
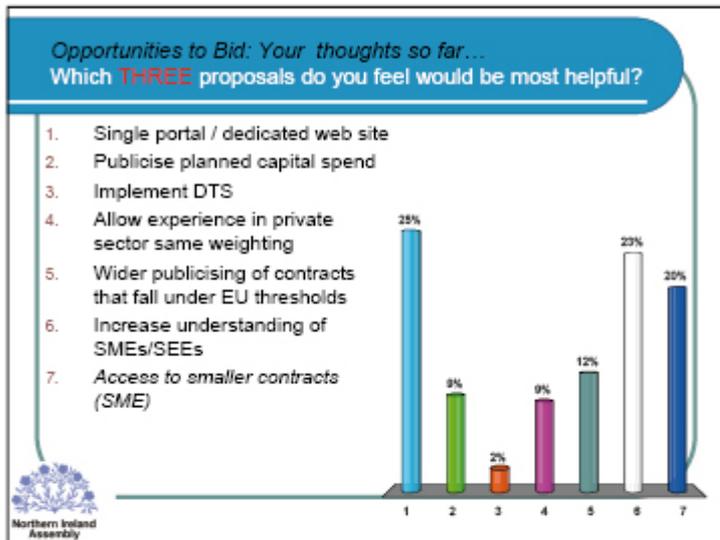
1. Onerous process
2. Assessment criteria / VFM test
3. Difficult to find meaningful guidance



Frameworks and Contracts: Your thoughts so far... Which THREE proposals do you feel would be most helpful?

1. Have a range of frameworks - various sizes of works
2. Have regional frameworks
3. Break up large contracts
4. Expand requirement for previous experience
5. Pre-qualification threshold should be rational
6. Criteria to assess full bid
7. Encourage joint ventures
8. Accept greater risk





Session 2: Maximising Social Value



Maximising Social Value What we already know...

- **The issues**
- **Comments from CPD**
- **Your suggestions so far**



Maximising Social Value

Issues

- ❖ Are social clauses being used and enforced effectively?
- ❖ Audit and monitoring requirements - disproportionate to contract
- ❖ Tend to focus on processes rather than outcomes
- ❖ How to measure social value?



Maximising Social Value

Comments from CPD

- Sustainability and the Programme for Government
- Application of social clauses within procurement process
- Implementation of CIFNI requirements for delivery of social, economic and environmental objectives
- Measurement process within contracts
- Auditing and monitoring process
 - *Proportionate to scale of contract*
 - *Confined to contract requirements*
- Measuring Social Value?



Maximising Social Value

Your suggestions so far

- ❖ All contracts to have social value clauses
- ❖ Project specific
- ❖ Apt and proportionate
- ❖ Use re Government policy
- ❖ CPD guidance mandatory?
- ❖ Identify suitable metrics
- ❖ Balance processes vs. outcomes



Let's hear from you...



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- **Opportunities to Bid Group** (Donal-Malin)
- **Tendering and Delivery Group** (Richard-Lab2)



Report back...



Social Research Centre
Independence Integrity Excellence

- Eileen Beamish
- Donal McDade
- Richard Buchanan



Open Forum



Approaches used elsewhere...

Jenni Inglis

Social Return on Investment Network



Approaches used elsewhere...

Analyse **social value** and use
to shape commissioning strategy



Jenni Inglis Social Return on Investment Network

Approaches used elsewhere...

Martin Sykes
Value Wales



Approaches used elsewhere...

The Welsh Perspective

- Opening Doors
- Barriers to Procurement Opportunity
- Collaboration
- Achieving Added Value - Community Benefits



Martin Sykes, Value Wales

Open Forum



Cast your vote...

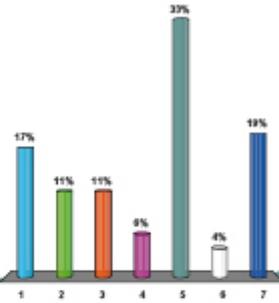


Your priorities...
Your preferences...



Which **ONE** of the following best describes your organisation?

1. SME
2. SME Umbrella body
3. SEE
4. SEE umbrella body
5. Government
6. Academic Institution
7. Other

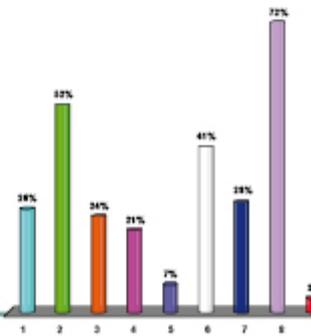


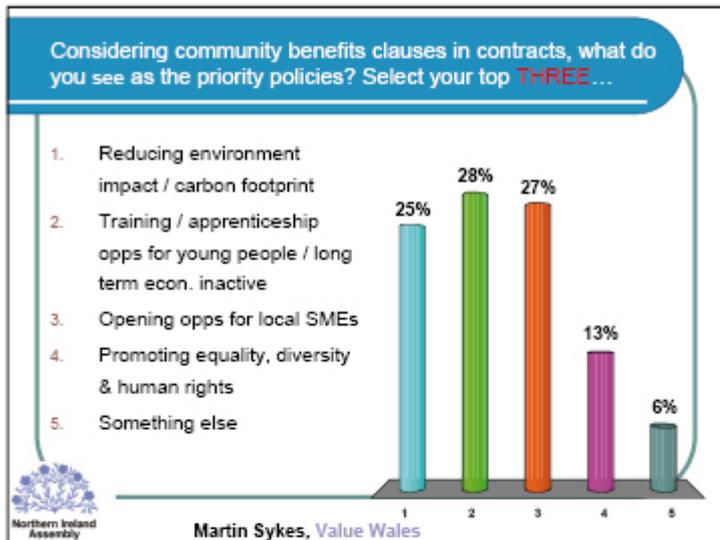
What do you think would unlock further social value from public contracting? Select your top **THREE**...

1. Closer working
2. Develop outcome measures
3. Fund pilots
4. Use small lots concessions
5. Raise quality standards
6. Define reqs of contracts
7. Address social issues
8. Develop understanding of 'value'
9. Something else



Jenni Inglis, SROI

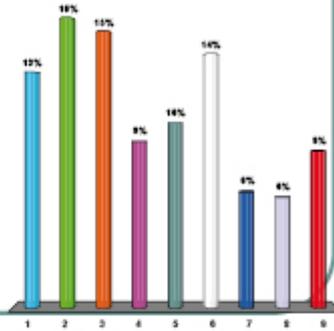




- Maximising Social Value: Which **ONE** issue is **MOST** concern for your organisation?
1. Inappropriate measurement of social clauses?
 2. Ineffective enforcement?
 3. Audit & monitoring requirements disproportionate?
 4. *Clarity of Assembly objectives*
 5. *Defensive approach*
 6. *Lack of Definition*
 7. *Lack of skills*
- Northern Ireland Assembly

Maximising Social Value : Your thoughts so far...
Which proposals do you feel would be most helpful? Select your top **THREE**...

1. All contracts to have social value clauses
2. Project specific clauses
3. Apt and proportionate
4. Make CPD guidance mandatory
5. Identify suitable metrics
6. Balance processes vs. outcomes
7. *Explore alternatives*
8. *Consistent negotiation opportunity*
9. *Education*



Session 3: Building Capacity, Purchaser & Supplier



Building Capacity – Purchaser / Supplier What we already know...

- **The issues**
- **Comments from CPD**
- **Your suggestions so far**



Building Capacity – Purchaser and Supplier Issues

- ❖ Resource pressure
- ❖ Negative perception of risk
- ❖ SMEs - winning private sector contracts
- ❖ Perceived inconsistencies in debriefing
- ❖ Under-capitalised / cash flow / reserve levels
- ❖ Review of Public Administration (RPA)?
- ❖ Joint ventures/consortia



Building Capacity – Purchaser and Supplier Comments from CPD

- Managing risk within the procurement process
- Equal treatment of suppliers of all sizes
- The role of the debrief in developing suppliers
- Opportunities for SEEs
- Payment terms and conditions
- Supporting and assisting SMEs to bid for work as a consortium



Building Capacity – Purchaser and Supplier

Your suggestions so far

- ❖ Educate re potential benefits / Increase knowledge of the SME / SEE / Recognise micro enterprises.
- ❖ Have a target for the awarding of contracts to SMEs/SEEs (or) Remove barriers to procurement opportunities (real and perceived) rather than establish targets.
- ❖ Consistent approach across Gov't
- ❖ Have two-way feedback
- ❖ Develop social economy finance brokerage service
- ❖ Allow SEEs to hold reserves
- ❖ 'Supplier ombudsman'



Let's hear from you...



- Frameworks Group (Eileen - Bracken)
- Opportunities to Bid Group (Donal-Malin)
- Tendering and Delivery Group (Richard-Lab2)



Report back...



Social Research Centre
independence integrity excellence

- Eileen Beamish
- Donal McDade
- Richard Buchanan



Open Forum



Approaches used elsewhere...

Frank McGlone
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Approaches used elsewhere...

- Simplified and consistent process
- Supplier/Purchaser training
- Consistent feedback with recommendations
- Independent appeals process
- Supplier focused payment model
- Supplier voice



Frank McGlone . Frank McGlone Consulting

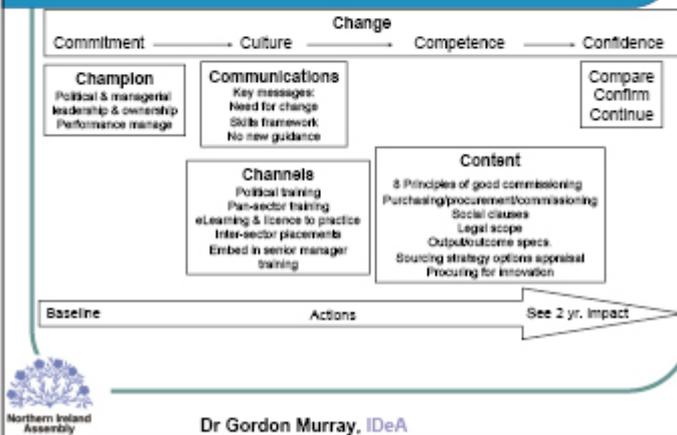
Approaches used elsewhere...

Dr Gordon Murray

IDeA



Building capacity to maximise the economic & social benefits from public procurement



Open Forum



Cast your vote...

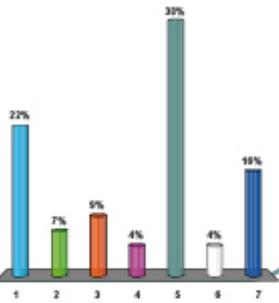


Your priorities...
Your preferences...



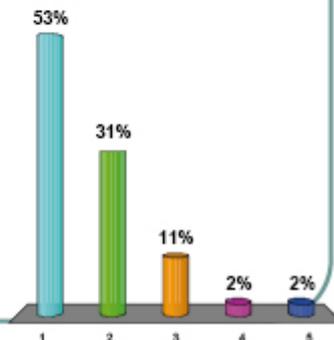
Which **ONE** of the following best describes your organisation?

1. SME
2. SME Umbrella body
3. SEE
4. SEE umbrella body
5. Government
6. Academic Institution
7. Other

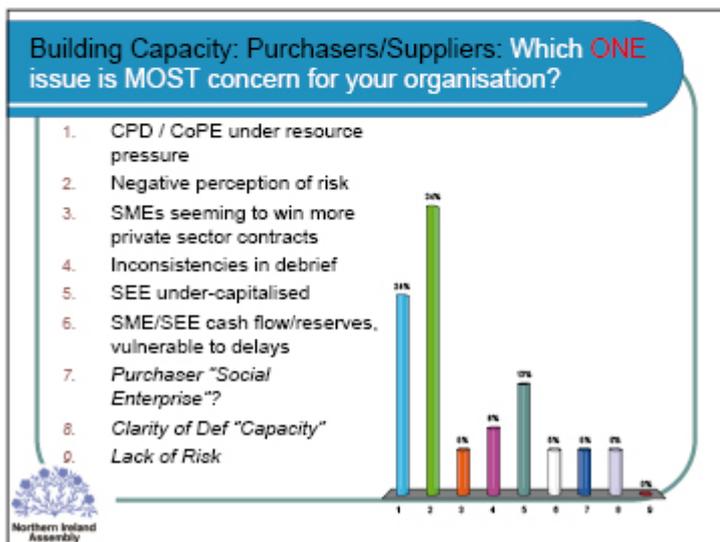
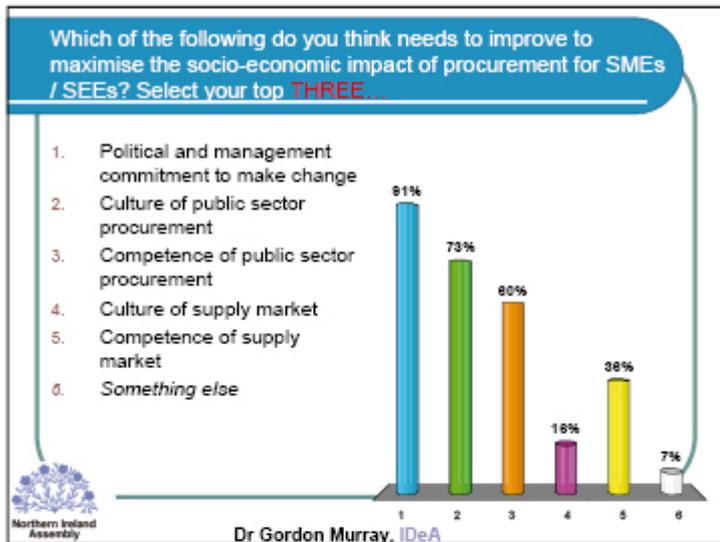


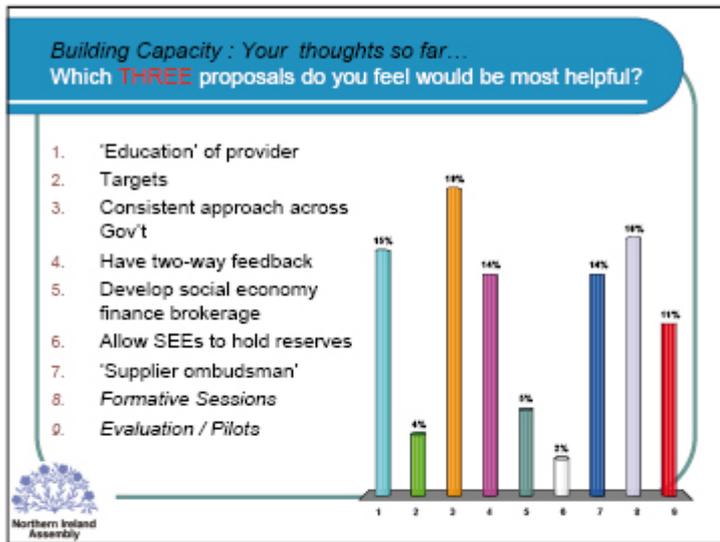
An independent appeals process would help build the trust of SME's/SEE's. **What is your opinion?**

1. Strongly Agree
2. Agree
3. Neutral
4. Disagree
5. Strongly Disagree



Frank McGlone , Frank McGlone Consulting





Your thoughts on today !



How satisfied or dissatisfied are you with the conference overall in terms of your...

Opportunity to **contribute** to the Committee inquiry generally

1. Very Satisfied
2. Satisfied
3. Neutral
4. Dissatisfied
5. Very Dissatisfied



How satisfied or dissatisfied are you with the conference overall in terms of your...

Opportunity to **suggest solutions** to the issues identified

1. Very Satisfied
2. Satisfied
3. Neutral
4. Dissatisfied
5. Very Dissatisfied



How satisfied or dissatisfied are you with the conference overall in terms of your...

Opportunity to **identify further issues** to be resolved

1. Very Satisfied
2. Satisfied
3. Neutral
4. Dissatisfied
5. Very Dissatisfied



How satisfied or dissatisfied are you with the conference overall in terms of your...

Opportunity to **learn** from others

1. Very Satisfied
2. Satisfied
3. Neutral
4. Dissatisfied
5. Very Dissatisfied



How helpful or unhelpful did you find each of the formats used...

Presentations

1. Very Helpful
2. Helpful
3. Neutral
4. Unhelpful
5. Very Unhelpful



How helpful or unhelpful did you find each of the formats used...

Contributions of Commentators

1. Very Helpful
2. Helpful
3. Neutral
4. Unhelpful
5. Very Unhelpful



How helpful or unhelpful did you find each of the formats used...

Break-out sessions

1. Very Helpful
2. Helpful
3. Neutral
4. Unhelpful
5. Very Unhelpful



How helpful or unhelpful did you find each of the formats used...

Open Forum

1. Very Helpful
2. Helpful
3. Neutral
4. Unhelpful
5. Very Unhelpful



How helpful or unhelpful did you find each of the formats used...

Digivoting

1. Very Helpful
2. Helpful
3. Neutral
4. Unhelpful
5. Very Unhelpful



Thank you!

Closing Remarks...

Jennifer McCann
Chairperson
NI Assembly
Committee for Finance & Personnel



Please ensure you return your handset!!

Have you returned me yet?



Professor Christopher McCrudden
Comment on Stakeholder Conference Report

*Lincoln College,
Oxford OX1 3DR*

Shane McAteer
Committee Clerk
Committee for Finance and Personnel
Northern Ireland Assembly
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Stormont, BELFAST
BT4 3XX

COMMITTEE FOR

F & P

10th January 2009

Dear Mr McAteer,

Stakeholder Conference Report: *Maximising the Economic and Social Benefits from Public Procurement in Northern Ireland*

You have asked me to provide a written submission to help inform the Committee's Inquiry into public procurement in Northern Ireland. In particular, you have asked me to comment on the Stakeholder Conference Report especially "the use of social clauses within public procurement contracts, including potential benefits of social clauses but also the potential disadvantages and possible hidden costs."

I have, in fact, addressed this issue in a recent book I have published, and rather than simply repeat what I said there, I have taken the liberty of enclosing the relevant (short) chapter on the potential advantages and disadvantages of the use of social considerations in public procurement.

May I make two brief additional points? You will see that although I have identified the theoretical pros and cons, in this chapter, I have argued that these pros and cons have relatively rarely been tested empirically. It is important, therefore, to continually test theoretical pros and cons against the actual effects.

Northern Ireland has been relatively fortunate in having sought to test the pros and cons empirically, in particular in the context of the effects of the pilot project on unemployment. As you will, no doubt, be aware this pilot was rigorously assessed and the results are now available on the CPD website. This provides strong evidence that the advantages may considerably outweigh the predicted disadvantages, if the policy is implemented sensitively.

My second point relates to the possible range of social policies that may be advanced. The Review into public procurement that led to the reformulation of public procurement policy by the Northern Ireland Executive, and on which I was privileged to serve, made clear that the use of public procurement to serve social policy must operate within the constraints of European Community law.

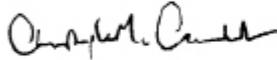
One of the major aims of EC law in this context is to prevent 'protectionism', i.e. the prevent attempts to protect local market operators from competition from outside the

local area. This has recently been reiterated by the European Court of Justice in the *Ruffert* case.

It is, in my view, not legally permissible to construct the social policy to be advanced so as to seek to benefit, or to have the effect of benefiting, a local area or a local population primarily. For example, the ECJ has long made it clear that encouraging the use of long term unemployed is permissible, but not the use of only local long term unemployed, because that is likely to be protectionist, favouring firms who are able to make use of long term unemployed from a particular area. Several of the comments in the Stakeholder Conference Report fail to appreciate the limits that EU law places on the use of procurement to advance social policy in this respect.

I hope these few comments are useful. I will, of course, be happy to help in any further way, if the Committee would find that useful.

Yours sincerely,



Christopher McCrudden, FBA
Professor of Human Rights Law, Oxford University



Buying Social Justice

*Equality, Government Procurement,
and Legal Change*

CHRISTOPHER McCRUDDEN

*Professor of Human Rights Law and Fellow of Lincoln College,
University of Oxford*

OXFORD
UNIVERSITY PRESS

Buying Social Justice

Buying Social Justice?

This part of the book has attempted to provide a basic introduction to some of the more salient background factors necessary for a better understanding of what follows in the remainder of the book. In chapter 2, we considered the roots of current equality-based procurement linkages in previous socio-economic or political goals that public procurement has been used to achieve from the early nineteenth century. In chapters 3 and 4, we examined respectively the equal status law and policy context, and then the international and EC public procurement law and policy context. These provide the vital contexts in which equality-based procurement linkages operate. We have seen that the use of linkages between public contracting and social regulation, what I termed 'buying social justice' in chapter 1 above, has been in the past a deeply controversial strategy, legally and politically. We have seen in chapter 2 that, historically, there have been real dangers in exploiting the clout of the state's power in this way. We have seen in chapter 4 how, increasingly, international and regional procurement reforms have addressed some of these problems. And yet for all its complexity and risks, we have also seen that the presence of the state in the market does present unique opportunities for it to influence market behaviour. Are sceptics of procurement linkages right to be so sceptical? Or is there a way of harnessing or exploiting the presence of the state in the market for social purposes without causing unacceptable political harms or detriment to the market as the primary means of generating wealth in society? Can the two be brought into alignment to achieve optimum economic, political, and social results? In this chapter, I want to present a relatively full preliminary exploration of the pros and cons of the use of procurement linkages to advance status equality, from an economic and political perspective initially.

I. Objections to Linkage

It is possible to identify seven broad arguments that suggest that linkages between procurement and social policies may be ill advised. These are based as much on my own experience as they are on the politics and economics literature. Each of these arguments has several aspects.

Irrelevance to the appropriate functions of purchasing

Here is an attempt to articulate the first argument. According to Miller, the only 'mission of the contracting agency . . . [is] to obtain what is needed, in both quantity and quality, at the time when it is needed, at a decent price, and under circumstances which are fair to both the Government and the contractor'.¹ Private contracting is subject to market disciplines to ensure that this is achieved. Government would truly be acting in the public interest if it were to act just like another commercial organization motivated by commercial considerations.² There should be no significant difference between what private actors do in contracting, and what governments do in contracting.³ The benefits of using contract are more likely to be dissipated when essentially regulatory policies creep in. Government should be restrained from acting in this way, in the public interest. The contractual relationship should be kept 'pure' and uncomplicated by social and political concerns. Decisions should be made on the basis of 'value for money', interpreted largely as lowest price. In public contracting, the market does not provide an effective discipline to achieve this, therefore there are legal and policy constraints that attempt to ape these market disciplines.

This approach to procurement is one that is seen not only as justified in its own terms, but also as one that is particularly suited to the new public sector management approach stressing the need for a less bureaucratic form of government, one that is revenue driven and competitive, and one that seeks to take a more commercial approach to government operations.⁴ In this form of government, the public sector manager should be encouraged to act as if he or she were a private sector manager. Procurement linkages, it is argued, cut in exactly the opposite direction and should therefore be resisted.

Costs of linkage

Here is the second argument. There are, it is said, extra financial costs that result from procurement linkages. Let us assume that equality linkages seek to distinguish 'good' buyers from 'bad' buyers, using 'good' and 'bad' loosely. Based on the analysis of procurement linkages in chapters 2 and 3 above, and anticipating the descriptions of national practice in subsequent chapters, we can identify at least four basic models of how equality issues are currently addressed in public procurement.

¹ AS Miller, 'Government Contracts and Social Control: A Preliminary Inquiry' (1955) 41 *Virginia Law Review* 27, 54.

² cf PM Risk, 'Federal Government Contract Clauses and Forms' (1954) 29 *GWLR* 125, 134 'the contract become[s] cluttered with impediments which are not encountered in commercial contracting'.

³ cf HR Van Cleave, Jr, 'The Use of Federal Procurement to Achieve National Goals' (1961) *Wisconsin Law Review* 566, describing such requirements as 'highly absurd' in the private business context.

⁴ P Trepte, *Regulating Procurement: Understanding the Ends and Means of Public Procurement Regulation* (OUP, 2004) 14–15.

In the first model, there is a prohibition on obtaining government contracts as a penalty for previous wrongdoing, or to prevent public bodies contracting with those who are currently failing to achieve a particular standard of behaviour relating to equality. Where this 'tenderer qualification' model is adopted, it is most likely that the tender (or general legislation) will specify that a person will be disqualified from tendering for the contract if they have been found to have failed to comply with anti-discrimination or equality requirements. The point of this use of procurement is, essentially, to add the deprivation of government contracts to the other penalties to which the contractor may be subject.

The second model focuses its attention on the stage *after* the contract has been awarded. It does not attempt to exclude potential contractors on the basis of their previous activities or current behaviour, as does the first model. Instead, it requires that whoever is awarded the contract must comply with certain conditions in carrying out the contract once it is awarded. In this second 'contract conditions' model, there is no attempt to build the ability of the contractor to comply with such conditions into the award of the contract. This model presents all contractors with the same boilerplate requirement that the contractor must sign up to. The simplest approach includes a straightforward non-discrimination clause as a contract condition.

The third model attempts to get tenderers to commit to equality norms and have their success in doing so taken into account in the *award* of the contract. The form in which this third 'award criteria' approach can be found in practice is where the public body takes conformity to certain equality issues into account as an award criterion. This approach differs enormously, however, between different programmes. In some, the approach taken is to establish a quota of contracts that is set aside for contractors of a particular type. In others there is a price preference for certain types of contractors. In others the approach taken is that the willingness or ability or past practice of the bidder is taken into account as a tie-break where otherwise equal tenders are in competition. (Here too, however, in some programmes the social criterion is one among many to be taken into account where tenders are equal; in others the social criterion is determinative.) In others, the procedure is to offer-back to preferred tenderers to allow them to match the lowest bid of their non-preferred competitors.

The fourth model arises where the tender lays down the *technical specifications* that must be met by successful contractors in a way that includes equality criteria. When combined with the award approach this may enable the most flexibility, combined with a clear constraint, where the specifications may be linked to the subject matter of the contract. One example of this 'technical specifications' model is where the specifications specify that computer equipment must conform to certain accessibility criteria.

Using the studies of international procurement economics as our guide,⁵ particularly the helpful analysis of Evenett, we can construct three types of effects that

⁵ These are usefully summarised in S) Evenett, 'Multilateral Disciplines and Government Procurement' in P English, BM Hoskman and A Motta (eds), *Development, Trade and the WTO* (WTO, 2002) 419-27.

may arise in using equality linkages. First, there are linkages (for example qualification criteria, set asides at the award stage) that directly or indirectly reduce the number of 'bad' bidders, sometimes referred to as 'entry discrimination'. Second, there are linkages that reduce price competition for 'good' bidders, for example giving price preferences for preferred bidders such as black-owned corporations at the award stage (termed 'price discrimination'). Third, there are types of linkages that directly or indirectly increase the cost of bidding for 'bad' bidders, such as using the contract conditions model to require those awarded the contract to introduce equality policies subsequently ('cost discrimination').

We are interested in the effect of the three types of 'discrimination' against 'bad bidders'. There are various types of effects that we should be interested in: what effect do these linkages have in increasing the number of 'good' firms and reducing the number of 'bad' firms in particular procurements, or in particular markets? But we should also be interested in what the effect on national welfare is more broadly. Based on economic studies of discrimination against foreign buyers in auction-type procurements, we might predict several effects. First, 'entry discrimination' approaches are likely, according to Evenett, to 'reduce the competition faced by each [good] bidder, which then all submit higher bids. The government then finds itself choosing from a range of higher bids, and the overall cost of the contract rises.'⁶ Second, 'cost discrimination' measures similarly increase the costs of one group of bidders, raising its bid, and the other bidders 'facing less competition, raise their bids, too. Again government's procurement costs rise',⁷ although less than in the case of entry discrimination where there are outright prohibitions on certain bidders participating. Third, 'price discrimination' does not necessarily lead to higher procurement costs because 'bad' firms may 'make their bids knowing that a price preference will be used to inflate those bids. They respond to high price preferences by lowering their bids and reducing their profit margins. If the probability of a [bad] firm being the low bidder is high, raising price preferences might actually reduce procurement costs.'⁸ However, cost reductions are likely to be small, and if the government chooses the 'wrong' rate of price preference, these cost reductions become cost increases. In addition, the profitability of the 'good' firms is considerably enhanced.

Procurement linkages that advance status equality will, if these predictions are accurate, by increasing the costs of procurement, indirectly lead to a smaller economic pie, and a consequential reduction in what can be redistributed through social welfare measures.⁹ To the extent that the social requirement also discriminates against foreign contractors, then the cost implications may be even greater. Higher costs for contractors may also mean higher prices for some consumers. Procurement linkage could result in the loss of jobs. Such measures introduce an additional level of uncertainty for contractors and this will affect investment decisions adversely.

⁶ *ibid.* 522. ⁷ *ibid.* ⁸ *ibid.*

⁹ A key objection which Epstein raises, see R. Epstein, *Forbidden Grounds: The Case Against Employment Discrimination Laws* (Harvard, 1992) 435-6.

Linkage makes it harder to encourage growth and, in the absence of new jobs, it is more difficult to provide social justice. The policy implications are clear. It is better to keep the two policy areas (equality and procurement) separate, otherwise public procurement will be less effective in doing what it should, which is ensuring that the goods necessary for government are purchased at the best price.¹⁰

Fairness and discrimination arguments

Here is the third argument against procurement linkages. A requirement that contractors should deliver social policies along with the goods or services they were primarily contracted to deliver is unfair to those who will bear the burdens. Linkages may disadvantage contractors dependent on public contracts who are in competition with others not dependent on government contracts. To this extent, procurement linkages are unfair because they inflict a particular set of social costs on only one group. The more complex and costly the requirements that linkages impose, the more they will constitute barriers to entry which may reduce the number of competitors, contributing to greater concentration in carrying out public contracting.¹¹ It is the larger companies that are primarily able to satisfy complex social requirements.

Once we include the global effects of procurement linkages that make access to government contracts more difficult, then the risks of adverse distributional effects increase considerably. Howse and Langille have made the point that

... the integration of the world economy ... has the potential, at least, to provide developing countries with access to markets and capital, which are the required preconditions to economic and social progress. From the point of view of global equity it is important that open trade and investment rules be directed to these nations. At the same time it is in the self interest of workers and firms in the developed world to resist this competition and potential exit of capital and jobs.¹²

Procurement linkages facilitate this type of protectionist behaviour, thus risking a conflict with principles of global, as well as domestic, equity.

Direct regulation preferable to procurement linkages

Underlying many of the suspicions about linkages between social policies and public procurement is the view that such uses of public procurement are, quite simply, unnecessary. This is the fourth argument supporting scepticism. If government

¹⁰ Riik (n 2 above) 133.

¹¹ See D Biggar, Background Note, in 'Procurement Markets' (1999) 1(4) OECD Journal of Competition Law and Policy 6, 14.

¹² R Howse and B Langille, with J Burda, 'The World Trade Organization and Labour Rights: Man Bites Dog' in VA Leary and D Warner (eds), *Social Issues, Globalisation and International Institutions: Labour Rights and the EU, ILO, OECD and WTO* (Brill Academic, 2005) 165.

believes that one practice is not acceptable, or that another is desirable, then it should act directly rather than through procurement. Direct legislation, for example, and not the use of indirect financial incentives or sanctions that have unacceptable or unpredictable distorting effects, are seen as the best way of enforcing required norms without unacceptable side-effects. If procurement linkages are unnecessary, then the suspicion grows there is a less benign explanation of such linkages.

So far, we have identified scepticism regarding linkage between equality and procurement as arising primarily from the procurement side of the relationship. However, some might see such involvement as problematic from the social policy perspective also; linkage may be a poor way to deliver the social policy desired. Here is one way of articulating the argument. General social policy problems cannot be resolved through the medium of public procurement because, as we have seen, only some sectors of the economy, which happen to be particularly dependent on government contracts and can therefore be subjected to particular burdens, will be affected. The desired influence can only be achieved where the state is a major customer. The desired objective can therefore only be achieved patchily using public sector contracts as an instrument. This may contribute to aggravating what Maupain has called the 'dualization'¹³ of working conditions, for example improving the lot of only those fortunate enough to be employed under government contracts. If the government believes that employers should adopt certain forms of practice, it should make this a legislative requirement for all employers. Direct legislation, and not the use of discretionary financial incentives or sanctions, is the proper way of indicating the desired form of action. Why should procurement be used as the policy tool for the delivery of the social policy preferred? Other regulatory tools are often available, including transfer payments directly to the beneficiary group, for example.

Regulatory capture

Here is the fifth argument. Linkage, to be successful, essentially depends on a benign theory of regulation, a public interest theory. But an alternative (less benign) regulatory theory is more convincing, based on public choice. In the latter theory, government is not thought to be operating in the public interest, but rather in the interest of powerful groups that put pressure on government to act in their narrow sectional self-interest, or in the interest of politicians. The discretion and absence of transparency that linkage brings with it contributes to the risk that those awarding the contract will succumb to corruption, vote-buying, or protectionist pressures. Consumers and taxpayers who would otherwise benefit from decreased costs and increased efficiency are poorly organized and ineffective watchdogs of

¹³ F. Maupain, 'Is the ILO effective in Upholding Workers' Rights? Reflections on the Myanmar Experience', in P. Alston (ed.), *Labour Rights as Human Rights* (OUP, 2005) 139.

the public interest, whereas those who gain from procurement linkages are likely to be well organized.¹⁴

Public choice theories identify an important feature of government regulation. McChesney has identified the power of regulation to 'create benefits that were unavailable other than through politics, or were more cheaply available through politics'.¹⁵ These benefits are termed 'rents'. Government's ability, through procurement linkages, to restrict entry into markets 'can often perform rent-creating functions',¹⁶ in ways unavailable to private parties. Where rents are created or maintained through 'the mechanism of law, including bureaucratic administration of law' they will be even more desirable.¹⁷ The ability to legislate by establishing these rents makes them more durable and therefore more valuable than private sector rents.

Some procurement linkages can be seen as creating rents for those groups that have persuaded politicians to favour them. Government procurement, then, is a prime site for rent-seeking behaviour by people who 'hardly care about its overall welfare-economic implications as long as they gain personally'.¹⁸ The benefits (rents) that result may be in the form of greater financial profits, or simply in the increased political clout that will accrue to an NGO which is seen to have lobbied successfully for its own constituency. Consumers, taxpayers, or other special interest groups may pay the losses. This basic model has been extended to predict that politicians may themselves benefit (whether financially or in terms of votes) not only by creating such rents that benefit particular groups, but even by threatening to regulate and then being 'paid' for *not* doing so (so called 'rent-extraction').¹⁹ All in all, public procurement linkages seem tailor made for extensive rent-seeking, rent creation, and rent-extraction. They benefit politically organized groups at the cost of politically unorganized groups.²⁰

Good governance objections

Here is the sixth argument. One of the features of procurement markets, as Trepte has argued,²¹ is that principal-agent problems arise to a significant extent. The government (the principal) relies on purchasing officers (the agent) to ensure that the government's procurement policy is put into effect. This has often given rise to

¹⁴ This argument is derived from J.-J. Laffont and J. Tirole, *A Theory of Incentives in Procurement and Regulation* (MIT, 1993) 9.

¹⁵ FS McChesney, *Money for Nothing: Politicians, Rent Extraction, and Political Extortion* (Harvard University Press, 1997) 11.

¹⁷ *ibid.* 13.

¹⁸ *ibid.*

¹⁹ *ibid.* 19.

¹⁶ *ibid.* 11.

²⁰ Different national jurisdictions have sought legal methods to restrict rent extraction. In the US, this has taken the form of the doctrine of unconstitutional conditions under which the government may not selectively threaten to deny certain privileges (licences, for example) in order to extract benefits from others, see *Nollan v California Coastal Commission* 483 US 825 (1987), and see generally R. Epstein, *Regulating with the State* (Princeton University Press, 1993).

²¹ Trepte, *Regulating* (n 4 above) 13.

a complex web of regulation to ensure that the agent does what the principal wants. The process of government purchasing is, as Miller has observed, 'a complex, often tediously detailed operation'.²² The more policies extraneous to the main purpose of the contract are taken into account, the more the process of awarding the public sector contract will have to become bureaucratized in order to deal with this problem. All of this tends to impede the procurement process and goes against the goal of trying to decrease bureaucratic constraints on business. 'To some extent', says Miller, 'delays in procurement occur as a result of these non-buying requirements'.²³ They place the 'burden of insuring adherence to their terms on Government personnel not trained to enforce statutes, and whose job it is to do something entirely unrelated to law enforcement'.²⁴

The use of linkage to achieve some social policies may also result in overwhelming pressure to adopt more and more extraneous social policy requirements, overburdening the procurement system, and thus defeating the primary purpose of procurement, which is to obtain the best goods for the lowest price.²⁵ The greater the number of social policy objectives incorporated into the process by which tenders are awarded, the more the process is likely to generate requirements that are contradictory, or at least in tension with each other. The larger the number of extraneous criteria taken into account, the less easy it is to predict the decision made on the award of a contract, and the more the problem arises of how to balance all of those considerations so that all of these legitimate considerations can be taken into account effectively. In the absence of government as a whole setting priorities, this will be left to the particular procuring entity, or (even worse) to the individual procurement officer. If social policy objectives are incorporated into the process by which tenders are awarded, the process may thus no longer be transparent. The larger the number of extraneous criteria which are taken into account, the less easy it is to predict the decision made on the award of a tender.

Abuse of power

Here is a seventh reason for scepticism about procurement linkages. Procurement is more likely to be harnessed by a public body to further a social goal in situations where that public body's ability to use other tools to further the social policy is limited for political, constitutional, or legal reasons. This illustrates the reason why linkage has been particularly popular in situations, for example in the United States, where, as we shall see in chapter 6 below, civil rights legislation proved difficult to achieve but the use of procurement was possible by executive action. Where different levels of government adopt different values on particular issues, or significantly differ on the means of delivering these values, then procurement is also likely to be used as a tool for the implementation of the contested value by the

²² Miller (n 1 above) 54. ²³ *ibid.* ²⁴ *ibid.* 55.

²⁵ P.F. Hanm, 'Government by Procurement' *The Business Lawyer*, July 1963, 997.

'lower' tier of government, because it may be one of the relatively few ways in which the lower tier can exercise regulatory power.

As a matter of good governance, however, sceptics see something rather distasteful in using a mechanism that seems so closely associated with evading democratic and constitutional controls. However valid the purpose, evading these controls by using linkage is in principle wrong and should not be encouraged. To the extent that there is a constitutional division of power within a country, between local authorities and central government, or between federal and state government, then evasion of this division of responsibilities by using procurement is unacceptable.

II. Arguments in Favour of Linkage

Can a positive theoretical case be made for procurement linkages? I believe, on balance, that it can. Again, these arguments derive from the theoretical literature and from my own experience.

Inadequacy of other methods of compliance with equality legislation

We saw in chapter 3 above that there is a growing concern in many countries that traditional mechanisms of securing status equality are not adequate. Orthodox legal methods of combating discrimination in employment, for example, have proved to be of limited effectiveness. The purpose of using linkage is, then, to bring an influence to bear indirectly on the exercise of business decisions. Its power lies in the firm's economic interest in obtaining orders from public authorities and linkage seeks to use this economic interest for the promotion of social policy objectives, usually in addition to the use of other regulatory approaches.²⁶

Procurement linkages have been used as an additional mechanism of enforcement to secure both individual justice and group justice aims. Some types of procurement linkage are more associated with one, and some more with the other. Thus, for example, tender qualification approaches are more often associated with individual justice models, and set-asides or price preferences are more associated with jurisdictions that have adopted a group justice model. Where procurement linkages are used in the context of securing individual justice, the dominant emphasis of linkage is on a more traditional *prohibitory* approach to anti-discrimination enforcement. In the context of group justice approaches, procurement linkages often provide a more *incentive-based* method of anti-discrimination law enforcement.

The use of procurement is not usually the sole or even the primary method adopted to enforce equality. More frequently, it is but one of several other methods of enforcement that mutually reinforce each other. 'Contract compliance' measures

²⁶ L. Opreloh, 'Rechtsgutachten zu Fragen der Frauenförderung im Rahmen der öffentlichen Mittelvergabe' (June 1991).

of the type made popular in the United States are combined with agency-type regulation and individual litigation to produce a raft of incentives for compliance with employment equality laws. When more orthodox command and control regulation seems of limited effectiveness, it is unsurprising, perhaps, that states resort to public procurement as one weapon in their armoury. The explanation for the popularity of linkage lies in part, then, in the comparative strength of procurement and, in part, in the comparative weakness of other regulatory mechanisms. The greater the public perception of a *compliance gap* between the aspirations towards equality incorporated in public policy, and its delivery in practice, the more likely it is that equality will be linked to public procurement.

Mainstreaming requires linkage

Second, the argument that linkage is unnecessary because other instruments are available runs directly counter to the recent major development in equality regulation discussed in chapter 3 above, ie that government and public bodies are increasingly required to weave equality into the fabric of decision-making across *all spheres of government*—in short, to ‘mainstream’ equality issues in public policy.²⁷ We have seen that underlying these attempts at mainstreaming is a common perception: that unless special attention is paid to the equality issue within government, it will become too easily submerged in the day-to-day concerns of policy makers who do not view that particular policy preference as central to their concerns. The increasing adoption of ‘mainstreaming’ equality issues into government policy increases the likelihood that public procurement becomes subject to equality disciplines. The argument is simply put: one area of government policy (procurement) should not cut across, and should where possible assist, the pursuit of other government policies (equality). An organization can hardly be said to be mainstreaming equality if it neglects to do so in its procurement functions, often leading to the adoption of procurement linkages.

Limits of a ‘commercial’ model of government contracting

We have seen that those who are sceptical of procurement linkages quite frequently assert the importance of ensuring that a ‘commercial’ approach should be taken by government in its contracting. There are several assumptions in this argument that those in favour of linkage challenge.

To begin with, it is clear that in some respects the difference between private contracting and public contracting has narrowed considerably regarding the use of linkages. Part of the corporate social responsibility (CSR) agenda is, as we shall see subsequently, to urge private firms to engage with their contractors in such a

²⁷ C McCrudden, *Mainstreaming Fairness* (CAJ, 1996); C McCrudden, *Benchmarks for Change: Mainstreaming Fairness in the Governance of Northern Ireland* (CAJ, 1998).

way as to gain the greatest possible social benefits, whether in terms of employment conditions or environmental benefits. We shall see examples in chapter 12 below of *private* firms aping *government's* incorporation of social issues in procurement. The idea has been widely promoted by government, indeed, that there are 'commercial' benefits to be gained from CSR. All this undermines the argument that following private sector procurement practices requires linkages to be avoided.

More importantly, the assumption of commonalities between public and private contracting is challenged at a more fundamental level. Selznick has made the perceptive point that 'governmental authority has an irreducibly comprehensive character. That is so because government (unlike the private sector) has inherent responsibility, and at least a minimum of implied authority', to protect the welfare of its citizens.²⁸

Applied to government contracting, this implies that governments award public contracts on behalf of the communities that they serve. It is not unreasonable that these communities expect that public contracts should go to contractors who do not violate the basic norms of that community. The award of public contracts is not simply an economic activity by the administration, in which the administration can consider itself simply as equivalent to a private sector organization. This makes it difficult for a public purchaser to appear as an entirely neutral actor in the market place. Public purchasing activity can only to a limited extent be a separate area, one in which social criteria are ignored that are considered politically self-evident in other areas of state activity. It is unacceptable that government should allow those acting in its place to behave in ways in which government itself would not wish or be permitted to act, and in this context it seems not only permissible but an act of good government that social and political considerations should enter into the award of government contracts. Those acting at the behest of government, in its stead, and with its financing should at least uphold the norms that government would be held to, acting directly.²⁹ One important justification for linkages, then, relates to their signalling effect on the public. As Justice Brandeis said in *Olmstead v United States*: 'For good or ill, [government] teaches the whole people by its example.'³⁰

Assisting the internalization of externalities

Such arguments are controversial, of course. Can arguments be articulated that are based less on any moral function for government and more on the economics of procurement? Two different sources of inequality are in issue: status inequality caused directly or indirectly by the government itself, and status inequality caused directly or indirectly by the private sector. Procurement linkages have a justified role to play in

²⁸ P. Selznick, *Laws, Society and Industrial Justice* (Russell Sage Foundation, 1969) 61.

²⁹ See in general B.E.R. Smith (ed.), *The New Political Economy: The Public Use of the Private Sector* (Macmillan, 1975).

³⁰ *Olmstead v United States*, 277 US 438, 485 (1928) (in dissent).

dealing with each of these sources of inequality. For the moment, I want to concentrate on the former issue: status inequality caused directly or indirectly by government itself. Sceptics of linkage appear to assume that the function of contracting is largely, from the point of view of status equality, a neutral activity. With the growth of governmental purchasing throughout the developed world, there have been many voices that have, however, seen the expansion of the use of public procurement as being far from neutral in its effects.³¹ This is the starting point for a fourth positive argument for linkage.

During the 1980s and 1990s, extensive changes occurred in the delivery of public services, in part under pressures from global economic developments. This involved a combination of privatization, and contracting-out. The contractual method came to be seen by some as an important instrument of deregulation. It was argued by some, particularly trade unions, that procuring services from the private sector had distributional consequences for employees and consumers that needed to be taken into account in the initial decision on whether or not to use procurement. An important example of this was the proposal to contract out the delivery of services that had previously been delivered by government itself through its own directly employed workforce to private sector service deliverers employing workers not in public employment. It was argued that there was a significantly adverse effect on status equality in using procurement as the chosen method of delivery where wage rates in the private sector were significantly lower than in the public sector, and where those employed on procurement contracts were more likely to be women and ethnic minorities.

We can put this in more 'economic' language. One of the traditional justifications for government intervention in markets is the need to address market failures. One traditional category of market failure is where there are externalities. These arise when one person's production or consumption decision affects another person's production or consumption decision, without that effect being reflected in the market price. The spill over may be either to the benefit or detriment of the other person. The crucial point is that in neither case is the price related to the spill over: the person benefiting does not pay for the benefit; the person damaged is not compensated through a lower price. The classic externality is pollution from a factory affecting a neighbouring village. The cost of the pollution is not reflected in the price of the good sold by the factory. The role of government regulation is to require that the cost be internalized by the factory owner, for example by taxing the factory for polluting, or requiring that new technology be introduced to stop the pollution from occurring.

If the use of government contracting is more likely to produce reductions in status equality than other methods of delivering public services, procurement linkage may operate as a method of government intervention to internalize unacceptable externalities.³² From this point of view, they are a means of assigning obligations to those

³¹ See eg. J D Hanrahan, *Government by Contract* (Norton, 1983) 21–6.

³² Trepte, *Regulating* [n 4 above] 9–10 on externalities in procurement regulation.

best able to perform them.³³ Where procurement itself is thought likely to be the cause of status inequality or discrimination, the linkage between procurement and social policy is justified to limit or control the perceived damage.³⁴ The argument that this is not only justified but required is strengthened when one takes into account that the move to procurement may lead to a diminution of accountability because such contracts are often beyond more traditional administrative law controls, and are often negotiated in secret, in the absence of democratic political controls. Thus the role of procurement linkages in some contexts, is to reinsert what might be thought of as public values into a contractual context that would otherwise ignore or underestimate them.

Sustaining and increasing competition

What of the cost arguments against procurement linkages? They appear to underestimate significantly the costs of *not* intervening. To the extent that inequality results in reduced competition and, possibly, increased costs in any particular contract, there is a clear narrowly financial justification for government intervening to require, for example, non-discrimination in public procurement markets where this would result in lower costs to government in delivering that contract. There is, however, a broader economic argument for such linkages. A fifth argument in favour of linkage derives from the belief that exclusion of some from the market is damaging to everyone in that it deprives society of the benefits that would derive from their involvement and the greater competition that this would bring. Government regulation is necessary to ensure that significant groups in society (women, minorities) are included in important market activities in order for there to be an effective market in the first place.³⁵ Certain types of procurement linkages, such as set-asides or bidding preferences for minority-owned businesses, may be justified, therefore, on the basis that they have a 'market-creating function' which may reduce the cost of the procurement to the government by increasing the competition among bidders.³⁶

Ian Ayres and Frederick Vars have developed arguments in support of the broader use of procurement linkages. Their argument is that the government has a role in addressing status discrimination by private actors where this has the effect of

³³ cf M Seidenfeld, 'An Apology for Administrative Law in "The Contracting State"' (2000) 28 Florida University Law Review 215.

³⁴ See eg in Scotland, STUC/Scottish Executive, PPP Employment Protocol, to be found at <http://www.union-scotland.org.uk/briefings/protocolapp1.html>.

³⁵ S Deakin, 'Social Rights in a Globalized Economy' in P Alston (ed), *Labour Rights as Human Rights* (OUP, 2005) 55.

³⁶ Ayres and Crampton have provided some empirical support for this, based on a case study of a 1994 auction of licences by the Federal Communications Commission. I Ayres and P Crampton, 'How Affirmative Action at the FCC Auctions Decreased the Deficit' in I Ayres (ed), *Persuasive Prejudice? Unconventional Evidence of Race and Gender Discrimination* (Chicago University Press, 2001) 315, 316.

reducing the number of minority firms that are able to contract with government, using its procurement power to address the discrimination in the private market by purchasing 'as much from minority firms as it would but for private discrimination'.³⁷ Government purchasing can be used, then, 'to correct shortfalls in government purchasing caused by private discrimination'.³⁸ Going further still, however, they argue that it is justified 'to correct shortfalls in private purchasing caused by private discrimination' in an even more extensive way.³⁹ If analysis suggests that minority businesses are selling less [in a particular market] than one would expect [without] discrimination, then the government may ... increase its purchases of that product from minority businesses to offset the private discrimination'.⁴⁰

Supplying the 'public good' of equality

As we have seen, one of the traditional justifications for intervention by government in markets is the idea of market failure and, as argued above, a classic example of this relates to externalities. Market failure has also been identified in the supply of so-called 'public' goods.⁴¹ This is the basis for a sixth argument in favour of linkages.

Public goods are those that 'even if consumed by one person can still be consumed by other people',⁴² such as clean air. Since everyone can benefit if they are available, then it is in no one's interest to buy them, if they can simply free ride on someone else's purchase. Since the providers of the public good will not profit from the consumption of the good by those who consume it, public goods will not be provided through the market. The solution is for the government to intervene and establish a mechanism whereby the public good is supplied. We can conceptualize status equality as a public good that will not be adequately supplied in the absence of government intervention. Assuming that providing equality would cost more than the benefits it would produce to the individual firm, but that others in that society want more equality, then the market itself will not produce equality sufficient to satisfy that demand since everyone could consume it without paying for it, or it would be prohibitively expensive for any single individual to do so—a classic public good.

Procurement linkages are sometimes attempts by government to ensure the supply of this public good by 'buying' it from the employer, but on behalf of the public. As Trepte put it: 'the government is to be seen as disposing of the financial means ... as well as the material means and facilities necessary to render the service for the benefit of society as a whole and for which no private market exists or could exist at a reasonable price'.⁴³ The volume of public procurement and the limits

³⁷ J Ayres and FE Van, 'When Does Private Discrimination Justify Public Affirmative Action?' (1998) 98 *Columbia Law Review* 1577, 1586. ³⁸ *ibid* 1587.

³⁹ *ibid*.

⁴⁰ *ibid*. ⁴¹ Trepte, *Regulating* (n 4 above) 9–10.

⁴² *ibid* 10.

⁴³ *ibid* 11.

placed upon direct social intervention by budgetary stringency make this an attractive area for buying these public goods. The greater the emphasis placed on the importance of the efficient use of tax expenditure, the more likely that the argument will be made that if it is possible to use procurement to deliver on necessary social policies, by piggybacking on other purchases, the more efficient that will be. A European Parliamentary Committee, for example, argued that 'the limits placed upon direct social expenditure by budgetary stringency make (procurement) an attractive area for the promotion of socially desirable outcomes'.⁴⁴

III. Theoretical Issues and Legal Form

Achieving social change through regulation is immensely complex and uncertain. There is no consensus on what makes for an effective regulatory scheme. The wise policy maker, therefore, will not want to put all her eggs in one basket, and will want instead to keep a range of tools available with which to attempt to achieve the desired changes in behaviour. Achieving the benefits of the use of a particular regulatory instrument, whilst avoiding the pitfalls, is a complex policy challenge. What I have attempted in this chapter is to bring together largely theoretical arguments both for and against linking procurement with the goal of increased status equality. What emerges is a complex picture of apparently competing considerations that seem to be starkly at odds with each other. One of the aims of the remainder of the book is to describe in some detail how countries have attempted to deal with these issues, and assess the limited experience that we now have worldwide on the development and effects of procurement linkage, including the successes of such engagement, as well as its limits.

I have said nothing so far about the legal form in which procurement linkages are best presented. Nor have I said much about the legal limits on the use of linkages. A major argument against linkages is that they are frequently of questionable *legality*, whether under domestic law or under supranational legal obligations that states have accepted. Another task in the book is to engage in a detailed analysis of the relevant provisions in WTO, European, and domestic law. What emerges is, I think, a fascinating story in which law becomes a site for the working out of many of the arguments that I have presented as theoretical issues. In my experience, there are profound political and economic conflicts underlying the legal debates, and it is these that I wanted to identify in this chapter. This chapter, indeed the whole of Part I of this book, should be seen as an attempt to explore the deeper underpinnings of the policy debate than has been attempted in the past. Understanding these underpinnings, I argue, will help us to understand the way the law has evolved and should be interpreted.

⁴⁴ European Parliament, Committee on Employment and Social Affairs, Response to the Green Paper on Procurement Reform.

Dr Aris Georgopoulos - Comment on Stakeholder Conference Report

Maximising Economic and Social Benefits from
Public Procurement
Conference for Northern Ireland Small Medium Enterprises (SME)
and Social Economy Enterprises (SEE)

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The present contribution deals with those points that emerged at the stakeholders' conference and according to the author are of legal significance. The contribution follows the structure of the conference's "summary report".

Comments on Points Raised:

A. Stream 1: Framework Agreements and Contracts

- Framework agreements are indeed very useful and potentially beneficial for SMEs especially under the format of multi-supplier frameworks. Multi-supplier frameworks involve the conclusion of a framework agreement between one (or more) contracting authority and more than one provider. However it should be underlined that the mechanism of framework agreements is not a panacea and should be used for those kinds of contracts that due to their nature are better suited to benefit from the frameworks arrangement: for example contracts aimed to satisfy recurring needs for supplies and/or services etc.
- The proposal for having "regional frameworks" as a means to increase opportunities for SMEs (an unsuccessful SME in a procurement being able to bid for other similar opportunities in a different region in Northern Ireland) is an interesting one. From a legal perspective this could be achieved through the use of the "Central Purchasing Body" mechanism. However it should be noted that although the "regionalisation" of the use of frameworks through such bodies may lead to better value for money (better unit prices due to higher volumes) it may also attract more cross-border interest because of the higher financial opportunities involved thus increasing the competition for local SMEs.
- The EU Procurement Rules (Art. 9 (5) (a) Directive 2004/18/EC and Reg. 8 (12) Public Contracts Regulations 2006) allow the break up of contracts under certain conditions. In fact the rationale of these provisions is to encourage contracting authorities to provide opportunities for small and medium-sized enterprises by dividing contracts into lots. This exemption is based on the following conditions:

a. the value of each of the (exempted) works contract is less than €1,000,000 (£810,580), or for supplies or services €80 0000 (£64,846),

b. the exempted contract (or contracts) worth up to 20% of the lots' total value.

Here it is important to note that the EU procurement rules state clearly that the subdivision of contracts to lots should not be done with the intention of avoiding the application of the public procurement rules (See Article 9 (3) of Directive 2004/18/EC and Reg. 8 (19) Public Contracts Regulations 2006). This should be stated clearly in the final report because otherwise unwanted messages may be sent both to contracting authorities and the European Commission.^[1]

- The suggestion for a proportionate consideration of the required level for pre-selection criteria is very important. It should be remembered that these requirements are there in order to ensure a certain level of professionalism and reliability of the providers. In fact

according to the principle of proportionality contracting authorities are required to set these pre-qualification requirements at levels that are not higher than necessary (i.e they should not be unduly burdensome) for guaranteeing the reliability of the providers. This is also proposed in the European Commission's Code of best practices for facilitating SMEs access in public procurement contracts.^[2]

- With regard to the inclusion of environmental criteria such as "carbon footprint" it can be said that under the current procurement rules this is allowed.
- The suggestion for further examination of the full supply chain in order to ascertain whether SMEs and SEEs are involved in the delivery of public procurement contracts as subcontractors requires further clarification. It is not clear to the author whether this refers to:

a) a proposal for the competent departments of the Northern Ireland Executive to conduct an ex post examination (by a means of a study perhaps) in order to ascertain the general level of involvement of SMEs and SEEs as subcontractors in public procurement carried out by contracting authorities in Northern Ireland; or

b) a suggestion for including in the screening/evaluation process of specific procurement contracts (for instance as award sub-criterion or a condition of performance of the contract) the involvement of SMEs and/or SEEs as subcontractors.

It can be said that there is nothing in the procurement rules to prevent (a). In fact this seems an excellent idea. With regard to (b) however it is important remember the following:

First of all contract award sub-criteria have to be linked with the subject matter of the contract and they should observe the principle of equal treatment. Thus if such an award criterion of contract condition is imposed it should take into account the involvement of all SMEs and/or SEEs irrespective of their nationality.

B. Stream 2: Opportunities to Bid

- The issue of "below threshold" contracts is of fundamental importance for SMEs because these contracts fit nicely with the capabilities of smaller SMEs and start-ups. The advantage of the "below threshold" contracts is that because of their smaller value they do not necessarily attract the interest of foreign competitors. For this reason an improved mechanism of dissemination of "below threshold" contract opportunities (the proposal for a single portal is very positive) would be beneficial for SMEs. It is important to note at this point nevertheless that despite the fact that these contracts do not fall within the field of application of the public procurement directive and the national implementing regulations, contracting authorities may be still subject to certain obligations (including minimum publicity obligations, equal treatment) that arise directly from the EC Treaty (See the European Court of Justice case law^[3] in this regard).

C. Stream 3: Tendering and Delivering

- Regarding the criticism of the value for money test it should be remembered that this is meant to bring some flexibility by allowing contracting authorities to consider other important factors apart from price in the award of procurement contracts. It is also true that contracts that are not too complex could be awarded on the basis of the lowest price alone. Nevertheless it seems that the European Legislator left the decision for the appropriate award criterion (for contracts above the applicable thresholds) namely the "lowest price" or the "most economically advantageous tender" to each contracting

authority. Thus a national provision that limits this choice of contracting authorities by establishing a "blanket" application of price as the only available award criterion for certain kinds of contracts could raise questions of compatibility with the European public procurement rules. Nevertheless contracting authorities could be encouraged to adopt the "lowest price" as award criterion for contracts that are not too complex. Lastly it is important to note that when contracting authorities use the "most economically advantageous tender" as the award criterion they should be stipulate clearly and in advance all the relevant sub-criteria/factors and their relative value.

- With regard to taking into account non-monetary benefits it should be mentioned that the procurement rules allow for the use of "social" and "environmental" considerations as award sub-criteria under the proviso that these relate to the subject matter of the contract. More importantly, especially with regard to social criteria/considerations, any national measures or practices must not be discriminatory. This is the settled case law of the European Court of Justice.^[4] Even for public procurement contracts that are not covered by the European public procurement rules (for example below threshold contracts and service concessions contracts) national rules cannot introduce discriminatory measures unless they are justified by one of the available grounds mentioned in the Treaty (for example see grounds mentioned in Article 30 EC) and they are proportionate (achieve their aim -for example protection of the life of humans- in the least intrusive manner for the internal market.^[5] With regard to national measures that are equally applicable on domestic and foreign suppliers but are de facto discriminatory the ECJ has ruled that such measures could be justified –apart from relying on specific grounds stipulated in the Treaty- if they try to achieve legitimate aims of general interest. Nevertheless the ECJ also ruled that these aims of general interest cannot be economic in nature. The question that arises in our case is whether the promotion of SMEs is an aim of general interest that is economic in nature. A strict reading of the case law of the European Court of Justice would reach this conclusion. Nevertheless this narrow approach has been criticized in the literature^[6] and it could be argued that is outdated. However even if a more progressive interpretation that acknowledges the beneficial social impact that can stem from the support of SMEs –especially in the current economic climate- is accepted, any national measures trying to support SMEs through procurement would still have to pass the proportionality test.

[1] The bullet points in the section "key suggestions made" that stipulate: a)"Breaking into lots should be seen as the first recourse of any procurement tender" and b)"Break up large contracts into smaller contracts which would be more appropriate for local SMEs" may be misread by contracting authorities as an invitation to devise ways to evade the application of public procurement rules. A reminder or a clarification of the limits of this option (for example with the inclusion of the phrase "as far as permitted under the public procurement legislation") would be helpful.

[2] "European Code of Best Practices Facilitating Access by SMEs to Public Procurement Contracts", Commission Staff Working Document, SEC (2008) 2193 available online at: http://ec.europa.eu/internal_market/publicprocurement/docs/sme_code_of_best_practices_en.pdf

[3] Case C-324/98, *Telaustria Verlags GmbH and Telefonadress GmbH v Telekom Austria and Herold Business Data AG*, [2000] ECR I-10745. However see also Case C-231/03 *Coname* [2005] ECR I-7287, where the ECJ stated as obiter dictum that an obligation to advertise may not apply to a contract of modest economic value that would not give rise to cross-border interest; see also the Opinion of Advocate General Sharpston of 18 January 2007, in Case C-195/04, *Commission v Finland* [2007] ECR I-3351 where the Advocate General argued that in the case of "below-threshold" contracts Member States have discretion to determine what the sufficient degree of transparency should be.

[4] See for example Case 31/87, *Gebroeders Beentjes v Netherlands* [1988] ECR 4635 and Case C-225/98, *Commission v French Republic*, [2000] ECR I-7445.

[5] See in this regard Case C-360/89, *Commission v Italy* [1992] ECR I-3401 and C-21/88, *Du Pont de Nemours Italiana SpA v Unita Sanitaria Locale No.2 Di Carrara* [1990] ECR I-889

[6] S. Arrowsmith, "Application of the EC Treaty and Directives to Horizontal Policies: a Critical Review", chapter 4 (pp.147-248) in Arrowsmith and Kunzlik (eds), *Social and Environmental Policies in EC Procurement Law: New Directives and New Directions* (2009; CUP)