



## AN ANALYSIS OF PUBLIC SECTOR PROCUREMENT IN IRELAND

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**АНАЛИЗ НА ОБЩЕСТВЕНИТЕ ПОРЪЧКИ В ИРЛАНДИЯ****Ейди Р.<sup>1</sup>, Милър Ф.<sup>2</sup>, МакКюън К.<sup>3</sup>, Къртни К.<sup>4</sup>****Резюме**

Строителното инженерство и конструктивното проектиране съгласно Европейските норми са в съответствие с принципите, залегнали в европейските директиви 2004/17 (EUR-Lex, 2004a) и 2004/18, (EUR-Lex, 2004b). Те утвърждават принципите на Световната търговска организация, Общото споразумение за доставки (1994) приложение 4 (членове VII до XVI) в европейското право. Тази статия изследва финансовото въздействие при приемането на разпоредби за възлагане на обществени поръчки за строителство и строителни проекти в рамките на сегашната рецесия. В нея се разглеждат членове от две европейски страни и се сравнява възприемането на текущата политика в областта на обществените поръчки, отнасящи се за строителство и строителни организации. Данните се базират на 72 отговора от on line web въпросник, получени от членовете на Федерацията на работодателите в Строителството (SEF) в Северна Ирландия и на Федерацията за Строителна индустрия (CIF) в Република Ирландия. Европейският съюз трябва да разгледа внимателно своите политики, свързани с обществените поръчки, тъй като по-голямата част от анкетираните, смятат, че настоящите стратегии ще доведат организациите до финансови затруднения. При сегашните условия на рецесия, а и при конкуренция, предприемачите са принудени да поемат риск без да имат печалба. Изследването показва, че малките и средни предприятия също са „дискриминирани” в тръжната процедура за европейски проекти. Въпреки това, някои детайли в тръжните пакети са подобрени, като се наблюдава намаление в колебанията при процедурите. Докладът заключава, че европейското законодателство за обществените поръчки е добро за държавните поръчки, тъй като осигурява заплащане (VFM).

**AN ANALYSIS OF PUBLIC SECTOR PROCUREMENT IN IRELAND****Robert Eadie<sup>1</sup>, Phillip Millar<sup>2</sup>, Clare McKeown<sup>3</sup>, Kieran Courtney<sup>4</sup>****Abstract**

Civil Engineering and construction projects above the European Threshold are procured according to the principles set out in European Directives 2004/17 (Eurlex, 2004a) and 2004/18 (Eurlex, 2004b). These enshrine the principles of the World Trade Organisation (WTO) General Procurement Agreement (1994) Annex 4 Articles VII through to XVI (WTO, 1994) into European Law. This paper investigates the financial impact of the adoption of procurement regulations on

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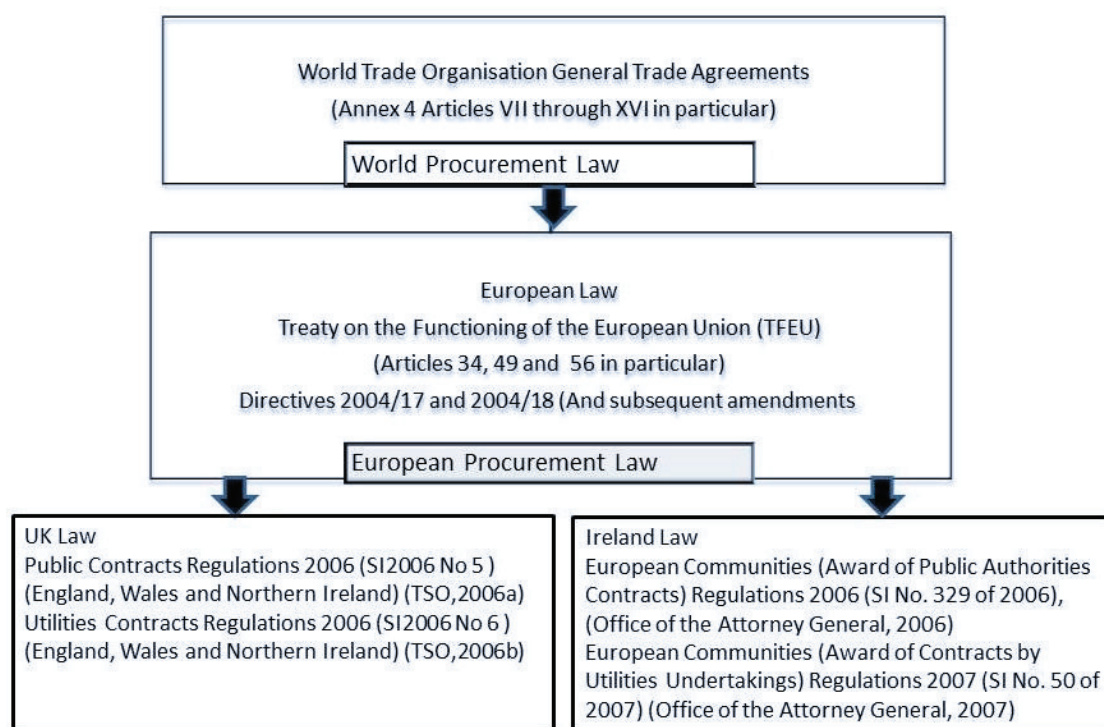
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civil engineering and construction projects within the current recession. It identified members from two European states and compares the perception of the impact of current procurement policy on civil engineering and construction organisations. It sourced members of the Construction Employers Federation (CEF) in Northern Ireland and the Construction Industry Federation (CIF) in the Republic of Ireland and gained 72 responses to an on-line web-based questionnaire. The European Union needs to carefully consider its procurement policies as the majority of respondents concluded current strategies would result in organisations facing financial difficulties. In the current recession contractors are being forced to assimilate risk without financial reward owing to competition. The research determines SME's are also being discriminated against in tendering for European projects. However, on the positive side, the detail in tender packages has improved due to the downturn and variations have decreased. The paper concludes that the European Procurement legislation is good for government procurement as it provides value for money (VFM).

**Keywords:** Public sector procurement practices, European legislation, Construction Contracts, Construction, Procurement Law, Restricted Procedure.

### Introduction

Civil Engineering and construction projects have been procured using a variety of methods. Those methods have been shaped through legal obligations set out in the World Trade Organisation (WTO) General Procurement Agreement (1994) Annex 4 Articles VII through to XVI (WTO, 1994). The European Union (EU) enshrined these principles in European law through the Treaty on the Functioning of the European Union (TFEU). Europe has set criteria for civil engineering and construction contracts within the European Directives 2004/17 (Eurlex, 2004a) and 2004/18 (Eurlex, 2004b). These directives have been adopted by member countries through their own legal systems. Ireland is divided into two: Northern Ireland adopts United Kingdom law, the Republic of Ireland implements Irish law. Figure 1 shows how the hierarchy of these laws.



**Figure 1 Hierarchy of Procurement Legislation**

Both the UK and Ireland have adopted European Directive 2007/66/EC which obligates public authorities to have a 'standstill period', before awarding a public contract (Eurlex, 2007). This

stipulates a number of days for Economic Operators who are not the preferred bidder to appeal an unfair decision. Contracts can be set aside by the national courts rendering the contract "ineffective". The UK adopted the stipulations of the European Directive 2007/66/EC in the Public Contracts (Amendment) Regulations 2009 and the Utilities Contracts (Amendment) Regulations 2009. Ireland also adopted the directive through the European Communities (Public Authorities Contracts) (Review Procedures) Regulations 2010 (Office of the Attorney General, 2010a) and by the European Communities (Award of Contracts by Utilities Undertakings) (Review Procedures) Regulations 2010 (Office of the Attorney General, 2010b).

The aim of this paper is to ascertain construction professionals' perceptions on the implementation and benefits of the regulations in the two jurisdictions on the island of Ireland. The construction professionals selected must have been responsible for tendering procedures and included contractors quantity surveyors, private sector developer quantity surveyors and other procurement professionals such as business managers.

The paper further investigates the financial implications on public procurement subsequent to the adoption of the regulations. Erlendsson (2002) defines Value for Money (VFM) as endorsing an organization has *"obtained the maximum benefit from the goods and services both acquired and provided, within the resources available to it"*. All government contracts on the island of Ireland must achieve VFM which KPMG (2010) suggests is determined by three main aspects – efficiency, effectiveness and economy.

### Methodology

Due to the diverse location of economic operators throughout Ireland an electronic survey using Limesurvey was conducted. Limesurvey uses a PHP/MySQL database to collect manage and analyse data. The Construction Employers Federation (CEF) in Northern Ireland has 1200 members (CEF, 2012), the Construction Industry Federation (CIF) in the Republic of Ireland has over 3,000 members (CISIreland, 2012). This provides an estimate of 5000 construction organisations in Ireland. Bartlett et al (2001) provide sample sizes based on data type and a response rate of 65%. A sample size of 83 is proposed for a population of 6000 and continuous data *"An alpha level of .10 or lower may be used if the researcher is more interested in identifying marginal relationships, differences or other statistical phenomena as a precursor to further studies"*. Hence once the 0.10 is combined with a possible error level of 3% (Krejcie & Morgan, 1970) it indicates that the response rate of 72 is above the 54 required by Bartlett et al. (2001) figures. This ensures that there will be less than 3% error in the findings described in the following section. Forty-nine of the responses came from Northern Ireland and 23 from the Republic of Ireland.

### Findings in regard to Company Size

It would be expected that a survey of construction companies would result in a variety of company sizes. Table 1 indicates the majority of the sample is in the medium size category.

**Table 1 Company Size**

Company Size				
	Total Count	Total %	Count Northern Ireland	Count Republic of Ireland
Micro (1-9 Employees)	16	22.22%	6	10
Small (10-99 Employees)	19	26.39%	8	11
Medium (100-499 employees)	30	41.67%	28	2
Large (500+ employees)	7	9.72%	7	0

#### 4. Findings in relation to VFM

Table 2 states that once the neutral responses are ignored in Ireland that approximately two thirds of respondents (66.07%) agree that the current European procurement strategies produce VFM. When this is segregated into Northern Ireland and the Republic of Ireland this percentage remains constant. Northern Ireland had 25 who agreed or strongly agreed that the current European procedures produced VFM (68%) against a value of 63% from the 12 responses from the Republic of Ireland. However this still leaves nearly a third of the sample who consider that the adoption of the current European regulations do not provide VFM; 12 from Northern Ireland (32%) and 7 from the Republic of Ireland (37%).

**Table 2 Current European Procurement Strategies and VFM**

<b>Current European Procurement strategies provide VFM</b>				
	<b>Total Count</b>	<b>Total %</b>	<b>Count Northern Ireland</b>	<b>Count Republic of Ireland</b>
Strongly Agree	2	2.78%	0	2
Agree	35	48.61%	25	10
Neither Agree/Disagree	16	22.22%	12	4
Disagree	15	20.83%	10	5
Strongly Disagree	4	5.56%	2	2

Respondents were then asked to identify through a qualitative question why they had answered in the manner that they did. Ten of the responses on the positive side identified the competition resulting from European contracts as the main driver for VFM in public procurement. The two stage process which includes a prequalification and Quality/Price tenders was also identified by those who were positive about the current process. On the negative side the transfer of risk to the contractor with its resultant increase in price is identified.

#### 5. Findings in relation to cost overruns in construction

Respondents cited lack of detail in tender documentation as the main cause of cost overruns in construction projects (52.11% overall, 50% Northern Ireland and 56.22% Republic of Ireland). This was followed by unforeseen conditions on site (30.99% overall, 35.42% Northern Ireland and 21.74% Republic of Ireland). Other aspects such as poor quality of workmanship on site, changes to specification, waiting on service connections, and poor project management made up the remainder of the responses.

#### 6. Findings in relation to the current procurement strategy and the number of contractors likely to experience difficulty

While the majority of current participants agree that the current policy is providing VFM for European government purchasing in construction, the impact on individual contractors in the downturn has also been highlighted. The data in Figure 3 suggests that the majority agree that a negative financial impact will result if current policies are followed. This is more extreme in the Republic of Ireland where once those respondents who remained neutral are removed 84% of respondents held this view compared with 73% in Northern Ireland. These statistics mirror the effects of the recession in both jurisdictions where the impact of the recession has influenced construction to a greater extent in the Republic of Ireland.



**Table 3 Financial Implications of Current Public Procurement Policy**

<b>Will the current Public Procurement strategy result in a larger number of contractors experiencing financial difficulty during the construction phase</b>				
	<b>Total Count</b>	<b>Total %</b>	<b>Count Northern Ireland</b>	<b>Count Republic of Ireland</b>
Strongly Agree	7	9.72%	5	2
Agree	31	43.06%	17	14
Neither Agree/Disagree	23	31.94%	19	4
Disagree	10	13.89%	7	3
Strongly Disagree	1	1.39%	1	0

### **7. Findings on change in application of current procurement strategies**

The current economic climate and the application of the European procurement strategies have led to elements of change within procurement. Respondents were asked to comment on whether they considered that in the current climate risk transfer was occurring from employer to contractor without a fair premium being attached to the work. Overall 68.05% of respondents agreed that this was the case. When those remaining neutral were removed and it segregated 85% from Northern Ireland and 84% from the Republic of Ireland considered this to be correct. This shows that in the current climate of recession contractors can no longer build into the prices additional monies for risk in the schemes.

Further a strong disagreement appeared between the jurisdictions relating to the opportunities for small to medium size enterprises (SME). In the North once the neutral's were removed 47.5% considered SME's had equal opportunities in gaining European Work, with 52.5% considering that they were discriminated against. In the Republic of Ireland the result was much more extreme, only 10.50% considered SME's had equal opportunities with 89.50% considering that SME's were at a disadvantage in gaining European wide contracts. It is suggested that the current dialogue within the EU on this difficulty results in legislation which overcomes the problem of equal opportunity for SME's.

The detail in tender packages has improved due to the downturn (62.5% and 79% agree in Northern Ireland and the Republic of Ireland respectively). Significantly the number of variations has also reduced. Fifty-nine per cent (59%) considered that they had reduced in Northern Ireland and 86% in the Republic of Ireland.

### **8. Conclusions**

The paper concludes that the European Procurement legislation is good for government procurement in that it provides VFM. However, in the current downturn contractors have to take on risk without being reimbursed for this due to competition. This is in two member states of the EU and the research will need to be expanded to other EU States.

Respondents cited lack of detail in tender documentation as the main cause of cost overruns in civil engineering and construction projects above the European Financial Threshold, followed by unforeseen conditions on site. Other aspects such as poor quality of workmanship on site, changes to specification, waiting on service connections, and poor project management made up the remainder of the responses. However, these accounted for less than 25% of the response.

The EU has to make a careful consideration in the development and implementation of procurement policies. The EU needs to consider a procurement strategy to exit recession as the majority of respondents indicate the current strategies would put more organisations in danger of

financial difficulties. Respondents considered the current strategies place Economic Operators in a vulnerable position during the recession as they had to take on risk without the financial gain due to increased competition. SME's were also being discriminated against in tendering for European projects and the findings of the current European Commission Consultations needs to be enshrined in European Law. However, on the positive side, the detail in tender packages in Northern Ireland and the Republic of Ireland has improved due to the downturn in the construction industry and there is a significant decrease in variations.

Further work needs to be carried out Europe wide which sets a strategy where the impacts of procurement policies in civil engineering and construction can be used to grow Europe out of recession.

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