

## Overview of the OGP

### **What is the role of the OGP?**

Public Procurement is governed by EU legislation and National rules and guidelines. The aim of these rules is to promote an open, competitive and non-discriminatory public procurement regime that delivers best value for money.

The Office of Government Procurement (OGP) provides procurement solutions, advice, guidance and systems for public bodies, promoting good practice and proactive engagement with its sourcing partners in the Health, Education, Defence and Local Government Sectors through the Procurement Executive.

It also has responsibility for developing and setting out the overarching policy framework for public procurement in Ireland. This framework enables a more strategic, consistent and co-ordinated approach to public procurement across the public sector by setting out the procurement procedures to be followed by public bodies.

The OGP leads on the implementation of the Government's procurement reform programme which has seen the introduction of a centralised approach for common goods and services.

### **What are the overarching structures governing public procurement?**

EU law sets out minimum harmonised procurement rules. The EU Procurement and Remedies Directives govern the way public authorities and certain utility operators purchase goods, works and services. The rules are transposed into Irish law and apply to tenders for public contracts whose monetary value exceeds certain thresholds. There are remedies available when an economic operator that has an interest in a public procurement procedure believes that it has been run without proper application of the EU Public Procurement Directives. An unsuccessful economic operator can bring a challenge to the High Court for determination. The European Commission can also take action against a Member State if it considers that the Procurement Directives are not being applied correctly. For tenders of lower value, national rules apply which must respect the general principles of EU law such as equal treatment, non-discrimination etc.

The OGP has responsibility for developing and setting out the overarching policy framework for public procurement in Ireland. In this regard, the OGP has progressed the National Public Procurement Policy Framework. This framework enables a more consistent approach to public procurement across the public sector by setting out the procurement procedures to be followed by public bodies.

The OGP has published the Public Procurement Guidelines for Goods and Services. This comprehensive interpretation of the public procurement directives has been designed to improve consistency and promote best practice in the application of the public procurement rules.

The Goods and Services Procurement Guidelines are available here: <https://ogp.gov.ie/public-procurement-guidelines-for-goods-and-services/>. A further update to these guidelines incorporating recent developments such as environmental and social considerations will be published shortly.

The OGP is also responsible for implementing national policy in relation to construction procurement. The Capital Works Management Framework (CWMF) is the structure that has been developed to deliver the Government's objectives in relation to public sector construction procurement reform. It consists of a suite of best practice guidance, standard contracts and generic template documents that form the four pillars that support the Framework.

A review of the CWMF was announced by the Minister for Public Expenditure and Reform in 2019 and is ongoing. Enhanced risk management throughout a project's lifecycle and quality of information will inform all aspects of the work programme. Opportunities to further deploy digital technologies, such as Building Information Modelling (BIM), will also be explored with the aim of improving workflows and information management for public bodies, contractors and consultants.

The current Capital Works Management Framework guidelines are available here: <https://constructionprocurement.gov.ie/guidance-notes/>

The OGP has no role in the scrutiny of the procurement practices of public sector bodies. It is a matter for individual contracting authorities to ensure that their public procurement function is discharged in line with the standard accounting and procurement rules and procedures. Under Section 19 of the Comptroller and Auditor General (Amendment) Act, 1993, each Accounting Officer is personally responsible for the safeguarding of public funds and property under his or her control; for the regularity and propriety of all the transactions in each Appropriation Account bearing his or her signature; and for the efficiency and economy of administration in his or her Department.

Public procurement practices are subject to audit and scrutiny under the Comptroller and Auditor General (Amendment) Act 1993, and the Local Government Reform Act 2014.

As part of its commitment to openness and transparency around public procurement in Ireland, the OGP publishes an annual Public Sector Spend and Tendering Analysis Report. The report consistently finds that more than half of spend analysed is with SMEs and that more than 90% is with firms based in Ireland. A recent report can be found here: <https://ogp.gov.ie/public-service-spend-and-tendering-analysis-for-2017-report/>

## Briefing on the 2019 Appropriation Accounts

### RECENT FINANCIAL HISTORY FOR THE VOTE

	2018		2019		2020
	Outturn €m	Estimate €m	Outturn €m	Estimate €m	Estimate €m
<b>Programme Expenditure:</b> <i>Delivery of Central Procurement Service</i>					
<b>Gross Total:</b>	<u>15.54</u>	<u>21.02</u>	<u>16.16</u>	<u>18.48</u>	<u>18.71</u>
B: <i>Appropriations in Aid</i>	15.54	21.02	16.16	18.48	18.71
	0.50	0.55	0.49	0.45	0.36
<b>Net Total</b>	<b>15.04</b>	<b>20.47</b>	<b>15.67</b>	<b>18.03</b>	<b>18.35</b>

#### 2019 Headline

The Estimate for 2019 was set at €18.48m. This is largely driven by the requirement to provide for annualised salaries of staff. The estimated outturn for 2019 was €15.67m and so the OGP has consumed €2.39m less financial resources than planned in the revised estimated.

The audited surplus surrendered in 2019 adjusted for capital carryover was €2.39m, which arose due to the following:

- Administrative Budget (€1.80m)  
Delays in the on-boarding of staff have impacted on spend within this subhead. Recruitment continues across the Office with panels formed for three open competitions. Allocation of staff from these panels has commenced.
- Procurement Consultancy and Other Costs – (€0.59m)  
The underspend is primarily due to longer than expected start up times on a number of key projects.

A capital carryover to 2020 of €59k was requested and sanctioned.

#### 2020 Headline

The Net Estimate for 2020 is €18.35m which represents a 1.77% increase on the 2019 Estimate of €18.03m. The OGP have established four hub offices and also have their headquarters at Spencer Dock and expect to reach full staff allocation by end 2020.

Most areas of expenditure are in line with 2019 levels with some increases in administration spend due to the working from home requirements necessitated by Covid-19.

**SUMMARY OF FINANCIAL DATA ON A SUBHEAD BY SUBHEAD BASIS 2019**

Subhead Description (€'000)	2019		
	Estimate	Outturn	Variance
<b>A (i)</b> Salaries, Wages and Allowances	14,685	12,645	2,040
<b>A (ii)</b> Travel and Subsistence	155	204	-49
<b>A (iii)</b> Training, Development and Incidental Expenses	444	751	-307
<b>A (iv)</b> Postal and Telecommunications Services	90	85	5
<b>A (v)</b> Office Equipment and external IT services	241	421	-180
<b>A (vi)</b> Office Premises Expenses	414	195	219
<b>A.3.</b> Procurement Consultancy Services and Other Costs	2,452	1,863	589
<b>Gross Total</b>	<b>18,481</b>	<b>16,164</b>	<b>2,317</b>
<b>B.</b> Appropriations-In-Aid	450	491	41
<b>Net Total</b>	<b>18,031</b>	<b>15,672</b>	<b>2,358</b>

**SUMMARY OF FINANCIAL DATA ON A SUBHEAD BY SUBHEAD BASIS 2018**

Subhead Description (€'000)	2018		
	Estimate	Outturn	Variance
<b>A (i)</b> Salaries, Wages and Allowances	14,500	11,881	2,619
<b>A (ii)</b> Travel and Subsistence	250	250	0
<b>A (iii)</b> Training, Development and Incidental Expenses	735	763	-28
<b>A (iv)</b> Postal and Telecommunications Services	160	92	68
<b>A (v)</b> Office Equipment and external IT services	360	256	104
<b>A (vi)</b> Office Premises Expenses	230	126	103
<b>A.3.</b> Procurement Consultancy Services and Other Costs	4,785	2,177	2,608
<b>Gross Total</b>	<b>21,020</b>	<b>15,545</b>	<b>5,474</b>
<b>B.</b> Appropriations-In-Aid	550	500	50
<b>Net Total</b>	<b>20,470</b>	<b>15,045</b>	<b>5,424</b>

## ADMINISTRATION EXPENDITURE

### DETAILED HEADLINES BY SUBHEAD

#### Subhead A (i) - Pay

- The **2019** outturn was €2.1m less than expected. The sanctioned allocation was calculated on the basis that full capacity would be reached by year end. Delays in the on-boarding of staff have impacted on spend within this subhead. Recruitment continues across the Office with panels formed or due to be formed for three open competitions. Allocation of staff from these panels has commenced with the Office expected to reach full capacity in the coming months.
- The **2020** estimate of €14.9m includes an allocation to fund pay increases under the Public Service Stability Agreement 2018-2020.

#### Subhead A (ii) – Travel and Subsistence

This subhead provides for travel and subsistence expenditure incurred by OGP staff while on business including:

- Staff travelling from regional hubs for central meetings.
  - Staff travelling to meet suppliers and buyers.
  - Category Council meetings.
  - Travel to EU relating to Policy matters.
- The outturn for **2019** is €204k compared to a budget of €155k. This overspend was largely driven by more than anticipated travel activity due to delays in the recruitment process.
  - The estimate for **2020** is €150k represents a decrease of 3% on the 2019 budget.

#### Subhead A (iii) – Training, Development and Incidental Expenses

This subhead covers the costs of:

- Training and development including; course attending, development of accredited procurement training, conferences, professional fees and subscriptions.
  - Incidental expenses e.g. shared service charges and facilities costs.
- The outturn for **2019** was €307k higher than the anticipated €444k, this was most due to greater expenditure than originally estimated on staff training, office expenses and website development.
  - The estimate for **2020** is €735k which is an increase of 39% on the 2019 budget.

#### Subhead A (iv) - Postal and Telecommunications Services

This subhead provides for the routine fixed and mobile telephony, inter building data links, and postal costs associated with a multi-location organisation.

- The outturn for **2019** was €85k compared to a budget of €90k. Staff churn and delays in on-boarding new staff have resulted in these costs not occurring as had been profiled.
- The estimate for **2020** is €107k which represents an increase of 16% on the 2019 estimate.

### **Subhead A (v) - Office Equipment and External IT Services**

This subhead provides for:

- Capital expenditure relating to the purchase of ICT equipment.
- Current expenditure relating to the cost of IT consumables, printing, stationary and OGCIO IT support costs.
- The outturn in **2019** was €420k compared to a budget of €298k. The main driver for this subhead was expenditure by the Office of the Government Chief Information Officer for service provision and IT office equipment which came in higher than expected.
- The estimate for **2020** is €395k which represents an increase of 32% when compared to the 2019 estimate.

### **Subhead A (vi) - Office Premises Expenses**

This subhead has both a current and a small capital allocation.

OGP is organised around five locations including head office at Spencer Dock and regional hubs in Trim, Sligo, Limerick and Cork. Premises rental costs are met from the OPW Vote and the OGP therefore only provides for ongoing service and maintenance charges that apply to these locations (current expenditure).

- The **2019** outturn was €195k compared to a budget of €453k. The underspend within this subhead is due to delays on planned improvement works to OGP offices.
- The **2020** estimate was €127k which represents a reduction of 356% when compared with the 2019 estimate of €453k.

## PROGRAMME EXPENDITURE

### SUBHEAD A3 – PROCUREMENT CONSULTANCY AND OTHER SERVICES

The allocation to this subhead is provided mainly to cover expenditure arising from procurement capacity support, procurement category specific advisory services, IT systems support, IT systems advisors and strategic consultants.

- The **2019** outturn was €1.863m compared to the estimate for the year of €2.452m. The allocation on this subhead provides, in the main, for external expertise to deliver essential services to support the work of the OGP.

A programme budget is essential to support the delivery of the OGP administrative pay and non-pay costs to deliver on its mandate.

This underspend in 2019 was primarily due to longer than expecting start up times on a number of key projects.

The 2020 allocation on this supports, in the main, the following:

- Support services in relation to procurement matters which are necessary to support the work of the OGP.
- the further development and implementation of a medium term strategy for construction procurement
- The development of a new national eTenders system.
- Delivery of a Commercial Skills training programme, including procurement elements, across the public sector through the OGP's Commercial Skills Academy.

The areas supported by the provision of funding in this Subhead reflect ongoing work across a variety of areas including:

#### **Procurement Capacity Support**

While the OGP continues to build up its own internal capacity to enable it to deliver external procurement support is required to provide the flexibility to progress individual projects in instances where OGP does not have the internal capacity or requisite experience to deliver them.

#### **Procurement Category Specific Advisory Services**

External expertise is also required to support the successful delivery of Category Strategies across the diverse range of spend categories. Such specific expertise include energy advisory services, advice on technical specifications in fleet, professional services etc. This advice includes but is not limited to, provision of market, price and cost intelligence insights and benchmarks, specification challenge, savings opportunity identification assessments and scoping, stakeholder and supplier engagement strategies, and strategy challenge.

#### **Business Intelligence and Operational Systems**

The OGP provides technology solutions that support its operations and those of its sector partners to enable efficient and effective delivery of OGP objectives.

The OGP's Business Intelligence system provides spend analytics on expenditure data gathered from key large public service bodies across the Health, Education, Local Government, Defence and Justice Sectors and from Central Government departments. Spend analytics support sourcing and policy activities and contribute to increased openness and transparency on public expenditure.

In 2017 a Workflow Management System, purchased in Q4/2016, was to be implemented to support the sourcing activities of the OGP and its sector partners and the OGP's Customer Service function. This system became operational in 2018 and enhancements have been carried out on the system in the intervening time.

#### **eTenders National Tendering Platform**

The OGP manages the Government's national electronic tendering platform – eTenders - that is used across the public sector. During 2020 investment in the eTenders platform will continue to focus on meeting the requirements of the EU Procurement Directives including the development of an electronic ESPD (European Single Procurement Document) and the capability to support Dynamic Purchasing System (DPS) and Central Purchasing Body (CPB) activities.

#### **Legal Support**

Funding is also required where necessary to enable the engagement of legal support services necessitated by the reduction in the capacity of the Chief State Solicitor's Office to provide the required level of legal advice. The protocol agreed in 2016 with CSSO providing for the engagement of external legal support has continued in the intervening years continuing up to 2020.

#### **Policy Construction Advice**

Funding is allocated for consultancy in relation to the initial development of the Medium Term Strategy as set out in the 'Report on the Performance Review of the Public Works Contract'.

#### **Commercial Skills Academy**

Delivery of a Commercial Skills training programme, including procurement elements, across the public sector through the OGP's Commercial Skills Academy.

## SUBHEAD B – APPROPRIATIONS-IN-AID

This subhead records certain receipts arising in the normal course of business which are, or may be, retained to meet expenditure instead of being paid directly to the Exchequer. These receipts are known as Appropriations-in-Aid.

The majority of receipts on this Vote arise from Pension Related Deductions from pay. Adverse variances on outturn (2019 - €42k) are directly related to the delays in recruiting staff – reduced pay costs impact directly on the receipts on this subhead.

SUNDRY INFORMATION IN RELATION TO STAFF COSTS

**Pay bill matters – back-up for figures shown in the Appropriation Accounts**

**Number of sourcing / non-sourcing staff by year**

<b>Year ending</b>	<b>Total number of staff</b>	<b>% of total planned 231 (ECF)</b>	<b>Number of staff in Sourcing</b>	<b>% of total sourcing ECF (146)</b>	<b>Number of staff in other areas (general and other specialist support, including data intelligence)</b>	<b>% of total non-sourcing ECF (85)</b>
2013	41	17.70%	27	18.50%	14	16.50%
2014	140	60.60%	94	64.40%	46	54.10%
<b>Total ECF revised in August 2015</b>	<b>Total number of staff</b>	<b>% of total planned 238 (ECF revised )</b>	<b>Number of staff in Sourcing</b>	<b>% of total sourcing ECF ( 159)</b>	<b>Number of staff in other areas (general and other specialist support, including data intelligence)</b>	<b>% of total non-sourcing ECF (79)</b>
2015	185	77.73%	133	83.65%	52	65.82%
2016	193	81.09%	136	85.53%	57	72.15%
2017	184	77.31%	122	76.72%	62	78.48%
<b>Total ECF revised in 2018</b>	<b>Total number of staff</b>	<b>% of total planned 249 (ECF revised )</b>	<b>Number of staff in Sourcing</b>	<b>% of total sourcing ECF (164)</b>	<b>Number of staff in other areas (general and other specialist support, including data intelligence)</b>	<b>% of total non-sourcing ECF (85)</b>
2018	226	90.76	144	87.80	82	96.47
<b>Total ECF revised in 2019</b>	<b>Total number of staff</b>	<b>% of total planned 258 (ECF revised )</b>	<b>Number of staff in Sourcing</b>	<b>% of total sourcing ECF (164)</b>	<b>Number of staff in other areas (general and other specialist support, including data intelligence)</b>	<b>% of total non-sourcing ECF (85)</b>
2019	230	89.15	143	87.2	87	92.55

**Accelerated procurement**

The OGP has published Covid-19 information notes to support contracting authorities in managing procurements where urgency is required. The Covid-19 information note provides guidance on procurement options available to contracting authorities in cases of unforeseeable events. It identifies relevant legislation, payment procedures, gives advice on commencing new procurement procedures and managing current contracts.

The OGP has responsibility for developing and setting out the overarching policy framework for public procurement in Ireland. However, it should be noted that while the policy framework and associated guidelines and guidance documents facilitate compliance with public procurement rules, it is the responsibility of each contracting authority to ensure they adhere to these rules. The operation of any contract is also strictly a matter for the contracting authority which is party to the contract.

**What flexibility do contracting authorities have in times of extreme emergency?**

It is a basic principle of public procurement that competitive tendering should be used except in justifiably exceptional circumstances. The procurement rules acknowledge that there can be legitimate reasons for awarding contracts without the use of a competitive process, such as extreme urgency brought about by unforeseeable events. 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. To assist procurement practitioners ensure continuity of service and supply, the OGP developed comprehensive information notes on Covid-19 and Public Procurement to support public bodies in managing procurements where urgency is required. In instances of extreme urgency, the rules allow flexibility to directly award, use accelerated timescales and extend or modify a contract during its term.

**Can a public body directly award without a competitive procedure?**

Regulation 32 of the European Union (Award of Public Authority Contracts) Regulations 2016 has a provision to allow contracting authorities to use a negotiated procedure without prior publication once a series of tests have been met. In responding to Covid-19, contracting authorities may enter

into contracts without a competitive process or advertising the requirement so long there are genuine reasons for extreme urgency, the events that have led to the need for extreme urgency were unforeseeable, it is not feasible to comply with the usual timescales in the 2016 Regulations and the situation is not attributable to the contracting authority.

The requirements should be limited to only what is absolutely necessary both in terms of what is being procured and the length of contract. Contracting authorities should document the reasons for choosing a non-competitive procedure and these should be retained for audit purposes. If a Government Department or a body under its aegis makes a direct award above €25,000 (ex. VAT), this should be reported in line with Circular 40/02 at the appropriate time.

### **Indemnification and procurement contracts**

Indemnification is a risk management issue for each individual public body to assess in advance of any competition. Any issues should be covered off in advance of issuance of final tenders, so that there's a level playing pitch for all tenderers. The provisions on remedies in OGP's template contract documents for goods and services, available at <https://ogp.gov.ie/templates-2/> offer guidance to public bodies on how to incorporate indemnifying clauses into final contracts.

Public works contracts set out the indemnities of both contractors and employers in the standard forms of contract for interested tenderers to evaluate up front. The standard templates can be found at, <https://constructionprocurement.gov.ie/wp-content/uploads/GN-1.5-v2.1-28-06-2016.pdf>

### **Poor past performance of Works Contractors – exclusion grounds provisions in the directive**

The circumstances where public bodies may exclude a contractor from a public procurement competition is set out in Regulation 57 of S.I. 284 of 2016. With respect to past performance, the two most relevant grounds are where a contractor (i) has had a contract terminated or had damages or other comparable sanctions applied for significant or persistent deficiencies in a prior public contract; or (ii) is guilty of grave professional misconduct, which renders its integrity questionable. Of the two, (i) affords the greatest potential to drive better performance standards since (ii) is open to interpretation.

The conditions of the public works contract already provide the tools necessary to ensure that a contractor completes a project to the required standard.

**Which conditions of the public works contract provide the tools necessary to ensure that a contractor completes a project to the required standard?**

These include (but are not limited to):

Obligation on contractor	Sanction for non-performance
<ul style="list-style-type: none"> <li>• Requirements for supervision, inspection, testing and sign off at specified stages;</li> <li>• A requirement for all the materials and products that are to be incorporated into the works to be fit for their intended purpose and to meet the specified standards;</li> </ul>	<ul style="list-style-type: none"> <li>• Instruct the removal or replacement of works that are not completed in accordance with the specification;</li> <li>• Withhold payment until the matter is rectified;</li> <li>• Appoint another contractor to rectify the works where the contractor fails to respond in a timely fashion and to deduct the cost of the necessary works from the contract sum;</li> </ul>
<ul style="list-style-type: none"> <li>• To keep the Employer’s Representative up to date on all matters related to the progress, management and supervision of the works;</li> </ul>	<ul style="list-style-type: none"> <li>• Deduct from monies due where an up to date programme reflecting progress on site is not provided;</li> <li>• Removal of personnel from the site for specified reasons;</li> </ul>
<ul style="list-style-type: none"> <li>• To complete the works (or sections of the works) by the date(s) specified – subject to adjustment in accordance with the contract;</li> </ul>	<ul style="list-style-type: none"> <li>• The provision to deduct pre-determined amounts where the project is not completed by the date stated in the contract – Liquidated Damages</li> </ul>

These are the main performance metrics and the associated sanction for non-performance. With regards to other obligations, where the remedy is not specified, failure to perform may be treated as a breach for which the ultimate sanction is termination.

A consistent approach from the contract administrator is required throughout the duration of the contract by issuing directions where performance does not meet the specified standards. This permits the contractor to address the issues in a timely fashion and can avoid the imposition of the stated

sanctions. It also amounts to a robust record in the event that the imposition of a sanction is challenged later. The majority of the stated sanctions equate to the application of damages or are comparable thereto meaning that a contractor who has had the sanctions applied could be excluded from a subsequent competition.

**What matters should be considered in order to enable a robust performance evaluation regime across the NDP?**

- Consistent application - It is important from the perspective of equal treatment and for the success of any performance management system that a consistent approach to the monitoring and measurement of performance is undertaken. It is proposed to develop robust Key Performance Indicators with contracting authorities and industry stakeholders to put in place a system of evaluation that will engender confidence and reduce the risk of challenges.
- Whilst the contractor assumes a high level of responsibility for the successful delivery of a project, they cannot be held 100% liable since they are relying on others to have performed their tasks up to the point where the contractor becomes involved. Therefore the performance of the wider project team needs to be evaluated.

**Will performance be reviewed as part of the review of the public works contracts?**

As part of the OGP's engagement with industry under the review of the procurement of public works projects it is proposed to develop metrics to review the performance of the project and to challenge the key players (including the contracting authority) to maintain high standards of performance.

If the focus is purely on the contractor, there is a risk of an increase in disputes arising on public works projects. This is because the imposition of sanctions that have a significant impact on the potential earning capacity of a contractor will be resisted – up to and including the courts if necessary.

A fair and balanced system of assessment is required, one that provides regular updates on the performance of the project, addresses the contribution of the key players and affords them an opportunity to improve their performance before the application of any sanctions.

**Non-compliant procurement arising from frameworks not being established.**

The OGP has established a wide range of procurement arrangements since it became operational in 2014. All our arrangements have been established in accordance with EU Directives, national legislation and procurement best practice, and support clients in delivering value for money and compliantly procuring goods and services to meet their needs.

The OGP has developed a Client Proposition, available through their Buyerzone website, which lays out the timelines involved in planning and running a procurement competition, which aids clients in planning their procurement competitions.

Depending on the nature of the goods and services that clients access through a mini-competition, the complexity of the competition would vary. In order to support client's planning processes, the OGP has categorised all of its existing frameworks into tiers based on their complexity and has committed to a delivery timeframe. The tier categorisation for each framework is available on the Buyerzone website.

The OGP can also support public sector bodies with bespoke competitions where their requirements are not met by an existing framework. Dedicated staff are available to support this work but the capacity to take on new projects is limited in terms of resources.

In some cases, it may arise that the OGP does not have the capacity to run a competition within the timelines requested by the client. It is open in this instance to all public sector clients to run their own competitions. The OGP, will, of course, offer any guidance it can on the procurement process through its published advice, template contracts, network of Key Account Managers and its Customer Service team. However, it is up to each individual public body to ensure that procurement regulations are adhered to. The operation of any contract is also strictly a matter for the contracting authority which is party to the contract. The Accounting Officer in each Department has ultimate responsibility for ensuring that any competitions run by their department are compliant with procurement regulations.