



**STANDING COMMITTEE
OF
TYNWALD COURT
OFFICIAL REPORT**

**RECORTYS OIKOIL
BING VEAYN TINVAAL**

**PROCEEDINGS
DAALTYN**

**ECONOMIC
POLICY REVIEW COMMITTEE**

Procurement

HANSARD

Douglas, Friday, 21st September 2018

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Members Present:

Chairman: Mr C R Robertshaw MHK
Mr T S Baker MHK
Mr J R Moorhouse MHK

Clerk:
Mr J D C King

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Standing Committee of Tynwald on Economic Policy Review

Procurement

*The Committee sat in public at 2.33 p.m.
in the Legislative Council Chamber,
Legislative Buildings, Douglas*

[MR ROBERTSHAW *in the Chair*]

Procedural

The Chairman (Mr Robertshaw): Good afternoon, welcome to this public meeting of the Economic Policy Review Committee. I am Chris Robertshaw MHK and I chair this Committee. With me are Mr Tim Baker MHK and Mr Jason Moorhouse MHK.

Please ensure your mobile is off, or on silent, so that we do not have any interruptions. For the purposes of *Hansard*, I will be ensuring that we do not have two people speaking at once.

The Economic Policy Review Committee is one of four Standing Committees of Tynwald Court which scrutinise different areas of Government. We invite the Ministers of our three Departments to come in at least once a year, with their Chief Executive, and give oral evidence in public. Later this afternoon we will be hearing from the Minister and Chief Executive of the Department for Enterprise.

First, however, we are pleased to welcome Mr Attorney General. We have asked him to come in and discuss procurement. This follows on from a discussion we had with the Treasury Minister on 18th May.

EVIDENCE OF

**Mr J L M Quinn QC MLC, Her Majesty's Attorney General and
Mr S Watson, Senior Law Officer and Head of Procurement**

The Chairman: Thank you very much for coming in this afternoon.

The Attorney General: Thank you, Mr Chairman.

Q1. The Chairman: It would be very helpful to the Committee if you could outline your role, sir, and how you apply it; and your thoughts on your role.

The Attorney General: Mr Chairman, I welcome the opportunity of answering this call to give evidence this afternoon. To assist you and the Committee I have prepared an opening statement.

The Government's Procurement Team moved to the Attorney General's Chambers from Treasury in March 2016. The Procurement Team is now combined with the Commercial Team within Chambers, forming a cohesive team offering procurement and commercial law advice to

Government. Currently, this team comprises four procurement officers, four lawyers and, as they describe in the Civil Service terms, 1.5 admin officers. Of the procurement officers, two officers currently hold qualifications granted by the Chartered Institute of Procurement and Supply and one officer is currently undertaking these qualifications.

The Procurement Team are tasked by Treasury with undertaking the procurement process for tenders sought by Departments and Statutory Boards where the cumulative spend is over £100,000 over the life of a contract, and where the Department or Statutory Board is not in receipt of an exemption – which was previously known as an FD8 waiver – from the requirement to tender. Our objective in running the procurement process is to ensure that the process is fair to all tenderers and prospective tenderers, it is transparent and that the Department and Statutory Board is advised of, and so aware of, all the risks and material considerations linked to the procurement in question. We are available to offer advice in connection with the commercial decisions that the Department or Statutory Board has to make and also to advise the Department and Statutory Boards with regard to their obligations under Treasury Financial Regulations.

As the Committee will be aware, the Treasury introduced a new procurement policy in August 2017. On the back of this new policy, the Procurement and Commercial Team has so far provided training to 320 officers across Government. This training covered procurement generally, the provisions of the new procurement policy and the introduction of the Procurement Portal, which we manage in Chambers.

This Procurement Portal is a web-based application which enables tenders to be submitted in electronic format. It also facilitates the advertising of tenders and their opportunities and provides a ‘quick quote’ process which Departments are able to use for contract opportunities which fall below the £100,000 tender limit. The Procurement Portal has been well received and we currently have 1,635 contractors registered on the portal.

Undertaking procurement within a large public sector organisation can be a difficult task, and as there is a need to balance the requirement that the process is fair and transparent with the time pressures often demanded for the delivery of goods and services, it can be challenging. It is for this reason that a variety of procurement options are now available to Departments and Statutory Boards designed to ensure that the procurement process can be adapted to meet the needs of each procurement. For example, there is now no need for a formal process for tenders which are under £100,000 save for the requirement that those tender opportunities are advertised on the portal.

For tenders over £100,000 we do have a standard procurement process but this can be adapted so as to reduce or increase timescales depending upon the nature of the procurement. The Procurement Team is available to advise in relation to any adaptations. There is also a comprehensive ‘exemption’ regime set out in Treasury Financial Regulations meaning that Departments or Statutory Boards are able to apply to exempt a particular tender from the formal procurement process where circumstances may dictate that this is not appropriate, for example, where there are urgent timescales, where specialist contractors are involved and where, in those circumstances perhaps, there is no realistic alternative tenderer.

I have, Mr Chairman, considered the evidence which you and your Committee heard at your sitting on 18th May and the questions posed – and it may assist if I mention some of these. Firstly: ‘How does Procurement and Financial Regulations, or the Treasury and Procurement Team work or interact?’ The procurement policy is owned by the Treasury within their duties and functions under section 3 of the Treasury Act 1985. The procurement policy was a direction of Treasury when it was first introduced but has since been incorporated into Treasury Financial Regulations.

The Procurement and Commercial Team are custodians of the procurement process. They are charged with a duty to ensure that the process is fair and transparent and that it complies with Treasury Financial Regulations, or such other directions as Treasury may make. The lawyers

within the team are also instructed to draft the formal written contracts that are ultimately entered into by the Department and Statutory Boards at the end of the procurement process.

80 To be able to demonstrate fairness and transparency a defined process is followed and this includes the documentation as part of this process being clear, fair and reasonable in its terms and that tenderers or potential tenderers be given sufficient time to consider it. Provided the formalities of the process are followed and that the Department and Statutory Boards complies with Financial Regulations, they have complete latitude then to make their own decisions as to the procurement in relation to the ultimate contract provided for.

85 Secondly: 'What has been the impact of the introduction of the new Financial Regulations, Procurement Policy, and is the procurement regime sufficiently nuanced in terms of process to cope with the range of requirements?' The first and obvious impact of the new procurement policy and Financial Regulations is a reduction of the cases where a formal procurement process is required because the financial limits have been increased to only apply to tenders over
90 £100,000, with the ability for this formal process to be adapted provided that the process remains fair, reasonable and transparent. The second impact is the effect of the new exemption system which enables the formal procurement process not being followed where appropriate.

Thirdly: 'What measures are taken to ensure that Government is not charged more merely
95 because it is Government? Are comparisons outside of the tender responses received considered before tender award? What additional checks are made?' The Procurement Team always asks Departments and Statutory Boards to consider the measures that it should take to ensure that it is aware of the market in which it is seeking to secure goods and services. In most instances the Departments or Statutory Board are experts in the areas over which they are
100 seeking to procure and often have connections within the sector which assist them with this.

Ultimately, however, this is a question for Departments or Statutory Boards to satisfy themselves on. In view of the breadth and technical nature of most of the procurements undertaken, it would not be feasible to require the Procurement Team to undertake this market testing although the Procurement Team are, if requested, always happy to assist. In order to
105 ensure consistency and to aid contract management across Government we provide Departments and Statutory Boards with a standard form of contract as their starting point for their consideration of what is required for the drafting of the tender contracts.

Fourthly: 'What role do Departments have in deciding on the procurement process?' Ultimately the actual procurement process which a Department or Statutory Board adopts is a matter completely for them. As mentioned, the Procurement Team deal with the formal
110 procurement process for tenders over £100,000 and must, as I say, ensure that the procurement run by the Department is fair and transparent. Provided that these requirements of fairness and transparency are met and the Department and Statutory Board have complied with Financial Regulations they then have complete latitude, as I say, to make their own decisions.

115 Finally: 'Does the procurement process work in terms of not causing undue delay, and/or ensuring tenderers are treated fairly?' Broadly speaking, in my view, yes. That is not to say that mistakes are never made as it can often be a difficult balancing act when, for example, dealing with urgent timing demands.

Does the system work? Our experience over the last two years would suggest it is working
120 having received on average six to eight appeals in each of the years in relation to individual tender processes none of which, so far, have been upheld after review by the Audit Advisory Division of the Treasury.

Our experience has been that although officers within Departments and Statutory Boards are busy people, who I am sure would all welcome more time to consider procurement options and decisions, overall the process works well within the resources available.
125

The only areas where procurement policy has been slow so far to become embedded within Departments' and Boards' own practices is the need to advertise procurement opportunities under £100,000 and the need to publish exemptions which, as I say, were formerly FD8 waivers.

130 The number of adverts on the portal since the introduction of the Procurement Portal in March
131 2017 has been 234, and the number of exemptions/waivers that have been published on the
132 portal to date is 33. Frankly, I have no hesitation in saying that I suspect there should have been
133 more.

I hope, Mr Chairman, that this opening statement may assist you and your fellow Committee
134 members and of course I am happy to answer any outstanding questions you may have for me.

135 **Q2. The Chairman:** Thank you very much indeed, Mr Attorney General, for that
comprehensive introduction which we appreciate.

136 One of the things that the Committee has set its heart on of late is to intensify its
137 examination of the relationship between SMEs in the Isle of Man and all of Government process
138 effectively where it interacts with them. I think particularly therefore, here I would like to
139 understand a little bit better if I may – and forgive me if I have not attended judiciously enough
140 to your significant statement – but I would like to understand more of the process between
141 £10,000 and £100,000.

142 Rightly or wrongly, some of the feedback that I personally have had from SMEs is, ‘The
143 process is really complicated, I am not going to go anywhere near it. They want to know the ins
144 and outs of everything and we have not got that administrative capacity in our organisation.’ If
145 you think that, as I am sure you know, a significant proportion of businesses on the Isle of Man
146 have got 10 or less employees, is your view therefore that the processes they have to attend to
147 when they are looking at potential contract opportunities of between £10,000 and £100,000 are
148 appropriate and speedy enough and capable of being dealt with by the smaller business? In
149 other words, are there two levels of application for the more sophisticated company to submit
150 its details, data and profile to the process compared to the smaller business?

151 **The Attorney General:** Sorry, I am seeking counsel. I have with me Simon Watson who is a
152 senior law officer who heads up the actual procurement team.

153 You will forgive me, Mr Chairman, I am not personally aware of difficulties. What I can say is
154 that in Chambers, in the management of the team, we are not aware of any complaints. That is
155 point number one.

156 We are aware that as the Departments themselves run their own procurement at that level
157 that Departments have different approaches to this. They set the criteria, they set the
158 information which they require and it is not with reference to us. So the fair, reasonable and
159 transparent approach at that level is a matter for Departments and we would only comment on
160 that if we were asked to advise.

161 I am not trying to avoid the issue, if there is an issue, but certainly from our experience within
162 the Procurement Team there is no challenge. But secondly, the Departments themselves,
163 depending on the nature of the contract they are trying to award, will set their own criteria to
164 the information that they require from those who do tender.

165 **Q3. The Chairman:** Okay, thank you for that, and for bringing your colleague along who is
166 also contributing.

167 I take your point: from what you have said it is possible, because you cannot necessarily see
168 it, that there may be a problem in this area which for small businesses may be significant in the
169 sense that you may very well not be aware of their view because you would never have seen it.
170 So I think we need to examine that more. I have had it a number of times and it would suggest
171 to somebody like me that the Government is missing the opportunity to have people
172 approaching them as appropriate contractors because the process is, shall we say, more inclined
173 towards the bigger, more capable administrative-wise organisation.

174 The second point that comes out of your comments and your colleague’s comments there is
175 this point about, ‘£100,000 or less is *with* the Department’. But am I right or wrong in saying

180 Audit Advisory would have to examine that process in the Department – and report to whom? In
other words, can we have confidence that each Department is conducting itself in those £10,000
to £100,000 contracts in a way which you may very well approve of – could you see it? [*The*
Attorney General consulted with Mr Watson]

185 Mr Attorney General, can I just interrupt you for a second, we are perfectly happy for your
colleague to address us as well, to save this –

The Attorney General: I am most happy, Mr Chairman, with your consent.

Mr Watson: That might be sensible.

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The Attorney General: Sorry, do you want him to state his name?

The Chairman: Yes, please.

195 **Mr Watson:** I am Simon Watson, one of the senior legal officers at the Attorney General's
Chambers. Thank you.

I have just got a few points, Mr Chairman. In relation to contracts between £10,000 and
£100,000 they have to be advertised on the Procurement Portal. So the idea was that with the
portal and the new procurement policy things would be more transparent and that companies,
200 both big and small, would be able to see the tender opportunities as and when they became
available.

I am not aware thus far, of any feedback from my team or team members or from
Departments regarding there being a particular problem concerning contracts between £10,000
and £100,000. As Mr Attorney has indicated, this is something that the Departments or
205 Statutory Boards broadly run themselves and they will come to us for advice. We do assist in
relation to preparation of adverts that will go up on the Procurement Portal and that advert will
specify the nature of the goods or service that the Department or board are wanting between
the £10,000 and £100,000. We will often assist – although the tender threshold, as you will be
aware, has gone up from £50,000 to £100,000 – because Departments will want us to draft a
210 contract or, if appropriate, see what the supplier's terms and conditions are because often
boards or Departments will contract on a supplier's terms and conditions.

In relation to your query regarding Advisory Audit being involved between £10,000 and
£100,000, at the moment that is not the case. Advisory Audit will usually only get involved in full
tender matters above £100,000.

215 Where it stands at the moment is that contractors will often use a Department or Statutory
Board's complaints procedure if they consider they have been unfairly treated between £10,000
and £100,000. Perhaps it would be something that the Attorney General's and perhaps Treasury
need to speak to Advisory Audit on as to whether there is something that could be done, if there
is an issue between £10,000 and £100,000, to see whether there is any process that could be put
220 in place to cover any sort of appeal procedure there may be if a contractor is unhappy at a
process that has occurred when a contract has been awarded between £10,000 and £100,000.

Q4. The Chairman: Thank you very much, that again is very helpful.

225 It is emerging now as something of a slightly grey area in terms of knowledge and
identification of process, procedure and transparency –

The Attorney General: Sorry to interrupt ... Which is why we focused initially on making sure
that we offered training to the Departments so that they could hopefully learn to address these
issues properly.

230 **Q5. The Chairman:** Indeed. I am beginning to feel that – and I have not discussed this, obviously, with the Committee members yet – it might be something that this Committee might want to seek evidence from smaller businesses on, direct to us, as to whether or not they were happy with the process and whether they were involved or not, and whether they had shied away from it.

235 One of the points that you make, that you have not had complaints or they would complain to the Department – may I put it to you respectfully that if you were a fairly small business and you were trying to contract to a Department and you found the process too onerous, the last thing you would do is complain to them, because you are, in your view, putting yourself at a disadvantage from the get-go, and therefore you would say nothing.

240 So I think we probably need to seek more evidence elsewhere to understand the £10,000 to £100,000 process better, both on audit ... I take your point about training, but that training will include the fact that for under £100,000 it is with them anyway.

It would not be for me to suggest that Departments might get into comfortable, convenient arrangements with certain suppliers, but it will be something that it would be reasonable to examine.

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The Attorney General: Which, in the context of transparency, is why there is the requirement to advertise.

250 **The Chairman:** Yes, and – I beg your pardon?

The Attorney General: If I just might add really an obvious point: the portal has been in place for two years and I think it would be fair to say, both to Departments and to the public, that there is a learning curve but we have reached the stage where 1,635 people are now on the portal, and that is growing. This is where people are starting to understand better the use of the portal, and that is a good sign, so that is what I would encourage you to see.

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Q6. Mr Moorhouse: Just two related questions. One is: if you put in a project for £90,000, it goes to the Department; but if that project is added to and becomes a total value of £120,000, for example, is that looked at by you?

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And following on this, is there any clustering around the £100,000 level or the £90,000 level, so there is something done to keep it in the Department?

Mr Watson: In my experience, sir, the position will usually be that the Department will come to us and say, ‘This is very close to the tender threshold – what do you think we should do?’ and normally our advice would be to take a cautious approach and actually have the matter tendered fully. That would be certainly my experience of how the commercial team in Chambers would approach a borderline tender threshold. We would normally go on that it might overrun, there might be an additional spend. Hopefully, there would not be, but if there was it would be safer to actually do a full tender process rather than take a punt and hope that it is going to be under the threshold – if that answers your question, sir?

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Q7. Mr Moorhouse: But is there a clustering around £100,000 to keep the deposits –?

275 **Mr Watson:** Not in my experience, frankly.

Q8. Mr Baker: Can I ask: you made the point that the portal was introduced two years ago and the new Treasury policy was introduced just over a year ago – has there been any post-implementation review done of either of those things? If the answer is no, is one envisaged? And if not, should there be one envisaged?

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The Attorney General: It is kept under constant review – to state the obvious – in Chambers, and clearly the training aspect will be reviewed to match the change in regulations and the policy. There has not been, to my knowledge ... if I say ‘external’ review, I do not think Treasury has come and looked certainly at our processes in the context of the change position.

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Mr Watson: Also, what makes it a bit difficult, sir, is the Treasury often change the financial regulations. The financial regulations had a bit of a revamp, which was rolled out by the Treasury on 1st June, the Friday before TT. So, again, the old regulations everyone was familiar with, but the new regulations ... There are directions and then practice notes and everyone has got to link those together. So Departments and even ourselves in Chambers have got to look at them and see how they all fit in, compared to how they used to.

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Q9. Mr Baker: So it is a continual evolution, really, is what I am picking up.

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Mr Watson: Yes.

Q10. Mr Baker: The other point from me was that clearly, even at £100,000 and above, there is a vast range of different contracts and different natures of contracts and it is very difficult to create a one-size-fits-all approach. So major capital projects, for instance, tendering for those is very different from even a significant amount of spend on recurring office equipment or that type of thing. Do we feel that the processes and the flexibility that we have got in there, which you have outlined, are appropriate, or is there room for further improvement?

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The Attorney General: I think I have mentioned that clearly in many areas we have got to depend on the expertise of the Department that comes to us. If you take Health, for example, we would not know whether a particular type of machine would necessarily fit the bill, so we have got to depend on that. So the key has got to be still with the Department, the responsibility to identify the input that it requires in designing its own specification, for example. We can look at what they come up with and quite often there is a long tail of dealings with the Department before we actually get to the tender stage to try and get that right.

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It is a very complex area and I am not going to sit here and say that we know all the answers in Chambers. Where necessary, we do on occasion go out and take specialist advice to assist the Department, firstly to develop our own knowledge and skills in that regard, but more importantly to help the Department.

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I do not know if that helps you. It is a growing skill within Government, and quite properly, in my view, they are focusing on this and making sure it is done more appropriately perhaps than in the past. So there is that movement.

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Q11. Mr Baker: My take on that, Mr Attorney General, is it is a work in progress.

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The Attorney General: It certainly is, and that is the reason why I made reference to the portal. It is early days, but it is growing as people become more aware of certainly the advantages to contractors in being on that portal, looking at the opportunities that are advertised. Government has got to keep advertising, to be transparent – but more importantly, from my perspective, to ensure that we can add value to the process by bringing it through the necessary procurement skills in shaping what is actually put out there.

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Mr Watson: You made comment on the different nature of agreements and contracts that we see in Chambers. We have a very large precedent section with different types of agreements that have been worked on over many years, so we often have a big precedent street to draw on, and if those are not appropriate then we adapt and it provides as required. They are constantly

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looked at as well, so we have got a broad street of precedents that assist us in meeting Departments' and Boards' demands in relation to contracts.

335 **Mr Baker:** Thank you.

Q12. The Chairman: In preparation for today, just out of interest, I thought I would try and register myself, and I failed –

340 **Mr Watson:** I am so sorry about that!

The Chairman: – because I ticked the box 'not a company' and the question came 'we want your company details'. I wanted to say, 'But I've ticked "not a company"', but I could not get past that point.

345 Is this too detailed a question to fairly ask you at this stage? I was trying to register as an MHK to engage in the transparent process of becoming more familiar with what contractors, particularly SMEs, smaller ones, were engaged in, and I could not get in. Shall I just leave that thought with you, rather than unreasonably, on my part, asking you for an answer? I just thought I would make that point.

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The Attorney General: As an aside, Mr Chairman, I will go away and try myself and see how I manage.

Q13. The Chairman: Please do.

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The Attorney General: I am looking at the guidelines that were issued on this and it says, to your amusement perhaps, 'The registration process is simple (*Laughter*) and takes five to 10 minutes to complete.' I will have a go and see if I can get in.

360 **Q14. The Chairman:** I gave up at 10 minutes, but it was probably me! I think these things are important for us to exercise as we all try to make this process better.

The Attorney General: Yes, and I cannot emphasise enough that this is a process that is developing and any improvements that can be identified as being required should be made, and we do when we can. We manage the portal, so if there are difficulties with that we will go back to those who write the software and try and improve.

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Q15. The Chairman: Okay, well, we look forward later in the year to providing you with what evidence we have come across and I hope you find it helpful in your work.

370 It sort of brings me to the point, though: why you? It is fairly – (**The Attorney General:** Me personally?) No, not *you!* (*Laughter*) Why the Attorney General's office for this sort of role? It seems to be a little bit operational and a little bit ... at your level. Is it unfair to say are you starting to reach into operational matters and becoming just a touch too close to the executive process, Mr Attorney General?

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The Attorney General: The background to this is that, historically, Treasury ran the procurement process and essentially we then had procurement officers dealing with the first stage, if we call it that, on advising Departments, in my view without the necessary legal qualification to do so.

380 As to shaping the specification – and that is so key to trying to get the tender process correct – what then happened was that Chambers was brought into the shared legal service to sort out the contract. Quite often, by the time we then picked up the successful tender outcome

we were looking at a successful tender outcome which was awarded in the context of, again
frankly, a specification which was wrong. So it doubled the workload because we had to
effectively go back to base and start again.

There were so many examples of tenders actually having to be restarted to get the
specification right with the legal input required that the view was taken to join these two parts of
the operation together, which is the provision of legal advice on the opening salvo of the tender
process and the completion of the contract itself. That, I would suggest to you, Mr Chairman, is
clearly understandable, I would have thought, in the context of the formal tender process which
is over the £100,000 level.

I cannot emphasise enough that we ought not become involved operationally with reference
to the process below £100,000, but all we are doing there is to operate the portal and to ensure
that, at the behest of Treasury, Departments comply with financial regulations that the contracts
are advertised and that the waivers granted are similarly advertised to ensure that the process
below £100,000, which is Treasury's responsibility, is fair and transparent.

So the changes in regulations have actually brought us a bit further away operationally and we
are simply dealing, with what in my view is correct from a Chambers perspective, with the
shared legal service to focus on the formal side of tendering.

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Q16. The Chairman: So, is it fair to make the assumption that these new arrangements have
not slowed the process down at all and may have speeded it up? Is that unfair – (*The Attorney
General:* Good question.) or just wishful thinking?

The Attorney General: Impartially, I do not think it has improved that much, because if a
Department comes along and makes the decision that it wants to move towards a specific
tender – and let's say it is a relatively complicated one and certainly over £100,000 – my
experience from what is reported to me is that the first part of the delay in the process is
actually getting the specification right, and if the Department does not have the resources to
focus on that, that is an inbuilt problem of delay to get to the actual invitation to tender.

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The second part of the delay is that once you have gone through the process we then
experience delays in actually awarding the contract, because that is where Departments again
may well have challenges with regard to resources with reference to looking at the tender
process, its outcome, and then making – this is where I am well away from this, sir – any political
decisions that may be necessary with reference to the award.

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So I would not say that the tender process, so far, for the formal tenders has resulted in any
great improvement in timing. Do you think that would be fair? [*The Attorney General consulted
with Mr Watson*] Thank you, I will mention that. But below the £100,000 I have simplified the
system and that should be much quicker.

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I am just told that the average time from our perspective on the tender is about 16 weeks,
and that is for the formal process.

Q17. The Chairman: This is for over £100,000?

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The Attorney General: Yes, that is for the formal process, which is timely.

Q18. The Chairman: Have you any idea how speedy the ones between £10,000 and £100,000
are? Would you have that knowledge?

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The Attorney General: We would not have that knowledge, sir.

Q19. The Chairman: I am not suggesting this happens, but it crossed my mind as you were
speaking, Mr Attorney General, that Departments may from time to time deconstruct a contract

435 and granulate it, make it into elements of less than £100,000 three times over, in order to avoid
the process. Would that ever come to your attention, something like that, if it started to
happen?

The Attorney General: It would.

440 **Q20. The Chairman:** How would it?

The Attorney General: How would that come to my attention?

445 **Q21. The Chairman:** I am not suggesting it happens, for a minute.

The Attorney General: It has done. I am reminded of a financial practice note where they are
not allowed to, but I do not think it is worth saying that because that does not answer your
question.

450 **The Chairman:** I would assume it works!

The Attorney General: There are lots of rules out there where you are not supposed to do
things.

455 How would they come to my attention? It would not necessarily come to my attention. What
I can say is that circumstances have been brought to my attention by my team where I have had
to consider whether or not that regulation has been complied with.

But I am not the policeman; I can only simply say to you that if those circumstances did come
to my attention they would certainly be investigated – informally, because it is not our role,
again – with any necessary reference made to Audit.

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Q22. The Chairman: I think there is a role for us here to address that particular area through
questions to Audit Advisory and again (**The Attorney General:** Yes.) add to further examination
of the £10,000 to £100,000 process.

465 **The Attorney General:** But you will appreciate – I am sorry to interrupt you – as accounting or
accountable officers, they have a duty to comply with the regulations.

The Chairman: Yes, but my concern is whether Audit Advisory is having a look at that. So that
is for us to look at.

470 I have enjoyed this so much, Mr Attorney General, that we have shot over a little bit on our
time.

The Attorney General: I am happy to stay as long as you like! (*Laughter*)

475 **The Chairman:** Can I just check with my colleagues to see if there are any further questions:
have we missed anything out in our examination?

Q23. Mr Moorhouse: Just once more, you brought up the reference to Government being
ripped off.

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The Attorney General: What? (*Laughter and interjections*) I do not think I actually said that!

485 **Q24. Mr Moorhouse:** Perhaps not using those words, but in terms of the process that is
going on, how much depth do you look at when you are looking at projects in terms of the price
we are being offered not being the same price as a private company would be offered?

The Attorney General: We do not look at that; that is not our role. I think I have said to you that all we can do is advise the Departments that they have to have regard to market forces and to market prices. We have got to look at this with blinkers on, with respect; and I am sure, as you can imagine, we are not part of that process.

490 They will go out to tender. It is transparent, it goes on the portal, and contractors can then make their bids. Let us say there are three bids and the Department decide that they will go with either the lowest or, for whatever reason, not the lowest, whatever their decision might be. I am sure any member of this Committee may sit back at times and think, 'Crikey, why are we paying so much for that?' or whatever. All we can say is that there has been a transparent procurement
495 process followed. The human being in me will think, 'Why are we paying so much for it?' at times, but you just simply have got to follow the process and it is back to the Department.

Q25. Mr Moorhouse: And that is one of the four areas that are considered in terms of the overview that you identified earlier ...? Yes. Thank you.

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Q26. The Chairman: Before we do close I have one more question, but I just want to make the point that Mr Baker is not getting terribly upset about everything you are saying; he has got a terrible cold, so that is why the hankie keeps coming out.

My final question, sir, is the matter of the aspect within any process which addresses social
505 interests from the Government's perspective, and here I am talking about, for example, the terms and conditions for the employees within the organisation that is submitting the tender.

I am sorry to come back to the £10,000 to £100,000 again, but are you aware of any processes within your training, etc. that those issues have to be addressed so that – ?

510 **The Attorney General:** I am sure I am just going to be told that it is in the regulations here, but certainly within the training, yes, we would remind the Departments that they have got to take those matters into account.

Q27. The Chairman: Have you a booklet that we could see?

515

Mr Watson: We provide training notes – (**The Attorney General:** Training notes?) not so much a booklet, sir. Are you considering social value in the procurement policy? (**The Chairman:** Yes, I am.) Certainly there has been, as Mr Attorney has indicated, considerable training given to offers over that. (**The Attorney General:** Yes.) That is something that has got to be considered in
520 tenders above £100,000. The main one that most of the Departments and Statutory Boards, in looking at the procurement policy ... The local economic factors has been the main one that certainly in my experience Departments and even, I think, contractors have been looking at.

Q28. The Chairman: For purposes of our records on this examination, would you be kind
525 enough to submit to us a copy of those notes?

The Attorney General: More than happy.

The Chairman: Thank you.

530 With that, then, I will close this session and thank you very much for your attendance, your time and your contribution this afternoon. Thank you.

The Committee adjourned at 3.16 p.m.