



Procurement
report

Sponsored by

A portrait of Emer Higgins TD, the Procurement Minister. She is a woman with long brown hair, wearing glasses and a pink blazer. She is smiling and looking directly at the camera. The background is a light blue and white geometric pattern.

Procurement Minister Emer Higgins TD: ‘Making public procurement more open and transparent’

Minister of State with responsibility for Public Procurement, Digitalisation and eGovernment, Emer Higgins TD, speaks with *eolas Magazine* about the development of the first National Public Procurement Strategy for Ireland.

“Each euro that we spend on goods, services, and works has the possibility to bring far-reaching social and environmental benefit.”

Minister of State with responsibility for Public Procurement, Digitalisation and eGovernment, Emer Higgins TD

eolas Magazine (EM): Why do we need a new National Strategy for Public Procurement?

Minister of State Emer Higgins (MoS EH): The 2025 *Programme for Government: Securing Ireland’s Future* includes a commitment to reviewing the public procurement process to make it more transparent and support greater participation from SMEs in Ireland. According to European research, every year in the EU, over 250,000 public authorities spend around €2 trillion (around 13.6 per cent of GDP) on the purchase of services, works, and supplies.

This is a very significant amount of money, in Ireland it amounts to several billion euro each year. We have an obligation to ensure that this money is spent strategically, in a way that works for indigenous industry, for SMEs, micro enterprises, and for social enterprises.

I am passionate about supporting SMEs because I see their value at every stage of my life and career. I grew up watching my mother run a small business, I worked in the corporate world with PayPal, and later, as Minister of State for Business, Employment and Retail, I met business owners across the country. I saw first-hand not only the challenges they face every day, but also the vital role they play in driving employment, supporting communities, and strengthening our economy. They are the backbone of local enterprise and deserve real opportunities to thrive, including fair access to public procurement.

By procuring from social enterprises, a public body can use some of the money spent to improve access to employment for people with disabilities or other marginalised groups. Green public procurement can also be a tool to support government’s wider climate ambitions and the transition to a circular economy.

EM: What will this mean for public servants involved in public procurement?

MoS EH: One of the foundational policy positions of the strategy is to better equip public buyers to access the markets they depend on. This includes a focus on strengthening skills and confidence across the system. I am very aware that many public servants who procure are not procurement specialists. They are focused on delivering essential public services and procure goods and services as part of that wider role. That is why my department has been engaging with public buyers from across the sector to understand their main challenges and to work with them on practical solutions to improve how procurement is carried out. ▶

“This Government is committed to making public procurement more open and transparent.”

Challenges brought about by crises such as the Covid-19 pandemic and Brexit have demonstrated the public sector’s resilience and ability to adapt to changing global circumstances. Public buyers have had to show significant levels of agility to enable continuity of supply and service.

The pandemic had the dual effect of putting pressure on the supply of contracted goods and services while giving rise to new, previously unforeseen but highly sought after requirements, particularly in the area of PPE. Global competition for resources in the early stages of the crisis was fierce.

It was the professionalism, experience, and expertise of procurement practitioners that helped the country navigate its way through the crisis. By leveraging the shared experience and expertise of public buyers, I am keen to explore ways to expand the focus on resilience in the procurement system, building on the work undertaken to date, to prepare for any future challenges.

Public procurement projects are often complex and, as we have seen, even the best planned projects can be impacted by unforeseen circumstances. In this context, public servants need to be equipped with commercial skills to address these challenges in a timely and effective fashion. Through the strategy, we are keen to explore ways to train, retain, and develop talent and skills across the public procurement landscape.

Ensuring that public buyers and policy makers have the necessary skills and knowledge to deliver on the agreed actions will be crucial to the successful implementation of the strategy and I will work with colleagues across government to support this objective.

EM: How will the strategy seek to ensure greater participation from SMEs in the public procurement process?

MoS EH: Public procurement has significant potential to support SMEs and, with it, regional development, and the wider economy. The award of a public contract can act as a springboard for emerging micro-enterprises and SMEs to expand and export. I am aware of the growing network of social enterprises that have the capability to deliver a vast, and expanding, range of goods and services. Awarding a contract to a social enterprise can maximise the societal impact of the procurement spend. With these wider economic benefits in mind, one of the foundational policy positions of the strategy is to make participation in public procurement easier for suppliers, particularly SMEs and social enterprises.

I previously served as Minister of State with responsibility for Business, Employment and Retail. I also bring with me a decade of experience working in the private sector. So, I am acutely aware of the challenges faced by Irish businesses, particularly in these uncertain times.

Throughout this consultation process, we have listened carefully to the views of businesses across the country and the barriers they encounter when trying to access public procurement opportunities.

In 2023, my department issued practical guidance to public bodies on how to actively support SME participation in procurement processes. We also developed clear, accessible information for suppliers, to promote public procurement as a real business opportunity.

Building on this work, I am committed to identifying further practical measures to ensure that the public procurement system is more accessible and more responsive to the needs of SMEs.

EM: How can public service bodies use procurement to promote innovation?

MoS EH: Through the *Public Service Transformation Strategy*, my department is supporting a culture of innovation across the public service to help ensure the best possible outcomes are achieved for Ireland.

As part of the new procurement strategy, I want to explore how we can promote the use of innovation procurement as a strategic tool. It has the potential to improve how we deliver public services, unlock new opportunities for start-ups and SMEs, and support public bodies in addressing complex societal and environmental challenges. Public procurement can and should play a central role in shaping better solutions and better outcomes for the country.

EM: How will this strategy support sustainable public procurement?

MoS EH: Through the strategy, I am keen to explore the use of public procurement as a key lever to bring about wider government and societal objectives. Each euro that we spend on goods, services, and works has the possibility to bring far-reaching social and environmental benefit.

In recent years, significant progress has been made progressing the use of sustainable public procurement, which encompasses green public procurement and socially responsible public procurement.

There are many examples of public bodies implementing sustainable public procurement practices and using their procurement to yield wider social value, whether it be the awarding of a contract to a social enterprise, through the inclusion of criteria and contract conditions which promote social inclusion and the employment of people who are disadvantaged or the inclusion of green public procurement criteria.

Building on the work already being undertaken across the public sector, I am eager to ensure that the public sector leads the way as Ireland moves towards a more socially inclusive and sustainable future. The Strategy is a major stepping stone to this end.

EM: What will this strategy mean for the people of Ireland?

MoS EH: As this is a national public procurement strategy, it is only appropriate that the public sit at the very heart of it.

One of the foundational policy positions of the Strategy is that it must be in the public's best interest. This position is reflected in the ambition of the Strategy, which is to improve the lives of those building their lives in Ireland through the delivery of strategic, innovative, sustainable, and transparent public procurement that supports competition and value for money.

I am very conscious of the critical role that public procurement can play in maintaining and building public trust in government. This Government is committed to making public procurement more open and transparent. As part of the consultation phase to inform the strategy, my department has been actively seeking views on how we can strengthen transparency in public procurement and ensure that the system works in the public interest.



Lessons from the Court of Appeal decision in *Killaree Lighting Services Limited v Mayo County Council*



Pat McInerney, Partner and Head of Public Sector & Regulatory.



Cian Clifford, Solicitor.

Avoiding legal challenges is a central concern for any contracting authority conducting a procurement competition. Ensuring that such processes are robust and fully compliant with the relevant legislation is essential, write Beauchamps' Pat McInerney, and Cian Clifford.

While legal challenges can pose difficulties, they also offer valuable insights that can improve future procurement practices. The recent Court of Appeal decision in *Killaree Lighting Services Limited v Mayo County Council* provides useful guidance on key issues such as abnormally low tenders, standstill periods, and the application of the European Communities (Public Authorities' Contracts) (Review Procedures) Regulations 2010 (S.I. No. 130 of 2010) (as amended) (the 'Remedies Regulations').

Background

The case concerned a procurement process led by Mayo County Council (MCC) on behalf of a number of other local authorities for the repair, maintenance, and upgrade of public lighting. The contract notice was published on 3 July 2020, with Killaree Lighting Services Limited (Killaree) submitting a tender on 31 July. On 14 August, MCC raised concerns about potentially abnormally low prices in Killaree's tender. Killaree responded on 20 August, followed by further correspondence on 27 August, 4 September, and 15 September. Ultimately, MCC deemed the tender abnormally low and

excluded Killaree from the competition, notifying them on 9 October. MCC awarded the contract to another bidder on 27 October. Killaree initiated judicial review proceedings on 6 November 2020.

High Court decision

Killaree sought various remedies, including the setting aside of its exclusion and a declaration of ineffectiveness regarding the awarded contract.

The High Court addressed five key challenges:

1. the obligation to issue a standstill letter;
2. MCC's duty to investigate abnormally low tenders;
3. interpretation of the tender documents;
4. evaluation of Killaree's explanations for low pricing; and
5. adequacy of MCC's reasons for exclusion.

While the Court found MCC's 9 October letter failed to meet the standstill notice requirements under Regulation 5(1) of the Remedies Regulations, it declined to issue a mandatory declaration of ineffectiveness under Regulation

11(2)(b). The Court held that Killaree had not demonstrated that it was deprived of the chance to seek pre-contractual remedies and had not adequately explained why it failed to take steps to preserve its position in light of MCC's letter of 9 October 2020, which made it plain that the contract would be awarded without further reference to Killaree.

Although the Court acknowledged it had discretion to issue a declaration of ineffectiveness under Regulation 11(7), it refused to do so, finding that Killaree had not properly pleaded this issue.

The High Court upheld MCC's decision to exclude Killaree, citing Regulation 69 of the European Union (Award of Public Authority Contracts) Regulations 2016 (S.I. No. 284 of 2016) (the "Procurement Regulations"), which requires authorities to investigate abnormally low tenders.

The Court emphasised that this obligation overrides any discretion offered in the tender documents, and that MCC were entitled to reject the explanations put forward by Killaree.

On the issue of reasons, the Court ruled MCC had provided sufficient justification for Killaree's exclusion, noting importantly that reasons can be discerned from the full body of correspondence – not solely from the final decision letter.

Court of Appeal decision

In January 2025, the Court of Appeal upheld the High Court's core findings. It confirmed MCC was right to assess whether Killaree's bid was reliable and whether it might impair contract performance. MCC was entitled to conclude that Killaree's explanations were inadequate.

The Court also agreed that MCC had given sufficient reasons for exclusion. However, it disagreed with the High Court's conclusion that Killaree was not deprived of the opportunity to pursue pre-contractual remedies. Still, since no substantive breach of procurement law was found, the criteria for a mandatory declaration of ineffectiveness under Regulation 11(2) were not met.

The Court further disagreed with the High Court's finding that Killaree had failed to properly plead entitlement to a discretionary declaration under Regulation 11(7). Despite this, it upheld the refusal to grant the declaration, citing public interest factors, the involvement of multiple authorities, and the importance of legal certainty.

Finally, as the Court found an infringement under Regulation 11(7) but declined to declare the contract ineffective, it held that an alternative penalty under Regulation 13 was mandatory. The Court remitted the

matter to the High Court for further consideration on what that penalty should be.

Key learnings

The issue of abnormally low tenders rarely comes before the courts, making this decision a valuable source of guidance for contracting authorities on the application of Regulation 69 of the Procurement Regulations. The case reaffirms that contracting authorities are legally required under Regulation 69 to request explanations from tenderers whose bids appear abnormally low. Contracting authorities must therefore:

1. seek an explanation from the tenderer whose bid appears to be abnormally low;
2. assess the information provided by the tenderer; and
3. Decide whether to admit or reject the suspected tender.

The judgment also underscores the importance of issuing standstill letters in procurement processes. Although the Court ultimately declined to grant a declaration of ineffectiveness, MCC will nonetheless be required to pay a civil financial penalty of up to 10 per cent of the contract value to the Central Fund under Regulation 13 of the Remedies Regulations due to its failure to issue a compliant standstill letter. The Court of Appeal emphasised that Regulation 13 is mandatory and applies whenever a court finds an infringement under Regulation 11(7) but chooses not to declare the contract ineffective. For high-value contracts, such penalties could have significant budgetary consequences.

W: www.beauchamps.ie

PROCUREMENT

Public procurement in Ireland

These statistics have been compiled via reports by the European Court of Auditors and the Central Statistics Office (CSO).

Procurement: Ireland in Europe

Ireland's **single bidding rate** is **16%**, compared to an EU average of **38%**.

The share of **direct awards** ('no call for bids') in Ireland is **1%**, while the EU average is **6%**.

Ireland's **publication rate** (TED notices as a percentage of GDP) is **3.3%**, versus an EU average of **5.8%**.

The **average time to award a contract** in Ireland is **113 days**, compared to **84 days** in the EU.

The **share of bids from SMEs** in Ireland is **79%**, higher than the EU average of **66%**.

The **percentage of contracts split into lots** in Ireland is **14%**, whereas the EU average is **30%**.

Source: European Court of Auditors, 2023

Public contracts awarded in 2024

Supplier	Date awarded	Description of contract	Duration of contract	Type of contract	Total value (Excl.)	Single or framework
Amadeus Software Ltd	25-Mar-24	Software Development Services	9 months	Services	€57,500	Single
Amadeus Software Ltd	25-Mar-24	Software Development Services	9 months	Services	€57,500	Single
Bizmaps Ltd	08-Mar-24	Technical Services	2 years	Services	€40,000	Single
CBS Netherlands	01-Jan-24	Software Licensing and Support	1 year	Services	€136,030	Single
Core Full Solutions Ltd	14-Feb-24	Creative and Digital Services	2 months	Services	€33,075	Single
Domino People Ltd	01-Jan-24	Software Licensing	1 year	Services	€121,341	Single
Ergo Services Ltd	12-Jan-24	Software Development Services	42 months	Services	€503,440	Framework
Electric Ireland	01-Jan-24	Supply of Electricity	26 months	Utilities	€600,000	Framework
Telefonica Tech Ireland Ltd	01-Feb-24	Supply of Hardware	3 years	Goods	€28,892	Single
Oracle EMEA Ltd	01-Jan-24	Software Licensing and Support	1 year	Services	€51,469	Single
PFH Technology Group	20-Mar-24	Software Licensing	1 year	Services	€55,000	Framework
SureSkills	01-Jan-24	Software Licensing and Support	1 year	Services	€44,630	Single
TopSec Cloud Solutions	01-Jan-24	Security Software Services	1 year	Services	€30,620	Single
Terminal Four	28-Feb-24	Software Support	1 year	Services	€25,884	Single
SureSkills	25-Apr-24	Software Licensing	1 year	Services	€42,220	Single
SureSkills	01-May-24	Software Maintenance and Support	2 years	Services	€48,000	Single
PFH Technology Group	22-May-24	Hardware Maintenance and Support	3 years	Services	€68,463	Framework
Total ICT Services Ltd	23-May-24	Hardware Support Services	19 months	Services	€45,687	Single
Construction Information Services	29-May-24	Database Services	1 week	Services	€30,000	Single
Amadeus Software Ltd t/a Katalyze Data	31-May-24	Software Support and Maintenance	1 year	Services	€29,889	Single
KSG Catering Ltd	01-Jun-24	Catering Services	4 years	Services	€250,000	Framework
Mircomail Ltd	01-Jun-24	Software Licensing and Support	4 years	Services	€4,000,000	Framework
Planet 21 Communications Ltd	06-Jun-24	Supply of Hardware	5 years	Goods	€32,546	Single
Jumping Rivers Ltd	11-Jun-24	Software Licensing	5 years	Services	€600,000	Single
Medguard	12-Jun-24	Supply of Medical Equipment	1 month	Goods	€32,822	Single
Ergo Services Ltd T/A	13-Jun-24	Software Development Services	18 months	Services	€288,000	Framework

*Figures available up to June 2024
Source: Central Statistics Office



Towards a national strategy for public procurement



Minister of State Emer Higgins TD launched the public consultation for Ireland's first national public procurement strategy with government and industry representatives in March 2025.

Public procurement accounts for a large share of the State's spending, billions of euros each year are spent on goods, services and works to support the State deliver its public services.

In many sectors such as energy, transport, waste management, social protection, and the provision of health or education services, public authorities are the principal buyers. Strategic public procurement ensures that public money is spent in the best possible way, delivering value for money for the people of Ireland and contributing to government's wider horizontal ambitions around supporting indigenous industry while factoring in environmental and wider societal considerations.

Public bodies can use their procurement to stimulate employment, including among those disadvantaged groups that are underemployed, it can promote innovation, support the growth of SMEs, including social enterprises, and progress government objectives in the areas of climate change and social inclusion. Increasingly, the EU sees public procurement as a tool for steering investment.

Achieving these goals requires a collaborative, strategic approach and the Office of Government Procurement (OGP) is currently developing Ireland's first National Public Procurement strategy. As part of this, the OGP conducted qualitative and quantitative research as part of an extensive public consultation exercise, to ensure the *National Public Procurement Strategy* worked for all stakeholders.

Why do we need a strategy?

The *Programme for Government: Securing Ireland's Future* includes a commitment to reviewing the public procurement process to make it more transparent and work to ensure greater participation from SMEs in Ireland. The EU is also revising existing public procurement rules.

With EU amendments happening and the power of strategic public procurement coming more into focus it is timely to have a first *National Public Procurement Strategy* for Ireland.

What is the Strategy going to achieve?

The ambition of the Strategy is to improve the lives of the people of Ireland through the delivery of strategic, innovative, sustainable, and transparent public procurement that supports competition and value for money. It will achieve this by supporting SMEs, micro enterprises and indigenous firms and developing the commercial capability of public buyers and policymakers in Ireland. The Strategy will be designed to support the procurement system to be sufficiently agile to respond to wider economic, environmental, societal and geopolitical challenges, and facilitate a culture of innovation in public procurement to ensure the best possible outcomes are achieved for those living here.

In order to do this, three foundational policy positions have been adopted. The strategy must:

- be in the public's best interest;
- enable public buyers to better access the markets on which they rely; and
- make participation in public procurement easier for suppliers.

How do we ensure the strategy works for all stakeholders?

In order to ensure the strategy works for all stakeholders, the OGP held public consultation workshops in Dublin and Cork in May with open invites to stakeholders interested in public procurement. Attendees were asked for their views on a number of strategic themes and these inputs are being considered and will feed into the overall strategy. As well as the public consultation workshops, the OGP also developed a survey for interested parties to complete and held bilateral meetings with industry bodies and government departments over the course of a two-month public consultation period. There was also engagement at political and European levels in the run up to the public consultation and well in advance of it. In September 2024, the OGP in partnership with the European Commission ran a national 'strategic dialogue' on the use of green, socially responsible and innovation public



Minister Jack Chambers at the first public consultation workshop held in Dublin in May.

procurement. The output of this dialogue was the publication of a roadmap towards a National Public Procurement Strategy which is available on the gov.ie/ogp website.

OGP outreach and engagement

The OGP runs regular nationwide in-person network events and online information sessions for public buyers. This year, there will also be an OGP supplier event on 11 November which will be held in the Aviva Stadium and will give suppliers an opportunity to meet public buyers from OGP and the various central purchasing bodies. The event is being held in collaboration with InterTrade Ireland. This free event represents a unique opportunity for sellers interested in selling to Government to speak directly to public buyers and State agencies about how to grow your business and successfully tender for public procurement opportunities. More information will be available on the OGP's social media channels and on the gov.ie/ogp website.

Digital transformation in public procurement

As well as being one of five central purchasing bodies in Ireland, the OGP is the national authority on public procurement in Ireland, with responsibility for procurement policy in the State. The OGP's remit also extends to managing eTenders, the national electronic tendering platform and leading on the digital transformation of public procurement.

In order to deliver on this ambition, The OGP has worked with stakeholders including the OECD to develop a new strategy for the digital transformation of public procurement. It has been

informed by significant stakeholder engagement and consultation including interviews, surveys of contracting authorities and economic operators, stakeholder workshops and engagement with other EU member states. Exploration of the strengths, challenges and opportunities in the current public procurement ecosystem allowed the OGP to develop a vision for digitalising public procurement and the key enablers of this vision. The overall ambition of this strategy is to design and deliver user-focused digital solutions that will enable the user, no matter their level of procurement experience, to seamlessly navigate the complexities of the end-to-end procurement process compliantly and efficiently. Users will be at the centre of all digital solutions designed and consulted with and kept informed throughout the process.

How to stay informed

The OGP is part of the Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation. News is frequently featured across Departmental news channels.

Our website, gov.ie/ogp is kept updated with events including the supplier event in November. It will also be updated with progress on the *National Strategy for Public Procurement* and the *OGP Strategy for Digital Transformation*. You can also follow the OGP on LinkedIn and contact our support line with general queries by emailing support@ogp.gov.ie

Any queries in relation to the national strategy for public procurement should be emailed to strategy@ogp.gov.ie

Ireland's material consumption 'well above the EU average'

Buying Greener: Green Public Procurement Strategy and Action Plan 2024-27, published in April 2024, states that "Ireland's material consumption is well above the EU average", identifying Green Public Procurement (GPP) as a means to make Ireland "a more resource-efficient and circular economy".

It says that Ireland's public sector spends an estimated €18.5 billion on goods, services, and works. "This provides Ireland's public sector with significant influence to stimulate and actively encourage the provision of more resource-efficient, low carbon, less polluting goods, services and works across the public sector, The Plan asserts."

It also outlines that Ireland agreed to 17 sustainable development goals (SDGs) when it adopted *Transforming our world: the 2030 Agenda for Sustainable Development* in 2015. One SDG is to "promote public procurement practices that are sustainable, in accordance with national policies and priorities".

It includes the following objectives:

- ensure GPP is a core and integral component of the public procurement process and associated governance structures in Ireland;

- set out measures to ensure that all procurement using public funds include green criteria, where possible;
- support further development of GPP criteria, enhance GPP knowledge and expertise, and facilitate Ireland's participation in international collective efforts to use GPP as a lever for sustainable production and consumption; and
- support market conditions needed to deliver sustainable and innovative solutions for GPP.

Targets

To promote GPP in the public sector, a total of 12 targets across nine subsections are outlined in the Plan, beginning with the built environment. It states that from 2025, a "minimum proportion of construction materials procured by public bodies under new contract arrangements comprise

recycled materials". This target will be updated following the publication of the second Whole of Government Circular Economy Strategy.

Three targets are outlined under food procurement and food waste. One states that of money spent on food under contract arrangements, 10 per cent should be spent on certified organic foods, from the date of publication of the Action Plan. The second asserts that all new contract arrangements for canteen or food services should have a specific focus on food waste prevention from 2025. The third says that from 2024 all new contract arrangements for canteen or food services were to cease the use of disposable or single use cups, plates, and cutlery.

A single target under ICT equipment sets out that by 2025 at least 80 per cent of end user products like computers and mobile phones

“Citizens need to be sure that what is purchased on their behalf has minimal harmful effects on the environment and society.”

Former Minister of State with responsibility for Public Procurement, eGovernment and Circular Economy, Ossian Smyth

procured by public bodies must be certified EPEAT Gold Standard or equivalent, TCO certified or equivalent, or will have been remanufactured.

On textiles, one target outlines that by 2027, polyester fibre products procured by public bodies must be manufactured using a minimum recycled content of 20 per cent “where possible and proportionate”. Under paper products and printing, 100 per cent of procured office paper for printing and photocopying must now be recycled.

Two targets are included for energy related products, heating equipment, and indoor and outdoor lighting. The first states that from January 2025, 100 per cent of all tenders for the public procurement of these products were to include a requirement for tenderers to specify environmentally sustainable options once the product or its components comes to the end of life.

The second target states that no tenders for public procurement of heating systems installed in new buildings and major renovation retrofit projects can use fossil fuels. This is subject to exceptions outlined in the *Public Sector Climate Action Plan Mandate 2023*. No timeframe is outlined for this target.

The only target outlined for indoor cleaning services states that from January 2025, 100 per cent of tenders for the public procurement of indoor cleaning services were to include an obligation for tenders to outline staff training to be put in place. This is “to ensure that all staff involved in delivery of the contract have the knowledge and skills to apply cleaning methods, which will

reduce the environmental impact of the services”.

On road transport vehicles, the Action Plan states that 100 per cent of tenders for the public procurement of vehicles should be “to procure zero emissions vehicles only”. This is subject to exceptions outlined in the *Public Sector Climate Action Plan Mandate 2023*. No timeframe is outlined for this target.

The final target outlined in the Plan states that by 2027 “a minimum proportion of annual procurement by public sector bodies shall include used or repaired goods or materials”. It notes: “Availability of used or repaired goods will be informed by the national network to support and scale reuse and repair in Ireland that has been established by the EPA.”

In the foreword of the Plan, then-Minister of State with responsibility for Public Procurement, eGovernment and Circular Economy Ossian Smyth says: “Citizens need to be sure that what is purchased on their behalf has minimal harmful effects on the environment and society. At the same time, these goods, services and works must represent value for money. Green Public Procurement has the potential to deliver wider economic benefits where significant savings can be made over the whole life cycle of a purchase both for public bodies and for society in general.”



Procurement flexibility: A missed opportunity in the public sector



Jeanne Copeland, CEO Greenville presenting at Procurex Ireland.

There is a considerable mismatch between the demands of the procurement function and the resourcing allocated in many public sector organisations which are dealing with ever constraining budgets and expectations that more can be achieved, writes Jeanne Copeland, founder and CEO of Greenville Procurement.

This is aligned with increasing compliance and reporting demands, and obligations around sustainability with many also attempting to define, design, and implement digital transformation programmes.

It is worth noting the 2023 European Court of Auditors Special Report 28/2023 highlighted the increase of

single bid scenarios peaking in 2021 at 42 per cent of all contracts. In the preceding 10 years, single bidding doubled across the EU and the number of companies submitting bids fell by over 50 per cent. This trend is not good for competition, value for money, or the taxpayer. At a time when we need the greatest innovations from technological

and sustainable perspectives, we need more and not less engagement.

To try and meet these competing demands, public bodies need to maximise the benefit of every procurement action taking account of the flexibility that exists within the public procurement regime to support sound and strategic procurement decisions.

Maximising flexibilities within public procurement

The EU Directives are frequently blamed for poor procurement. However, the flexibilities within the rules are not used to their full potential. Open tendering is the primary procurement procedure used; but is it the right one? While suitable for many procurements it should not be used without due consideration and is invariably not suitable for high value, complex, high risk, or sensitive procurements. Many tenderers decide not to bid if it is an open procedure due to the cost of tendering, the overly burdensome requirements, and the reduced chances of winning. It also allows for no real engagement between the two sides within the process.

Multi-stage procedures are more appropriate – particularly for larger, high risk contracts – and reduce the time and effort on tendering when executed efficiently. In particular, the competitive procedure with negotiation and the competitive dialogue procedures allow for significant engagement with tenderers before any award decision is reached. Both of these procedures provide real opportunity for greater understanding of what is required and what should or could be tendered as a solution.

The duration of contracts and frameworks should take account of the

total life cycle; the cost, resources, overall investment, and feasibility of changing provider in shorter periods, and the risks associated with change. While four years is the standard duration for frameworks (eight years for utilities), both Directives allow for longer frameworks in “exceptional cases duly justified, in particular by the subject of the framework”. Where a contracting authority is tendering a new IT system for example, a single party framework for a 10 or even 15 year period (or longer) is more appropriate, it reflects the reality of the investment, the evolution of the requirement, and more competitive pricing while minimising the risk associated with more frequent tendering or change of provider.

In multi-party frameworks, Dynamic Purchasing System (DPS) arrangements or even qualification systems, contracting authorities should not limit themselves to the same award criteria for mini-competitions and should always give themselves the discretion to change the weightings – this provides significantly more opportunity for real competition. Using the same criteria and weightings for all mini competitions ultimately results in tender decisions coming down to cost only. Once that outcome arises, tenderers stop bidding as they cannot afford to be involved in a race to the bottom. It also prevents the possibility of increasing weightings in area such as sustainability as the market develops more capacity to offer more sustainable solutions.

Maximising participation and competition

One of the considerations in designing procurements is to understand the size and scale of the market likely to bid for contracts and how to design the process to maximise participation.

Seeking overly high levels of insurance is a clear barrier. It is essential that a meaningful risk assessment is completed, including taking account of the value of contracts likely to be awarded under a procurement mechanism and not just the total value assigned over its lifetime. Insisting insurances are in place at time of award for contracts or single party frameworks, is appropriate. However, it may be overly burdensome for panels, qualification systems, DPSs, or multi-party



Public procurement is complex but being flexible on the process and criteria can be beneficial to everyone.

frameworks where no contracts are guaranteed and confirmation of agreement to implement would be sufficient in many cases.

Requirements to have Article 57 declarations witnessed by Commissioners of Oaths or other independent witnesses is unnecessarily onerous on bidders. This has been reflected in case law from the Court of Justice of the EU in *Ambisig C-46/15* with the Court describing it as “excessively formalistic when compared to the straightforward declaration by the economic operator”. This witnessing element should be eliminated as a mandatory requirement. Indeed, the requirement to complete both an Electronic Single Procurement Document (ESPD) and an Article 57 declaration is also excessively bureaucratic as an unnecessary duplication.

Another requirement used without questioning is previous experience, commonly requesting three previous contracts – why? Its purpose is to give confidence that candidates or tenderers have a track record of delivering comparable contracts.

At the very least, what is being asked for from suppliers should be subject to some critical analysis as part of the design stage, moving away from formulaic practice and trying to put ourselves in the shoes of suppliers, considering what we really need demonstrated.

Conclusion

In summary the Directives provide options to engage in better practice serving both the buying and supply side. Contracting authorities have the freedom to reduce the burden on tenderers, the examples provided above are some of the most common, however, there are many ways to maximise the flexibilities, but it does require us to think differently.

W: www.greenville.ie



GREENVILLE
PROCUREMENT



'Limited digitalisation' in Ireland's public procurement

Ireland must establish a national digital procurement strategy if it is to enhance the digitalisation of its public procurement models, according to a report by the Organisation for Economic Co-operation and Development (OECD).

The OECD's October 2024 report, *The Digital Transformation of Public Procurement in Ireland: A Report on the Current State*, provides an assessment of the maturity of Ireland's digital public procurement systems. The report outlines existing structures and practices, identifies areas of strength, and details several shortcomings to be addressed through a national strategy.

The report was produced in cooperation with the European Commission Directorate-General for Structural Reform Support and was funded through the EU Technical Support Instrument. It forms part of the Strategy for the digital transformation of public procurement in Ireland.

According to the report, Ireland has developed a mature e-procurement system for the tendering phase. The eTenders platform functions as the national publication portal for procurement notices and is the sole eSender to the EU's Tenders

Electronic Daily (TED). Sectoral central purchasing bodies (CPBs) have also developed their own tools and platforms.

The use of digital platforms in the tendering process is well-established. However, the report outlines that there is "limited digitalisation in the pre-tender and post-award stages". It further identifies gaps in needs assessment, planning, contract management, invoicing, and performance evaluation. These areas are not consistently supported by digital tools or integrated systems.

Governance and interoperability

Ireland's public procurement system is managed across multiple organisations. The Office of Government Procurement

(OGP) provides leadership and is responsible for sourcing common goods and services. Other CPBs, such as those in health, education, local government, and defence, operate in their respective sectors.

The report notes that governance structures could better support the digital transformation process. There is currently no national strategy for digital public procurement. Most digital initiatives have been driven by regulatory requirements, including those under the EU Public Procurement Directive. This has resulted in “operational silos, limited system interoperability, and inconsistent data usage”.

The report recommends the establishment of a national digital procurement strategy, including clear governance arrangements, defined responsibilities, and engagement with stakeholders across the procurement system.

Data collection and use

The report highlights limited capacity to collect and use data across the procurement lifecycle. Data collected through eTenders and other systems is not consistently linked across platforms, and much of the post-award data is not systematically captured. Manual data transfer between systems creates inefficiencies and raises the risk of errors.

The OECD recommends that Ireland invest in data governance, quality, and accessibility. Improved data infrastructure would support oversight, enable evidence-based decision-making, and provide the basis for assessing procurement performance. The introduction of EU eForms and the development of the EU Public Procurement Data Space are identified as relevant developments for enhancing data consistency and interoperability.

Emerging technologies

The OECD notes that there is currently limited application of innovative or emerging technologies in public procurement in Ireland. Tools such as artificial intelligence, robotic process automation, and blockchain are being used in other EU member states to support supplier engagement, performance monitoring, and process automation.

The report recommends that Ireland develop a co-ordinated approach to assessing the applicability of such technologies within the public procurement context. This includes identifying functional requirements, potential use cases, and implementation frameworks.

Strategic alignment

The report outlines the need to align procurement digitalisation efforts with broader public sector digital transformation strategies, including Connecting Government 2030 and the Digital Public Service Strategy. Integration with systems in finance, budgeting, human resources, and public registries is identified as a means to improve efficiency and reduce duplication.

The OECD distinguishes between vertical integration (connecting national e-procurement platforms with internal systems used by contracting authorities) and horizontal integration (connecting procurement systems with other public sector systems). The report recommends that Ireland consider both approaches when developing its digital procurement architecture.

Recommendations

Key recommendations from the report include:

- establishing a national vision and strategy for digital public procurement;
- expanding digitalisation to cover all stages of the procurement lifecycle;
- enhancing governance structures to support co-ordination and implementation;
- improving procurement data quality, availability, and use;
- increasing system interoperability and user accessibility; and
- assessing and deploying emerging technologies in a structured manner.

The report concludes that while Ireland has made progress in digitalising certain aspects of public procurement, a more comprehensive and co-ordinated approach is required to improve system efficiency, reduce administrative burdens, and support wider policy objectives.

All change? How to modify a public contract without risk



Áine Smith, Partner and Head of Procurement.



Cian Clifford, Solicitor.

Public procurement in Ireland is governed by a complex framework that demands a careful balancing act between compliance and flexibility, write Beauchamps' Áine Smith, and Cian Clifford.

One of the most challenging areas for authorities in recent years has been managing changes to existing contracts. Often, such bodies may not be alive to the fact that public procurement law continues to "bite" long after a contract is awarded. Getting a contract awarded in compliance with the rules can be challenging enough in the first place; the need to then keep an eye on how a contract evolves, particularly long-term contracts or those for complex services, is an additional burden, often complicated by changes over time to personnel tasked with managing those contracts.

Regulation 72 of the European Union (Award of Public Authority Contracts) Regulations 2016 sets out the limited circumstances under which contracts

may be lawfully amended without the need for a new procurement. A misstep in applying these provisions can expose an authority to legal challenge, audit scrutiny, and financial penalties, not to mention significant reputational damage and trust in the authority's ability to manage public funds being seriously undermined. So what are the rules around contract modifications and when are changes permitted?

- 1. Modifications provided for in initial procurement documents:** Changes to public contracts are permitted where they are provided for in clear, precise and unequivocal terms in the original procurement documents. This sounds straightforward, but can be difficult to achieve in practice, necessitating

the ability to clearly forecast and legislate for future needs. The original procurement documents must specify the nature and scope of the changes and conditions under which they may be used, and any proposed change must not alter the overall nature of the contract. In practice, it is rare to come across a contract which meets the required standards.

- 2. Additional works, supplies or services:** In summary, modifications are allowed where additional works or services are necessary, and a change of contractor cannot be made for economic or technical reasons. A change made under this provision must not exceed 50 per cent of the

original contract value; if multiple modifications are made, the 50 per cent threshold applies to each one. A modification notice must be published in the Official Journal, notifying the market of the change. This increases the risk profile, as the notice can be seen as an invitation to challenge.

3. Unforeseen circumstances:

Changes necessitated by unforeseen circumstances not attributable to the authority may be permitted, provided such changes do not alter the nature of the contract and their value does not exceed 50 per cent of the original value. As above, the 50 per cent threshold applies per modification, and a modification notice is required. The onset of Covid-19 is a now classic example of the kind of genuinely unforeseen circumstances justifying contract changes. But now that we are all too familiar with Covid, it cannot constitute a lawful basis under this provision going forward.

4. Corporate restructuring:

A change to the identity of the original contractor is a material – and unlawful – change. This makes obvious sense: the whole thrust of the procurement regime is to appoint a contractor following a competition in compliance with the rules. If it were possible to simply swap in a new contractor once the contract was awarded, this would seriously undermine the intent and purpose of the rules. However, in limited circumstances, it is permissible to change the contractor – following corporate restructuring, including merger or acquisition, provided the change does not entail further substantial modifications and the new contractor satisfies any selection criteria used in the original competition.

5. Non-substantial modifications:

Changes deemed not “substantial” are permitted. Examples of substantial modifications include:

- The introduction of conditions which, had they been part of the initial procedure, would have allowed other candidates to participate, led to a different tender being accepted, or

“As public scrutiny of public spending increases, a transparent and compliant approach to contract modifications is not just a legal obligation – it is a public duty.”

attracted more bidders;

- A change in the economic balance of the contract in favour of the contractor in a way not provided for in the original contract: for example, where the authority takes back risk originally transferred to the contractor;
- A significant extension of the contract's scope.

6. Low value modifications: Low value changes are allowed if their value does not exceed the relevant EU threshold and is below 10 per cent of the initial contract value for services or supplies, or 15 per cent for works. Such changes must not alter the overall nature of the contract. Successive low value changes must be cumulated and must cumulatively stay within the above limits. Once the limits are exhausted, no further low value changes may be made.

Summary

Regulation 72 plays a pivotal role in ensuring that changes to public

contracts are handled with both legal precision and transparency. While Regulation 72 offers a degree of flexibility, this flexibility is constrained by strict legal requirements designed to preserve the integrity of the original procurement process.

Non-compliance with the provisions of Regulation 72 creates significant risk, exposing public bodies to legal challenge and reputational harm. It is therefore essential that any proposed modification is rigorously assessed against the defined parameters. The so-called “safe harbours” under Regulation 72 are not blanket permissions; they are narrowly defined pathways, the use of which must be clearly justified and, where required, notified to the market.

As public scrutiny of public spending increases, a transparent and compliant approach to contract modifications is not just a legal obligation – it is a public duty. Ultimately, adherence to Regulation 72 enhances authorities' credibility and ensures that resources are managed responsibly.

W: www.beauchamps.ie



Review of EU Public Procurement Directive underway

On 29 October 2024, the European Commission confirmed that it is conducting an evaluation of the Public Procurement Directives. This evaluation aligns with the political guidelines for the 2024-2029 term and responds to requests from the European Court of Auditors and the Council of the European Union.

The Commission has indicated that the review will cover a range of topics including the level of competition within EU procurement markets, procedural simplification, and the extent to which strategic objectives have been achieved. A call for evidence and a public consultation are to be launched, with input expected from contracting authorities, economic operators, and civil society stakeholders.

This development follows the publication of a review of the evolution of public procurement in the EU between 2011 and 2021 – formally titled *Special Report 28/2023* – by the European Court of Auditors (ECA) on 4 December 2023. The review provides insight on competition levels, data quality,

procedural efficiency, and alignment with the stated objectives of 2014 legislative reform.

Decline in competitive tendering

According to the ECA report, competition in public procurement procedures decreased over the decade in question. The proportion of procedures with a single bidder increased from 23.5 per cent in 2011 to 41.8 per cent in 2021. During the same period, the average number of bidders per procedure declined from 5.7 to 3.2.

The rate of direct contract awards – defined as awards made without a prior call for bids – stood at approximately 15.8 per cent in 2021. The report

notes that this figure varied significantly between member states, with Cyprus recording a rate of 42.3 per cent, while Greece reported 3.1 per cent. The ECA asserts that rates above 10 per cent are “problematic”.

Cross-border procurement accounted for approximately 5 per cent of procedures throughout the period under review. The report notes minimal variation over time. Luxembourg and Ireland reported above-average levels of cross-border procurement, at approximately 30 per cent and 15 per cent respectively.

Limited impact of 2014 reform

The 2014 reform of the Public Procurement Directive was intended to achieve simplification of procedures, improved access for small and medium-sized enterprises (SMEs), and greater integration of strategic policy goals. The report concludes that these objectives have not been met.

Regarding administrative efficiency, the average duration of award procedures increased from 62.5 days in 2011 to 96.4 days in 2021. Survey respondents cited process complexity and administrative burden as factors discouraging participation in tenders.

On SME access, the report finds no significant change in participation levels. Data from 2016 to 2021 shows stability in both the share of contracts awarded to SMEs and the volume of bids submitted by SMEs. Variations between member states were observed but not consistent across the dataset.

In terms of strategic procurement – referring to tenders designed to support environmental, social, or innovative objectives – the report notes that most procedures continue to rely exclusively on the lowest-price criterion. In eight member states, over 80 per cent of contracts were awarded based on price alone. The use of most economically advantageous tender (MEAT) criteria remains limited.

Monitoring and data quality

The report identifies weaknesses in the monitoring frameworks maintained by the Commission and member states. National monitoring reports lack uniformity and contain limited quantitative data. The Commission’s Single Market Scoreboard does not include disaggregated regional or sectoral data and lacks indicators on strategic procurement and appeals.

The primary data source for EU procurement monitoring, Tenders Electronic Daily (TED), exhibits persistent data quality issues. As of 2021, approximately 30 per cent of notices lacked complete values in key fields such as estimated contract value and number of offers received. Data input errors, such as implausibly high contract values (e.g., €9,999,999,999.99), were also identified.

The lack of a common unique identifier for contracting authorities and economic operators was noted as an obstacle to transparency and data reliability. Existing proposals for unique identifiers, such as the EORI number or eIDAS-based solutions, have not been implemented EU-wide.

Limited corrective action

The report states that the Commission has taken limited and fragmented action to address the decline in competition. While a 2017 strategy paper outlined six thematic areas for improvement – including professionalisation, strategic procurement, and digitalisation – few of the related initiatives were implemented in full or within the originally intended timeframe.

Member state-level actions were also characterised as limited in scope. The report indicates that procurement authorities primarily focused on compliance with formal legal requirements rather than on the performance of procurement procedures. Survey data shows that a significant proportion of national stakeholders are either unaware of or do

not make use of key indicators such as the single-bidding rate or the share of direct awards.

Recommendations and Commission response

The ECA issued four recommendations to the European Commission:

1. clarify and prioritise public procurement objectives;
2. close existing gaps in procurement data collection;
3. improve the effectiveness of monitoring tools; and
4. analyse the root causes of limited competition and identify corresponding policy responses.

In its formal reply, the Commission accepted all four recommendations and committed to integrating them into the forthcoming evaluation process. It also referred to the planned rollout of the Public Procurement Data Space (PPDS), which aims to consolidate procurement data across member states and improve access to information. Full implementation of PPDS is anticipated by 2025.

Next steps

The Commission’s evaluation process is expected to run throughout 2025. Outcomes will inform possible legislative or policy changes in the current mandate. The call for evidence and public consultation will be the main mechanism for stakeholder engagement during the review period.

The evaluation is intended to assess the effectiveness, efficiency, coherence, and relevance of the existing Public Procurement Directive, with particular attention paid to the implementation of the 2014 reform and recent trends in procurement practice.

Cracking down on bid-rigging



Anti-competitive conduct can cause very significant harm to Ireland's economy, businesses and consumers, writes Úna Butler, Commission Member of the Competition and Consumer Protection Commission (CCPC).

One of the Competition and Consumer Protection Commission's (CCPC's) primary objectives is the detection and investigation of cartels, which includes price fixing, market sharing and bid-rigging. These are serious criminal offences, currently punishable, upon conviction on indictment, by a fine of up to €50 million or 20 per cent of turnover

in the 12 months prior to conviction and, in the case of an individual, imprisonment for up to 10 years or to both the fine and imprisonment. A company director can also be disqualified for five years.

Bid-rigging is considered a serious form of anti-competitive conduct worldwide because it undermines fair, competitive

tendering processes, especially in public procurement, where large amounts of money are generally involved in public service contracts. The name bid-rigging, or tender collusion, is self-explanatory, in that it involves cartelists coming together to collude and 'rig bids' and agree who will win a tender, with the agreed winner telling the other cartel members what

prices they should submit in order to try and ensure that the agreed winner's bid wins.

In an open tender competition, contracts are won on the basis of competitive bids. Suppliers compete by tendering the lowest price at which they are willing to provide goods or services. In bid-rigging cases, however, the winning price is often higher. Bid-rigging can also reduce the range and quality of goods and services available. In public procurement, competitive tendering is the most common means of getting value for money, but it is difficult to assess incidences of bid-rigging (as large efforts are made to keep cartel conspiracies hidden). If a public body is overpaying, then the State, its citizens and undertakings (businesses) are worse off. Extra costs can result in fewer public services being delivered and taxpayers end up paying more for those services.

Research shows that cartels last, on average, four to seven years. They also result in purchasers paying between 20 per cent and 30 per cent more for goods and services. With a public procurement budget in the region of €18.5 billion per year, bid-rigging cartels can impose a significant cost on the public purse in Ireland.

Finding cases of bid-rigging in Ireland largely depends on people reporting it to the CCPC, or cartel members seeking immunity from prosecution through the Cartel Immunity Programme (which the CCPC operates in conjunction with the Director of Public Prosecutions (DPP)) and/or the CCPC's Administrative Leniency Policy. Without the right information and data, it is much harder for the CCPC to actively find bid-rigging.

One of the main ways other countries detect bid-rigging is by allowing competition agencies to screen public procurement tender data to try to spot signs of collusion. Many countries, including Brazil, Denmark, Portugal, Spain, Switzerland, the United States, and South Korea, have already begun this type of screening.

Collecting such information will bring other benefits, for example, it can be indicative of patterns and trends developing in the cost of goods and services. This information could also be used by officials buying goods and services to understand what prices are being paid across markets.

Published in December 2020, the Hamilton Review Group *Report on structures and strategies to prevent,*



investigate and penalise economic crime and corruption recommended new laws to: (i) create a specific offence of bid-rigging, and (ii) enable the collection, collation and analysis of public procurement data to detect and deter bid-rigging.

The first of these recommendations was implemented in 2023, making bid-rigging a specific criminal offence under Irish law. New legislation is needed to implement the second recommendation, to allow the CCPC to access public procurement data for screening purposes from public procurers, such as the Office of Government Procurement (OGP) and other state departments and local government.

Concern among European and international bodies about bid-rigging in public procurement is not new. Bid-rigging is an illegal practice in all OECD (Organisation for Economic Co-operation and Development) member countries and can be investigated and sanctioned under their respective competition laws.

The OECD's *Recommendation on Fighting Bid-Rigging in Public Procurement* sets out the policy standard for prevention and detection of bid-rigging in public procurement, where it:

- encourages the development of procurement databases and screening to detect bid-rigging cartels;
- supports co-operation between organisations involved in competition, public procurement, and criminal investigations; and

- highlights the need for assessing framework agreements, centralised purchasing, joint bids and subcontracts as possible collusion risks.

The European Commission also recommends creating databases on businesses that have been involved in collusion in the past. A large amount of procurement data is being created continuously from a variety of sources. Artificial intelligence (AI), algorithms and/or machine learning can be used to collect and analyse data from procurement databases to help uncover suspicious tenders and/or patterns in public procurement datasets.

The CCPC is a member of the European Competition Network Digital Investigations and Artificial Intelligence Working Group and has built up a strong network of contacts with colleagues in other competition authorities across the EU. The CCPC is working with European colleagues on a project to develop screening tools to help identify potential collusion in public tenders.

These tools, along with the introduction of legislation to allow the CCPC to screen public procurement data, for instances of potential collusion and possible bid-rigging, should contribute greatly towards the fight against harmful bid-rigging cartels.

W: www.ccpc.ie



Cloud services procurement: 2025 policy update

In May 2025, the Office of Government Procurement (OGP) issued a revised version of its Cloud Services Procurement Guidance Note, superseding the 2021 edition.

This updated guidance is intended to support Public Sector Bodies (PSBs) in Ireland in procuring cloud-based services in a compliant, risk-aware, and commercially appropriate manner, taking into account the increasing reliance on cloud delivery models across all public service domains.

The revised note outlines procedural recommendations, contractual considerations, legal compliance obligations, and market engagement practices, with a particular focus on the complexities introduced by hyperscale providers and emerging technologies such as embedded artificial intelligence (AI) components.

The guidance reiterates that all PSBs must comply with EU and national procurement regulations, most notably the European Union (Award of Public Authority Contracts) Regulations 2016 (S.I. No. 284/2016), when procuring cloud services. These requirements include the publication of contract terms as part of the Request for Tender (RFT) and the use of transparent and non-discriminatory procurement procedures.

Due to the distinctive contractual and operational characteristics of cloud services, the guidance advises PSBs that standard OGP contract templates may be insufficient and may require customisation to account for service-specific risk factors, commercial terms, and performance arrangements.

Procurement procedure selection

The OGP highlights that PSBs must choose an appropriate procurement procedure type in accordance with the risk profile, market maturity, and complexity of the cloud services being sought. In circumstances where it is anticipated that standard terms and conditions may be rejected or modified by prospective suppliers – particularly hyperscale cloud service providers – the guidance suggests that negotiated procedures or competitive dialogues may offer a more suitable procurement path than open procedures.

PSBs are reminded that while negotiation-friendly procedures offer

flexibility, they must be used in accordance with legal thresholds and must preserve the principles of transparency and equal treatment.

Market engagement

The guidance strongly recommends that PSBs undertake structured pre-market engagement, most often through the publication of a pre-market consultation (PMC) via the eTenders platform. This engagement should serve several purposes:

- **Solution assessment:** Determine whether the appropriate service model is infrastructure as a service (IaaS), platform as a service (PaaS), or software as a service (SaaS), and assess whether services include AI functionality.
- **Risk assessment and DPIA:** Conduct a data protection impact assessment (DPIA) and classify the data to be processed under the prospective service. PSBs must be able to demonstrate understanding of the nature, purpose, and legal basis for all personal data processed in the cloud environment.
- **Supplier screening:** Assess whether potential suppliers – including resellers and systems integrators – can meet GDPR and security obligations.
- **Cost and lifetime analysis:** Estimate the total cost of ownership (TCO) over the contract term, including variable usage-based pricing structures.
- **Contract alignment:** Identify conflicts between standard supplier terms and PSB requirements.

The guidance makes clear that engaging external legal and data protection advisors is advisable before initiating formal procurement processes.

Contractual and commercial considerations

The document outlines 10 contractual and commercial terms (CCTs), each of which addresses a specific challenge for cloud procurement:

CCT.1: Data protection: The PSB remains fully accountable under GDPR for data processing. Contracts must explicitly define processing roles, sub-processor controls, audit access, breach notification procedures, and restrictions on cross-border data transfers.

CCT.2: Hierarchy of documents: The PSB Services Contract must define a clear order of precedence among all documents, with PSB terms explicitly taking precedence over CSP terms – especially those included via embedded hyperlinks or “click-through” agreements.

CCT.3: Security requirements: Contracts must specify standards for data encryption (in transit and at rest), data residency, private vs public access, and responsibilities under the shared responsibility model.

CCT.4: Contract duration: Long-term contracts may offer improved unit pricing but introduce risk of supplier lock-in. PSBs should balance pricing incentives with flexibility for early termination and re-tendering.

CCT.5: Exit management: Exit provisions must cover data extraction, service transition, and handover obligations. Contracts should include a mandatory exit management plan reviewed at regular intervals.

CCT.6: Service suspension: CSPs may reserve rights to suspend service unilaterally. The PSB should seek to restrict such rights to well-defined and proportionate scenarios.

CCT.7: Pricing models: The note distinguishes between fixed pricing and consumption-based pricing, including PAYG and commitment models. PSBs must fully scope the pricing components, including compute, storage, bandwidth, and licensing.

CCT.8: In-life service management: Governance mechanisms must be in place to monitor SLA compliance, incident resolution, and strategic review. This includes regular supplier performance reviews and operational meetings.

CCT.9: Other contractual issues: These include force majeure, indemnities, intellectual property rights, software versioning, and novation clauses.

CCT.10: General procurement issues: PSBs must distinguish between direct CSPs, resellers, and systems integrators and ensure contractual accountability is not diluted in multi-party arrangements.

The 2025 Cloud Services Procurement Guidance Note is intended to serve as a technical resource for contracting authorities procuring cloud services. It does not represent a change in policy direction but consolidates recent legal developments and codifies procurement best practices into a single reference point.

PSBs are expected to operationalise the guidance in all relevant procurement processes and to retain appropriate legal and technical advisory support. Compliance with GDPR, procurement law, and internal governance frameworks remains a fundamental requirement.



Comhairle Contae Chill Dara
Kildare County Council

Inside Kildare County Council's procurement unit



For a period of two years Kildare County Council was unable to recruit a procurement officer as the competition with the private sector was an obstacle we could not overcome.

Therefore, it was decided that a position would be recruited internally with the procurement officer a designated Local Authority Grade 7. It was then decided by management of Kildare County Council to future proof the procurement role by establishing a team of staff to support to the Procurement Officer.

The Procurement Unit in Kildare County Council now comprises of a team of four comprising, Clodagh Lyons, Senior

Executive Engineer for Procurement, Property and Facilities; Sabrina Fogarty, Procurement Officer; Fergus Hogan, Staff Officer; and Aiveen Dykes, Assistant Staff Officer. This ensures a solid team with procurement knowledge that will allow for staff movement into the future.

The role of the procurement unit in Kildare County Council is to assist staff to ensure procurement compliance, staff awareness and training, standardising

procurement procedures, and promoting the goal of attaining value for money for public money spent. We have an open-door policy and are committed to assisting each section across Kildare County Council at any stage of the procurement process. We have a decentralised model of procurement in our organisation for the procurement of goods, services, and works which means that it is the responsibility of the individual sections to procure, which is backed up by the support and advice of the procurement team.

One of our key achievements in 2024 was the establishment of a procurement steering group which holds quarterly meetings. It has representatives organisation wide, from libraries, finance, economic development, transport, environment, public realm, community and housing. It serves as an intermediary between the procurement unit and the staff within individual departments.



Meet the Buyer Event at MERITS Kildare 2024.

There had previously been no such group in Kildare County Council for several years. The representatives in the group discuss the procurement issues that are going to have an impact on their sections, for example Office of Government Procurement reporting. The members then disseminate information back to their section. This has been very successful with full attendance from all participation at our quarterly meetings.

Another significant milestone for us in the Procurement Unit is the development of a procurement portal. Its function is to provide a 'go to' location for staff for all procurement information. This has become a popular site on our intranet with high traffic flow. We are also provided with information on the key areas that are searched and even the date and time when the portal is accessed. This allows us to build up trends on procurement across the organisation, and tailor our training programmes. In essence it acts as a 'one-stop shop' for procurement, providing information on procurement procedures and policies, guidance on thresholds, and tender document templates which end users can use when creating and publishing their tender and quotation documents.

The 'Latest News' section keeps our audience up to date with any procurement alerts or updates. The main types of queries that our staff ask are in relation to procurement advice, system support, and requests for procurement information. The portal provides a reporting facility which enables us to

look at what the main areas that end users are viewing and this helps us identify potential training needs, which allows us to support the organisation. On average, between 700 and 800 visits are made to the portal per month. Feedback from our staff has been very positive.

We also support staff navigating such platforms as eTenders and Supply Gov. This has been very successful with sections as they found the new eTenders system difficult to navigate.

In November 2024 the Procurement Office, in collaboration with the Local Enterprise Office, hosted a Public Procurement Briefing designed to equip local SMEs with the knowledge to successfully engage in Ireland's public procurement process. Our aim was to demonstrate transparency to SMEs and demystify the tendering process. This briefing highlighted KCC's 2025 procurement plans, providing Kildare-based SMEs with valuable insights into opportunities for business growth. Kildare County Council is committed to encouraging more local SMEs to engage in the procurement process. The briefing also provided an overview of KCC's procurement plans across five key departments: roads/transport, housing, environment, corporate services, and enterprise and economic development. We also provided breakout sessions for people to get further information from the presenters.

Over the last two years, great strides have been made in addressing the deficit of procurement advice and knowledge

within the organisation. We have built up extensive support systems for all staff through the rolling out of extensive training on the basics of procurement through to more complex issues that arise.

Kildare County Council recently appointed an outside procurement adviser to develop the knowledge of the procurement team and to provide advice when challenges arise.

The key challenges we have faced were building up a good working relationship with our colleagues who are procuring in each section, and establishing a contracts register.

We work closely with the Office of Government Procurement, and they provide useful, prompt advice and assistance with tendering.

We aim to ensure high standards of openness, transparency, and compliance with all relevant public procurement directives and legislation in all our procurement work. Our mission is to support service delivery by the Council and to fulfil the strategic objectives in the Council's Corporate Plan and to achieve value for money for Kildare County Council.

Our goal is to facilitate economic, social, and environment objectives through social and green procurement and by engaging with businesses and suppliers.

W: www.kildarecoco.ie

Green public procurement and decarbonisation



Eileen Torres Morales, research associate at the Stockholm Environment Institute, tells *eolas Magazine* that green public procurement holds the key to decarbonising the public sector across Europe.

Public procurement accounts for roughly 15 per cent of GDP across the European Union. That scale makes it a potentially powerful tool in the transition to a low-carbon economy, however, it remains underused. Across EU member states, green public procurement (GPP) policies exist but are rarely mandatory, inconsistently monitored, and poorly integrated into wider climate strategies.

According to Torres Morales, GPP should be considered a core part of Europe's climate policy framework rather than an optional add-on. "Green public procurement is not just about securing value for money," she says. "It is also about delivering environmental and societal value. That is where the real untapped potential lies."

At its core, GPP involves prioritising goods and services with lower environmental impacts throughout their life cycle. This includes operational emissions such as energy use during the life of a building or vehicle, but also embodied emissions like the carbon locked into construction materials or manufacturing processes.

"Think of the EU's road transport and construction sectors," Torres Morales explains. "They are both heavy users of materials such as steel and cement, which are sources of significant greenhouse gas emissions, and both rely heavily on public procurement. That means decarbonisation through GPP is both necessary and feasible, but it is not being pursued with the urgency or consistency it requires."



Fragmented implementation

Despite policy frameworks in place, the EU's current approach to GPP is patchy. "There are national action plans, and many of them have targets," Torres Morales notes. "But those targets often go unmet. In most cases, GPP remains voluntary, and even where it is mandatory for certain product groups, enforcement and transparency are lacking."

Procurement officers – the individuals responsible for applying these policies – often lack access to tools and training. "They told us in interviews that they do not always understand how to apply environmental criteria or assess bids based on them. There is also fear of legal challenges," she says.

The challenge, she argues, is structural. "You cannot expect meaningful decarbonisation if the people implementing policy do not have the support to do so. It is not just a matter of adding a green checkbox to the procurement process; it requires knowledge, time, and capacity."

Data

One of the key barriers to successful GPP policy rollout, according to Torres Morales, is data. There is no harmonised EU-wide system for tracking the uptake or environmental impact of GPP. "It is very difficult to measure what progress is being made, or to compare between countries," she says. "Some municipalities like Berlin, Rome, and Catalonia have started local-level monitoring, and the Netherlands is piloting greenhouse gas savings tracking. But overall, the data is sparse."

Without standardised definitions, methods or reporting systems, even basic statistics become unreliable. "According to public reports on GPP uptake, as of 2020, Poland reported that just 1 per cent of tenders were green. The Netherlands reported 67 per cent. But the methods used are so different, the numbers are not really comparable," she says. "We need harmonised metrics that allow us to know what is working and where."

Coherent, mandatory policy

To address these challenges, Torres Morales and her colleagues at SEI

conducted a one-year study, funded by Breakthrough Energy, looking at GPP in eight EU member states: Sweden, the Netherlands, Estonia, Poland, France, Germany, Italy, and Spain.

"We chose a mix of frontrunners and laggards," she explains. "Countries with large and small economies, and different governance structures."

The findings were consistent: better coordination is needed "within countries, between national and sub-national governments; between member states; and between EU institutions and international actors. Right now, efforts are fragmented and overlapping".

The report also recommends introducing product-specific carbon thresholds and expanding EU directives to include embodied carbon emissions, particularly important in sectors like transport, where focus still tends to be limited to tailpipe emissions.

"We need to move from soft incentives to clear rules," she says. "That means mandatory thresholds, better data, and more robust monitoring. Without that, GPP will remain a marginal factor in the climate transition."

Strategic value of procurement

Despite the current gaps, Torres Morales is optimistic. She sees signs that some governments and cities are beginning to take procurement seriously as a climate tool.

"Public procurement can drive demand for low-carbon materials, support innovation, and shift entire supply chains. That is not theoretical. We have already seen it in isolated examples; the challenge now is scaling that impact."

However, she asserts that doing so will require more than goodwill: "Procurement officers need time, training, and clear mandates. Policies need to be enforceable, and their outcomes measurable. And there needs to be alignment between procurement strategies and national climate goals."

Concluding, Torres Morales states that the key to progress is political will: "The potential is there, but unless GPP is treated as a core element of Europe's decarbonisation strategy, with the investment and coherence that implies, it will not deliver what it could."



Navigating AI in public procurement



Donnacha Phelan, Ross McCarthy – Directors, Keystone Procurement.

AI and analytics are transforming public procurement, but authorities must balance innovation with the EU and Ireland’s strict rules on fairness, transparency and data protection.

Existing procurement directives still apply, and the new EU AI Act (from 2024) adds oversight for “high-risk” systems. Best-practice guidance (from OECD, WEF, etc.) recommends that robust risk management and procedural safeguards should be in place when AI is being procured.

Integrating AI into public procurement (buying AI)

AI solutions differ fundamentally from traditional software. They can be off-the-shelf tools, bespoke models trained on client data, or embedded modules within larger systems. In any case, an AI offering is an evolving service, not a fixed product. This means procurement teams must specify not only the desired functions but also understand how the AI is trained, updated, and governed.

Key considerations include:

- **Data rights and privacy:** Contracts must define who owns the training data and outputs, forbid unauthorised reuse, and ensure GDPR and local privacy compliance.
- **Explainability and auditability:** Require that suppliers document how the AI works. Score bidders on model transparency, clarity of decision logic, and the auditability of outputs.
- **Bias and fairness:** AI reflects its training data. Buyers may need bias testing and regular fairness audits (with independent oversight if needed) to ensure equitable outcomes.
- **Ongoing monitoring:** AI models can change radically over time. Buyers must include clauses for retraining schedules, performance monitoring and KPIs to maintain accuracy and ethical behaviour.

Standards for AI procurement are still emerging. Most authorities rely on existing IT procurement rules. In practice this means involving legal, technical and ethical experts from the outset, using pilot phases for complex AI projects, and insisting on staged rollouts. A risk-based mindset is essential:

- high-risk AI (e.g. medical or justice) needs deep ethical vetting and rigorous testing;
- moderate-risk AI (e.g. public chatbots) still demands transparency and auditability; and
- low-risk AI (e.g. internal writing assistants) can be bought with a lighter touch but require proper staff training.

Officers must also plan for failure modes. Robust exit clauses, clear intellectual-property terms and data-portability provisions are critical if an AI solution under-delivers. In short, buying AI means buying assurance that the tool will perform fairly, safely and in line with public-sector values.

Evaluating AI-generated bid responses (managing AI in tenders)

AI is also a game-changer in the tender process itself. With bids often spanning hundreds of pages, automated tools can flag missing documents, mislabeled files or internal inconsistencies, speeding up evaluation and ensuring no compliant bid is overlooked. For lower-value or routine projects, AI-driven completeness checks could enable smaller teams to handle more competitions with fewer errors. At the same time, AI is levelling the playing field for bidders. Those with dyslexia, disabilities or weaker language skills can use AI aids (like grammar checkers or ChatGPT) to structure and polish their responses. This assistive use of AI should not be seen as cheating – it is more like providing a ramp for accessibility.

Evaluation teams should distinguish between genuine assistive use and cases where AI is misused to mask a lack of expertise. The UK's PPN 02/24 notes suppliers' use of AI is not banned but advises transparency and due diligence. Buyers are encouraged to ask

“With the right governance, transparency and risk management, authorities can harness innovation without compromising accountability or fairness.”

bidders to declare any AI use and to put proportionate controls in place.

For example, authorities might require assurances that no confidential tender data was used to train the AI, and should conduct extra due diligence (site visits, clarifications or presentations) to check a supplier's capacity when AI tools were used in bid preparation. When AI use is detected, evaluators should apply a risk-based lens. They should ask: Is this a high-stakes, €5 million contract or a routine €20,000 job? Does the bidder show real local knowledge and a solid track record? Are the technical and financial plans coherent?

Well-crafted AI-assisted text is not grounds for disqualification, but it heightens the need to verify that the bidder truly understands the work and can deliver. Contracts themselves may need updating. Many assume human authorship, so authorities should add AI-related exit mechanisms (performance bonds, milestone reviews, dynamic penalties) in case of non-performance. At the same time, these safeguards must be fair so as not to deter smaller economic operators who may rely on AI for efficiency.

A future-focused balance

AI offers immense potential in public services, from predictive analytics to fraud detection, but it requires a balanced approach. Procurement teams

must blend AI's strengths with human judgement. As one expert advises: “use AI as an “intelligent, assistive tool, not an oracle”. Global guidance from bodies like the OECD stress that AI procurement must safeguard public benefit and transparency. In practice, this means upholding core EU procurement principles – value for money, non-discrimination and transparency – even when AI is involved. It also means investing in skills. Teams must learn to write outcome-based specs and engage legal, IT and ethical experts early in the process.

Cross-functional governance (involving AI engineers, data stewards and ethicists alongside commercial officers) will become more common. In summary, navigating AI in procurement is about thinking big but buying carefully and responsibly. With the right governance, transparency and risk management, authorities can harness innovation without compromising accountability or fairness. The future of public procurement will be shaped by how well we integrate AI within the rules. The focus should not be on bending the rules for AI but bending AI to serve our rules.

W: www.keystoneprocurement.ie

PUBLIC SERVICES 2025

Sponsored by

opensky
YOUR VISION. REALISED.

Organised by

eolas
Digital | Events | Publications

Date for your diary

Thursday 2 October • Talbot Hotel Stillorgan, Dublin



Better Public Services is the transformation strategy for the public service aimed at delivering for the public and building trust. The three core pillars of the strategy are: **Digital and innovation at scale**, **Workforce and organisation of the future** and **Evidence-informed policy and services designed with and for the public**.

The vision is to create an inclusive, high quality and integrated public service provision that meets the needs and improves the lives of the people of Ireland. This conference will bring together key stakeholders from across Ireland's public service to look ahead to what's next and how we can deliver transformation at scale.



A high level panel of experts will look at key issues including:

- ✓ Better Public Services: Update on delivery;
- ✓ Strengthening public trust in government;
- ✓ Embedding design across our public service;
- ✓ Engaging with the service user – becoming citizen-centric;
- ✓ Designing inclusive and accessible public services;
- ✓ Identifying skills gaps in the public service;
- ✓ Driving equality, diversity and inclusion within organisations;
- ✓ Delivering large scale transformation;
- ✓ New workforce models;
- ✓ Innovative leadership;
- ✓ Innovation in healthcare delivery;
- ✓ Creating and using innovative solutions for government;
- ✓ Sectoral update: health; justice; education; local government;
- ✓ Best practice case studies.

Exhibition opportunities available

There are a limited number of exhibition opportunities available which will be of interest to companies and organisations with products or services they wish to promote. For further information on how your organisation can benefit, contact us directly on **+353 (0)1 661 3755** or email **Olivia.Ross@eolasmagazine.ie**.

More information available soon!



Phone

+353 (0)1 661 3755



Online

www.publicservices.ie



Email

registration@eolasmagazine.ie

eolas

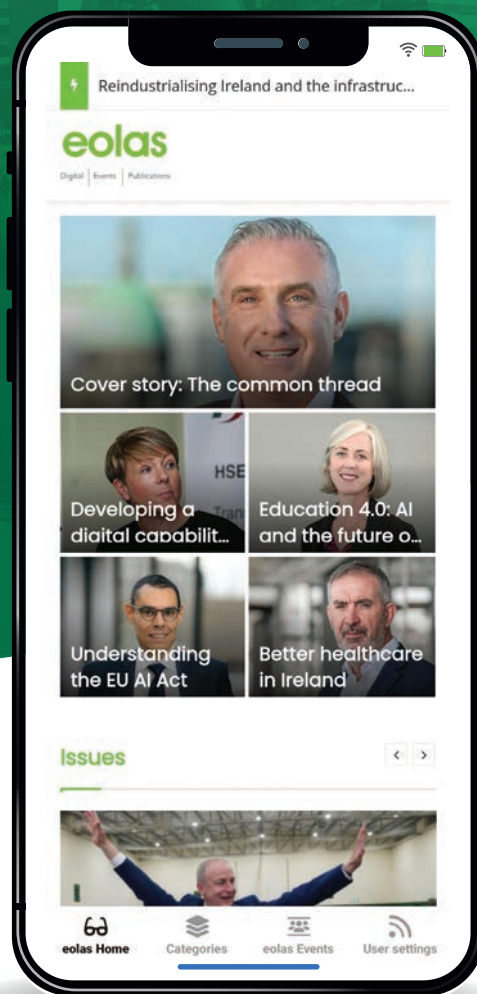
Digital | Events | Publications

informing Ireland's decision-makers...

Now on your mobile device!

 Download on the
App Store

 GET IT ON
Google Play



eolas Magazine is Ireland's premier policy publication and digital resource, trusted by senior decision-makers across the public, private, and third sectors. With the new **eolas Magazine Mobile App**, you can:



Stay informed:

access in-depth analysis of current affairs, public policy, and sector-specific insights.



Engage with events:

discover and register for our wide range of conferences that shape the national conversation.

DOWNLOAD
FROM APPSTORE



GET IT ON
GOOGLE PLAY



www.eolasmagazine.ie