

## VOTE 18. - DEPARTMENT OF TRANSPORT, ENERGY AND COMMUNICATIONS

### 21. Excess on Consultancy Project

In August 1994, the Department placed an advertisement in the EU journal for consultancy firms to tender for the provision of advice it needed to assist in the evaluation of applicants for the licence to become the second operator of the global system for mobile telephony (GSM) in Ireland and in the licensing of the successful applicant.

Twenty one applications were received and, in March 1995, six firms who had been invited to bid for the contract submitted tenders varying from £190,000 to £932,000. The Department, following Department of Finance sanction and Government Contracts Committee approval, awarded the contract to a company which had tendered a fixed fee of £297,450 and expenses of up to £30,000. Verbal notification of its success in the competition was given to the company by the Department on 6 April 1995 and the company commenced work immediately on the project. The formal legal contract was signed on 9 June 1995.

Shortly after the consultancy commenced, the successful company maintained that it would have difficulty in completing the project to the required standard within the agreed ceiling of £297,450. Subsequently, approval was obtained from the Department of Finance in September 1995 to increase the fee from £297,450 to £370,000. The Department also approved £17,215 for separate additional work items. The final payment on the contract was made in 1996 and the total cost was £411,574 comprising

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Fees	369,205
Expenses	25,154
Additional Work	17,215

Due to this substantial increase I asked the Accounting Officer why the company could not complete the project as agreed in the written contract, why the difficulties were not foreseen before the contract was awarded, why the fees were renegotiated after the contract was signed and whether legal advice had been sought by the Department prior to entering into the contract.

The Accounting Officer informed me that:

- Following the engagement of the company by the Department in April 1995, two contractual disputes emerged:
  - ▶ On 11 May 1995, in the context of negotiations on a formal contract, the company raised a difficulty arising from both its erroneous exchange rate assumption contained in the original tender for the project on which the price of £297,450 was based and an unfavourable rate movement since the submission of the tender. The company also raised the question of additional payment for advice on certain items which were not included in the original project. Following detailed negotiations in which it was made clear that any exchange rate risk must be carried by the company, it was formally agreed on 14 July that certain defined work items which were clearly outside the original contract could be invoiced



as additional to the £297,450 ceiling at a cost of £17,215. The fundamental agreement that the main project would be completed in (what was then understood to be) a defined ceiling was not departed from.

- ▶ Following receipt of the applications for the GSM licence on 4 August 1995, it became clear that the company would have difficulty in completing the consultancy project to the required standard within the ceiling of £297,450. The company began to signal additional workloads from 8 August and, on 22 August, formally sought approval to invoice certain essential elements of the evaluation as additional work items not covered by the agreed price for the consultancy project. The Department was and continues to be of the view, that all of these extra items related to work which could only be reasonably considered to be within the scope of the evaluation agreed with the company.
- Nevertheless, it became clear from detailed and difficult discussions with the company that, without revising the payment outline of the project, the Department could not have confidence in the company's evaluation and this would have serious implications both for the Department's objective in the selection and licensing process and, in the event of a legal challenge, the outcome of the evaluation.
- The Department considered the possibility of severing relations with the company and engaging a new consultant to complete the project. It was estimated that the cost of this course of action would amount to somewhere in the region of £400,000 to £500,000. The only other consultancy tender which was considered acceptable envisaged a total project cost in the region of £1m. Furthermore, the Office of the Attorney General advised, notwithstanding the legal contract agreed with the company, against severing relations. Accordingly, the Department negotiated a new price ceiling with the company for completion of the project. The Department put this proposal to the company on 14 September and it was accepted on 18 September 1995 in the sum of £370,000 plus expenses.
- The Chief State Solicitor's Office was consulted by the Department on the details of the contract and the contract was not signed until that consultation was completed. The Chief State Solicitor's Office drew on Senior Counsel's opinion in settling the terms of the contract. While a clause in the contract provided that no payment in excess of £297,450 would be made without the express approval in writing of the Minister, the intention of this clause was to ensure that an absolute ceiling would apply. The Office of the Attorney General advised, however, that because the contract referred also to the company's tender which foresaw a more flexible payment regime and because the contract specifically provided for payments in excess of the ceiling, the ceiling could not be enforced.

*All figures quoted are VAT exclusive*