



Northern Ireland
Assembly

Research and Information Service Briefing Paper

Paper 50/24

5 December 2024

NIAR 270-24

Public Sector Procurement in Northern Ireland

RaISe

Public Finance Scrutiny Unit

This Briefing Paper provides an overview of public sector procurement in Northern Ireland.

This information is provided to Members of the Legislative Assembly (MLAs) in support of their duties, and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as professional legal advice, or as a substitute for it.

Key Points

Around £3 billion is awarded through Northern Ireland public sector contracts annually¹; and most contracts are won by Northern Ireland based small and medium sized enterprises (SMEs)².

The Department of Finance (DoF) have overall policy responsibility for public sector procurement, which is overseen by the Procurement Board.

Following the United Kingdom's departure from the European Union (EU), procurement rules have broadly stayed the same across the United Kingdom, including Northern Ireland. Although new procurement rules will come into force in February 2025, the new rules aim to make procurement simpler and more transparent.

In 2023, the Northern Ireland Audit Office (NIAO) completed a review of public procurement in Northern Ireland³. It concluded that there should be more effective coordination and oversight of procurement activity and fundamental changes to culture, structures and processes are required.

The NIAO report highlighted that there should be a procurement strategy to underpin how procurement functions across all procuring authorities. It presented four recommendations; all of which have been accepted by the DoF⁴.

The Northern Ireland Assembly (NIA) Public Accounts Committee (PAC) also published a review of public sector procurement in Northern Ireland (dated November, 2024). That report highlighted that the absence of a strategy has resulted in a lack of strategic leadership and direction for public sector procurement. The report also stated that the weaknesses within procurement structures made it difficult to demonstrate that value for money has been achieved.

¹ [Annual Procurement Report June 2024.pdf](#)

² [Procurement | Department of Finance](#)

³ [NIAO Report - Public Procurement in Northern Ireland.pdf](#)

⁴ [Departmental Response to recommendations in the Northern Ireland Audit Office's Report - Public Procurement in Northern Ireland](#)

Introduction

This Briefing Paper has been prepared for the Committee for Infrastructure (the Committee). It provides the Committee with an overview of procurement processes and roles and responsibilities in Northern Ireland.

This Paper is structured as follows:

1. Public Sector Procurement Structures and Processes
2. Public Procurement Policy
3. Overview of the Northern Ireland Audit Office Report on Public Procurement
4. Public Accounts Committee's Report on Procurement
5. Key Takeaways.

1 Public Sector Procurement Structures and Processes

This section summarises the overall structure of Public Procurement in Northern Ireland and related processes.

1.1 What is public sector procurement?

The Northern Ireland Executive has defined public procurement as:

Public procurement is the process of the acquisition, usually by means of a contractual arrangement after public competition, of goods, services, works and other supplies by the public service". The public procurement process spans the whole life cycle from initial conception and definition of the needs of the public service through to the end of the useful life of an asset or the end of a contract. Both conventionally funded and more innovative types of funded projects (for example PPP/PFI arrangements with the private sector) are included as are the use of the private sector to deliver services previously delivered directly by the public sector ("contracting out") and in-house consortia bidding in a public procurement process.⁵

⁵ [NI Public Procurement Policy document](#)

1.2 Public Sector Procurement Structures

The Department of Finance (DoF) has overall responsibility for public procurement policy across all Northern Ireland Executive (Executive) Departments and their Arms' Length Bodies (ALBs) and non-departmental public bodies (NDPBs)⁶. Construction & Procurement Delivery (CPD), within DoF provides professional procurement services to Northern Ireland Civil Service (NICS) departments, agencies and non-departmental public bodies (NDPBs).

The Supplies and Services Division (SSD) sits with the CPD group and is responsible for supporting Northern Ireland government departments and other public sector bodies. The SSD administers tendering processes for CPD's public sector clients and provides advice and support to ensure that the public procurement policy is understood and applied.

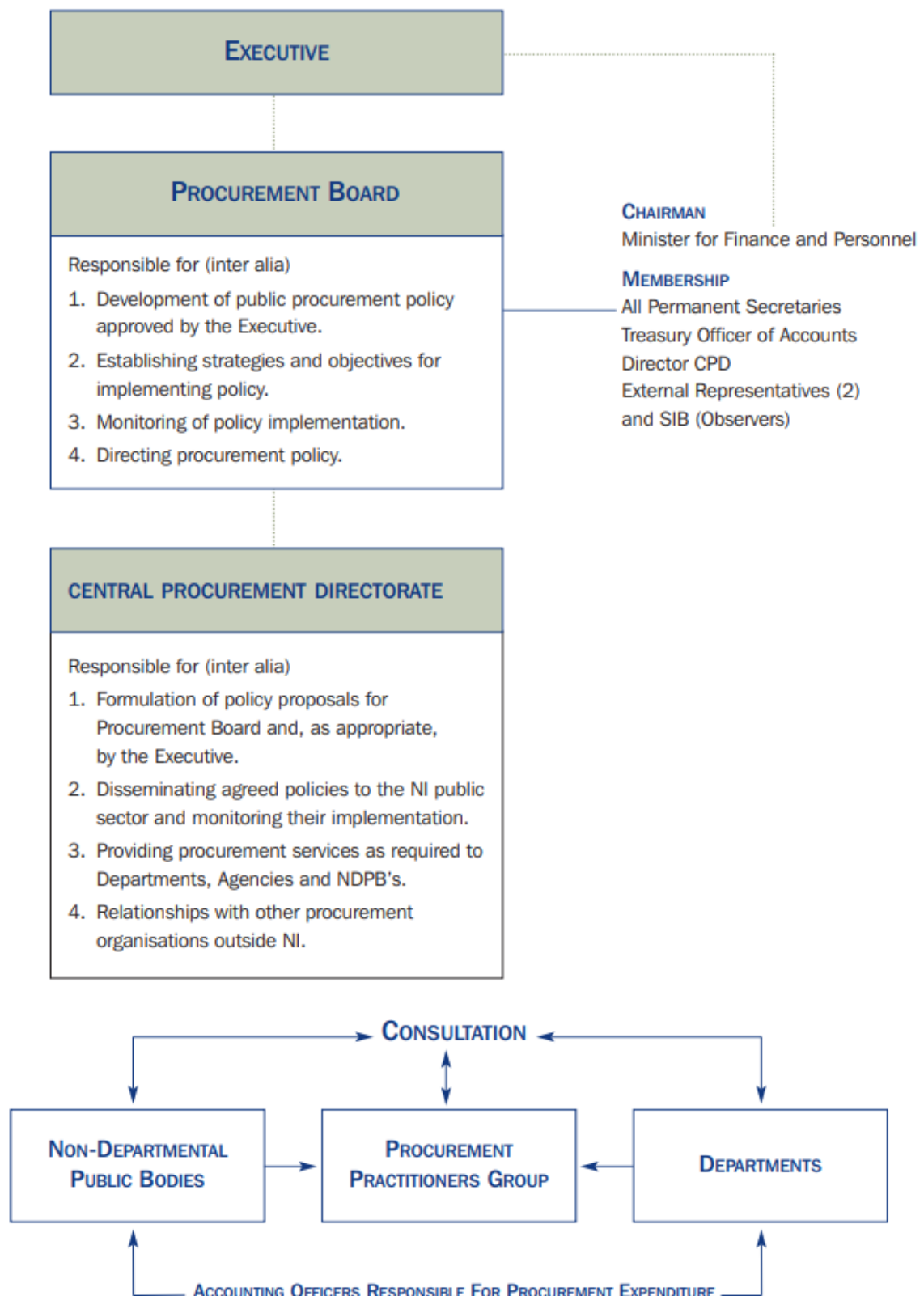
The Procurement Policy Division within CPD is responsible for advising Northern Ireland departments on procurement policy and developing Procurement Policy Notes (PPNs). CPD advise public sector bodies of procurement policy via PPNs⁷. Examples of recent PPNs include those relating to Social Value, Supply Chain Resilience and Human Rights.

Departments, their agencies, NDPBs and public corporations are required to carry out their procurement activities by means of documented Service Level Agreements with CPD or a relevant Centre of Procurement Expertise (CoPE).

The overall structure of Public Procurement in Northern Ireland is summarised as follows:

⁶ [List of public bodies to which NI public procurement policy applies | Department of Finance](#)

⁷ [Procurement Policy Notes \(PPNs\) | Department of Finance](#)

Figure 1: Procurement Structures in Northern Ireland

Source: [Northern Ireland Public Procurement Policy \(2014\)](#)

1.3 Procurement Board

As set out in Figure 1 above, the Procurement Board is responsible for public procurement policy and is accountable to the Northern Ireland Assembly (the Assembly). The Board, as chaired by the Minister of Finance, develops, disseminates and co-ordinates the public procurement policy⁸. The Procurement Board is also responsible for developing policy initiatives, practices and advice, for endorsement by the Executive. The Board cannot operate in the absence of a Minister and therefore its function ceased in September 2022 when the Minister left Office. In the interim, the Procurement Board has yet to be re-established. Membership of the Board in 2022 is set out in the following table:

Table 1: Membership of the Public Procurement Board (2022)

Sector	Member
Chair	Minister of Finance
Public Sector & Procurement Advisors	Permanent Secretary, DoF Chief Executive, DoF CPD Director, CPD Construction Director, Education Authority (EA) Chief Executive, Strategic Investment Board (SIB) Head of procurement, Translink
Industry Advisors	Director, Social Enterprise NI Director, Inspire Managing Director, Construction Employers Federation Chair, NI Construction Industry Council Deputy Chief Executive, Manufacturing NI Representative, Procurement Board Forum for SMEs. Representative, Irish Congress of Trade Unions.

Source: <https://www.finance-ni.gov.uk>

⁸ [V3 Terms of Reference - Procurement Board.pdf](#)

Under its Terms of Reference⁹ the Board is charged with several responsibilities including:

- developing policy and ensuring that that policy is consistent with the Executive's wider policy commitments and the Programme for Government
- consulting with departments, heads of procurement and other stakeholders on policy and implementation
- disseminating procurement policy amongst public bodies and monitoring implementation and compliance
- ensure procurement officials are provided with appropriate guidance and training
- developing targets for procurement and monitoring performance.

It is also the Board's role to periodically review the competency of CoPEs. As noted in the NIAO 2023¹⁰ report on procurement in Northern Ireland, the Board is a critical body for ensuring the overall effectiveness of procurement arrangements across all bodies covered by the Northern Ireland Procurement Policy (NIPPP). However, in practice, these arrangements did not meet these standards or deliver the intended accountability and governance.

1.4 Construction and Procurement Delivery

Construction and Procurement Delivery (CPD) is the central government purchasing body for supplies and services in Northern Ireland. The Director of CPD reports directly to the DoF Permanent Secretary. As set out in the most recent CPD Business Plan¹¹ their role is to:

- support to the Procurement Board and Minister in the development of procurement policy and implementation of UK procurement legislation
- procurement services to a wide range of public bodies ensuring best value for money is achieved through the contracts awarded

⁹ [V3 Terms of Reference - Procurement Board.pdf](#)

¹⁰ [NIAO Report - Public Procurement in Northern Ireland.pdf](#)

¹¹ [CPD Business Plan 2023-24](#)

- construction advice and services to assist clients deliver successful capital projects
- provision of property maintenance and small projects to ensure assets are available to be used by staff and the public
- property services to ensure appropriate office accommodation is available to our staff
- project and commercial delivery advice, guidance and assurance to enhance project and commercial capacity and capability.

Policy and Performance Division within CPD provides the administrative support that the Board needs to deliver on these responsibilities. In particular, CPD is responsible for formulating policy proposals for the Board. It also has responsibility for developing management information on procurement expenditure and monitoring information on procurement performance across the public sector.

CPD is also responsible for disseminating advice and guidance on the direction and policies on public procurement, determined by the Procurement Board, to the Northern Ireland Public Sector and monitoring their implementation. Advice and guidance are disseminated through the production of Procurement Guidance Notes (PGNs), which are developed in consultation with a Procurement Practitioners Group (PPG), and its sub-groups whose membership includes practitioners from the various CoPEs.

Once endorsed by the Procurement Board these guidance notes are issued to Permanent Secretaries, Finance Directors and all CoPEs for implementation by bodies covered by Northern Ireland Public Procurement Policy. Procurement Guidance Notes are also placed on the CPD website¹². There are seven divisions within the CPD: each of which report to the Director of CPD, as summarised in Table 2:

¹² [NI Public Procurement Policy document](#)

Table 2: CPD Divisions

Division	Role / Responsibility
Procurement policy	Supports the Procurement Board and the Minister in the development, dissemination and monitoring of procurement policy across Northern Ireland (NI) Departments and the wider public sector. It is also works closely with United Kingdom (UK) Cabinet Office and other UK jurisdictions (Scotland and Wales) in the development and implementation of procurement regulations.
Building standards and regulations	Is responsible for building standard policy and legislation.
Construction	Provides a comprehensive construction procurement service on capital and grant funded projects.
Commercial delivery	Is responsible for project assurance and project delivery and the Northern Ireland Civil Service (NICS).
Estates management	Is responsible for providing office accommodation for Northern Ireland Departments and for the management of the Stormont Estate.
Property maintenance services:	Provides high quality, cost effective professional property and hard facilities management service to Departments and other public sector bodies to enable them to adequately maintain their assets, ensuring the assets are available for use by both staff and the public
Supplies and Services	Supports the Departments and their sponsored bodies by procuring supplies and services to enable them to meet the Programme for Government (PfG) – currently in draft. The supplies and services procured by SSD include: IT hardware, software and services, office furniture and equipment, commercial fleet, and professional services.

Source: [CPD Business Plan 2023-24](#)

1.5 Centres of Procurement Excellence (CoPEs)

In addition to the CPD, there are seven Centres of Procurement Expertise (CoPEs) providing professional procurement services to the NICS Departments, agencies and arms-length bodies¹³. Each Departmental Accounting Officer is responsible for its own CoPE. CoPEs provide technical support and guidance to ensure compliance with legislation and other regulations as set out below:

Table 3: Centres of Procurement Excellence

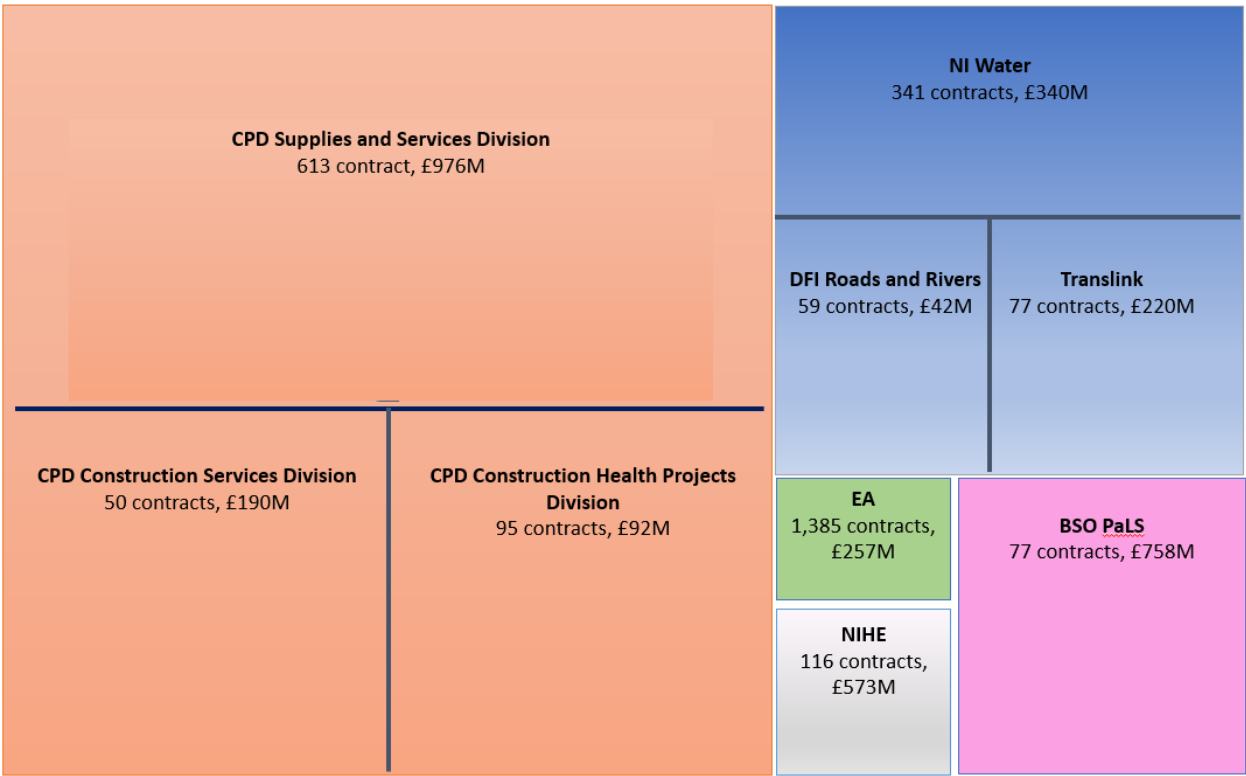
CoPE	Area of procurement
Department of Health	Health Projects, including construction works and services for Northern Ireland Health and Social Care Trusts (HSCTs) and public safety bodies.
Education Authority	Procurement projects, including capital works, design services for capital works as well as goods and services.
Northern Ireland Executive	A wide variety of construction, supplies and services procurement projects.
NI Water	Procurement of goods, material services and construction works relating to water and sewerage.
Procurement and Logistics Service (PaLS)	Provision of logistics and procurement services to all public health and social care organisations in Northern Ireland.
Translink	Procurement for the Translink group.
Department for Infrastructure (DfI)	Transport and Roads Asset Management (TRAM), which is responsible for procurement relating to the transport network and transport projects designed to improve safety, sustainability and efficiency.

Source: [DoF Learn about the NI Centres of Procurement Expertise \(accessed Dec, 2024\)](#)

¹³ [View procurement pipeline information for Centres of Procurement Expertise | Department of Finance](#)

All Northern Ireland Departments buy through a CoPE for contracts of £30,000 of over¹⁴. An overview of the CoPEs, including, the number and value of their contracts in 2021-22, is provided at Figure 2 below:

Figure 2: CoPE overview and contract details (2021-22)¹⁵



Source: NIAO Report - Public Procurement in Northern Ireland, 2023

The 2023 NIAO report¹⁶ noted that there is capacity and capability issues within CoPEs. There remains significant work for both CoPE and contracting authorities in establishing sufficient capacity and capability within the workforce to manage the procurement activity they undertake. The Figure also highlights that the Procurement Board has responsibility for steering procurement policy and practice; and is also responsible for ensuring procurement officials are provided with appropriate guidance and training. Understanding capacity and capability issues across both contracting authorities and CoPE, and assessing

¹⁴ [committee-32872.pdf](#)

¹⁵ [NIAO Report - Public Procurement in Northern Ireland.pdf](#)

¹⁶ [NIAO Report - Public Procurement in Northern Ireland.pdf](#)

their scale and impact, is critical to the Board's ability to meet its specified responsibilities.

1.6 Tendering Processes

Tenders are advertised and managed through the DoF electronic tendering portal [eTendersNI portal](#). All CoPEs advertise and manage their tenders through the portal. To ensure consistency and transparency in the award of contracts, Departments must use eTendersNI.¹⁷ This tendering portal is used by 146 contracting authorities including some local councils.

There are six procedures that may be used to award such a contract:

- **Open procedure** – the contracting authority invites interested parties to submit tenders by a specified date. The process does not involve a separate selection stage. All tenders that meet the qualitative criteria must be evaluated and the contract awarded to the bidder with the most economically advantageous tender. Negotiations are not permitted.
- **Restricted procedure** – the contracting authority considers applications from interested parties and invites a minimum of five qualified applicants to submit tenders, determined based on objective and non-discriminatory rules and criteria. The contract is awarded to the bidder who has submitted the most economically advantageous tender. Negotiations are not permitted.
- **Competitive procedure with negotiation** – the contracting authority considers applications from interested parties and invites a minimum of three qualified applicants to negotiate the contract with the contracting authority. Two may be permissible in specific circumstances. Negotiations may involve successive bidding rounds, to reduce the number of tenders to be negotiated. Final tenders cannot be negotiated.
- **Competitive dialogue** – the contracting authority considers applications from interested parties and invites a minimum of three qualified applicants to enter into discussions with a view to identifying the solution(s) capable of meeting its needs. Again, two may be permissible in specific circumstances.

¹⁷ [PPN 04 21 Procurement Control Limits pdf \(3 May 2022\).PDF](#)

A competitive dialogue may take place in successive stages to reduce the number of solutions to be discussed. There can be no substantive discussions following the submission of final tenders, although these may be clarified, specified and optimised at the contracting authority's request. Limited non-substantive negotiations may also take place after the bidder with the most economically advantageous offer has been identified, with a view to finalising the terms of the contract.

- **Innovation partnership** – the aim here is to set up a partnership between a contracting authority and one or more economic operators for the development of an innovative product, service or works meeting the contracting authority's minimum requirements. The contracting authority can purchase the outputs without the need for a new procurement process, provided that these meet the performance levels and maximum costs agreed between the contracting authority and the participants. The process for setting up an innovation partnership is based on the procedural rules that apply to the competitive procedure with negotiation.
- **Competitive procedure without prior publication** – permitted in certain limited and narrowly defined circumstances. These include where there is extreme urgency not attributable to the contracting authority, and where the requirement can only be met by a particular economic operator due to technical reasons or the existence of exclusive rights.

In line with all other aspects of the procurement process, any negotiations are subject to the obligation to treat economic operators equally, without discrimination. That means, among other things, that the contracting authority cannot disclose the confidential information of one bidder to the others without agreement. That agreement must be specific, with reference to the intended disclosure of specific information, and not a general waiver.

The legislation permits the use of the open or restricted procedures at the discretion of the contracting authority. The other procedures are permissible only where specific conditions are met.

1.6.1 Thresholds and Procurement Control Limits

The levels at which public bodies must follow formal procurement processes are referred to as thresholds or control limits are set out in Public Contracts Regulations (PCR) 2015, Utilities Contracts Regulations 2016, the Concession Contracts Regulations 2016 and the Defence and Security Public Contracts Regulations 2011 (“the UK regulations”). The aim of Procurement Control Limits is to ensure that public procurement contributes to a strong, competitive and regionally balanced economy by:

- Stimulating effective competition (competition is the best way of achieving and demonstrating Best Value for Money);
- Achieving a balance between the value of the contract and the transactional cost of undertaking the procurement procedures; and
- Ensuring a proportionate approach is taken to procurement for low value requirements¹⁸.

Procurement Control Limits are set out in Table 4 below:

Table 4: Public Sector Procurement Control Limits

Value of contract (exclusive of VAT)	Required Procedure
Up to £5,000 Up to £10,000 (Health)	Departments must demonstrate that value for money has been secured.
£5,000 to £30,000 £5,000 to £50,000 (Utilities) £10,000 to £30,000 (Health)	Seek a minimum of two tenders to demonstrate value for money
£30,000 to UK Thresholds* £50,000 to UK Thresholds* (Utilities)	Advertise on eTendersNI, using a CoPE
Above UK Thresholds*	Advertise on eTendersNI. Public Contracts Regulations / Utilities Contracts Regulations apply – advertise on Find a Tender service.

Source: [PPN 04 21 Procurement Control Limits pdf \(3 May 2022\)](#)

¹⁸ [PPN 04 21 Procurement Control Limits pdf \(3 May 2022\) 0.PDF](#)

As noted in the PPN, Departments are required to report and monitor tenders using the eTendersNI platform. Contracting authorities must ensure that eTendersNI is kept up to date with information on tenders and contracts awarded to allow reports to be generated on the volume and value of contracts awarded above £30,000 (or £50,000 for utilities contracts) exclusive of VAT.

1.7 Tender Evaluation

The assessment of bids in public sector tender competitions has two distinct processes:

1. **Selection of economic operators** - to determine the economic and financial standing of bidders, as well as their technical and professional ability to deliver a contract. (There are a number of factors that would exclude economic operators at this stage, such as offences relating to fraud, corruption and human trafficking or, where operators are in breach of their obligations relating to the payment of taxes. Regulation 57 of the Public Contracts Regulations 2015¹⁹ sets out in detail mandatory exclusions which contracting authorities should apply (an extract of which is provided in Annex C)).
2. **Evaluation of tenders** - an assessment of how the economic operator has proposed to deliver the contract in question.

DoF provides guidance to ensure that public bodies which are engaged in tendering processes are compliant with European Union and United Kingdom law and the Northern Ireland Public Procurement Policy²⁰. The Guidance highlights that panels should be established to assess all procurement exercises. Each panel should include a member of the relevant CoPE and have experts on the relevant field to ensure a full and thorough evaluation of each economic operator and their tender. It is mandatory for tender evaluation panel members above the EU thresholds to have appropriate training in evaluation best practice. The Guidance also emphasises that panel members should

¹⁹ [The Public Contracts Regulations 2015](#)

²⁰ See [The Sourcing Playbook – June 2023](#) and [DoF Tender Evaluation Guidance](#)

adhere to the principles underlying probity, that they should declare any conflicts of interest and must not accept gifts from economic operators. Further information on the roles and responsibilities of procurement panel members is set out in Annex B.

Tenders must only be evaluated against the award criteria that has been published and only using information that has been provided in the tender offer. Panel members must score submitted bids individually and then meet to develop a consensus. The on-line evaluation functionality in eTendersNI must be used for completing the individual and consensus scoring. These records provide an audit trail and form the basis of debriefing information that can be provided to economic operators.

Regardless of the type of procurement process used, contracting authorities must award the contract to the most economically advantageous tender (MEAT). This should be determined based on price alone or, a price and quality ratio that is based on criteria linked to the contract.

1.7.1 Due Diligence

Due diligence is primarily conducted through self-declaration by the economic operator bidding for the contract during the 'selection of economic operators' stage. At this stage economic operators must disclose their financial status and confirm that they do not meet any exclusion criteria. If requested they must provide relevant documentary evidence. Failure to do so may result in public sector bodies amending their contract award decision.

The NIAO also provides information and guidance to public sector bodies relating to risk and due diligence at each stage of the procurement lifecycle²¹. Table 5 below provides examples of potential risks at each stage of the tender lifecycle and mitigating controls:

²¹ [NIAO Procurement Fraud Risk Guide.pdf](#)

Table 5: Potential Fraud Risk and Mitigating Controls in public sector procurement

Fraud Risks / Red Flags	Mitigating Controls
Pre-tender stage	
There may be an unusual pattern or overuse of single sourcing, possibly used to favour a certain supplier and influenced by a conflict of interest or bribery.	Monitor use of single sourcing on a periodic basis, to ensure it is not excessive and is properly justified in each case. Up-to-date and accurate management information is key for monitoring purposes.
There may be signs of a close relationship between a public official and a supplier.	Ensure staff are aware of: <ul style="list-style-type: none"> - the actual and perceived risks of a close relationship with suppliers. - and abide by, the principles of public life and any applicable code of conduct.
Insufficient due diligence or market engagement regarding proposed new suppliers/contractors, and existing suppliers.	Perform appropriate due diligence on all proposed new suppliers and contractors, e.g. checks to Companies House or trade associations. Also, periodically monitor the status of existing suppliers to ensure no change.
Tender Stage	
There may be a lower than expected number of tenders, suggesting manipulation of the specification or collusion between bidders in the form of bid rotation or market sharing	Conduct market engagement exercises to help ensure appropriate levels of competition. This may include seeking feedback on the proposed specification to ensure it is not restrictive.
There may be evidence of contact between a bidder and a staff member through unofficial channels, indicating the possible leaking of information, bribery or a conflict of interest.	Establish an e-tendering platform and require its use for all communications. This will help to maintain an audit trail. Raise staff awareness of bribery and corruption risks through regular ethical procurement training sessions. Annual ethical procurement training should be mandatory for staff in procurement posts.

Certain bidders may be given extensions, allowing them to submit tenders after the due date.	Monitor any extensions to ensure they were properly authorised and given for justifiable reasons. Consider their impact on the final outcome of the process.
Award of contract	
The contract may be awarded to an unexpected contractor, indicating possible conflict of interest, bribery or corruption.	<p>Ensure that standard documentation is used to record the panel decision, with appropriate supporting documentation.</p> <p>Ensure that all panellists have declared any conflicts of interest in relation to the specific procurement exercise.</p>
There may be little or no documentation to support the award panel's decision. This could be an effort to conceal possible conflict of interest, bribery or corruption.	<p>Ensure that standard documentation is used to record the panel decision, with appropriate supporting documentation.</p> <p>Use an e-tendering platform to facilitate proper recording of decisions.</p>
Contract Management	
Unexpected or unexplained delays could indicate a contractor manipulating the contract in order to claim extra costs.	<p>Monitor contract overruns in terms of both cost and time, and ensure there is clear justification for any variations.</p> <p>Ensure contract terms are invoked to secure service credits or recovery of costs due to supplier delays.</p>
Unexplained additional works or services leading to additional contract costs may indicate bid manipulation, with submission of an intentionally low bid to win the contract, followed by requests for contract variations.	<p>Have clear procedures in place for contract variations, to ensure they are properly documented, justified and authorised.</p> <p>Challenge contractors/suppliers who seek variations to the contract post-award.</p>

Source: NIAO Procurement Fraud Risk Guide (2020)

2 Public Procurement Policy

Responsibility for public procurement policy in Northern Ireland lies with the Procurement Board; chaired by the Finance Minister. The Procurement Board is responsible for developing policy initiatives, practices and advice, for endorsement by the Executive. Board members are appointed by the Minister for Finance. Public Procurement Policy applies to all Departments and their ALBs²².

All policies agreed by the board must comply with relevant procurement legislation. Currently, policy is governed by four different pieces of legislation which were designed to comply with EU standards:

- Public Contracts Regulations 2015
- Utilities Contracts Regulations 2016
- Concessions Contracts Regulations 2016, and
- Defence and Security Public Contracts Regulations 2011.

The Executive has approved five Procurement Policy Notes (PPNs), which are the key areas of focus for the Executives Procurement Policy, as summarised in Table 6 below

Table 6: Current Procurement Policy Notes

PPN	Reporting Requirements
PPN 01/21 Scoring Social Value	The use of Social Value among Departments must be monitored and reported to CPD. The model criteria includes reporting metrics to guide monitoring activity and a template will be developed to ensure a standard approach to reporting. The Department of Finance will publish an annual report on the implementation of the Scoring Social Value Policy. This will assess social value impacts, detail contracts that opted out of the policy and identify lessons for revising the policy and practices as well as associated training and guidance.

²² [V3 Terms of Reference - Procurement Board.pdf](#)

PPN 02/21 Procurement of Social and Other Specific Services	<p>The following annual reports on contracts awarded for social and other specific services must be forwarded to CPD:</p> <ul style="list-style-type: none"> • Details of above Threshold Contracts awarded (including number value supplier details, details of the process and award criteria used); • Details of all below Threshold Contracts awarded (including number, value, supplier details, details of the competition process where applied and award criteria); • Details of above Threshold Reserved Contracts; and • Details of any supplier complaints relating to the award of contracts for social and other specific services, <p>Reports should be forwarded to CPD before the end of April each year. A consolidated annual report will be published on the DoF website in June each year</p>
PPN 03/21 Supply Chain Resilience	<p>The use of supply chain mapping must be monitored and reported to assess the impact the policy has on supply chain resilience. Departments must provide case studies to demonstrate their approach to supply chain resilience across a range of sectors. Case studies should be provided in April each year for publication in the Annual Procurement Report in June. The nature of and reason for a Department opting out of this PPN must be reported to CPD for publication in the Annual Procurement Report</p>
PPN 04/21 Procurement Control Limits	<p>Adherence to this PPN must be monitored and reported to ensure consistency of application. Departments must ensure that eTendersNI is kept up to date with information on tenders and contracts awarded to allow reports to be generated on the volume and value of contracts awarded above £30,000 (£50,000 Utilities). The nature of and reason for a Department opting out of this PPN must be reported to CPD for publication in the Annual Procurement Report.</p>
PPN 05/21 Human Rights in Public Procurement	<p>It is important to monitor the actions taken by Departments to identify and manage human rights risks in contracts. Departments must provide details to CPD on the actions taken to address human rights risks for publication in the Annual Procurement Report.</p>

Source: [PPNs Department of Finance \(accessed 2024\)](#)

2.1.1 New procurement regulations

It is also important to note that new procurement regulations will come into force in February 2025. The Cabinet Office introduced new regulations (the Procurement Act 2023), which are intended to simplify public sector procurement across the United Kingdom, making it quicker, simpler and more transparent²³ and compliant with the World Trade Organisation's (WTO's) plurilateral Agreement on Government Procurement (GPA)²⁴. All public authorities must align their procurement processes to the objectives of the Act.

Furthermore, part 6 of the Procurement Act 2023 (regulated below – threshold contract) does not apply to transferred Northern Ireland Authorities or, procurements under a transferred procurement arrangement.²⁵ In practice this means that Northern Ireland authorities are not required to publish details of contracts over £30,000 which is the case in England and Wales²⁶.

The Procurement Act 2023 also legislates for provision of a central digital platform to facilitate the publishing of required notices and documents in accordance with the new regulations.²⁷ Whilst to some extent this is already in place in Northern Ireland; 146 contracting authorities use eTenders. The eTenders platform is due to be replaced in 2024 (which has not happened to date). The NIAO report highlighted that whilst CPD had hoped to procure a bespoke system that would have additional monitoring and contract management functionality, they have had to opt for a less tailored, off-the-shelf option due to affordability issues.

Following the enactment of the Procurement Act 2023, the United Kingdom Government drafted a Procurement Strategy²⁸ for England and Wales. There is currently no equivalent Northern Ireland strategy.

²³ [New Procurement Regulations.pdf](#)

²⁴ [Public procurement law: the basics](#)

²⁵ [Procurement Act 2023 Knowledge Drop for contracting authorities - Northern Ireland](#)

²⁶ [Procurement Act 2023 Knowledge Drop for contracting authorities - Northern Ireland](#)

²⁷ [20241029 CDP Factsheet v1.0](#)

²⁸ [Transforming Public Procurement - GOV.UK](#)

3 NIAO - Public Procurement Northern Ireland Report

This section summarises key findings from the 2023, NIAO report on public sector procurement in Northern Ireland.

The NIAO published a report into [Public Procurement Northern Ireland](#) in April 2023. This report highlighted that a number of procurement change initiatives that have been introduced since 2020, as set out in Table 7 below:

Table 7: NIAO summary of change initiatives in public sector procurement

Action	Impact
<p>Reconstitution of the Procurement Board</p> <p>In December 2020 the Minister of Finance replaced the Procurement Board then comprised of NICS Permanent Secretaries with one comprised of public sector procurement experts (Heads of CoPE) and representatives of external suppliers and the voluntary sector.</p>	<p>The wider membership was intended to provide a wider range of expertise and insight and support a more collaborative approach to procurement policy development.</p>
<p>New procurement policies</p> <p>The new social value policy mandates that there should be an evaluation of social value as part of the tendering and contract award process for every service and construction contract above threshold values. This is currently set at 10 per cent of award criteria from 1 June 2022 but is anticipated to rise to 20 per cent from 1 June 2023.</p> <p>The supply chain policy was driven by the recognition of the vulnerability of some supply chains that had been highlighted during the pandemic. It requires public bodies to map their supply chains for critical supplier contracts.</p>	<p>The new social value policy is intended to create a stronger link between the expenditure incurred as a result of procurement and the achievement of the Executive's wider set of policy objectives.</p> <p>The key anticipated benefits of the new supply chains policy include public bodies developing a greater understanding of their supply chains, and a reduction in the risk of service delivery failing due to future disruption.</p> <p>Understanding these supply chains also means public bodies are better placed to identify opportunities to restructure these to better reflect other Executive objectives (for example, in respect of carbon emissions or waste production).</p>
<p>Clarifying policy and guidance</p> <p>Previously, procurement policy was set out in a set of 40 Procurement Guidance Notes (PGNs). These individual documents contained a combination of mandatory policy direction and optional guidance. There were concerns that the distinction between policy and guidance was not clear, and as such the entire suite of PGNs was often considered mandatory.</p> <p>New policies are now issued as Procurement Policy Notes (PPNs) and contain only policy.</p>	<p>The new PPNs are designed to provide a clear articulation to all stakeholders of the policies that all public bodies must adhere to.</p> <p>By removing aspects that are optional or advisory they are hoped to be less restrictive and encourage procurement professionals to apply their own expertise to design effective bespoke approaches to procurement.</p>

Action	Impact
<p>Introduction of toolkits</p> <p>As part of the transition to the PPN-model the existing PGNs were reviewed and the guidance within them was brought forward for inclusion in one of two toolkits: the Sourcing toolkit and the Construction toolkit.</p> <p>These toolkits, based upon similar tools used in England, support practitioners to deliver effective procurement processes whilst remaining within legal and policy constraints.</p>	<p>Toolkits are intended to provide practical support to practitioners to design procurement exercises that are compliant with law and policy but are tailored to the particular circumstances of individual procurement exercises to maximise effectiveness.</p>
<p>Better management information</p> <p>All new PPN documents include monitoring and mapping requirements setting out information that must be gathered and reported by public bodies.</p>	<p>Creates a system for properly monitoring procurement behaviour, ensuring it is compliant with policy and evaluating the impact that policies are having.</p>
<p>Commercial Delivery Group</p> <p>In response to series of reports highlighting capacity and capability issues within the NICS, the DoF established a Commercial Delivery Group.</p> <p>The Group is charged with improving commercial practice both within the Department and across the wider civil service.</p>	<p>The Group is intended to support the development of increased commercial capability and knowledge across the NICS.</p> <p>It will establish a specialist project delivery profession within the NICS, enhance commercial leadership and work to improve relationships between the NICS and strategic suppliers.</p>

Action	Impact
<p>Replacing eTendersNI</p> <p>The eTendersNI system is due to be replaced in 2024. To deliver the best common platform, it was initially intended to define operational requirements to meet the varied needs of CoPE and to help deliver an improved culture of enhanced, data-driven oversight of procurement.</p> <p>However, there are issues identifying and tailoring the new system to the varied needs of each individual CoPE, as well as questions over affordability. CPD has therefore decided to replace e-TendersNI with an off-the-shelf tendering solution that will meet current tendering requirements and can accommodate changes in the proposed new UK Procurement Bill. There will be no bespoke development and the system will no longer include contract management functionality.</p>	<p>It is unlikely that the replacement system will address the Board's future data requirements. It will therefore be incumbent on all parties to provide agreed data in a standard format to facilitate the proper monitoring of procurement activity. Individual contract management systems will also have to ensure that that they meet all the legal requirements of the new Procurement Reform Bill.</p>

Source: [NIAO Report - Public Procurement in Northern Ireland.pdf](#)

When considering the effectiveness of procurement in Northern Ireland, the NIAO reviewed a number of reports and investigations that were completed over the last decade. Through this analysis, the NIAO identified a number of issues which were repeatedly highlighted. Those include:

- a lack of suitable skills and leadership capability amongst officials responsible for procurement exercises
- deficiencies in how public bodies design and specify what they need to procure
- weaknesses in the process used to assess tenders and select a supplier
- deficiencies in contract management; and
- inadequate and unsophisticated utilisation of data to inform sound decision-making.

3.1 Conclusions, recommendations and the DoF response

The NIAO report concluded that:

*current structures and arrangements have not provided effective leadership, governance and accountability in public procurement.*²⁹

Although the NIAO acknowledged improvements in processes with the establishment of a new Procurement Board, it noted a lack of strategic direction procurement process. The NIAO made four recommendations for improving public sector procurement. In June 2023, the DoF responded to the report accepting all of the recommendations outlining their proposed actions to address them, as summarised below in Table 8:

²⁹ [NIAO Public Procurement 2023](#)

Table 8: Summary of NIAO recommendations and DoF response

NIAO Recommendation	DoF Response
<p>1: The Department of Finance should commission a fundamental review to ensure that arrangements support effective strategy setting, policy development, governance and accountability for procurement. This should involve a detailed consideration of the role, responsibilities and composition of the Procurement Board and an assessment of how the Board's role and responsibilities relate to those of other stakeholders, including the NICS Board, the Executive, and CoPEs.</p>	<p>1: DoF will appoint an independent panel of experts to review the current arrangements to ensure they support effective strategy setting, policy development, governance and accountability for procurement. This will include consideration of the role, responsibilities and composition of the Procurement Board and an assessment of how the Board's role and responsibilities relate to those of other key stakeholders. The review will also consider the efficiency and effectiveness of the current operational structures for public procurement</p>
<p>2: DoF, in consultation with procurement practitioners, should develop a new strategy to underpin how procurement functions in Northern Ireland. This strategy should be time-bound and set out clearly the objectives and priorities that procurement authorities will work to deliver within this timescale.</p>	<p>2: DoF will develop a new strategy for public procurement for Northern Ireland in consultation with procurement practitioners following the outcome of the review (recommendation 1). The strategy will be time-bound and will set out clearly the objectives and priorities that procurement authorities will work to deliver within this timescale. The development of the strategy will be initiated by the next Finance Minister and overseen by an incoming Executive.</p>
<p>3: DoF and/or the Procurement Board should develop the strategic oversight of capacity and capability. This should involve agreeing baseline standards for CoPE and contracting authorities against which performance can be measured.</p>	<p>3: As part of the review (See recommendation 1) a capacity baseline will be developed to underpin the effective operational model for the Northern Ireland procurement function. The Cabinet Office Commercial Skills and Competency framework sets out the skills, behaviours and competencies which public procurement functions, and in particular those undertaking procurement activities will be used as a baseline standard for capability and will provide the basis for measuring performance and strategic oversight by the</p>

	relevant CoPE Accounting Officer and/or a future Procurement Board. Many CoPEs are experiencing difficulties recruiting and retaining the required number of procurement and construction professionals. When the capacity and capability baseline standards are set, these will be overseen by a future Procurement Board.
4: The Board should establish arrangements to ensure that all bodies provide complete, accurate and timely procurement data to enable effective oversight of public procurement activity. This data should support meaningful assessment of the value for money of procurement activity by public bodies, and of the impacts of the expenditure incurred.	4: DoF will work with Departments to agree a standard minimum data set that brings together data on tendering/contract award with the data required by the Departmental Accounting Officer (DAO) letter DAO (DoF) 05/21 . This DAO requires Departments to maintain data on all active contracts, including spend against awarded value, which is reviewed by departmental boards. The data will demonstrate whether projects were delivered on time and within the estimated budget. The assessment of value for money of the procurement activity and the impacts of the expenditure incurred will be determined by the post project evaluations/reviews which are carried out for all projects.

Sources: [NIAO Public Procurement 2023](#) and DoF [response 2023](#)

4 Public Accounts Committee – Report on Public Procurement in Northern Ireland

This section provides an overview of the findings and recommendations from the 2024 Public Accounts Committee (PAC) report on public sector procurement in Northern Ireland.

Following on from the NIAO report and the DoF response, the Assembly's Public Accounts Committee (PAC) published a [Report on Public Procurement in Northern Ireland](#) in November 2024. That report also highlighted a number of risks and weaknesses within the arrangements used to manage procurement that pose a risk to these objectives. It noted that these:

“...weaknesses, and the consequences that arise from them, significantly diminish the ability of public sector organisations to demonstrate to the taxpayer that the way procurement is managed and delivered in Northern Ireland consistently delivers value for money and effectively contributes to wider policy objectives where this is possible.”

The PAC emphasised that the key weakness is the absence of a specific procurement strategy that establishes and clearly articulates the high-level objectives that public procurement is working towards. PAC considers that a specific strategy is an integral building block of the arrangements needed to coordinate a function such as procurement that is carried out across a range of different organisational, governance and commercial market contexts. Furthermore, it noted that the absence of a Strategy has led to the lack of strategic leadership and direction at a strategic level for procurement.

As summarised below in Table 9, the PAC report sets out 11 recommendations, which are congruent with those in the NIAO report:

Table 9: PAC Recommendations

Recommendation	Detail
1. DoF “establishes a procurement strategy for the Northern Ireland Civil Service and other relevant central government public bodies as a matter of urgency that will provide the basis for a coordinated approach for public procurement activity in Northern Ireland”.	A strategy is essential in bringing together a clearly articulated vision of what the procurement system should look like, a realistic assessment of the issues and challenges that are barriers to this vision and provides a basis for empowering decision-makers to take the actions necessary to overcome these challenges. The Departmental officials referred to ongoing work that was being carried out with a view to establishing a set of strategic objectives and priorities for procurement by Autumn 2024. The Committee’s view is that this work should be used to inform the establishment of a procurement strategy for Northern Ireland.
2. “within six months of the establishment of a procurement strategy, the Department establishes a set of metrics that will be used to provide the basis of cross-sectoral performance assessment for the effectiveness of procurement and ongoing evaluation of the impact and value of current CoPE structures”.	The NIAO report cited the lack of meaningful data in respect of the most basic aspects of procurement. In its evidence to the Committee the Department [of Finance] accepted that there was a lack of sufficiently specific and detailed data available to support assessments of whether procurement as a general service was effective. The Committee considers it vital that there are arrangements in place to collect the data needed to provide the public with assurance over the value for money being achieved in relation to the costs incurred on procurement and its administration.
3. DoF “undertakes an urgent review to determine the most appropriate governance and oversight structures to be put in place to support strong leadership and decision making and to allow system-wide oversight of performance against the new strategy’s priorities.”	The Department told the Committee that the refreshing of strategic objectives for procurement would be a precursor of a detailed evaluation of how best to structure governance and accountability arrangements to support delivery of these objectives. In the Committee’s view this work will, necessarily, involve a reconsideration of the roles, responsibilities and composition of the Procurement Board, as well as how it relates to other parts of the wider public sector governance framework.

<p>4. That “<i>the oversight body carries out a review of the current procurement structures in place to determine if the current structures remain optimal for procurement in Northern Ireland</i>”</p>	<p>Given the widespread nature of the issues being faced by public bodies, the Committee would expect to have seen more evidence of a greater degree of collaboration and coordination across the public sector. The Committee is not satisfied that there are sufficiently developed workforce plans across all of the relevant bodies that would enable understanding of the full scale of procurement capacity and capability need. In the Committee’s view there are likely to be opportunities available from more flexible arrangements for sharing staff between CoPE or public bodies that could help ensure that resources are put to best use across the public sector.</p>
<p>5. DoF “<i>undertakes a review of the capacity and capability issues affecting procurement and puts in place a strategy to attract and retain the skills required</i>”.</p>	<p>Given the widespread nature of the issues being faced by public bodies, the Committee would expect to have seen more evidence of a greater degree of collaboration and coordination across the public sector. The Committee is not satisfied that there are sufficiently developed workforce plans across all of the relevant bodies that would enable understanding of the full scale of procurement capacity and capability need. In the Committee’s view there are likely to be opportunities available from more flexible arrangements for sharing staff between CoPE or public bodies that could help ensure that resources are put to best use across the public sector.</p>
<p>6. “<i>Within six months, DoF completes a formal review of the impact that the Scoring Social Value policy has had on SMEs access to public markets</i>”.</p>	<p>The Department [of Finance highlighted] that there was some emerging evidence that microbusinesses were finding that the Scoring Social Value procurement policy implemented in July 2021 was potentially making it more difficult to get a foothold in public markets. The original policy intent was that the proportion of contract award scoring based on social value would increase from the initial 10 per cent to 20 per cent, but this increase had been deferred. The Department explained it was engaged in consultation and evaluation to determine whether this increase would contribute to a greater disincentive for some suppliers.</p>

<p>7. <i>“Within six months, DoF, in consultation with its stakeholders, establishes a model for internal and external stakeholder engagement that will provide a sound basis for appropriate engagement in relation to any future procurement policy interventions and innovations”.</i></p>	<p>The Committee noted that: the policy changes developed between 2020 and 2022 were made at a unique point in time during which all organisations were subject to unprecedented operational challenges as a result of the pandemic. The Committee also considers that it is important that innovation and change is pursued with an appropriate level of urgency and drive. However, the Committee noted that NIAO concluded in its report that the approach which was used was not an appropriate long-term approach to policy development. The Committee therefore consider it essential that relevant lessons are learned to improve the processes used to design and implement any future procurement policy innovations.</p>
<p>8. <i>“As part of its stakeholder engagement model, DoF produces a communications strategy that ensures that it reaches all potential suppliers, including SMEs and new businesses”.</i></p>	<p>The Committee considers this to be an opportune time to use communication about ongoing reforms as a means to also attempt to connect with suppliers who have not previously been active in public sector markets, or to re-engage with suppliers that may have become inactive in those markets. The evidence presented to the Committee suggested that there is a risk that the engagement and communication that has been carried out to date has concentrated on organisations already engaged with the public sector. Given the scope and scale of recent and ongoing changes, the Committee’s view is that the Department should review its approach to communicating with all potential suppliers, and in particular local SMEs.</p>
<p>9. <i>“That an interface between eTendersNI and the United Kingdom single portal must be put in place as a matter of urgency and requests the Department to provide an update to the Committee on progress in implementing this interface within three months”.</i></p>	<p>DoF advised the Committee that work was ongoing with its current supplier to build an interface that would enable between the new portal and eTenders. The Committee consider it essential that the Department ensure this interface is built in time to support the potential benefits offered by the new portal being available to suppliers when the Procurement Act is implemented.</p>

<p>10. <i>“Upon the agreement of a set of performance metrics for procurement, DoF engages with CoPE to establish proportionate arrangements to ensure the consistent recording of performance information needed to report against these”.</i></p>	<p>The Committee consider it vital that the issues that have historically affected the ability of eTenders to support data-driven oversight of procurement do not persist into the next four years and beyond. It is critical that stakeholders work together to establish a common approach to using technology to manage the common problem of improving data quality whilst minimizing new administrative costs.</p>
<p>11. DoF <i>“ensures that, once the governance structure has been established, appropriate arrangements are put in place to ensure that issues relating to technological risks and opportunities are subject to suitable oversight at a strategic level”</i></p>	<p>The Committee is concerned about the lack of evidence of there being a common strategic approach to technology in procurement. It is essential that public bodies involved in procurement are aware of new and emerging technologies to ensure that they are agile and suitably skilled to respond to new and emerging trends, including AI and digitalisation. It is also essential that there is appropriate oversight to ensure that there are not significant differences in the exploitation of opportunities, or exposure to risks, associated with new technologies in different areas of the public sector. Such trends can only serve to damage public confidence in the overall approach to procurement within the public sector.</p>

Source: [PAC - Report on Public Procurement in Northern Ireland \(2024\)](#)

5 Key Takeaways

Public sector procurement is an important element of the Northern Ireland economy. Around £3 billion is awarded through Northern Ireland public sector contracts annually³⁰ and most contracts are won by Northern Ireland based SMEs.³¹

The DoF has overall policy responsibility for public sector procurement, which is overseen by the Procurement Board. The Procurement Board is chaired by the Minister of Finance, which was restructured in 2020. The Procurement Board is responsible for developing policy initiatives, practices and advice, for endorsement by the Executive. However, the Board has not been reconvened since the Executive and Assembly was restored in 2024.

There are nine CoPEs, which are responsible for providing sectoral, expert procurement advice to government Departments and their ALBs.

New procurement legislation will take effect in February 2025. It aims to simplify and enhance transparency of public sector procurement across the UK. A new procurement strategy for England and Wales has been drafted to align to the new legislation. Currently, there is no Northern Ireland equivalent strategy.

Both the NIAO report (2023) and the PAC report (2024) were critical of procurement structures and processes in Northern Ireland. Both reports highlighted that there should be a review of the structures, roles and responsibilities of procurement in Northern Ireland and that a lack of data hindered the ability to assess the effectiveness of processes and the extent to which value for money has been provided.

Critically, both reports also noted the need for a procurement strategy to provide leadership and direction to all public sector procuring authorities.

The DoF has responded to the NIAO report, noting that they accept the recommendations and have actions in place to address them.

³⁰ [Annual Procurement Report June 2024.pdf](#)

³¹ [Procurement | Department of Finance](#)

Annex A: Roles and Responsibilities of the Procurement Board

The Procurement Board has the following roles and responsibilities, as set out in their Terms of Reference, to:

- develop public procurement policy across the public sector for the approval of the Executive taking account of local and international best practice
- ensure procurement policy is consistent with the Executive's wider policy commitments, including social value, economic development, equality, sustainable development, and the environment.
- ensure procurement policy and practice contributes to the outcomes contained in the Executive's Programme for Government
- develop policy across the whole procurement life cycle from commissioning through to the end of the useful life of an asset or the end of a contract
- consult with Departments and the Procurement Practitioners Group on policy development and implementation.
- ensure stakeholders are appropriately consulted on procurement policy
- ensure procurement policy is disseminated among public bodies and available to the general public.
- develop targets for procurement, and monitor performance against those targets.
- ensure procurement officials are provided with appropriate guidance and training.
- monitor the implementation of procurement policy within Northern Ireland public bodies.

Annex B: Roles and Responsibilities of the Procurement Chairperson and Panel Members³²

The role of the Chairperson is to:

- determine what training³³ or guidance the panels need to conduct the selection and tender evaluation processes;
- ensure all panel members appointed, have received the necessary training, have the necessary knowledge, skills and competency and are available to carry out the selection and tender evaluation process;
- ensure that the selection and award criteria and their weightings are agreed and published in the OJEU notice or procurement documents;
- ensure panel members have no conflict of interest at any stage of the competition and that they complete the appropriate conflict of interest declarations/confidentiality agreements. The Chairperson must place particular emphasis upon Regulation 24 of PCR 2015³⁴. (See paragraph 3.8);
- ensure all requests to participate and tenders are in the requested format and have been received by the stated deadline. This should be treated with a degree of caution and the principles of equal treatment, transparency and proportionality adhered to. The panel may wish to seek clarification regarding an expression of interest or tender. Where this is the case care should be taken to ensure the information received is clarification and not additional information. Legal advice should be taken in every instance where an economic operator wishes to submit documents or information or the panel requests it after the deadline;
- determine, if appropriate, which members of the panel will be responsible for evaluating the various aspects of the requests to participate and tenders;
- ensure panel members individually evaluate each economic operator and/or tender before the consensus meeting/s;
- ensure all documents used in the evaluation of economic operators and tenders, including all comments, justifications, marks, and any amendments are recorded and signed off and dated by both the panel members and the Chairperson as appropriate;
- ensure selection and tender evaluation panel membership is, where possible, consistent and members are available for the duration of the process;

³² [DoF PGN Selection and Tender Evaluation](#)

³³ For procurements above EU thresholds tender evaluation panels must receive appropriate training in evaluation best practice

³⁴ Regulation 42 of the UCR 2016. Regulation 35 of the CCR 2016

- seek and ensure due cognisance is taken of professional procurement advice provided by the CoPE;
- be available, if requested, to provide support with the debriefing process for unsuccessful economic operators;
- act as Moderator during the consensus meeting; and • sign off all relevant documentation.

The role of panel members is to:

- confirm that they have the necessary skills, competency and availability to carry out the selection and tender evaluation process;
- confirm that they have no conflict of interest at agreed/designated stages of the procurement process and submit an appropriate signed declaration to the Chairperson or CoPE. If a conflict of interest should arise, it should be reported immediately to the Chairperson. If an external panel member has a conflict of interest which is not declared that panel member could be in breach of his Terms of Engagement;
- confirm they have received and understood the required training or guidance; • individually evaluate, in an open, proportionate and transparent manner each economic operator for evidence of how they meet the selection criteria, minimum requirements/standards and mandatory and discretionary exclusions and each tender for evidence of how it meets the award criteria before the consensus meeting/s;
- be available, if requested, to provide support with any necessary debriefing of unsuccessful economic operators;
- ensure due cognisance is taken of the professional procurement advice provided by the CoPE; and
- sign off all relevant documentation.

Annex C: Extract of Public Contracts Regulations. Regulation 57: Exclusion Grounds

The following provides an extract from Regulation 57 (7), with some of the main mandatory and discretionary grounds for exclusion:

Mandatory exclusions

57.—(1) Contracting authorities shall exclude an economic operator from participation in a procurement procedure where they have established, by verifying in accordance with regulations 59, 60 and 61, or are otherwise aware, that that economic operator has been convicted of any of the following offences:—

(a) conspiracy within the meaning of section 1 or 1A of the Criminal Law Act 1977([1](#)) or article 9 or 9A of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983([2](#)) where that conspiracy relates to participation in a criminal organisation as defined in Article 2 of Council Framework Decision 2008/841/JHA on the fight against organised crime([3](#));

(b) corruption within the meaning of section 1(2) of the Public Bodies Corrupt Practices Act 1889([4](#)) or section 1 of the Prevention of Corruption Act 1906([5](#));

(c) the common law offence of bribery;

(d) bribery within the meaning of sections 1, 2 or 6 of the Bribery Act 2010([6](#)), or section 113 of the Representation of the People Act 1983([7](#));

(e) where the offence relates to fraud affecting the European Communities' financial interests as defined by Article 1 of the Convention on the protection of the financial interests of the European Communities([8](#)):—

(i) the common law offence of cheating the Revenue;

(ii) the common law offence of conspiracy to defraud;

(iii) fraud or theft within the meaning of the Theft Act 1968([9](#)), the Theft Act (Northern Ireland) 1969([10](#)), the Theft Act 1978([11](#)) or the Theft (Northern Ireland) Order 1978([12](#));

(iv) fraudulent trading within the meaning of section 458 of the Companies Act 1985([13](#)), article 451 of the Companies (Northern Ireland) Order 1986([14](#)) or section 993 of the Companies Act 2006([15](#));

(v) fraudulent evasion within the meaning of section 170 of the Customs and Excise Management Act 1979([16](#)) or section 72 of the Value Added Tax Act 1994([17](#));

- (vi) an offence in connection with taxation in the European Union within the meaning of section 71 of the Criminal Justice Act 1993([18](#));
- (vii) destroying, defacing or concealing of documents or procuring the execution of a valuable security within the meaning of section 20 of the Theft Act 1968([19](#)) or section 19 of the Theft Act (Northern Ireland) 1969([20](#));
- (viii) fraud within the meaning of section 2, 3 or 4 of the Fraud Act 2006([21](#)); or
- (ix) the possession of articles for use in frauds within the meaning of section 6 of the Fraud Act 2006, or the making, adapting, supplying or offering to supply articles for use in frauds within the meaning of section 7 of that Act;
- (f) any offence listed—
 - (i) in section 41 of the Counter Terrorism Act 2008([22](#)); or
 - (ii) in Schedule 2 to that Act where the court has determined that there is a terrorist connection;
- (g) any offence under sections 44 to 46 of the Serious Crime Act 2007([23](#)) which relates to an offence covered by subparagraph (f);
- (h) money laundering within the meaning of sections 340(11) and 415 of the Proceeds of Crime Act 2002([24](#));
- (i) an offence in connection with the proceeds of criminal conduct within the meaning of section 93A, 93B or 93C of the Criminal Justice Act 1988([25](#)) or article 45, 46 or 47 of the Proceeds of Crime (Northern Ireland) Order 1996([26](#));
- (j) an offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004([27](#));
- (k) an offence under section 59A of the Sexual Offences Act 2003([28](#));
- (l) an offence under section 71 of the Coroners and Justice Act 2009([29](#));
- (m) an offence in connection with the proceeds of drug trafficking within the meaning of section 49, 50 or 51 of the Drug Trafficking Act 1994([30](#)); or
- (n) any other offence within the meaning of Article 57(1) of the Public Contracts Directive—
 - (i) as defined by the law of any jurisdiction outside England and Wales and Northern Ireland; or
 - (ii) created, after the day on which these Regulations were made, in the law of England and Wales or Northern Ireland.

(2) The obligation to exclude an economic operator also applies where the person convicted is a member of the administrative, management or supervisory body of that economic operator or has powers of representation, decision or control in the economic operator.

Mandatory and discretionary exclusions for non-payment of taxes etc

(3) An economic operator shall be excluded from participation in a procurement procedure where—

(a) the contracting authority is aware that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions; and

(b) the breach has been established by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of the country in which it is established or with those of any of the jurisdictions of the United Kingdom.

(4) Contracting authorities may exclude an economic operator from participation in a procurement procedure where the contracting authority can demonstrate by any appropriate means that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions.

(5) Paragraphs (3) and (4) cease to apply when the economic operator has fulfilled its obligations by paying, or entering into a binding arrangement with a view to paying, the taxes or social security contributions due, including, where applicable, any interest accrued or fines.

Discretionary exclusions

(8) Contracting authorities may exclude from participation in a procurement procedure any economic operator in any of the following situations:—

(a) where the contracting authority can demonstrate by any appropriate means a violation of applicable obligations referred to in regulation 56(2);

(b) where the economic operator is bankrupt or is the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the laws and regulations of any State;

(c) where the contracting authority can demonstrate by appropriate means that the economic operator is guilty of grave professional misconduct, which renders its integrity questionable;

(d)where the contracting authority has sufficiently plausible indications to conclude that the economic operator has entered into agreements with other economic operators aimed at distorting competition;

(e)where a conflict of interest within the meaning of regulation 24 cannot be effectively remedied by other, less intrusive, measures;

(f)where a distortion of competition from the prior involvement of the economic operator in the preparation of the procurement procedure, as referred to in regulation 41, cannot be remedied by other, less intrusive, measures;

(g)where the economic operator has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions;

(h)where the economic operator—

(i)has been guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria; or

(ii)has withheld such information or is not able to submit supporting documents required under regulation 59; or

(i)where the economic operator has—

(i)undertaken to—

(aa)unduly influence the decision-making process of the contracting authority, or

(bb)obtain confidential information that may confer upon it undue advantages in the procurement procedure; or

(ii)negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award.