



**Oifig an Ard Rúnaí**  
Office of the Secretary General

**An Roinn Cosanta**  
Department of Defence

*20* February 2020

Ms Éilis Fallon  
Committee Secretariat  
Committee of Public Accounts  
Leinster House  
Dublin 2  
D02 XR20

**Request for Information Note regarding Non-Compliant Procurement**

Dear Ms Fallon

I refer to your letter dated 06 January 2020 concerning the Public Accounts Committee meeting of 14 November 2019 where the Committee agreed to request an information note on the number of contracts that were non-compliant with procurement guidelines in 2018, the amounts for each and the reasons for the non-compliance.

It is noted in correspondence from the Committee that the Appropriation Account 2018 for Vote 36, Defence includes a statement that there is non-compliant procurement to the value of €20.8 million. Please be advised for the official record that the Comptroller and Auditor General did not report on any instances of non-compliance in the Defence Vote in the 2018 Appropriation Accounts.

In that regard, please find attached an Information Note regarding Non-Competitive Procurement in Defence.

Please let me know if you require any further information or clarifications in the matter.

Yours sincerely

**Maurice Quinn**  
**Secretary General**  
**Department of Defence**

## Information Note regarding Non-Competitive Procurement in Defence

All procurements in the Defence Organisation are carried out in accordance with EU and National law and guidelines. Procurement practices are scrutinised and audited by both the Department's Internal Audit Section and the Office of the Comptroller and Auditor General. Accounting Officers are accountable to the Oireachtas for compliance with all relevant EU and National procurement Regulations. The Comptroller and Auditor did not report on any instances of non-compliance in the Defence Vote in the 2018 Appropriation Accounts or in his Report on the Accounts of the Public Services for 2018. Furthermore, the Management Letter issued following the audit of the 2018 Appropriate Accounts, did not include reference to any instances of non-compliance with EU and National law and guidelines. Beyond that, the European Commission also closely monitor the awarding of public contracts by Member States.

The Appropriation Account 2018, for Vote 36, Defence includes a statement that 96 contracts, each relating to payments in excess of €25,000, with a total value of €20.8 million were listed in the Department's 2018 annual return in respect of Circular 40/2002. Paragraph 8 of Circular 40/2002 states that "each Department should complete and Annual Report (signed off by the Accounting Officer) in respect of contracts above a €25,000 threshold (exclusive of VAT) which are awarded without a competitive process". Accordingly, this Department's annual return in respect of Circular 40/2002 lists those contracts that were awarded by the Department of Defence without a competitive process.

There is a distinction between non-competitive procurement and non-compliant procurement.

- Non-competitive procurement covers all instances where goods or services were procured without a competitive process.
- Non-compliant procurement relates, inter alia, to instances where goods or services were procured without a competitive process and the circumstances did not include exceptions allowed under procurement rules.

There are a number of legitimate circumstances where the Department or Defence Forces may place certain contracts on a non-competitive basis. The main exclusions are set out in the Defence and Security Directive 2009/81/EC. The Defence and Security Directive recognises the specific characteristics of defence and security procurement, its complexity and sensitivities, in particular security of supply and security of information considerations. Those considerations are also contained in Article 346 of the Treaty of the European Union.

An example of a legitimate circumstance whereby the Department or Defence Forces may award a contract on a non-competitive basis occurs is when the original equipment manufacturer is deemed the only suitable supplier. This may be necessary where a change in

supplier would result in equipment with different technical characteristics, which would in turn result in incompatibility or disproportionate technical difficulties in operation and maintenance.

A number of other specific defence and security exclusions are provided for in the EU Directives namely:

- international rules or arrangements between Member States and third countries
- disclosure of information
- intelligence activities
- cooperative programmes
- contract awards in third countries
- government to government sales.

The Department of Defence has robust procedures in place to implement Circular 40/2002 so as to ensure that the circumstances under which contracts are placed without a competitive process are in accordance with the exceptions and exclusions set out in the relevant Directives. These are also reviewed by the Comptroller and Auditor General as part of the annual audit process.