



Northern Ireland
Assembly

Committee for Finance and Personnel

OFFICIAL REPORT (Hansard)

Public Procurement Update: DFP Briefing

12 September 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)
Mr Dominic Bradley (Deputy Chairperson)
Mr Roy Beggs
Mrs Judith Cochrane
Mr Leslie Cree
Miss Megan Fearon
Mr Paul Girvan
Mr David Hilditch
Mr William Humphrey
Mr Mitchel McLaughlin

Witnesses:

Mr Des Armstrong	Department of Finance and Personnel
Mr Stewart Heaney	Department of Finance and Personnel

The Chairperson: We move now to the public procurement update. I remind members that the session is being recorded by Hansard, so all electronic devices must be turned off completely. In your packs, you will find the departmental response update for September and a response from the Committee for Enterprise, Trade and Investment on the inquiry into public procurement. It has raised a number of issues with regard to five recommendations. Members may wish to raise those with officials.

I welcome Des Armstrong, director of the Central Procurement Directorate (CPD), and Stewart Heaney, the divisional director of construction division.

Mr Des Armstrong (Department of Finance and Personnel): Thank you for the opportunity to give an update on the action plan and on other procurement matters that you might want to raise. We provided you with an update on the outcomes of your report, and if you are happy, we are available to take your questions.

The Chairperson: A number of the recommendations in the Committee's report have been addressed by the Department through the introduction of the new procurement guidance notes. How is the Department measuring how effective that guidance is in assisting social enterprises and small and medium-sized enterprises (SMEs) with gaining access to public sector contracts? That is something we were discussing at the previous session.

Mr Armstrong: There are a number of ways in which we are looking at how effective the guidance is. The e-sourcing portal is of great use to us. The centres of procurement expertise (COPEs) are now

using that portal for their procurement processes, and, obviously, some of the councils are using it as well. We are able to look at the information that is available on that portal and break it down across the types of enterprises that are showing an interest in the tendering process, those that are returning tenders and those organisations that are winning in the procurement competition. We want to continue to build on that type of management information, so that we have a good breakdown of how successful the various firms are in the procurement competitions.

As well as that, the procurement board has asked CPD to carry out an assessment of how effectively the centres of procurement expertise were applying the guidance notes relating to compliance. So we have to do some work to look at how the COPEs are reporting back on how they are doing against those guidance notes. As well as that, we have established two forums, one of which is with the construction industry. It has been in place for some time, and we get very good feedback directly from the construction industry and that forum. We have also set up a forum with business and industry. We get feedback directly from those representative bodies. So we have a number of things on the go to give us an idea of how effectively the procurement process is being seen across the various firms.

The Chairperson: Are there eight centres of procurement expertise?

Mr Armstrong: Yes.

The Chairperson: What standards are upheld? How are they kept in check? When do they cross the point of not being a COPE? How does the Department ensure that they are worthy of that title?

Mr Armstrong: The procurement board has considered how a COPE might lose COPE status. We have been looking at a new accreditation model for COPEs. That is quite well developed now. We have given that model across to the Cabinet Office, and it has given us some feedback on it. The model is designed to test not just the capability of the COPEs, but the application of the policy. If there is a systemic failure of process with a COPE, that might lead to a COPE losing its status. The procurement board has considered what would happen if a COPE lost that status, and the view is that CPD may have to move a team in to oversee the procurement process until the COPE was in a position to recover from whatever the significant issues might be. We have discussed how that might happen.

The Chairperson: Do you have any idea when that will be in place?

Mr Armstrong: The accreditation model is in place now. That has been approved by the procurement board. At the moment, COPEs are looking at the model to see what type of evidence they might need to gather so that COPEs will be subject to a further accreditation process in 2014. The model is established and the COPEs have that. We have given the COPEs some indication of the types of evidence that they need to collect for scrutiny when the accreditation process is in place, so we would expect COPEs to look at how they carry out procurement against the accreditation model, make the necessary changes and collect evidence.

The Chairperson: The Scottish Government are bringing forward some reform in procurement by public sector bodies and are talking about putting those proposals on a statutory basis. Is there anything similar in the pipeline here?

Mr Armstrong: The Executive, when they first looked at establishing a public procurement policy back in 2002, took the decision that rather than bringing the recommendations into effect through legislation, they would do it through administrative action. The procurement guidance notes that CPD published after endorsement by the procurement board outline the administrative actions that are needed to allow the public procurement policy in Northern Ireland to come into effect. We could map a lot of things in the Scottish Government's consultation across into initiatives that are either being taken forward in Northern Ireland or being progressed.

Mr Girvan: Thank you for coming to the Committee. I find it somewhat difficult to get my head around the fact that if, for argument's sake, a company wished to tender for a contract, it would have to appear on the select list that was alluded to in the previous session. That select list probably excludes quite a large number of SMEs and social economy projects from tendering. I wonder how we can square this in relation to getting rid of the cartel and the notion that, unless you are on that list, you cannot tender for certain things because you do not have a history of having dealt with a government

contract or public sector contract. As a result, companies never get on to the ladder and, therefore, stay under the radar for ever.

Small businesses should be encouraged to tender for projects, as they would be bringing on board people such as apprentices to deliver on them, as opposed to having someone else coming in who has a large team and is tendering for contracts here, elsewhere in GB and maybe further afield and will not necessarily look at local services. I wonder how you open up the tendering process to ensure that smaller SMEs and social economy projects get a fair crack of the whip.

Mr Armstrong: We have done several things. In CPD, we do not operate with select lists, so our competitions are open. To be clear, we accept private sector experience as well as public sector experience when looking at the capability of the supplier or contractor to carry out the work. Obviously, we have to strike a balance because we are spending public money. We have to ensure that suppliers are capable and competent of carrying out the contract because, at the end of it, there will be an impact on service provision if it is not delivered effectively.

We also seek to ensure that all the opportunities are now on a single portal. We are trying to work with InterTradeIreland to bring that to the attention of SMEs that may feel that the procurement process is a barrier to them. Before I came here this morning, I was in Belfast's Central Station trying to promote an event in Cookstown that we are co-hosting with InterTradeIreland and the procurement service in the South of Ireland. I was with representatives of a small SME who had felt that the procurement process was a barrier to their being able to participate. However, they went along to one of those events and found out how the system operates and what sort of experience they need. They have been able to bring that experience forward, and they sounded encouraging about that sort of event.

As I have said, we have also looked at trying to move away from a select list process. For smaller competitions in which there is greater interest, we are also looking at a random selection process so that, as you will appreciate, firms would be drawn from a list.

Stewart, do you want to say something about industries?

Mr Stewart Heaney (Department of Finance and Personnel): The simplification of the procurement under-threshold, which is set out in the guidance note, was developed in consultation with the construction industry. We have had feedback from the industry. Proposals that were set down and are now making their way into tendering processes have been well received by the industry.

Essentially, as Des has already said, we do not hold any standing lists at all. All contracts above £30,000 are published on the portal and companies can apply. Depending on the value of the contract, we would stipulate a couple of requirements. One relates to companies' financial standing. That is set out proportionately to an industry-agreed process and to health and safety standards. Beyond that, it is up to a company to demonstrate that it has relevant experience. That does not have to be in the public sector or involve exactly the same type of building or whatever the proposed project involves. As long as a company's experience is relevant, it will be able to apply. The random process will then generate a list. Provided that companies on that list fulfil their health and safety requirements and have financial standing and appropriate experience, they will be invited to bid. That in itself should change the opportunities that are available to some of the smaller firms that might not have been able to bid in the past.

In addition, because random selection is used to sort out the number that goes to tender, there are no huge, detailed pre-qualification questionnaires to be filled in to allow us to get 30 or 40 contractors down to a reasonable number, such as six, for tender. The random process means that there is no requirement. As long as companies meet the basic requirements, they will be invited to tender if their number comes up in the process.

Mr Girvan: I appreciate that we are dealing with construction in particular and hearing from that side. I am aware of subcontractors who are brought in under major contracts. They probably do the lion's share of the work on those contracts. However, because they are not the lead contractor — they are only subbies — they do not get any kudos for having delivered the work.

I will give you a very clear example of one such contractor. The guy was well paid — he told me that he was well paid anyway. He carried out a contract for a Department — I will just use that term. The contract was for around £150,000. He was happy; he went in through a subcontract and did his work.

He was paid £52,000 for doing the total job. The contractor had tendered and got the contract for £150,000. The subcontractor was the only person on site; there were no other people on the site. He said that he was well paid on that job and that he would have loved to have tendered for that job. However, unfortunately, due to the process, he could not. Who got value for money? Did the public sector get value for money in that case? This is something that I do not necessarily buy into. A company in the private sector has its finger on the button with regard to how much something costs. It is not going to be losing one penny because, if it does, it is not going to be there. So it understands exactly what it is trying to do. Unfortunately, because it is a public sector body, we sometimes cover ourselves by saying, "We have gone through the procurement procedure, and this team won it." The fact was that it was almost three times the price that the man who finished the job got paid to do it. He was happy; he told me that he was well paid for the job, but the fact remains that the procedure and the process do not always get value for money. How do you close that and ensure that you are getting value for money?

Mr Armstrong: As part of the process to try to simplify the procurement process, we moved away from price/quality bidding to more of a price-bidding competition. Statistics will show that SMEs can bid better in competitions in which they are asked for a price. COPEs need to use their commercial expertise at that stage to look at those bids and test whether they are providing value for money. Government do not need to enter into a contract where they feel that the price is inflated or does not represent value for money.

We also need to look at the issue around subcontracting from two aspects. Sometimes, industry will rely heavily on subcontractors to deliver a job; that is the nature of the industry. Because subcontracting is an important feature in how a project is delivered, it is important that Departments understand what subcontracting is going to be put in place and the commercial relationships that will exist between the main contractor and the subcontractor. We have provided some guidance as to how that should happen. Therefore, as part of a bid coming forward, suppliers should be asked who the subcontractors are. Subsequently, we should be able to see who the subcontractors are and approve them. We should also be able to verify that their bid is being brought forward as part of the main bid. There is the reverse situation where subcontractors might give a bid of £100,000; the main contractor then wins the price, and the subcontractor is told that the price is now £70,000.

Unless government take a view of not only how the main price comes to them from the main contractor, but how it relates to the subcontracting prices, that type of practice can proceed. That is the type of approach that we are going to take to have a view on regarding whether we are getting value for money.

Mr D Bradley: Is it common practice for Northern Ireland to combine with other regions in the procurement process?

Mr Armstrong: We have arrangements with the Government Procurement Service and the Cabinet Office to link into some contracts. For example, we were linked into a contract on electricity, but are now making our own arrangements. If we are tying into national arrangements, we need to be sure that we have taken into account the impact on the local supply base. There needs to be an assessment for any procurement that is above the EU threshold, which is around £120,000 for supplies and services. If we are going to go directly to one of these national contracts, we need to assess the impact on the local market.

We cannot award contracts directly to local firms or restrict local firms, but we can take action to make sure that we do not inadvertently or deliberately put in place a position in which the local supply market is bypassed. There are advantages in having call-off frameworks available to you on a national basis for the likes of year-end spend or an emergency situation that might arise.

Mr D Bradley: There is a combine between Northern Ireland, Wales and Scotland for certain medical items. How do you ensure that Northern Ireland is getting the best value for money out of those contracts?

Mr Armstrong: Those medical contracts are obviously not set by CPD; they are with another COPE. I assume that it has some benchmarking arrangement in place that will allow it to test those contracts. I assume that the contracts are set up through a competitive process. We are looking at more collaborative arrangements specifically for Northern Ireland and at setting up contracts that are based in Northern Ireland.

Mr D Bradley: I had reason to ask some questions about those medical contracts. The impression I got is that they are controlled from either Wales or Scotland, and Northern Ireland does not really have much say once the process has begun. It really does not have any way of ensuring that what Scotland and/or Wales agree is the best value for money.

Mr Armstrong: If I was involved in a national contract such as that, I would certainly want to be involved in how the contract is being framed and its terms and conditions. I would also want an option on whether it represents value for money. I do not think that you would want to put yourself in a position where you have no influence at all as to how the contracts are set in place, or be tied into a contract that, for whatever reason, does not seem to deliver value for money. You need to look at the contracting strategy and how you influence that on a national basis.

The CPD has been involved in various types of contracts with the National Procurement Service. It is working at the moment on trying to refresh our memorandum of understanding with it so that it does not go off and include Northern Ireland in a framework without reference back to CPD. That means we can have an opportunity to look at the detail of that particular contract and think how we might influence it to achieve the best benefit to Northern Ireland.

Mr D Bradley: My experience and the research that I have done on it suggest that the situation is similar to what Paul mentioned earlier. There may not be a list, but there seems to be a coterie of preferred suppliers, and it is extremely difficult for someone new to be taken seriously; in other words, to win a contract. The process seems to be loaded against them for one reason or another, and that is not always to the benefit of the public purse.

Mr Armstrong: We have produced guidance notes on the aspect around subcontracting, and we are trying to open up the competitions so that they are not as restrictive in the types of experience that organisations need. However, we will certainly look at the point that you have raised to see what further guidance we need to produce.

Mr Cree: I would like to clear up one point with Paul, if I picked him up correctly. You talked about contracting and said it was about price and quality, but that, now, it is not so much about quality — is that right?

Mr Armstrong: We are going at quality in a different way. There are basically two options available under the regulations regarding how you award a contract: one is on the lowest price and one is on the most economically advantageous tender, as it is described. The practice in the past in dealing with the most economically advantageous tender is to require suppliers to provide a pricing document and then a quality submission. The quality submission usually states how they would intend to carry out the contract. That is pretty resource-intensive, not only for the suppliers who put the thing together, but for assessment. That involves a time frame and also has introduced the potential for legal challenges because of the nature of how it operates.

The lowest pricing presents a different problem, because you do not want to drive the market to give you prices that are uneconomic or unrealistic, so you need to balance how you address pricing. We have come up with the concept of the best acceptable price, which calls for the client to clearly specify the types of quality that they want the market to bid against. It then requires an assessment of the prices that come in, and then it needs the supplier to be held to those prices as we go forward. Part of that might be a conversation saying that the price that has been submitted looks unrealistic and giving the supplier the option to withdraw without loss of face, while at the same time being very clear that the quality that has been specified needs to be delivered in the contract without exception, and that there would be issues if the pricing was not correct and the supplier was not able to deliver against that price. So, quality is still important. It is important that we do not spend money on things that are of no value. It is just a different way of trying to get at the quality by simplifying the process, making it easier for SMEs that do not have the resources to write quality submissions. It gives them the opportunity to exploit the economic advantage of their lower overheads, if that is what they have. It is also about making it clear that, when we get into a contract, we will not allow the prices to drift and that it is a pretty strong commercial relationship.

Mr Cree: These things seem to be based on the flavour of the month. A while ago, we were talking about the social impact of contracts. We were talking about sustainability. We were talking about value for money. In the old days, we talked about best value. It keeps changing, but it does not seem to get any easier. However, I will leave that point.

I want to raise a point about subcontracting. Paul gave an example of a subcontractor who carries out good, acceptable standards of work for a main contractor. Surely, such work should qualify them, in the eyes of Departments, as reputable and competent and, therefore, able to compete in their own right.

Secondly, I was involved in the matter of subcontractors not being paid by contractors or getting small payments. Many of those subcontractors, unfortunately, were forced out of business. However, I understand that we now have a system to protect subcontractors in relation to payments. Will you give us a view on that?

Mr Armstrong: The fair payment charter that we set down with the construction industry is now a requirement. We would like to see the good payment practice that government have with main contractors passed down through the supply chain. The 10-day payment requirement would be excellent, but that is probably unrealistic. However, there are statutory minimum times set for payments in contracts with the construction industry, through the Construction Contracts (Northern Ireland) Order 1997. It falls to the project manager responsible for delivering a government contract to make sure that the subcontractor payment issue is properly monitored and that the main contractor is aware that that will be a key performance indicator for them on the contract.

The feedback that I have had on construction contracts managed by CPD is that where we have been able to push this quite strongly, through our project management teams, there is not an issue. In fact, I have been told that consistently applying a similar practice across all government contracts would have a significant impact. That is the sort of approach that we need to take to ensure that subcontractors are treated fairly, because that is how economic benefit spreads through the economy.

Mr Cree: And on the competence of subcontractors?

Mr Armstrong: That is something that we need to make a bit clearer. We have already said that the private sector experience and public sector experience should be of equal standing, providing that they relate to the type of project that is on supply. We will have another look at how we might flag up the fact that a subcontractor that has been competent to deliver a substantial proportion of the work should be regarded as competent to become a main contractor. We are interested in making sure that we have a competitive supply market and that we do not put in place barriers that restrict firms that want to grow and move up.

Mr Cree: There is a certain logic in that.

Mr Armstrong: There is. We will have a look at that.

Mr Mitchel McLaughlin: That is interesting. It is a genuinely challenging and complex area. I have a number of comments on value and data capture analysis to examine the impacts of the various amendments to procurement guidance as we move along. There are a number of interesting statistics on SMEs and social enterprises. I think that they total 77%, which indicates that that is the penetration with regard to public contracts. Does that mean that they are the primary contractors, or is that an amalgam of some primary contractors and, in other circumstances, subcontractors? Are those the main contracts?

Mr Armstrong: Those are the main contracts that are awarded by a Department to suppliers.

Mr Mitchel McLaughlin: You would have to acknowledge that as definite progress.

Mr Armstrong: Yes. The percentage of construction contracts is higher; around 94% or 95%.

Mr Mitchel McLaughlin: That is correct. I was conscious of that.

Mr Armstrong: There is still a perception, though, that government construction contracts are being won by some international firm, or whatever. There is a perception issue, and because we now have a centralised system that captures that data, it allows us to understand that and what the impact might be. We talked to colleagues in Scotland and Wales. Certainly, if they had that type of penetration, their Ministers would be very happy.

Mr Mitchel McLaughlin: I think that we should be making more of that in the current circumstances because the Assembly generally — yourselves included — does not, perhaps, get the recognition is due for that in these difficult economic circumstances.

As regards how we monitor information and data and how we analyse and apply that, can we actually track an upward graph of that penetration over time? From my recollection of our previous discussions on the issue, that is a definite improvement.

Mr Armstrong: Yes. We can look at that data and how we might present it. In the past, we have gathered together an annual report on statistics. That has been very useful. However, by the time you gather up all those statistics, everybody has moved on.

We are preparing specifications for a new procurement portal. We want to put some different items on that portal. First of all, we would like it to be the single portal for all public procurement, whether it is for councils, public bodies or housing associations. We would like to set the system up so that they can go on and use it. Therefore, it will become one portal for anything that is publicly funded.

Then, we want to be able to provide information to assist those who are bidding in competitions and give them some online training and help on how they might go forward. We want to collect a set of data that allows us, quarterly or monthly, to know the types of contracts that have been awarded, whether they go to local firms and what type of firms they are.

We need to be more prescriptive with the system in order to ensure that firms lock themselves down in the correct category, so that we are not gathering data for an SME when it is actually an international firm. We need to put some checks in place to remind people that if they want to continue to use that system, they need to give us certain information because we need it to help us to understand the impact of the procurement function.

Mr Mitchel McLaughlin: Can we also monitor whether there has been any improvement in the level of, say, local companies, SMEs and even social enterprises working together in joint ventures?

Mr Armstrong: Yes.

Mr Mitchel McLaughlin: Can we actually report on that? Does the information allow us to do that? With regard to the previous point and this issue, perhaps the next thing that we need to do is set ourselves realistic targets to continue that progress and drive the message home, because people are sceptical, as you know. *[Laughter.]*

Mr Armstrong: Yes. From memory, I cannot tell you whether we can, at present, differentiate between a consortium and people who have applied for the first time and been successful. That is the type of information that is of interest to the Committee and that we intend to gather with the new system. I will see what the existing system can give us in that regard.

Mr Mitchel McLaughlin: Will you come back to us on that, because the Committee regularly addresses, hopefully in a constructive way, the issue of how we can improve and continue to improve?

I will not go into the detail of Paul's example, because I do not have it, but can you set out the process? Departments prepare their own bids in the budget process, and they map out the capital projects that they want to bring forward. All of that is done on the basis of business plans and costings. Is it conceivable that we could have a situation in which a subcontractor is asked to deliver a project that has been costed by the Department, and they produce it for something like 30% of the Department's calculation?

Mr Armstrong: It is possible that the estimate in the business case is not as good as it should be or that the market conditions change.

Mr Mitchel McLaughlin: The Department would probably have paid good money to get the estimated cost.

Mr Armstrong: CPD can provide some costings in the preparation of a business case because we have built up a database for construction. If you are buying unique things for which you do not have a feel for a price, you have to test the market on it to know that the market has responded. As part of

the new procurement system, I think it would be interesting to collect information on the difference between what was in the business case and what has been approved in the contract.

Mr Mitchel McLaughlin: In so far as this relates to ensuring value for money, do your project management arrangements or the monitoring process allow you to establish whether there is a subcontractor doing the main body of the work, for example?

Mr Armstrong: According to the guidance that we produced, subcontracting should not occur unless the client has approved it. The normal conditions of contract that are in place require an approval process; you cannot sublet without approval. I am not sure that that has always been applied effectively. Therefore, government have thought that the subcontract issue is something that the main contractor can get on with. I suppose that that is OK when there is a buoyant market, but, as the Committee has picked up on, public procurement has a significant impact on the economy, right down through the supply chain. I think that that is something that government need to get an interest in and get a good handle on. Hopefully, we can convince you that CPD has started that process in the contracts that we have managed.

Mr Heaney: We have our own quantity surveyors and team who will provide that cost for the business case to the funding Department, and they will test that all the way through and when the contract is awarded. The example that was given is unusual. The problem that we now face in most cases is abnormally low tenders. However, the rigour comes from having people on the client side, such as the client's project manager, who understand the business and can drill down in a professional way, look at those costs and see how they add up against estimates, or whatever. Certainly, most of my team is involved in challenging contractors who are looking for claims for additional costs. That is where the focus is.

I know that there is a lot of pressure from main contractors to subcontractors. We have heard that through the Construction Industry Forum. The subcontractor representatives there are constantly talking about the pressure on them from main contractors. The most effective way is for the client's team to be on top of the project by way of regular meetings and monitoring the processes. I have introduced a process in which there is a monthly report from the contractor on the level of payments to the subcontractors. We also seek approval for subcontractors prior to their being appointed. That process will bring some further rigour to the checking and looking beyond the main contractor, because we now recognise that as being an important part of the process.

Mr Mitchel McLaughlin: Thank you for that. I have a final point. In my experience, the language of the specification of a tender is a constant worry for people who are bidding for contracts for the first time. People who, perhaps, are contemplating a bid for the first time have an inherent disadvantage, compared with people who are in situ or who might be the incumbent contractor. I have discussed some of this with you already, Des, but the latest one, which I have not had the opportunity to discuss with you, and the details of which I am not going to go into now, involves an interesting development. An individual company decided to put in a bid, but it lost out, and the incumbent won the contract again. Subsequently, in the debrief, the company discovered that it had bid for the supply of new equipment. However, the winning contractor, who already held the contract and was bidding for the new phase of the contract, had an advantage. Its bid and costs were based on the existing equipment, which was in situ, because it was a supply and maintenance contract. The new bidder was bidding for full-cost supply of the equipment that was needed. In the specification, the winning contractor did not make a distinction between second-hand and brand new. The sitting contractor was away in a handcart; it won the contract. The differentiation between the two contracts was inexplicable to the new contractor, because they were both supplying the same equipment, and they could not understand how the other person could be so competitive. It turned out that the other firm was basically bidding against its own in-situ equipment that it had supplied previously, and it would be renewing that as part of the maintenance process.

The point that I am getting to is the language, because, had that been explained, the new contractor could have said that it could take the existing equipment and modernise and update it through the maintenance side of the contract. The new contractor did not have a hope of winning that contract.

Mr Armstrong: Specifications need to be clear. All bidders need to be able to understand them. They must not be driven in a way that favours a particular approach or job. It sounds to me as though there has been a mistake in the specification, but I am sure I can take a further look at it, if you can give me the details.

Mr Mitchel McLaughlin: I have confidence that they will get an explanation in the appeal or the challenge and that the necessary steps will be taken. If they are not, I will take it to the Public Accounts Committee.

Mr Armstrong: At the same time, we have to recognise that firms do have commercial advantage over others by virtue of their systems.

Mr Mitchel McLaughlin: I know; I do not think you can put a price on that. I do not know how to get round that one. Yes, of course, if they are familiar, they are bringing that commercial experience with them. It gives them an advantage, but I do not know how you would level that playing field. However, we can demand that there is consistency in the material that is supplied or the services that are being paid for. If people have all the information, they can decide whether they can compete and whether they should invest in trying to win the contract. I think there is still a gap there and a bit of work to be done.

The Chairperson: Paul, you can make a quick point.

Mr Girvan: It is a quick point; it comes back to what Mitchel said. There is another problem in the specification that is put down. Sometimes it is so narrow that the contract can go only to a particular person or a particular supplier. You remove the word "comparable". You give such a direct steer that there is only one person who can give you equipment that meets that specification. I will use bin lorries as an example; they must have an Allison gearbox and must have this, that and the other. You are going to tie it in in such a way that only certain people can tender for it. That creates a bigger problem.

We have also had some difficulty — we might be dealing with part of that today — where somebody comes in with a low tender, wins the contract and then expands upon what they call variances within the contract to such an extent that what they are getting paid has no relation to what they tendered for in the first place. They create a monster that has no bearing on what they tendered for. Is there a mechanism, or could one be put in place, to deal with people who are guilty of what I would call shady practice, whereby they go in and work out all the nuances after they have won the contract? Some of those people use subcontractors, who suffer because the contractor tells them that this, that and the other has been hit. The subcontractors who come in to a job are the people who end up losing at the end of the day. Contractors sometimes use all sorts of wonderful excuses. We had one contractor use the excuse that they did not know that they had to have an archaeological dig on a site, which cost an extra £400,000. Those are the sorts of things that filter through all of a sudden. You do not realise it at the time, but there is a run-on cost, and they have to be paid for it. That is what happens. So, I am just wondering how we ensure that those sorts of terms are not so prescriptive that you can get only one person to tender for an item or service.

Mr Armstrong: If the competition is coming through a COPE, we would expect the staff in the COPE to look at the specification and make sure that it is not drafted in a particular way, because it would be unlawful to draft it in such a way. There has to be open competition. You cannot deliberately draft something solely to have a particular type of product. That clearly should not happen.

On the other point about performance on price and about whether contractors actually deliver on what they bid against, we have put in place a protocol for poor performance with contractors. We want to work with contractors to correct poor performance and to make sure that that is corrected quickly. Ultimately, contractors who do not perform, particularly on a pricing basis, for example, those who try to move back to the days when they were able to push the thing up with variations, should be picked up by the contract management team, and they could be issued with a poor performance certificate that will put them off tendering for 12 months. So, there is a serious sanction to deal with contractors who do not deliver on the bid. The procurement process needs to be fair and open. It does not need to be full of bureaucracy; it needs to be slimmed down to the absolute minimum and be fair.

On the other side of the coin, when a contractor or supplier gets a government contract, they have to deliver against it. They have to deliver against the commercial terms that they have accepted and not try to change those terms. We need to be fair and open, and the Committee has brought to our attention that we need to address all those issues. However, when we get into a contract, we need to demand that the contractors or suppliers deliver for the public. That is the way in which I think we need to move forward.

Mr Girvan: I will finish with this: in relation to government contracts, quite a bit of our government contracting work is contracted out to arm's-length bodies to deliver. On that basis, how far into that process can we go? Some of the arm's-length bodies have an equally big budget. Dominic mentioned the health service and what can happen there. There is also the housing sector. How far into that process can the procurement legislation go?

Mr Armstrong: We have a definitive list of bodies that are covered by public procurement policy. That list includes the Departments and their arm's-length bodies.

Mr Girvan: Some of them.

Mr Armstrong: Well, a definitive list has been suggested.

Mr Beggs: You mentioned that if main contractors do not perform, you can remove them from the list for a year. How often do you exercise that power? Are you a soft touch? How often do you exercise that power when subcontractors are treated badly and are forced to the wall because the main contractor, whom you know has been paid, has not paid them? It is things like that. How often do you exercise that power?

Mr Armstrong: The purpose of this is not to get into a position where we use it. It is to ensure that the contract management in place picks up the issues at the earliest opportunity and that contract managers know that unless contract issues are resolved effectively, there will be an escalation up to senior management and then, ultimately, up to someone like me, who will make sure that the contractor has been challenged, that we are not acting unfairly and that the issue is not with the client but with the contractor's performance, and then deal with it. I have no issue that if I get into that situation, I will be able to make sure that the proper processes have been followed, and I will have no problem in signing off contractors who are not performing. We have not used it yet, but we want to put ourselves into a position where contractors know that when they come to work on a public sector contract, the public sector is a fair but demanding client. That is the position that we would like to get to.

Mr Beggs: Have you had to intervene in order to get reasonable treatment of subcontractors?

Mr Heaney: Yes, we have. Some of the reports from contractors demonstrated that maybe some of the subcontractors were not being paid. We intervened and went to the main contractor and put that to them. That led to the issue being resolved.

There are two sides to some of these issues. Sometimes, there are issues about the performance of the subcontractor. However, where there was a legitimate reason, we acted.

Mr Beggs: However, if the main contractor is being paid, work is obviously up to your standards, or you would not have authorised the payment. Therefore, there should not be an issue with the main contractor.

Mr Heaney: That is true.

The Chairperson: Thank you very much, Des.