



Northern Ireland
Assembly

Committee for Employment and Learning

OFFICIAL REPORT (Hansard)

Procurement: Joint Department for
Employment and Learning and Department
of Finance and Personnel Briefing

15 January 2014

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Members present for all or part of the proceedings:

Mr Robin Swann (Chairperson)
Mr Thomas Buchanan (Deputy Chairperson)
Mr Sammy Douglas
Mr Phil Flanagan
Mr Fra McCann
Ms Bronwyn McGahan
Mr Pat Ramsey

Witnesses:

Mr Derek Baker	Department for Employment and Learning
Mr Colum Boyle	Department for Employment and Learning
Mr David Carson	Department of Finance and Personnel

The Chairperson: I welcome Mr Derek Baker, permanent secretary of the Department for Employment and Learning; Mr Colum Boyle, director of employment services in the Department for Employment and Learning; and Mr David Carson, deputy director of the Central Procurement Directorate (CPD) in the Department of Finance and Personnel. Gentlemen, thank you very much for coming along. We have received the brief and correspondence, and I am sure that you are aware that we have also received our own legal advice. We are ready to receive an opening statement from you, Derek, if you wish.

Mr Derek Baker (Department for Employment and Learning): Thank you very much, Chair. Good afternoon. I will be very brief. I know that you wrote to the Minister and invited him and that he responded and explained that he did not feel that it was appropriate to attend in the middle of a live procurement. Therefore, I appreciate that you are getting second best today. Nonetheless, I am happy to be here. I am hardly a dispassionate observer in such matters, because of all the issues to do with procurement in DEL. Moreover, as accounting officer, the regularity and the propriety of procurement and, ultimately, the value for money, are matters for me personally. Therefore, I have a clear interest in this.

You know Colum well, and you know his responsibilities. David has come from the Central Procurement Directorate where he is head of that directorate. He has not been directly involved in supporting us in this procurement, but he is well placed to talk in general terms about procurement policy, the whys and wherefores and the dos and don'ts of procurement, and to help to set the context. I may come back to that point. For obvious reasons that I hope the Committee appreciates, I need to be fairly circumspect in what I say about the procurement. In particular, I have to be careful about commenting on any organisation or bidder, successful or otherwise, because, if I were to be

complementary about or critical of any organisation, that might be deemed by that organisation or, indeed, a competitor, to be prejudicial to their prospects in stage 2, or it might be deemed to be demonstrating prejudice on my part. Therefore, I will have to be circumspect, and I apologise in advance if it appears at times that I am being unhelpful. However, I am not here to be unhelpful; I am here to help the Committee in the best way that I can.

I am not directly involved in decision-making about the procurement; I have not been part of the evaluation panel nor will I be. That is an important point and one of the reasons why it is appropriate for me to be here. Hopefully, I can comment on things. Colum is involved in the evaluation panel, so he probably carries even more personal liability than I do in any challenges to the procurement. That is everything that I intend to say at this stage, Chair. It is entirely at your discretion, but, if you wish, David can make some general comments about procurement policy to set the context. However, if you would rather proceed into questioning, I will leave that to you.

The Chairperson: A couple of minutes would be useful. We have had our legal brief.

Mr David Carson (Department of Finance and Personnel): As Derek said, I have not had any input to this procurement. However, I can outline briefly the framework within which all public procurements are required to operate. Essentially, there are two sets of constraints on Northern Ireland Departments: EU regulations is one, and Northern Ireland public procurement policy set by the Executive is the other. Although Departments have freedom, or relative freedom, to define what it is that they want to procure, public procurement legislation directs and regulates how it should be procured. The EU directives reflect the fundamental principles of the European treaty and, in particular, equal treatment, non-discrimination and transparency. That is designed to underpin the single market with free movement of goods and services. According to the Northern Ireland Act, a Minister or Department has no power to act in a way that is incompatible with EU community law, and a breach of public procurement law would be a breach of EU community law. The other constraint is the Executive's public procurement policy, which requires that public procurement should deliver best value for money. That is defined as the most advantageous combination of cost, quality and sustainability to meet customer requirements. Public procurement policy also reflects the 12 key principles that are set out in the Executive's policy document, including non-discrimination and competitive supply. In essence, that means that specifications cannot be written to favour a particular sector or grouping. Procurements need to demonstrate equality of treatment and cannot be written to favour an incumbent supplier. Where procurements are found to be non-compliant and in breach of those rules, legal challenge with significant penalties can result. To manage the constraints in public procurement, the approach of the procurement board has been to ensure that the opportunities for the economic operators in public procurement are maximised. Our focus in the Central Procurement Directorate has been on streamlining the process and removing barriers, particularly for small businesses. We are doing important work on the supply chain to make sure that it gets access to opportunities that come up in public contracts.

That was a very quick run-through of the overall position.

The Chairperson: Derek, to clarify from the outset, the Committee is taking this step because we want to make sure that the Department is taking the appropriate steps at all stages. We are not doing this to be unhelpful or obstructive in any manner; it is to make sure that everything is open and transparent, and this is the best forum —

Mr Baker: I fully appreciate that, Chair.

The Chairperson: Each member will be given two questions, and then we will move on. If necessary, we will go back round until we get all queries satisfied.

David, you talked about equality of treatment. Part 7 is about capacity and capability. There are at least 1,700 unemployed or economically inactive clients in any one year within the past three years. That was one of the criteria for the companies. Why was the figure of 1,700 selected?

Mr Baker: Chair, that would be a question better for Colum —

The Chairperson: That is fine.

Mr Baker: — because David was not involved in the detail of that procurement.

Mr Colum Boyle (Department for Employment and Learning): We looked at what we were doing volume-wise in Steps to Work, and that gave us the baseline. If organisations were delivering a programme of that size, they should be able to cope with applying for that process. That was what we were trying to assess in capability.

The Chairperson: Therefore 1,700 is a baseline from Steps to Work.

Mr C Boyle: That is what we were looking for. We mapped from that onto Steps 2 Success as to what we thought the flows would be in the volumes that would come through. That is what we estimated. It was conceivable that organisations participating in Steps to Work would be able to meet that requirement.

The Chairperson: Have the companies that were not successful at the pre-qualification questionnaire (PQQ) stage been informed in detail as to why they were not successful?

Mr Baker: Yes, Chair. All the companies that bid at stage 1 receive feedback. They receive the individual scores against the individual questions as well as the comments of the evaluation panel against those scores so that they understand not only the score but why they were given it. In addition, the unsuccessful organisations that bid receive the score and the comments made against the scores for the successful bidders in each contract area so that they can compare and contrast how their bid fared against the successful bidder's. That has the simple objective of being as helpful and transparent as possible to all bidders.

The Chairperson: Have any of the unsuccessful bidders used regulation 29(2)(a) or regulation 32 of the Public Contracts Regulations 2006 to challenge?

Mr Baker: To the best of my knowledge, as of today, no. However, I stand to be corrected by David or Colum.

Mr C Boyle: We are not aware of any challenge.

Mr P Ramsey: Thanks very much for coming along. I understand that this is a sensitive and delicate issue. The Department officials previously complimented the performance, delivery and targets of existing Steps to Work contractors, as they have exceeded expectations of what they have been delivering. Do you not think that some of them would feel justifiably aggrieved that, even though they are meeting those same targets, they are not being shortlisted under stage 1?

Mr Baker: May I comment on that first of all, Chair? Colum may or may not want to say something. First of all, I will caveat what I say by repeating that I am not going to comment on any individual bidder, but I know that you have not raised any.

Mr P Ramsey: I did not ask you about any individual bidder.

Mr Baker: I know that.

The process for stage 1 was a competitive process. It was not an absolute process in saying that an organisation is or is not fit. It was a competitive process in which we asked for examples of previous experience of certain dimensions, which the Department, after careful thought and advice from CPD and our legal advisers, felt were very relevant to a competition of this nature. The top six bids in each contract area were put through to the next stage. I accept that one could argue that there is an arbitrariness to there being six. It could have been three or 10. If it were 10, more bidders would have got through. However, it was not without rationale. Fixing on a figure of six bidders to go through was an attempt to strike a balance between, on the one hand, maintaining competitive advantage going through to stage 2, so that we could have organisations competing on quality, cost and delivery and, on the other hand, making the process manageable. That is not to say that an organisation that did not make the top six is not a good organisation, is not a fit organisation and has not got a good track record, but it is saying that, in the objective assessment by the evaluation panel, those were the top six bids in each contract area. The reason for and the rationale behind the actual scores awarded to each organisation have been communicated to the bidders so that they can see that and raise issues about it, should they wish. To date, none has raised an issue about it with us. I can understand organisations being disappointed, but it was a competitive process with the top six going through for the reasons that I have explained.

Mr P Ramsey: Again, I have no intention of going into any individual case. At the same time, I feel somewhat disappointed and a wee bit of anger. Departmental officials — I will say this again, Derek — come into us and put up as models of best practice the same companies — I use that term collectively — that feel excluded from the process. I will ask you this question again: of the companies that did not meet the criteria for stage 1, was it the case that they were not competent enough and did not have the experience or capacity to deliver Steps 2 Success? Is that why they were not successful in getting through stage 1?

Mr Baker: All the companies that were unsuccessful at stage 1 will know exactly why they did not proceed to stage 2, because they will have received the feedback.

Mr P Ramsey: Again, you are not answering the question. Of the companies that were not successful at stage 1, was it the Department's opinion that they did not have the competency, capacity or experience to deliver that contract?

Mr Baker: For each individual bidder that was successful, there may be a different reason. They could have scored differently in different aspects of the stage 1 process. So, there is no generic answer to your question, because you are talking about a lot of bidders against a lot of questions. Companies may have fared well in some aspects of stage 1 and not so well in others. So, the reasons are different in each and every individual case.

On the more general point about what the Department has previously said about Steps to Work, I suppose that I have to preface my comments by acknowledging that I am something of a johnny-come-lately to this, and I know that. I have not been around throughout the process of Steps to Work, but I have read the statistics, the reports and the evaluations. Steps to Work was a good programme. The Department, in moving from Steps to Work to Steps 2 Success, has, I believe, done this properly. When it knew that the Steps to Work programme and contracts were coming to an end, it commissioned an independent evaluation of Steps to Work, which I am sure that the Committee has seen. That was very important. It highlighted what was working well with Steps to Work, what we want to preserve and where we need to refine it to make it better. That was the process that we went through. In that context, it is entirely appropriate that we factored the areas for improvement into Steps 2 Success.

Mr P Ramsey: I have a final question, and I am aware that I am pushing the boat out a wee bit. Have the track records of the companies that have been successful in stage 1 been evaluated on meeting targets in competency or in experience of other contracts elsewhere?

Mr Baker: We have not sought extraneous information over and above what was in the application form for stage 1, because you cannot start to bring in extraneous information that may be relevant to one bidder and not relevant to another, otherwise you are making a decision based on differentiated information and it is not a fair judgement. All the bidders in stage 1 were assessed on the basis of the information and the examples that they presented on the stage 1 form. Bear in mind that some organisations that bid at stage 1 may well have participated in Steps to Work. Some will not have. Some may have participated in the Work Programme in Great Britain, and some will not have. Some might have participated in neither of those programmes. So, you cannot start looking at specific programmes and say that you need to have participated in that or that we will base the decision on your participation in that. Otherwise, you are dealing with differentiated information. It is purely on the basis of the application form.

Mr Flanagan: Thanks for coming. I am disappointed that the Minister is not here, but I appreciate that you are here as the permanent secretary. You probably have a better insight into this than the Minister.

Mr Baker: That is unlikely.

Mr Flanagan: Colum and Brendan will know that, since the start of the Steps 2 Success process, I have expressed serious concerns about it. I do not think that it is value for money. If the Department had proceeded with the single contract area, the process would have been much worse. I am glad that the Department listened to some of the advice from the Committee about a single contract area, and I am hopeful that the Department will now listen to the concerns from the Committee on this issue.

Before I get into my questions, I want to clearly state that we are not looking for the Department to breach procurement rules to award contracts to local companies to keep local jobs. We know that that cannot happen. So, if that is the perception in either the Department or CPD about why we are doing this, I want to say that that is not the case. We want to make sure that Steps 2 Success is successful, that the best contract possible can be delivered and that the clients who need the service get access to the best service possible. That is why we are doing it. We are not here to represent any individual company or to protect local jobs. That is important, but we realise that there is European legislation that we cannot get round.

I will move on to my allocated two questions. Why have key performance indicators and the existence of a supply chain mechanism not been included as part of stage 1 or the PQQ process? Is the purpose of the PQQ not to allow candidates to demonstrate that they have the capacity and capability to deliver Steps 2 Success in one contract area?

Mr Baker: I will deal with that question, and I might ask colleagues to come in. In general terms, a two-stage procurement process is not unusual, particularly for big contracts, and David might want to comment on that. The first stage is generally to assess basic capability and capacity in generic terms in a contracting area before you go through to the second stage, at which point ability to deliver the contract in detail with regard to cost, delivery chain, quality and so forth will be tested. I do not pretend to be an expert in procurement and will not suggest that for one moment, but I have some experience — I will not say "expertise" — in recruitment, and an analogy might be recruitment to a post, where the first step is usually a basic eligibility test to establish the credentials of the individual, their professional qualifications or the level of seniority at which they operate. However, that first stage is not about assessing the individual's ability to do the job in question. Only those who get through the basic eligibility test go forward to the assessment, where they will be tested in great detail on their ability to do a particular job, be that through interview, assessment centres or tests. It is not a brilliant analogy, but it is not a bad analogy for this process. The first stage is not about the detail of cost, quality, delivery chains or whatever. It is about identifying a number of potential candidates who can be tested in those areas. That is standard practice for big procurements such as this. Issues such as delivery chain and infrastructure — I need to be careful that I do not sort of give the exam questions away in advance, because that would be inappropriate, as you will appreciate — will be thoroughly tested at stage 2. I will open it up to David to talk about the generality of the two-stage process and what is typically tested at stage 1.

Mr Carson: I think, Derek, you have given a fairly succinct outline of how the process works. It depends on the nature and size of the procurement, but, for large procurements where there are particular complexities, you will find that the two-stage process will be employed. The first stage is about assessing the capacity and capability of the bidders to undertake the work. The second stage is about how that capacity and capability will be applied in practice to the specific procurement that is the subject of the competition. If the procurement moved to the second stage immediately, it would represent quite an onerous burden, potentially, in evaluating a large number of bids. That is really why the two-stage process is employed. It reduces the number of bids that need to be evaluated as part of the competition.

Mr C Boyle: One thing I will add is that the assessment panel, which I chaired, will receive very specific training on that. When the decision is made to go for a two-stage process, with the first-stage process being the historical look back at capacity and capability, there can be no straying from that. As a panel, we were very clear in the questions that were asked on the bids that people put in to make sure that we looked back historically at what they had done and how they had done things elsewhere against those key criteria.

Stage 2 is a specific future look at what arrangements the organisations that hope to be successful are going to put in place to deliver Steps 2 Success. That would include their KPIs, supply chain arrangements and all of the rest of that. Having made the decision to go with a two-stage process, which is a much more economical way of doing it, there are particular ways of doing that, and we followed those. We specifically drilled the training to make sure that, from a procurement perspective, we did not deviate from that, and nor did we.

Mr Flanagan: Drilled by whom?

Mr C Boyle: By the trainers who were delivering the training.

Mr Flanagan: Who are they? Are they CPD officials or external consultants?

Mr C Boyle: They are selected by the NICS learning and development organisation to deliver the training, and they are qualified to do that.

Mr Flanagan: I take you back to my actual question, which was this: why have KPIs and the existence of a supply chain not been included in stage 1? I know that you are telling me that they were not, but why not?

Mr C Boyle: I think that my colleagues have answered that.

Mr Baker: I attempted to answer that, but I am sorry if I did not. It is not normal practice to drill down into the detailed delivery of the contract in a two-stage process. Stage 1 is about basic eligibility, capacity and capability of an organisation to compete. You get over that hurdle, and it is at stage 2 that you get into the fine-grain detail of cost, quality, delivery chain and so forth. One of the reasons for that is the pragmatic reason, which Colum has mentioned, of the economy of the process. To go straight into an evaluation process that would evaluate all potential aspects of the procurement at stage 1 would be a massively onerous process, both for the organisations bidding and for the contracting authority, in this case, the Department. Although it is our objective to get the very best outcome that we can from the procurement process, we also have limitations on our capacity and capability. We expect that we will have to evaluate up to 18 detailed bids at stage 2. If we had gone straight to that kind of stage, it would have been an awful lot more.

Mr Flanagan: I am not arguing that you should have run a one-stage process; I am asking you to tell me — this is still my first question, by the way — *[Laughter.]*

The Chairperson: You are still waiting for your first answer.

Mr Flanagan: I do not disagree that this should be a two-stage process, but you keep talking about capability and capacity. How can an organisation in England, which does not have one person here on the ground, be deemed to be capable and have the capacity to deliver a contract going from Belleek to Kilkeel without a single person or employee here? Why was the question not asked, "Do you have a supply chain? Can you demonstrate to me as part of this that you have a supply chain in place?". Would that not demonstrate capacity and capability?

Mr C Boyle: It would in respect of the second stage but not the first stage.

Mr Flanagan: The second stage is about value for money.

Mr Baker: No, it is more than that.

Mr Flanagan: It is not about capacity and capability.

Mr Baker: It is. The second stage will drill down in considerable detail about the capacity and capability of organisations to deliver this programme at a local level, in conformity with the service guarantee, which we have specified, and, I think, that has been made available to the Committee. The answer is probably not going to be a satisfactory one to you, because we are probably going to end up disagreeing on this. We deemed it appropriate not to ask detailed questions about the actual delivery of the contract at stage 1, and that includes detail —

Mr Flanagan: Why?

Mr Baker: Because we did not believe that it was necessary. All we were trying to do at stage 1 was to identify a sufficient number of organisations that could proceed to stage 2; organisations that, on the examples that they provided, have the capacity to get involved in a contract of this nature — not the detail of the individual contract, but of this nature.

With regard to your comment about how an organisation based in Great Britain could deliver a local service in Northern Ireland, that is the kind of thing, for all bidders, that will be tested in detail at stage 2. No contract has been awarded yet.

Mr Flanagan: Organisations that already have a supply chain in place and have the capability and capacity to deliver the contract to get into neighbourhood renewal areas, deprived areas and areas of

high unemployment, have been ruled out, whereas they can demonstrate that they have the capability and capacity to deliver the contract like no other candidate actually could. I genuinely do not understand why it was not included in the process.

Mr Baker: Any organisation that has not been successful in stage 1 of the competition has not scored highly enough in respect of the questions that were posed in stage 1. Those were not random questions. They were developed after considerable development and thought by the evaluation panel, which knows the policy and the policy intention well, with professional input from Central Procurement Directorate — our procurement experts — and with input from our legal advisers. Those questions were designed to test generic capability around dimensions, which I regard as extremely relevant to a contract of this nature, in such areas as performance management, financial management, financial control, quality control, working in partnership, risk management and so forth. Generic capabilities like that were being tested at stage 1.

Mr Carson: At stage 1, in assessing capability and capacity, you could not attach any weighting to the fact that a bidder had provided services in a particular local area. That would be against the regulations. It has to be equal treatment. While you may examine supply chain management, you could not restrict that examination to how a particular bidder has performed in a particular geographical area.

The Chairperson: Phil, sorry, I want to come in briefly. SC1 states that:

"Your answer should cover the organisational structure, staffing and other resources required to deliver the service."

Should that not have included detail on supply chain?

Mr C Boyle: In the SC1? There were questions about the supply chain later. The document at SC3 asks:

"Using an example(s) detail the processes and approaches you used to identify and meet the needs of both individuals and groups with different employability barriers to achieve the targets and other measures set by the organisation who awarded the contract?"

What we are trying to get at is this: show us where you have been successful doing this, and show us how you used the processes and approaches to achieve that success.

The next question, at SC4, asks:

"Using an example(s) detail how you have managed your own staff and/or sub-contractors to ensure that the targets and other measures set by the organisation who awarded you the contract were met."

We have been tapping that.

The Chairperson: A hypothetical supply chain, Colum.

Mr C Boyle: It is not hypothetical. People are talking about real examples in there. What you cannot do is pick an example of what somebody is doing in Australia and compare it with an example of what somebody is doing in Belleek versus what somebody is doing in Germany. You cannot do that. We are trying to assess each of the bids against these criteria in isolation, and whenever you have the scores, you rank. So you are not sitting comparing each organisation against each of those factors, one up against the other. They have not all been in Belleek, so we do not know at that stage how they will do in Belleek. The only way you will know that is when you get to stage 2 and ask them to set out their approach in this particular area. "We know the capability you described that you have, based on other contracts that you delivered. Show us now, please, in Northern Ireland for the contract that you are now bidding for." We ask that set of questions of every bidder, whether a Northern Ireland organisation or wherever they came from; it was irrespective.

The Chairperson: Phil, your second question.

Mr Flanagan: I thought that you were cutting me off. *[Laughter.]* I did have one more question, but I forget what it was now. I am still not satisfied with the rationale for doing it, lads; I will be honest with you. We have organisations, and I am picking two off the top of my head that I have seen have been prolific in advertising for the establishment of a supply chain: Reed and G4S. They have both advertised heavily that they are trying to establish a supply chain here.

What I cannot understand, and I really would like clarity from you on it, is why, at the stage 1 process, could you not have asked every organisation that wanted to move forward to stage 2 to demonstrate that they had a supply chain in place? I am not saying that you rule out companies that have not been in Belleek before, but you ask them to tell you how they are going to deliver this contract, and then, in stage 2, you move on to the in-depth, detailed analysis of their proposal.

I think that you have ruled out an awful lot of organisations that have the capacity and capability to deliver the contract and allowed companies through that, as far as I can see, do not yet have the capability and capacity to deliver this contract in a geographical area.

Mr Baker: I understand what you are saying, but I do not necessarily agree with you.

Mr Flanagan: That is fine.

Mr Baker: But I fear that we are going to end up disagreeing on this thing, or I fear that our answers are not going to be able to satisfy you on this point.

Mr Flanagan: I do not want you to answer the question in a way that I go, "OK, now I agree with you". I want to understand the rationale for it.

Mr Baker: I know that. That is what I mean by saying that I understand what you are saying. I do not want to go around all the houses again and repeat what I said to you. I will make just one comment and then Colum was obviously going to say something.

The question that you suggested that you would like to have seen in stage 1 is, in my view, although my view is probably not that important, and to those who know about procurement, more appropriate to stage 2, because it is a detailed issue about the delivery of this specific contract, whereas, at stage 1, we were looking for more general examples of an organisation's capacity. That is the way that we constructed it. Maybe you think that we constructed it wrongly. The Department, with its advisers, worked hard to construct a robust process that would stand up to scrutiny.

The issue of the delivery chain and, as Colum said, how it is going to be delivered in Belleek is very important to us. The challenge for the panel, not for me personally, is to assess that robustly and thoroughly at stage 2. Our interest coincides precisely with your interest in that ultimately we want the very best programme that we can get to help folk who are unemployed or economically inactive into employment.

That probably does not answer your question satisfactorily. Colum, you were going to say something.

Mr C Boyle: We share the same objective as you. We want this programme to be the best it can be. As the selection and assessment panel going in to do this process — again, I refer back to the training, but you do not need to be trained or told about some things — we had to be agnostic about any organisation bidding for this. It is easy for you to sit there and say, "Well, I have a perception that company x is better than company y, and company z could do this and company a could do that". I was not allowed the luxury of having that perception, and neither was any member of my selection panel. We had to rely on the advice of CPD about the best, safest, most secure, most defensible and most transparent way of working our way through the procurement. The advice that we received was to do it as a two-stage process. I do not make my money every day doing procurement. I could see procurement far enough, in truth. However, it is a necessary evil in the work that I do. We followed that advice. It has been very good advice. The advice means that it does not matter which bids sit in front of you; you look at what the bid is saying against the capabilities described.

If you think about the volume of work, that has given us about three weeks of solid work in scoring and assessing bids. Multiplying that, as Derek said earlier, and starting to look at local supply chains as part of the first stage would have absolutely smothered the process. There would have been no economy of effort whatsoever. I would have been very concerned about our actual capability to arrive at decisions that are defensible, transparent and that we could stand over. In truth, it does not really

matter whether you have done it in Germany, the north-east of England or south-west Australia. If you know what it takes to get unemployed people into work, particularly the hardest to help, that is the capability that we were testing. We were not afforded the luxury of looking at just who we had on our doorstep. We had to look right across the piece at whoever came in. That is what we did.

To answer your question, that was best served by looking at it in real, sharp focus in stage 2. Once we were assured that we had the top organisations, in respect of capacity and capability of what they had done elsewhere, coming through the process, that was the time to really get into sharp focus about the capabilities and capacity locally under Steps 2 Success. That is why it was done.

Mr Flanagan: Can I ask a yes-or-no question?

The Chairperson: Yes. Whether you get a yes or no —

Mr Flanagan: That is the thing. We were told to ask yes-or-no questions in here only if you know the answer.

During the process of looking at how the two-stage process would work, did you consider putting in the supply chain mechanism as part of the stage 1 process?

Mr C Boyle: We looked to CPD to give us advice about best practice. The best practice was to do it as two separate stages and to look historically back and forward. The advice that we received was that it was better to look at supply chain in the detail of what the contract would deliver going forward in isolation.

Mr Buchanan: I have one question, but I share the concerns of the Committee about the entire process. You said that, from stage 1 to stage 2, you were looking for top organisations coming through the process. However, the process has ruled out top organisations in Northern Ireland that are gold-plated in delivery, because they were not able to get through to the second stage to demonstrate exactly what they can do and what they had done. That is where the concern of the Committee lies.

On what basis would the Department consider rerunning the PQQ process?

Mr Baker: We would have to have very strong grounds to rerun the stage 1 process. One ground would probably be evidence of some kind of corruption or damage to the process that rendered it invalid or unsafe in some way. I am not a lawyer and I have not taken legal advice on this, but we would not rerun a stage 1 process simply because there was some disaffection in some quarters with the outcome of that process. That is in the context in which nobody has, as yet, challenged the process. There certainly has been no legal challenge. Nobody has pointed to something untoward or inappropriate being done as part of that process. I go back to the point that all the bidders, successful and unsuccessful, received their scores and comments, and they have seen the scores and comments of the successful bidders. It would be highly unsafe to do that. Unless we had really good grounds to do it, we as a Department would be wide open to litigation from all the bidding organisations for the costs, time and resource that they invested in stage 1. Reasons may crop up, but as the accounting officer for the Department — I am not the Department's policymaker; the Minister is — I do not see such grounds for rerunning stage 1. Nobody has raised any issue with me that I see as fundamentally damaging to or contaminating of the procurement process. It has been run in accordance with the best advice that we can get and as transparently and properly as we can do it. Our intention is to continue along those lines.

Mr F McCann: Thank you for the presentation. Just touching on one of Pat's points, I see that the letter that the Minister sent says that the Department does not hold information on previous performances by companies that may have applied for the contract. Did companies proving that they had not delivered similar schemes in the way that was expected, or falling far short of that, play any part in the selection of the firms to go on to stage 2?

Mr Baker: No. The only information that the assessment panel took into account was the information that was provided in response to the questions, which obviously asked for examples of what they have done in previous areas. If you are asking whether we, to use the vernacular, looked for references or at extraneous data or evidence or whatever, the answer is that we did not. That is because, as I said in response to a previous question, if we had started to look at other factors, we would have found that

there would have been different ones for each of the bidders and that we would not have been comparing like with like. We looked at the bids that we got based on the stage 1 questionnaire, and that was the only evidence that the panel took into account.

Mr C Boyle: It is the only evidence that we are permitted to look at. We are not allowed to look at anything else.

Mr F McCann: Do you look at companies' financial capability to deliver?

Mr C Boyle: We did do that.

Mr F McCann: Obviously, that is important. To me, not a week goes by that you do not see some of these major companies on a television programme talking about their ability to deliver or not deliver on many of these things. Surely their ability in the past to be able to deliver a similar scheme has to play a part in whatever decision is made.

Mr Baker: As well as the examples, a financial assessment was part of the process, and we have financial advisers to support us in that. So, financial capability was examined as part of the overall process.

Mr F McCann: I would expect that to be looked at, along with a company's ability to run an employment scheme, especially if the way that they ran a similar scheme left a lot to be desired.

Mr Baker: That was not examined. As I said, we did not look at extraneous factors, because we are not allowed to do so. If I may play devil's advocate, what about a new entrant to the market or somebody who has not run a similar scheme?

Mr F McCann: They have not got a track record.

Mr Baker: Yes, but are they excluded from entering, given that we can look at someone who has run such a scheme? What if another organisation wants to get into it?

Mr F McCann: Certainly not. However, if a company that has been heavily criticised not only by people but by government for the way that it has run a similar scheme elsewhere then applies for the scheme, surely it has to provide some information on whether it is capable of running it here.

Mr Baker: All the bidding organisations here were asked exactly the same questions and were asked to provide evidence in response to those questions — nothing different.

I will ask David whether there is anything in the generality of public procurement policy that allows an organisation to be excluded because of some previous event. I do not know the answer to the question of whether an organisation — again, to use an inappropriate term — can be blackballed because of some previous misdemeanour.

Mr Carson: The grounds for exclusion from a competition are set out in the regulations, and they are very specific. There are mandatory exclusions that would apply where an applicant or candidate is being convicted of a particular felony through the courts. There are also discretionary exclusions, which include areas such as bankruptcy, where someone has been previously declared bankrupt. That entails the contracting authority looking at the particular circumstances. That is prescribed in the regulations, but contract performance is not prescribed in the regulations.

Mr F McCann: I have one further point to make. Colum was asked this question: what administrative charge is accepted by a major company to run a scheme? Colum, the previous time, I think that you said that it could be up to 24%.

Mr C Boyle: Yes, we had a range in Steps to Work from 7.5% up to 20%.

Mr F McCann: I take it that that is the norm for some of the major companies. I was just taking up Phil's point.

Mr C Boyle: It is to cover costs.

Mr F McCann: There may be a 20% administration charge to employ a company here that may have applied. However, that means that there is 20% less to run a scheme that you hope would provide for everybody.

Mr C Boyle: Where the administrative charge is concerned, you would expect to see a lot of the additional capabilities, such as the supply chain, management of that supply chain, IT systems, the quality systems, the employer averages, technological support and all the support for learning and development and so forth to be dealt with. We are looking for Steps 2 Success lead contractors to put in place all that you would expect to see and to really build the supply chain. If the supply chain members are in difficulty with their finances, for example, we would expect them to help with that and to bring their own IT systems up to a certain standard as well. The prime contractor — the lead contractor — has to add a lot of value to make sure that that supply chain delivers, otherwise they will not meet their own contractual obligations. That is because they will not be able to deliver Steps 2 Success without a really active supply chain that goes right across the contract area.

Mr F McCann: Are you saying that, when the suppliers here sub-tender, they will not have to worry about the whole administration end and that it will be done elsewhere?

Mr C Boyle: On looking elsewhere, we have seen lead contractors working very skilfully and very closely with their supply chain to put their own systems in. It is to their benefit to make sure that they are all working off the same IT system, for example, and that they are working off the same management information to make sure that they are recording the same KPIs, the same outputs and so on and that they do it in the same way. So, I would expect to see a lot of added value from lead contractors to their subcontract chain, particularly the subcontract chain that is going to deliver end to end.

Mr Douglas: Last December in the Assembly, the First Minister said that one of the Northern Ireland Assembly's key principles in the Programme for Government was to grow the economy and tackle disadvantage. I think that Steps 2 Success will do that.

However, part of that is also about supporting local organisations and businesses that have had a very difficult time over the past six or seven years. David, you talked about the various clauses in European legislation that mean that you could not give preferential treatment to local companies, and we understand that. However, where local labour is concerned, obviously government contracts go to local companies and others who would ensure that maybe a percentage of the local labour would be from disadvantaged areas. Is that the case?

Mr Carson: Maybe not just as you have expressed it.

Mr Douglas: Apprenticeships as well.

Mr Carson: There is a very clear drive in the Programme for Government to include social clauses in public procurement contracts, and, where the nature of the contract allows it, to include requirements on training, apprenticeships and employment opportunities. There is guidance in that area. That is a key initiative generally in public procurement. Certainly, the procurement board monitors performance against those objectives very closely. However, one could not specifically say that apprentices should come from a particular area; it would have to be expressed in more general terms.

Mr Douglas: It is certainly not my experience that contractors are encouraged to look at local apprenticeships and local jobs.

Let me just take you on a bit. You mentioned that, in stage 1, you could not look at the local experience and the local track record. Will that be the case in stage 2? The reason that I ask you that is that, from some of the stuff that I have looked at, it appears to me that, not just in Europe but in other parts of the United Kingdom, the local experience and the track record of the local companies and organisations have been taken into consideration.

Mr Baker: That is probably not a question for David; it is probably more a question for Colum and me. It is a bit unfair to ask David that.

Mr Douglas: It was just that he had started off, Derek.

Mr Baker: I know.

You raised a very interesting point about social clauses in contracts. They are typically included in construction contracts. However, you raised something that I think that we need to take away and look at when we get to contract stage, so thank you for that point. Social clauses might be more difficult in something like this because it is not construction, and, therefore, apprenticeships and so forth might not be relevant.

Mr Douglas: Derek, all that I ask is that you look at other countries and elsewhere in the UK, where, from speaking to others, including the trade unions, it appears that that is the case.

Mr Baker: Mr Douglas raised a very valid point, and it is one that we have to take away. Generally and without going into the details, in stage 2, we will be looking at the local supply chain. You have seen the service guarantee, which is in the paperwork. That will have to be delivered locally to local clients right across Northern Ireland in three contract areas. Without pre-empting what comes through in tenders, it is hard to imagine that being delivered remotely. It will be delivered locally to people, because people live locally and will need to get that service. So, local organisations and local people will be involved in those contracts. I do not know what those organisations will be.

Generally in public procurement, the policies of David's organisation try to encourage small and medium-sized enterprises to have access to the information and the wherewithal that they need to compete fairly. In the prelude to stage 1, we went out of our way to highlight that there are opportunities for consortia and groups of smaller organisations to come together. Again without pre-empting what will happen in stage 2, one can imagine that, and this has been alluded to, there will be various subcontract arrangements.

Mr Douglas: Without guaranteeing it, are you saying clearly that there is a possibility that those companies and organisations that "failed" — that is the word that was used — in stage 1 may have an opportunity in stage 2?

Mr Baker: Yes. That was part of my ramble at the start of my presentation. However, I need to be careful what I say, because many organisations that might have bid for lead contractor status at stage 1 could well feature prominently in stage 2. I need to be careful that I do not say anything prejudicial about those organisations.

Mr Douglas: I want to ask a question based on what the Chair said. Colum, I understand how you arrived at the 1,700 quota. What weighting was given to that when you were making your assessment? Were organisations that did not have the capacity for 1,700 totally ruled out?

Mr C Boyle: That was an absolute one.

The Chairperson: Who decided the weighting of the questions in the PQQ? Was it DEL or CPD?

Mr Baker: It was DEL's evaluation panel. CPD and the lawyers provided quality assurance, but the final decision and casting vote rested with DEL.

The Chairperson: So, that was the Department's responsibility.

I will follow on from what Sammy said. What if a bidder gets through to stage 2 and then comes to you with a supply chain and a proposal that is based 100% on companies that were not successful in stage 1, apart from a small administration office somewhere? Is that acceptable?

Mr Baker: We will look at every bid on its own merits in stage 2. That would not be ruled out because of the circumstances that we described. We will look at that. An organisation having been unsuccessful as a lead contractor in stage 1 does not in any way, in my view, invalidate its potential participation in stage 2.

Mr C Boyle: I support that.

Mr Baker: We would start again from scratch with that.

The Chairperson: So, basically, the successful company in stage 1 could simply be the back office manager.

Mr Baker: That is conceivable. We would need to see the detail, but I know what you are getting at.

Mr P Ramsey: It is hard for members to get their heads round a lot of this, and I appreciate that procurement is a very intensive and sensitive process. However, in recent months, the Committee has seen that the DEL figure for Northern Ireland on the delivery of Steps 2 Success is 30%. Is that fair?

Mr Baker: Steps to Work.

Mr P Ramsey: The figure for Steps to Work was 30%. We are also aware that, of 17 of the 18 companies that got through to stage 1, not one, on the work programme that they are involved in in England, has exceeded 13%. From the perspective of a layperson and as a member of the Committee, I think that it is very hard to understand. We are trying to deliver a programme to get young people into training and work, and we are doing so well at 30%. I will go back to Phil's point to try to drill this out, because I still fail to understand the logic behind why the performance and supply chain was not included when it was so important. DEL brought a contractor in Steps to Work here to walk us through the scheme's process. It was very good, and it was a model. However, I ask myself this: how did the local contractors get it so badly wrong, when it was your model of best practice? What is your advice to them? If you are doing a map-through exercise now, could you say where they went wrong?

Mr Baker: They have all been told why they were unsuccessful in stage 1 and how they compared with the successful bidders. I do not have the individual documentation in front of me, but each and every one of them has been informed why their bids were not successful.

Mr P Ramsey: My understanding —

Mr Baker: There is — I am sorry, I cut across you there. Carry on.

Mr P Ramsey: I cut across you. Touché.

Derek, if we are trying to create an environment in Northern Ireland where all companies have the competency and capacity to procure or to compete in tendering exercises, does that mean that, as a result of this exercise, you now have a duty of care to try to create that environment to ensure that local companies have the capacity to compete in the tendering exercise stages?

Mr Baker: I will ask Colum to come in on that point.

Mr C Boyle: You used the phrase a couple of times today, Pat, that Steps to Work is our "model of best practice". It is not our model of best practice.

Mr P Ramsey: I am saying that it is a model that is —

Mr C Boyle: It is our current programme. I am proud of the programme, and I am proud of the organisations that have successfully delivered it. As I said, as chair of that panel, I had to put all that to one side and look at every bid that came in. My views on individual organisations, whether it is a Steps to Work one or one across the water, are meaningless. It meant absolutely nothing; all that you do is look at the bid straight down the line.

Steps to Work performance was evaluated, and it was found to be decent. Steps to Work is a programme that typically deals with jobseekers and people who are closer to work. We do not mandate ESA clients on to Steps to Work in the way that the Work Programme does. Those people can volunteer to come on, and we typically put them on to things such as Work Connect, which is a separate programme. The hardest to help will drag down the performance of any programme. When you compare Steps to Work with the Work Programme in GB, the two are like night and day. The measures that they use to assess outcomes are entirely different. We can go into that separately at some point if you want, or I can write to the Committee to set out how they are different, but they are very different.

In the evaluation of Steps to Work, we were asked to find more flexibility for providers. Providers wanted that themselves. They did not want to have to go off and say, "We will get somebody on a qualification, we will put somebody on work experience, we will give somebody essential skills, and we will give somebody Step Ahead 50+". What they were saying to us, and the evaluation said it very pointedly, was, "Give us the chance, with a new business model, to actually get people into work in the way that we know how to get them into work". We thought that was exactly the right thing to do. It is being done all over the world in that way.

We put in place the procurement process to tap that. We tried to tap into their capacity and capability to manage a supply chain, manage the IT, manage risks, set up a business model from scratch, deal with underperformance, and do all of those things. Those are the 10 questions that we mined in detail, and everybody was given the same fair chance. In fact, we lowered the bar for turnover so that more organisations, wherever they came from, could apply, including Northern Ireland organisations. The turnover level should have been set at £20 million and we set it at £12 million.

I think we have been very active on the duty of care question and in trying to build the capacity of the local market. We have also, through the procurement process, held market engagement events, which we facilitated and paid for. We are very hopeful that many of those organisations will continue to see the opportunities in this — I think that they will — to become an end-to-end provider or a specialist provider as part of a supply chain

Mr P Ramsey: Local service providers and contractors are crucial to the delivery of the programme. On one hand, Colum is very proud of the organisations that delivered Steps to Work, but they have been found unfit to deliver this programme.

Mr C Boyle: Well —

Mr P Ramsey: When they were excluded, they were judged unfit to deliver the programme.

Mr C Boyle: Chair, I would not like the word "unfit" to go on the record unchallenged. I explained earlier that it was a competitive process, and six organisations scored more highly than other organisations in each contract area, but that is definitely not to say that the organisations that came seventh, eighth, ninth or tenth are unfit. I want to make that point.

Mr P Ramsey: You are quite right to put that on the record, but that is the way that some of the companies feel. That is the language they are using to us. They are saying that they have been deemed unfit. Companies will now be delivering the programmes across Northern Ireland. It does not infuse you with great confidence when you see some of the English current affairs TV programmes that show the way those companies are delivering programmes. I will certainly be asking the Department to thoroughly examine those companies and the 'Dispatches' programmes that were on television last year to make sure that we do not see some of the incompetence that is going on in England.

The point that we are hearing from the local companies is that you might have the big hitters coming from England, but the local delivery agents will be expected to operate with much reduced levels of income and staffing. When you are going through stage 2, I think it is important to ensure that there is value and competency, but the same value for money for those groups. We do not want what is happening in England. You know exactly what I am getting at, Colum, about some of the English models that have been portrayed on TV as very poor and incompetent.

Mr C Boyle: One of the key things to make sure that we do as part of the process, going forward, is on operational readiness and the checks that we put in place to make sure that any bidder coming through is ready to deliver. Due diligence will be ongoing in financial capabilities. It is not in our interests to put in place an organisation that is doomed to fail before it starts. This is about lifting performance in Northern Ireland, getting more people who are unemployed into employment earlier, and keeping them there for longer. Our interest is not in setting this up to fail; it is in doing the opposite.

Mr Baker: Yes. Indeed, to go back to Mr Buchanan's question, if we get to the end or go through the stage 2 process and conclude that, in any contract area, we are not satisfied that we have an organisation that can do what we want, we could set it aside and say, "Do you know what? We have to run this again." Under those circumstances, it would be legitimate to do that.

I know what will happen. The challenge will be on the Department and you will hold us to account, and quite rightly so. You will hold our feet to the fire on our ability to run a procurement exercise and properly contract manage this programme. There is a big challenge for us as far as contract management is concerned. That is a discipline and a skill on which we need to step up to the plate and show our capability. There is work ongoing in the Department. This is not a red herring, but there is a secondary issue that, presumably, will be notified to the Committee in due course on how we are improving our capability in contract management.

There is a massive onus on us. As the accounting officer, I recognise that and do not shirk it. I understand the concerns of members of the Committee. Maybe we have not answered all questions to your satisfaction, but I understand the challenge that will be put on us as this moves forward. I acknowledge that.

Mr Flanagan: Colum has had a fair go at answering the questions, and I thank him for that. I want to put that on record.

You have said that you will give us a comparative analysis between Steps 2 Success and the Work Programme. Will you add Steps to Work to that and give us a three-column breakdown?

Mr C Boyle: Yes, we can do that.

Mr Flanagan: Will you also give us a copy of the PQQ scores for each candidate? If you need us to keep that confidential, we can do so.

Mr C Boyle: We would need to reflect on that with CPD. I am not sure what the rules are on that.

Mr Flanagan: OK. I will leave that with you. Will you give us an update on the time frame for moving to the second stage and all of that? Do you want to do that now or in writing?

Mr C Boyle: It is probably easier if we get back to you.

Mr Flanagan: Have you put out a call for the second stage yet?

Mr C Boyle: No.

Mr Flanagan: Is there still a January/February time frame for that?

Mr C Boyle: It will be the end of February before we are ready to go.

Mr Flanagan: Is there any reason why DEL did not deliver the contract itself?

Mr C Boyle: What do you mean by "deliver the contract"?

Mr Flanagan: Why does DEL not run Steps 2 Success itself instead of putting it out to contract? It seems to be the thing in the public sector now that everything is outsourced. Why does DEL not do something itself?

Mr C Boyle: DEL does quite a few things itself.

Mr Flanagan: Why does it not do this itself?

Mr C Boyle: I will give you an analogy. We run the youth employment scheme pretty much on our own and we have drawn in Steps to Work contractors to help us out on one small element of that. The amount of time that you have to spend on administrative overheads is one factor. It is one thing for our front line people to see clients — unemployed people — and assess where they are in their employability, do action planning with them, try to make sure that they have the right job goals and try to promote particular employers. That is all fine: you see them quite regularly, every couple of weeks, and you can do that. However, it is very labour intensive when it gets to the stage of being out there with employers and making sure that everything with the employers that has to be done is done, such as insurance, monitoring and equality, and we have found that very difficult. That is why we have had to enlist support for one element of the youth employment scheme from Steps to Work contractors.

Mr Flanagan: They are not doing that for nothing. You are paying them to do it.

Mr C Boyle: Absolutely. We are paying them to do it, but they have lots of other things to do as well. That is the problem. Considering the size of our organisation and the capacity of people to do what we are asking of them, we are busting at the seams. To take on something like this would be absolutely huge. The amount of time we are asking providers to give, whether in Steps to Works currently or in Steps 2 Success, going forward, is huge. We are asking providers to sit down with individuals for several hours every month and make sure that they are coached, mentored and supported to try to find employment. That takes time and a lot of case management and individual work. That is well beyond our capacity.

Mr Flanagan: I appreciate that but if a private company can make a profit doing it, why can the public sector not deliver it?

Mr C Boyle: The private company is making a profit because it is doing that and nothing else. The problem that we have is that we also have statutory functions to fulfil.

Mr Flanagan: The budget for Steps 2 Success over the period is something like £24 million or £40 million.

The Chairperson: Phil, you are changing the subject from public procurement to structure and management.

Mr Flanagan: I am not. I am asking a genuine question about why DEL put this out for tender instead of doing it itself.

Mr C Boyle: We wanted to do it in a focused way that would give us the best results. The best way of doing that is to give it to organisations that are specifically dedicated to that and that can sweat it in a way that we could not. We would be spread far too thinly.

Mr Flanagan: Can you not hire staff? I am not saying that you should do it, Colum. *[Laughter.]* I am saying that the Department should do it.

Mr Baker: It is a fair question, and I think that you hit the nail on the head in your last comment. Presumably, any Department could do what it contracts others to do, subject to the hiring of large numbers of staff with the expertise to do it. The answer is that, in theory, it is possible, but it would probably mean increasing the size of DEL by a factor of I do not know what.

As Colum said, there are organisations that are teed up to do this. I appreciate that they make a profit and you can get into philosophical questions about whether government should be contracting with organisations that make a profit. But we do. There are organisations that have capability, capacity and expertise in this area, so we contract with them. In theory, any Department could expand to do all the stuff that is done by outside organisations that we pay to do it. The public sector gives grant aid and contracts with a huge number of organisations to do various things that we do not do ourselves. We could take all that on ourselves if we had ever more staff trained them up to do it. In theory, that would be possible.

Mr Flanagan: It is not as if it has never happened before. There was a time when DEL did all this itself. Now, it is contracting everything out. It seems that DEL does not have direct responsibility and can then blame the contractor. That makes it very difficult for us, as a scrutiny Committee, to hold people to account. We cannot bring in Steps 2 Success contract providers. We will bring in you and Brendan and ask you the questions, and you will tell us that the questions are for the contractors.

Mr C Boyle: It is for us to manage the contractors. Through the evidence that we have given previously, you have seen that we have managed them and that a number of contracts have not been renewed and been removed. I think that we have our quality focus right in Steps to Work. I am extremely confident that we also have our quality focus right in Steps 2 Success. I think that that is shown in the enhancements that we are bringing through in the contract management arrangements and in how the KPIs will be focused on. Any organisation that is successful will know that it is being scrutinised. They will be managed.

Mr Baker: We are the contracting authority, and we will be accountable for this programme.

Mr Flanagan: We will agree to disagree.

The Chairperson: We will remind you of that accountability.

Mr Buchanan: You will be well scrutinised. You can be sure of that.

Mr Baker: I acknowledge that, Chair.

The Chairperson: Gentlemen, Phil made a couple of requests for documentation. Will you provide that? I do not think there is any reason why the scoring should be confidential. If necessary, we can hold that as confidential information and handle it in a closed session.

Mr Baker: We will take — Sorry, David.

Mr Carson: We need to reflect on that, Chair. It is not about the intention of the Committee but the outside perception of what could be going on. We have to bear that in mind.

The Chairperson: If necessary, we can also take legal advice, David. I have one final question. We are now going into stage 2. Have the scoring and the questions been agreed?

Mr C Boyle: We are in the process of finalising those now.

The Chairperson: Those will be signed off officially by DEL with —

Mr C Boyle: With CPD.

The Chairperson: You will be the responsible body.

Mr C Boyle: Yes.

The Chairperson: OK. Gentlemen, thank you very much for your time.