



**Gníomhaireacht Náisiúnta um Bhainistíocht Sócmhainní**  
**National Asset Management Agency**

Ms Éilis Fallon  
Committee Secretariat  
Committee of Public Accounts  
Leinster House  
Dublin 2

4 December 2019

**Ref: PAC32-I-1674**

Dear Ms Fallon,

I refer to your letter to Mr Brendan McDonagh, dated 22 November 2019 and the Committee's request for a note regarding non-compliant procurement.

The first point raised in your letter relates to an internal control issue documented in NAMA's 2018 Annual Report and Financial Statements ("the Financial Statements") and discussed by the Committee at their meeting of 13 June 2019. I respectfully direct the Committee to pages 68 and 69 of the 2018 Financial Statements, available on the NAMA website, for a detailed note regarding the issue.

In summary, in November 2016 and Q1 2017, four invitations to tender were publically advertised by NAMA on the Government tenders website (etenders.gov.ie) and on the NAMA website. NAMA was fully aware and fully intended to abide with the requirement to advertise these competitions in the Official Journal of the European Union (OJEU), which can be done via the Government tenders website. The team members operating on the Government etenders website selected an option, referred to on the etenders website at the time as "OPEN OJEU" tender competition, for each of the four tender invitations, mistakenly believing this was sufficient to effect advertising on OJEU. A screenshot of the competitions advertised on the website gave the impression they were advertised on OJEU. In fact advertising on OJEU did not take place, as a different etenders website option should have been selected.

The inadvertent unintentional omission was discovered in March 2017 and an assessment immediately carried out. This concluded that the omission was non-consequential; the additional steps taken by NAMA at the time – namely, advertising publicly on the NAMA and Irish Government websites – are considered sufficient to meet the EU procurement law principle of transparency in advertising the competition in such a way that it was capable of reaching interested parties. It was therefore established that there was no potential financial liability or impact for NAMA arising from the matter.

NAMA's position was subsequently affirmed by external legal advice, sought in March 2019, on whether omitting to publish the four competitions to OJEU amounted to a breach of procurement rules. The external legal advice concluded that a technical administrative, non-material breach of procurement requirements had taken place. For good order and completeness, NAMA set out details of the matter as an internal control issue in the 2018 Financial Statements.

As a final point, each of the procurement processes referred to above were sufficiently advertised competitive processes. As such, they do not comprise "non-compliant procurement" within the meaning of that phrase as used in the November 2017 "Code of Practice for the Governance of State Bodies 2016 - Guide to the Implications for the Annual Financial Statements and the Annual Report", prepared by the Office of the Comptroller and Auditor General with the Department of Public Expenditure and Reform. We have set out above what took place, for completeness.

As regards the second point raised in your letter, I can advise that NAMA procures its contracts in accordance with its procurement policies. Details of these policies and relevant authorised derogations from procurement guidelines are contained on pages 66 and 67 of the Financial Statements, available on the NAMA website. The use of derogations under NAMA's procurement policies does not amount to non-compliant procurement.

I trust that this information will be of assistance to the Committee.

Yours faithfully,

**Mary Lawlor**  
**Senior Communications and Public Affairs Manager**  
**National Asset Management Agency**