Comptroller and Auditor General

Special Report

General Matters arising on Audits

Non - Commercial State Sponsored Bodies

Health Sector Bodies

Vocational Education Committees

April 2008

This report was prepared on the basis of information, documentation and explanations obtained from the public bodies referred to in the report. The draft report was sent to the Department of Finance and the public bodies referred to. Where appropriate, the comments received from the Department and the public bodies were incorporated in the final version of the report.

Report of the Comptroller and Auditor General

General Matters arising on Audits

I have prepared a special report under Section 11 of the Comptroller and Auditor General (Amendment) Act, 1993, on general matters arising in relation to audits carried out by me under that Act and other enactments.

I hereby submit my report for presentation to Dáil Éireann pursuant to Section 11 of the said Act.

John Purcell

Comptroller and Auditor General

23 April 2008

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General Matters Arising on Audits

Chapter 1

Overview

1 Overview

1.1 This report deals with a number of issues that arose in recent audits I carried out in Non-Commercial State Sponsored Bodies, Health Bodies and Vocational Education Committees. In each case, the matter dealt with has had an undesirable consequence – a quantifiable loss, failure to achieve value for money, the inefficient use of resources or a serious breach of public financial procedures. While the consequences differ from case to case, the issues themselves centre largely on failures relating to the procurement process, governance and financial management - all themes that have been regularly addressed in previous reports that I have issued.

1.2 This chapter outlines key conclusions relating to the areas of activity that gave rise to audit concerns. Chapters 2 to 9 record the results of my examination of the underlying issues in various organisations subject to my audit remit.

Key Conclusions

General Procurement

1.3 Procurement of supplies and services by public bodies is governed both by EU Procurement Directives and by national public procurement policy, as enunciated in guidelines issued by the Department of Finance. In broad terms, public procurement policy is aimed at ensuring both that the taxpayer obtains value for money and that the public procurement function is discharged honestly and fairly. A basic principle of national public procurement policy is that a competitive process should be used unless there are justifiably exceptional circumstances.

1.4 Ultimately, responsibility for complying with public procurement policy rests with the Board, or equivalent governing authority, of an organisation. Chairpersons of Boards are required by the *Code of Practice for the Governance of State Bodies* to confirm compliance with procurement rules and procedures in an annual report to the relevant Minister. Funding authorities, such as Government Departments, also have responsibilities to ensure that funding is made conditional on proper adherence to public procurement policy by the recipient.

1.5 The key conclusions from the procurement issues examined in this report are

- The existence of formal procurement guidelines within an organisation does not guarantee that they will be observed or that national public procurement policy will not be breached. It is essential that a Board has appropriate processes in place that will provide assurance to its Chairperson that the annual confirmation on compliance with procurement rules and procedures can be made.
- Persons employed or engaged by the State who are involved in procurement should be reminded of the importance of adherence to ethical principles and avoidance of conflict of interest situations in the conduct of their work.
- Public bodies need to put in place appropriate procedures to ensure that departures from the normal competitive process are fully justifiable. Procurement procedures should state the general circumstances in which departures would be appropriate (e.g. urgent need), the reasons for the departure should be documented in advance and the departure should be approved at a more senior level than the person requesting that departure.
- It is important that funding authorities do not give the impression that normal procurement procedures can be set aside just so that funding can be drawn down by the year end.

Information Technology Procurement

1.6 The procurement of IT systems poses particular challenges. The IT procurement projects examined in this report are relatively small in scale in comparison to projects which were dealt with in my reports *Management Information Systems in the Institute of Technology Sector, October 2007* and *Development of Human Resource Management System for the Health Service (PPARS), December 2005.* Nevertheless, some of the shortcomings identified in those large projects were also evident in the smaller projects under consideration.

1.7 Adherence to the Department of Finance's *Guidelines for the Appraisal and Management of Capital Expenditure Proposals in the Public Sector* would help to avoid some of these shortcomings. The Guidelines deal with the appraisal, planning, implementation and review of capital projects. Their aim is to promote systematic appraisal and professional management of capital projects while at the same time ensuring that the effort devoted to each stage of a project is commensurate with the cost, scale and complexity of the issues involved.

1.8 The key conclusions from the IT procurement issues examined in this report are

- Previous reports have emphasised the importance of effective governance in the case of IT projects and the need for clearly defined lines of authority, responsibility and accountability and a means of ensuring they are observed in practice. This report shows how deficiencies in governance at a corporate level can arise through the absence of a formal IT strategy, inadequate control of spending authorities and poor management oversight.
- IT projects may fail, may not deliver all the expected benefits or may incur unforeseen costs for a number of reasons, but among the causes identified in this report are
    - inadequate specification of requirements
    - failure to ensure that proper consideration is given to the views of all users of the system
    - inadequate evaluation of the concept and of the risks involved and failure to manage the risks in a rigorous way.

Governance and Financial Management

1.9 Corporate governance comprises the systems and procedures by which organisations are directed and controlled. A key aspect of governance in Departments is adherence to *Public Financial Procedures*, issued by the Department of Finance. One important objective of the guidance contained in *Public Financial Procedures* is to help secure parliamentary control over public expenditure by ensuring that public moneys are spent legally and properly in accordance with parliamentary grants. Another is the economical, efficient and effective use of resources. In practice, the procedures govern many of the financial transactions that take place between Departments and the public bodies that they fund, such as non-commercial state sponsored bodies.

1.10 The key conclusions from the governance issues examined in this report are

- Departments must ensure that, in their dealings with State bodies under their aegis, they have full regard to both the detailed requirements and the key objectives of the guidance contained in *Public Financial Procedures*. For example, Departments must ensure that "windfall" gains by State bodies are appropriately treated and, where required by *Public Financial Procedures*, paid over to the Exchequer.
- Where expenditure by a State body requires the sanction of its funding Department, that sanction should not be anticipated in such a way as to present the Department with a fait accompli.
- Good financial management demands that public funds should only be disbursed as needed. Allocating

scarce resources to projects before they are clearly in a position to proceed may unnecessarily delay other projects of equal merit due to a perceived lack of the availability of funding.

Chapter 2 - FÁS

General Procurement

2 FÁS

Background

2.1 As part of its communications strategy, FÁS engages individuals and companies on a contract basis to provide media, public relations and advertising services. In 2006, it spent almost €9.0 million on these services.

2.2 FÁS organises events to bring potential employees and job seekers in contact with prospective employers. These events may be annual, such as ‘FÁS Opportunities’ or occasional, such as ‘Science Challenge’. In the past there have been other once-off initiatives such as ‘Jobs Ireland’, involving recruitment fairs abroad and an associated website.

2.3 Two functions in FÁS contribute to the procurement of marketing and related services, Corporate Affairs Division and the Procurement Department.

2.4 Corporate Affairs Division seeks to ensure that the corporate image of FÁS is consistent with the organisation’s statement of strategy. It establishes and maintains communications with key stakeholders to ensure they are fully informed of the services and products available. It also liaises with media representatives. It has a high degree of autonomy within FÁS to procure advertising, media and related services.

2.5 The Procurement Department organises tender competitions and advises line divisions on best practice in procurement. It also assists in evaluation of tenders and the administration of the procurement process.

Good Procurement Practice

2.6 Procurement in the public sector must be discharged honestly, fairly and in a manner that secures best value for money. Good practice includes

- Using procurement procedures that provide open and transparent competition
- Applying clear and objective criteria, notified to all interested parties, in selecting tenders and awarding contracts
- Using broadly based non-discriminatory technical specifications
- Allowing sufficient time for submission of expressions of interest and tenders.

2.7 Procurement Guidelines, issued by the Department of Finance in 2006, are intended to help agencies such as FÁS to engage external support through procedures that are competitive, compliant with national and EU policy and legislation, properly managed and capable of achieving value for money.

2.8 While the Guidelines deal largely with process issues, it is also important that contracting authorities carry out procurement activities in an ethical manner.

Internal Audit Report

2.9 In November 2004, internal audit commenced an investigation into allegations of impropriety in procurement activities undertaken by or under the authority of the Corporate Affairs Division. The report of the investigations, which covered the period 2002 – 2005 was presented to the Audit Committee in May 2006.

2.10 The report raised concerns which could be broadly summarised as

- Breaches of FÁS procurement rules that effectively undermined the process
- Instances where FÁS did not appear to have achieved value for money
- Possible interventions in the staff appointment process of a supplier of services to FÁS by a FÁS employee involved in the procurement process.

Breaches of Procurement Rules

2.11 The breaches described suggested that the procurement process was undermined on a number of occasions. For example,

- a contract worth €30,000 plus VAT was awarded to a company which invoiced FÁS's advertising agency for a payment relating to Science Challenge work two weeks before the outcome of the tender evaluation process was communicated to it; the successful tenderer had also suggested the names of two other parties who should be invited to tender notwithstanding the fact that a proposal and specification in respect of the work had already been completed by the successful tenderer at the request of FÁS
- an official in FÁS awarded a contract with a value of €53,000 plus VAT for work on Opportunities 2003 to a firm with which he had been in communication before FÁS Procurement had issued tenders for that work; this firm did not submit a tender to FÁS Procurement.

2.12 I asked the Director General of FÁS what remedial measures had been taken following the Internal Audit report in relation to procurement. He told me that, in preparing and revising its procurement procedures, FÁS took account of EU procurement directives and national procurement policy. He said that, in a number of areas, FÁS procurement thresholds were set at a lower level than that required and therefore ensured a greater level of control. The Director General said that Corporate Affairs Division had been instructed to follow normal FÁS procedures and that an analysis of expenditure for 2003, 2005 and 2007 demonstrated an increase in the value and amount of expenditure incurred by Corporate Affairs Division through the procurement system. Furthermore, if Corporate Affairs Division required any items of an emergency nature, such expenditure required his approval prior to costs being incurred. The Director General stated that this derogation had not been required to date.

2.13 The Director General also stated that the FÁS Finance Department continued to emphasise the involvement of the Procurement Department in contract approval, as required by FÁS procedures. He said this was evidenced by the increase in the number of purchase orders processed by the Procurement Department which had increased by 25% in the period 2003 to 2006. In addition, FÁS had conducted a number of briefing sessions for its management on tendering procedures including EU legislation in order to reinforce procurement procedures.

2.14 The Director General also informed me that in delivering the FÁS Strategic Plan 2002-2005, the management structures in Corporate Affairs Division and the Procurement Department had been strengthened through the appointment of a Procurement Manager and two Directors and that many other changes had been effected throughout the organisation.

Value for Money Issues

2.15 In the period covered by the internal audit investigation, FÁS or the advertising agency contracted by it, engaged in transactions which did not appear to be conducive to the attainment of value for money. These included

- One contract in relation to Opportunities 2002 was awarded at a cost of approximately €250,000, which was at least twice as much as was paid previously, or since, for such work.
- A company engaged by the advertising agency from January 2002 to late 2004 added an additional percentage to contractor charges. These charges were included on invoices passed to FÁS by its advertising agency and were paid in due course. The internal audit report estimated the direct financial loss to the organisation arising from incorrect invoicing/overcharging at €160,000.
- A major sales contract for Opportunities 2005, signed after the event, contained an incentive-based plan rather than the fixed fee originally envisaged. The incentive-based plan cost FÁS a further €27,400.
- FÁS made a commitment to advertising worth €100,000 with one specific local newspaper when all other printed advertising business was done with national titles.
- The advertising agency told Internal Audit that there appeared to be an unusually high level of outdoor media usage when considered as a percentage of total media spend; the spend on outdoor media should be below 10% for an average media campaign, whereas in 2004, for example, the FÁS spend on outdoor media represented between 25% and 30% of the total.

2.16 In responding to my enquiries as to the measures that had been taken to ensure that value for money in advertising spend was achieved, the Director General informed me that a Communications and Marketing Strategy Group was being established. FÁS had initiated tenders for an independent marketing and communications audit to establish the position of the FÁS brand among key stakeholders. This audit would allow an assessment of value for money in relation to FÁS's advertising spend and would assist the Group in developing the strategy for the organisation.

2.17 In the case of the contract for Opportunities 2002, the Director General stated that there were many imponderables involved in trying to develop precise estimates of what would constitute an appropriate fee for work of this nature. However, he acknowledged that the fee paid to the contractor was greater than that paid in previous or subsequent years for similar contracts.

Jobs Ireland

2.18 At the time Jobs Ireland was launched, FÁS already had web-based and other systems available which allowed interaction by employers and jobseekers. For example, it had its own corporate website and Job Bank, a jobs information exchange database formally launched in May 2000. However, during 2000, Corporate Affairs Division took the decision that a website separate to these systems should be developed specifically for Jobs Ireland. The objective of this website was to allow employers to add vacancies and for registrants to place their details on the Jobs Ireland database. However, the Internal Audit report suggested that the existing systems already provided the functionality provided by the Jobs Ireland system.

2.19 The value FÁS obtained for its expenditure on the Jobs Ireland site appeared questionable on a number of fronts

- the database was not available to FÁS staff or clients using the FÁS Employment Services offices other than through the Internet

- many overseas clients did not register online on the Jobs Ireland website. Instead, their manual forms were brought back to Ireland and then keyed into the Jobs Ireland system at additional cost to FÁS
- after the demise of the Jobs Ireland campaign in 2001, vacancy and client details were never integrated into the mainstream FÁS systems and any residual value of the investment was lost.

2.20 Internal Audit estimated that the total cost of developing, maintaining and hosting the Jobs Ireland website was €1.7 million. Internal Audit suggested that FÁS probably paid at least €1 million more than should have been the case. In addition, it found that FÁS spent a large proportion of its advertising budget promoting the website between 2000-2003.

2.21 I asked the Director General how the creation of the Jobs Ireland website had conformed to FÁS IT strategy at the time. In response, the Director General said that at the time it had been standard practice for all IT developments to involve the IT Department. A number of senior IT managers had been responsible for liaison with specific business units to deal with IT issues and to respond to requests for data and system design/upgrade. He said that this approach ensured that development was coordinated at the business unit level. The Jobs Ireland website was not developed using this approach.

2.22 He also informed me that, arising from an IT review conducted by an external consultant in 2002, an IT strategy had been developed for the organisation. As part of the strategy an IT Steering Committee had been established in 2003. All proposals for development must now be approved by this Committee.

2.23 Commenting on the figures in the internal audit report, the Director General stated that precise estimates of the appropriate cost of work of this nature was difficult to calculate, particularly so in the case of a major project such as Jobs Ireland which had to be undertaken very urgently and which had to satisfy the needs of international clients.

Conflicts of Interest

2.24 Internal Audit found some evidence that one FÁS employee involved in procurement may have intervened on occasions to recommend certain individuals for employment by a supplier. Interventions of this kind are not appropriate. They are open to abuse and, at the very least, may create the perception that FÁS's future dealings with the supplier may be influenced by whether or not the recommendations of the FÁS employee are acted upon. I asked the Director General whether changes were needed to the FÁS Employee Code of Ethics or whether any additional guidance was advisable, in the light of concerns raised in the internal audit report.

2.25 The Director General stated that the Code of Ethics had been launched in July 2003. The Code had been developed through the Partnership process and outlined the ethics that underpin FÁS core values and principles. He stated that the specific issue of a staff member making personal interventions in the employment by suppliers of certain individuals had been discussed with the FÁS Human Resources Department. This Department was of the opinion that the Code in its current format was sufficiently robust to deal with such an instance and therefore did not need to be amended.

Conclusions

2.26 Good procurement practice requires State entities to act in a fair and transparent manner in acquiring services. It is the responsibility of those charged with governance to see that this occurs. The FÁS control environment included formal internal procurement guidelines. However, it is clear that, over a prolonged period, those guidelines were not observed in Corporate Affairs Division.

2.27 Public procurement rules permit departures from the normal process of competitive tendering. However, such departures should only occur on an exceptional basis. Procurement procedures should state the general circumstances in which a departure from the normal standards would be appropriate (e.g. urgent needs); the reasons for the departure should be documented in advance and the departure from the norm should be approved at a more senior level than the person requesting that departure.

2.28 There was a failure to achieve value for money in the way in which FÁS managed its relationship with its principal advertising agency and in the way it conducted business with contractors for major events. Instances of direct financial loss include €160,000 by way of inappropriate charges on advertising fees and a contract of €250,000 for work which normally would have cost less than half that amount.

2.29 Significant expenditure on new organisational developments should be underpinned by a clear strategic plan. In the case of the Jobs Ireland website, a viable case for development had not been made and the subsequent application of FÁS resources to the website project did not produce value for the agency. The absence of an IT strategy at the time facilitated the misdirection of FÁS resources towards this end.

Chapter 3 – Abbey Theatre Amharclann na Mainistreach

General Procurement

3 Abbey Theatre Amharclann na Mainistreach

Background

3.1 Abbey Theatre Amharclann na Mainistreach (the Theatre) was incorporated as a company limited by guarantee on 25 January 2006. The company was formed as a result of a restructuring of the National Theatre which involved a takeover of the assets, liabilities and business of the National Theatre Society Limited.

3.2 The Arts Council (the Council) is the primary source of revenue funding for the Theatre. However, the Council does not have a significant capital budget and so the Theatre also receives financial assistance from the Department of Arts, Sport and Tourism (the Department).

3.3 In the autumn of 2005, the Theatre submitted a funding proposal to the Council seeking €2.29 million in capital funding for the 3-year period 2006-2008. Of this amount, €849,000 related to 2006. The Council agreed to fund a capital requirement of €1.93 million, of which €484,000 was for expenditure in 2006.

3.4 In the course of 2006, discussions took place between the Theatre, the Council and the Department as a result of which the capital funding available to the Theatre for 2006 was increased to €1.73 million. Figure 3.1 shows the date of approval of the funding, the source, the purpose and the amount.

Figure 3.1 Capital funding awarded to the Abbey Theatre in 2006

Date	Source	Purpose	Amount €
August 2006	Department	Capital development including lighting and IT and maintenance works	500,000
September 2006	Arts Council	Signage, foyers and Peacock entrance	484,000
November 2006	Arts Council	Maintenance, heating, electrical and ventilation works	600,000
November 2006	Department	Auditorium project	150,000

3.5 The Council has indicated that the Theatre was aware of the September grant in July and of the November grant shortly after 18 September and that the delay in formal notification was occasioned by the need to agree the specific purposes for which the funding would be used.

3.6 The Council attached a number of conditions to both grants, including a requirement that funding be drawn down by year-end and that it be provided with receipts showing how the relevant expenditure had been incurred.

3.7 The Department's August grant was also contingent on the funds being expended on matured liabilities by the end of 2006.

3.8 The Department paid the full allocation of €650,000 to the Theatre in December 2006.

3.9 In December 2006, the Council paid €798,169 to the Theatre on foot of claims submitted. The Council also paid €285,831, being the balance of the agreed funding, into an escrow account held by the Theatre's solicitors. The Theatre drew down €225,488 from this account in February 2007.

Public Financial Procedures

3.10 Public financial procedures relating to Departmental accounting stipulate that grants issued by Government departments must be fully vouched and any balance remaining unexpended at the end of the year must be surrendered to the Exchequer.

3.11 State agencies, such as the Arts Council, which are funded by way of grant-in-aid, possess a measure of independence which makes the more detailed financial control applicable to the payment of grants by Government departments inappropriate in their case. Nevertheless, grant disbursements by such agencies should have regard to the principles of sound financial management, including the requirement to establish the need for grant assistance at the time of issue.

3.12 National public procurement guidelines indicate that, in general, a competitive procurement process carried out in an open, objective and transparent manner gives the best prospect of achieving value for money.

3.13 The guidelines require public bodies to award contracts in accordance with EU Directives if they exceed EU advertising thresholds. Contracts exceeding €50,000 in value, and up to the EU advertising thresholds, should normally be advertised as part of a formal tendering process. Publication on the e-tenders website generally meets national advertising and publicity requirements. However, contracting authorities may invite tenders directly where there is a limited number of suppliers or service providers. Where direct invitations are issued, firms from which tenders are sought should be a good representative sample of all potential bidders in the market concerned. At least five firms should normally be invited to submit tenders.

Procurement by the Theatre

3.14 In the course of audit of the accounts of the Theatre for the year ending 31 December 2006 it was noted that it had entered into a number of contracts where public procurement guidelines did not appear to have been followed.

3.15 Figure 3.2 sets out these contracts and how the contractors in each case were sourced. In each case, the Theatre had delegated procurement of the service or works required to an architectural firm in its employ.

Figure 3.2 Details of contracts awarded by the theatre

Theatre requirement	Value of contract awarded	Procedure followed
Front of House and Bar upgrade	€220,011	Architects contacted 3 contractors by phone. One response obtained and accepted.
Back of House Decorating	€117,600	Architects contacted 2 contractors by phone. Only one was in a position to quote and this quotation was accepted.
Poster Boxes and External Works	€ 68,830	Three tenders sought by architects and two valid quotations were received in response. One quotation was deemed to have met the criteria specified by the architects.
Auditorium Seating	€510,000	Three quotations received. Highest quotation accepted on the architect’s recommendation, which was based on contractor’s experience.

3.16 The Theatre did not publicly advertise for its requirements. Instead, its architects made direct contact with eligible firms in the market to supply the works and services required. In consultation with the Theatre, the architects were responsible for establishing award criteria and evaluating the tenders received.

3.17 In awarding the contract for the front of house and bar upgrade and the back of house decorating, the architects operated on the basis that it was essential to complete the relevant works and pay for them by the end of 2006. It was for this reason that they departed from the terms of the public procurement guidelines. The tight deadline imposed by the Theatre also meant that, in the case of the front of house works, the range of contractors with the capacity to do the work in the requisite timeframe was reduced and, in the event, only one contractor ultimately quoted for the work. Clearly, this militated against obtaining value for money.

3.18 Similarly, the tight deadline reduced the range of contractors available to complete the decorating contract and may have driven up costs by requiring weekend work.

Audit Concerns

3.19 I was concerned that

- the condition attaching to the grants that they be expended before year-end might have been a contributory factor to non-compliance with public procurement rules
- the award of the capital grants was not made conditional on compliance with public procurement rules
- there might have been an element of double funding of the works
- value for money might not have been achieved because of the tight deadlines imposed.

I therefore communicated with the Heads of the Department, the Council and the Theatre.

Views of the Accounting Officer of the Department

3.20 The Accounting Officer stated that the Theatre had been given over four months within which to comply with the conditions attaching to the Department's €500,000 grant approved in August 2006. He said that the Department had subsequently issued four reminders to the Theatre regarding the deadline for drawdown and that the Theatre had acknowledged this deadline. He further stated that the Theatre had sought the additional funding of €150,000 on the basis that the expenditure would occur before the end of 2006.

3.21 The Accounting Officer said that, on this occasion, due to an administrative error, the normal letter of conditions, including the condition that capital grants provided by the Department are subject to public procurement procedures, was not sent to the Theatre. He informed me that new procedures had since been put in place to ensure that this situation could not recur. He was satisfied that the Department now had a procedure in place with the Theatre to ensure that it was aware of, and compliant with, public procurement guidelines.

3.22 Regarding any possible overlaps of funding, he stated that prior discussions with the Council and the Theatre ruled out the possibility of double funding of assistance for the Theatre's seating project. However, as a further precaution against the possibility of double funding, formal procedures have since been put in place for capital payments where project auditors are now required to certify that expenditure was for the purposes intended under the grant and that the expenditure has not been recouped from any other source.

Views of the Chief Executive of the Council

3.23 The Chief Executive told me that the Council had received specific assurances from the Theatre that the funding would be drawn down prior to year-end and, on receipt of these, its offers of funding were confirmed to the Theatre in September 2006.

3.24 The Chief Executive informed me that on this occasion it had not specified in its correspondence with the Theatre the requirement to provide copies of competing quotations from potential suppliers.

3.25 I asked the Chief Executive why the Council had paid the balance of the grant undrawn at year - end into an escrow account.

3.26 The Chief Executive told me that a separate bank account for the Theatre had been established in 2005 to ensure that exceptional funding provided to stabilise the organisation at the time of its financial crisis was set aside in that account and was only released when the Theatre met stringent conditions of funding.

3.27 She said that the idea of using a similar mechanism arose towards the end of December 2006 when the Theatre informed the Council that, despite its best efforts to fully expend its capital funding before year end, formal contracts entered into with suppliers were unlikely to have been fulfilled within that timeframe on account of the practicalities of carrying out building work. On the basis of assurances received from the Theatre that contracts had been entered into and that the work would be carried out in early 2007, the Council placed €286,000 into this temporary account.

Views of the Director of the Theatre

3.28 The Director of the Theatre informed me that the architectural firms engaged by the Theatre to identify suitable tenderers for the projects noted in Figure 3.2 had provided advice to the Theatre on the value for money represented by the tenders received for these projects. The Director accepts that the Theatre did not fully adhere to public procurement guidelines in the case of the first three contracts shown in Figure 3.2.

3.29 He said that the architectural firm had identified a number of contractors who it believed, based on past experience, had the skills, competence and ability to complete these projects to a high standard and within the timeframe available. He further stated that the construction industry in 2006 was experiencing a period of high demand. Consequently, the number of suitable tenderers was limited.

3.30 In the case of the seating project, the Director said that the Theatre had sought to apply the guidelines to the extent that it was practical. Due to the specialised nature of the project, the number of contractors capable of managing it was extremely limited. The Theatre's advisors conducted site visits to the tenderers and the award to the company that had submitted the highest quote was made on the basis of the evaluation process that had clearly demonstrated that this tenderer had the ability to deliver similar projects to a standard which ultimately rendered its tender to be the most economically advantageous.

3.31 The Director confirmed that the Theatre acknowledged its obligations as a recipient of public funds to adhere to public procurement guidelines and relevant EU Directives. It had issued a procurement policy and guidance to its employees that reflected the practices required by public guidelines. The Director was confident that all procurement by the Theatre since 2006 complied with the guidelines.

Value for Money Considerations

3.32 In response to my enquiries regarding the ultimate value for money obtained for the additional capital outlays in 2006, in view of the long-term relocation plans for the Theatre, the Accounting Officer told me that the Department was concerned that, pending the relocation of the Theatre to the Docklands site, the Theatre was maintained to a standard, both from an operational and health and safety perspective, befitting its status as the national theatre and as a prime venue for the theatre-going public and especially as a world famous national theatre frequented by many overseas visitors.

3.33 He said that the process of relocating the Theatre to the Docklands as part of a public private partnership project had only been given formal Government approval in July 2006 and, at that point, the process was expected to take in the order of five years. Given the timescale involved, he said that the present Theatre was expected to remain in-situ for at least five years from the time the 2006 grant was awarded.

3.34 He said that the equipment at the Theatre had become obsolete and age-worn and the works being carried out had been considered by the Department to be essential from a customer service and a health and safety perspective.

3.35 The Accounting Officer said that the seating in the Theatre was modular and could be reassembled elsewhere. It was unlikely that the seating would be re-used at the Docklands site, as it would not be in good enough condition by then to place in the new theatre but the Department was considering offering the seating to another of its funded venues if a suitable space could be identified.

3.36 He also stated that the Department's view was that the decision to relocate the Theatre to the Docklands was not sufficient reason to allow the national theatre to fall into further disrepair. He said that the provision of the grant had greatly improved facilities at the Theatre, integrating the main body of the auditorium with the balcony and had created a more intimate theatre experience for audiences and actors alike and which had received favourable comment from both theatre critics and audiences. This is borne out by the fact that the Theatre has confirmed that while the new seating arrangement reduced the overall number of seats from 628 to 494, the Theatre's attendance for 2007 increased by 11% over 2006. Patrons of the Theatre, and the media, had welcomed the replacement of the seating.

3.37 The Accounting Officer further stated that the Department's view was that the expenditure incurred represented value for money, notwithstanding the proposed relocation.

Conclusions

3.38 Although the Theatre's business plan had called for a capital requirement of only €849,000 in 2006, it was allocated €1.73 million for that year, 75% of its stated requirement for three years.

3.39 The allocations by the Department and the Council were subject to the condition that the Theatre must spend the €1.73 million by the end of 2006. This short timeframe placed a considerable strain on the Theatre and posed a risk to the attainment of value for money. In order to meet the timing condition the Theatre was forced to depart from recommended procurement practice.

3.40 Both the Department and the Council failed to notify the Theatre that it was required to follow public procurement rules in spending the funds received.

3.41 Placing funds in an escrow account to fund liabilities expected to mature in a later accounting period conflicts with the requirement of Public Financial Procedures that unexpended grants must be surrendered at year-end. Furthermore, the use of the escrow mechanism is inappropriate as it reduces transparency in financial reporting by the funding authority.

Chapter 4 – National Library of Ireland

General Procurement

4 National Library of Ireland

Background

4.1 The National Library of Ireland (the Library) was established by the Dublin Science and Art Museum Act, 1877. An agreement of 1881 provided that the Library should operate under the superintendence of a Council of twelve Trustees, eight of whom were appointed by the Royal Dublin Society and four by the Government.

4.2 Prior to its establishment as an autonomous body, the Library was directly accountable to the Minister for Arts, Sport and Tourism. It had no real responsibility for staffing or resource issues. Its expenses were met from a subhead in the Vote of the Department. However, it enjoyed a considerable degree of operational autonomy particularly in relation to acquisitions.

4.3 The operational structure of the Library changed in May 2005 when the Library was established as an independent body under the National Cultural Institutions Act, 1997. Under that Act, the Library became an autonomous non-commercial semi-state body, whose affairs are conducted by a Board comprising twelve members appointed by the Minister for Arts, Sport and Tourism. After May 2005, all administrative functions were transferred to the Library and the Library is currently being funded by means of a Grant-in-Aid (€12.7 million in 2007).

4.4 Immediately prior to the change in status certain manuscripts of James Joyce were acquired by the Library. While the acquisition and the verification of authenticity was carried out by the Library, the transaction was processed using the provisions of section 1003 of the Taxes Consolidation Act, 1997 under which the manuscripts were acquired by a commercial bank and donated to the Library.

4.5 The transaction can be viewed as part of a wider set of Joycean acquisitions. Prior to the 2005 acquisition the Library had acquired other Joycean material in recent times

- a Circe manuscript was acquired at auction for €1.4 million in 2000
- the Leon Collection was acquired for €12.1 million between 2002 and 2004.

Sourcing of the Manuscripts

4.6 On 2 February 2004, an employee of the Library[1] became aware of the existence of Joycean manuscript material in the possession of a bookseller in Paris. However, he did not bring the existence of the material to the attention of Library management at that time.

4.7 The employee visited the Paris bookseller on 8 May 2004. He has stated that he undertook the trip in a private capacity on his own initiative and on meeting the bookseller he did not inform him that he was employed by the Library. The inspection of the material allowed him to conclude that the manuscripts were authentic and of particular importance. He also concluded that the asking price would be of the order of €400,000 on the basis of material recording that figure being placed adjacent to the manuscripts. The existence of the manuscripts were brought to the notice of Library management on or before 17 May 2004 when the Keeper of Collections reported that the employee was compiling a report on the matter and that the then owner of the material had been in contact with Sothebys who would give the Library first refusal. Library files also indicate that the employee subsequently suggested on 29 June 2004 that a dealer (e.g. Sothebys) could manage any acquisition on behalf of the Library.

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1 The employee was engaged under a temporary contract between July 2003 and June 2007 to work specifically on Joyce activities.

4.8 The employee learned, through the informal Joyce grapevine, that Sothebys had discussed the matter of securing an export licence for the manuscripts with the Paris bookseller in Autumn 2004 and he later sent a note to the Acting Director of the Library on 12 October 2004 advising him that while everything was proceeding on course, the material was unlikely to be offered to the Library until early 2005 by which time the formalities of the export licence would have been completed.

4.9 On 2 November 2004, the employee informed the Library management that the export licence had been secured and that Sothebys would offer the material to the Library at a negotiable price. The Library met with Sothebys on 17 December 2004.

4.10 The decision to acquire the manuscripts was made by the Director of the Library in consultation with the Library's Council of Trustees. However, the agreement to purchase was completed before 3 May 2005 when the Library became an autonomous body and while it still was organically part of the Department and directly accountable to the Minister.

Acquisition of Manuscripts by Dealer

4.11 In the meantime, a dealer had acquired the manuscripts from the Paris bookseller. The dealer had been contracted to the Department on four separate consultancy assignments between 2003 and 2006 as detailed in Figure 4.1.

Figure 4.1 Consultancy Assignments of Dealer 2003-2006

Position	Date of Contract	Period of Contract		Remuneration Fee	Expenses
		From	To	€	€
Administrator – Bloomsday Centenary Committee	April 2003	07.04.03	31.08.04	50,059	127,294
Feasibility Study on Department involvement in Beckett Centenary celebrations	10.12.04	13.12.04	Feb. 05	9,142	-
Calendar of Events for Beckett Centenary celebrations	20.07.05	01.08.05	15.09.05	3,630	74
Beckett Centenary Festival Co-ordinator	09.01.06	12.01.06	06.05.06	45,496	47,332
Total				**108,327**	**174,700**

4.12 The Library had also conducted a number of other transactions with the dealer both as agent and vendor. In one of those she acted in July 2004 as an agent for the Library at an auction at Sothebys where she purchased a Joycean postcard at a cost of €14,027.

4.13 In regard to her acquisition of the manuscripts, the dealer stated that she had become independently aware of their existence in April 2004 and entered into an agreement to purchase the material on 28 April 2004[2]. The dealer also confirmed that she had been advised on the transaction by an employee of Sothebys acting in a personal capacity.

[2] Report of Philip Furlong who investigated the circumstances surrounding the acquisition of the manuscripts on behalf of the Minister for Arts, Sport and Tourism.

4.14 The dealer completed the acquisition of the manuscripts by way of an instalment arrangement and the final instalment was paid on 8 December 2004. The price paid by her for the manuscripts is not known.

Acquisition of Manuscripts by the Library

4.15 In early December 2004 Sothebys, acting as an agent for the dealer, contacted the Library to offer the manuscripts for sale to the Library and Sothebys brought the material to the Library on 17 December 2004 for a viewing and a preliminary discussion on the terms of a possible acquisition.

4.16 The dealer who was not disclosed by Sothebys sought £800,000 sterling for the material. After negotiations, the Library agreed a price of £775,000 sterling (€1,170,695) on 15 March 2005. The dealer's identity was revealed at the Library's insistence some weeks before the formal signing of the contract which took place on 28 June 2005.

Authentication and Valuation

4.17 The Library obtained an independent valuation and literary assessment of the manuscripts before agreeing the purchase.

4.18 Ultimately, three valuations of the manuscripts were obtained (two by the Library and one by the Revenue Commissioners). These all indicate that the Library obtained the manuscripts at market value.

Audit Concerns

4.19 The dealer's purchase of the manuscripts does not appear to explicitly contravene the terms of her contract with the Department[3] during the period she was temporarily employed by the Department to administer a Joycean festival. Nevertheless, it would have been clear to informed members of the Joycean community that the Library would have been particularly interested in acquiring the manuscripts to supplement its collection of Joycean material purchased for €13.5 million between 2000 and 2004, since those purchases had been widely publicised.

4.20 As the method of acquisition of the manuscripts and the involvement of the dealer raised concerns about the systems and practices of the Library for sourcing and acquiring material I sought the views of the Director of the Library on a number of matters. The responses of the Director to each issue are recorded overleaf.

[3] The contract provided that the dealer should not engage in any other paid work that could constitute a conflict of interest for the duration of the contract.

Responses of the Library

4.21 In response to my concern as to whether a de facto conflict of interest existed in relation to the dealer's purchase of the manuscripts and their subsequent sale to the Library, the Director informed me that the Library had no contract with the dealer and that he was of the opinion that it would be inappropriate for the Library to comment on whether there was a de facto conflict of interest in relation to the dealer's purchase of the manuscripts and their subsequent sale to the Library.

4.22 In regard to the role of the employee, the Director pointed out that the employee was engaged to work specifically on Joyce activities including exhibitions. His particular expertise was in the area of Joyce texts. It was thus entirely reasonable that he would have a personal scholarly interest in examining the material in question to see what significance, if any, it had in relation to other known Joyce material. The employee had pointed out that the individual who provided the information to him in February 2004 was "vague and sensational" when discussing the matter. It took a further period of time for the employee to obtain information that would enable him to pursue the matter. He did not feel that he should bring the existence of the material to the attention of Library management until he had gathered credible information as regards the nature of the material and its importance.

4.23 In regard to the factors which gave rise to the delay on acting on the information the Director informed me that no undue delay had occurred on the part of the Library in acting on information about the manuscripts. The employee who became aware of the existence of the material (independently of his role as an employee of the Library) quite properly undertook some private investigatory work in order to establish the nature of the material reported to be on sale in Paris. The level of information available to him prior to his visit to Paris was unlikely to have been sufficient to enable Library management to adequately assess the position and to actively pursue a possible acquisition at that stage. Library management received a very brief preliminary report of the employee's Paris visit in May 2004. A more detailed report was provided in late June. The delay was entirely understandable given the employee's central role in relation to the completion of a major Joyce exhibition by the Library which opened on 14 June 2004.

4.24 The Director went on to say that the existence of the material in Paris and its possible acquisition was discussed between senior staff and the Acting Director (the current Director) in late June. It was agreed that it would be prudent and preferable to allow the material in Paris to be offered to the Library through a reputable dealing house rather than through direct purchase of the material from a Parisian vendor with whom the Library had no previous relationship. The Director stressed the point that sensitive issues arise in relation to Joyce material (particularly in relation to provenance, authenticity, etc). Once the issue was brought to his notice the Acting Director took a policy decision not to make a direct approach to the Parisian vendor and to await any approach that might or might not be received from a reputable agent. The Director stated that in any event the point is moot as it appears that the ultimate vendor had purchased the material on 28 April 2004[4].

4.25 In regard to the Library's acquisition procedures generally, the Director stated that the circumstances that arose in relation to the Joyce manuscripts in the spring of 2004 were quite unusual and atypical. All acquisitions are managed by senior staff who have developed particular expertise in relation to their specific curatorial areas. In recent years, sections and managers have been given clearly defined acquisition budgets. Major purchases are thoroughly assessed, including by the Board where required, under its corporate governance regime. A collection development policy is being formulated for the Library at present. Associated with this, a series of acquisitions guidelines will be prepared in respect of each collection area. An Acquisitions Policy Advisory Committee was established by the Board in 2007.

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4 The evidence that the purchase date was 28 April 2004 is based on the dealer's statement to that effect as recorded in a report prepared for the Minister by Philip Furlong.

Its remit is broadly to support the Board in relation to acquisitions policy and related matters. It is considered that these measures further enhance the Library's procedures in relation to acquisitions.

4.26 The Director added that robust procedures are in place to assess possible acquisitions. The Director is of the opinion that appropriate corporate governance measures are in place including a requirement to have expenditure approved at appropriate levels and for the Board to approve certain expenditure. The Library's professional staff assess material on offer (whether for sale or by donation) in terms of relevance and importance with particular emphasis on issues such as authenticity, provenance, rarity, value for money and budgetary considerations. Where it is considered necessary[5] outside valuers and/or persons with specific knowledge and expertise may be commissioned to examine collections with a view to advising the Library as to how to proceed in individual cases.

4.27 The Director concluded by saying that all Library staff are required to comply with the Library's code of ethics and business conduct. Staff holding designated positions, (i.e. staff in positions of management and/or with direct purchasing responsibilities) are required to complete declarations in accordance with the Ethics in Public Office Act. The provisions in regard to Library staff, which are consistent with the Department of Finance Code of Practice for the Governance of State Bodies, are considered to be adequate to protect the Library's interests. Generally, the services of reputable firms based in Ireland or the United Kingdom are availed of to provide valuations. The Library has no evidence to believe that such agents and their firms do not abide by the appropriate ethical standards.

Response of Department of Arts, Sport and Tourism

4.28 In regard to the action taken by the Department to satisfy itself on how the transaction was handled, the Accounting Officer informed me that at the request of the then Minister, his predecessor as Secretary General carried out an extensive study of the circumstances surrounding the acquisition of the manuscripts and issued a report on the matter. The report was placed in the Houses of the Oireachtas Library for the purpose of its publication on 30 November 2007. The report concluded that there was no conflict of interest and that there was no evidence to support a contention that the dealer had exploited her association with the Department and the Library to acquire the manuscripts on financially advantageous terms. Given the extent of his predecessor's report and in the absence of new information the Accounting Officer added that he had no reason to disagree with the conclusions of that report.

4.29 The Accounting Officer also informed me that the conflict of interest clause inserted in the contract for the Administrator of the Bloomsday Festival was a standard clause which was used widely in public service contracts. He added that on foot of my enquiry the Department is consulting with the Department of Finance and the Office of the Attorney General for advice on whether the contract condition can be strengthened without infringing personal rights.

Conclusion

4.30 While the State ultimately acquired the manuscripts in question for a price representing market value, the circumstances surrounding the sourcing of the material and the level of interaction that is inevitable within a limited community of persons in a specialised field strongly suggests that more robust contractual and ethical arrangements may be required to protect the State's interests where such factors come into play.

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5 Generally, this arises in the case of major acquisitions and collections or items which may call for specialist knowledge not available within the Library and a detailed understanding of current market trends.

Chapter 5 – Irish Blood Transfusion Service

Information Technology Procurement

5 Irish Blood Transfusion Service

Background

5.1 The Irish Blood Transfusion Service (IBTS) is responsible for the organisation and administration of the blood transfusion service. The provision of adequate supplies of safe blood and blood products to hospitals is fundamental to its operation. It follows that the technology used in the collection, processing and distribution of blood products throughout the country is vital to the work of the health care system.

5.2 In my Special Report in 2002 on *Financial Control and Management in the Irish Blood Transfusion Service* I referred to the implementation of a system to control blood-banking activities (The Progesa Project).

5.3 The Progesa project commenced in 1998, had been budgeted to cost €4.26 million and was due to be fully implemented in 1999. Implementation was beset with difficulties, was considerably delayed and was significantly over budget.

5.4 Progesa was implemented in 2003 at a cost of €9.3 million. In the event, the version of Progesa implemented was a 'non-final' one as installing all the requirements of the IBTS would have destabilised the system.

5.5 In May 2004, the IBTS decided to move from Progesa to a new system called eProgesa developed by the same supplier. The plan was that live running of the new system would commence in October 2005.

The Business Case for eProgesa

5.6 A project definition for the implementation of eProgesa, which included a business case, was drawn up in May 2004. This explained the rationale for moving from Progesa to eProgesa

- The hardware platform on which Progesa operated was nearing end of life. Consequently, hardware support agreements could become exceptionally expensive or even unavailable and there was a need to manage this risk.
- eProgesa offered the facility to fully recover data from a systems failure right up to the point of failure, in contrast to Progesa which only allowed the system to be returned to the previous day's backup with the loss of all products processed in the intervening period.
- eProgesa offered current and reliable data and would allow users to run reports and analyse data.
- eProgesa would allow the IBTS to become a world leader in blood transfusion technology.
- eProgesa promised additional functionality which would allow for a more efficient blood transfusion service.

5.7 The project definition document in May 2004 set out the cost of computer hardware, software and licensing expenses at €1.8 million. The total estimated cost of the project, including staff costs and training, amounted to €3.13 million.

Governance Arrangements

5.8 An Executive Steering Group (ESG) was established to

- Set and monitor project strategy
- Assess and manage progress
- Make timely decisions on project related issues
- Take other IBTS projects into account and indicate to the project team where conflicts might arise.

5.9 A project team was to be established with responsibility for the delivery of eProgesa within the agreed timelines and budget. Separate Project Steering Groups were also to be established in testing centres to manage progress of the project against the detailed plan, take any necessary project-related decisions and to produce any output required by the ESG.

5.10 In response to my enquiries, the Chief Executive Officer (CEO) stated that neither the project team nor the Project Steering Groups had been established as the testing of the system had never gone beyond the 'super users' (those who had complete access to the system) and therefore their establishment had not been necessary.

5.11 He said that the setup and functional testing of eProgesa had been performed by IT technical teams and 'super users'. It had been envisaged that once this functional testing had been completed the project team would have been activated and would have aided the validation element of the project. During that phase it would have been involved in deciding on any issues that arose during validation and planning for live running of eProgesa.

Difficulties with the Project

5.12 In October 2004, following discussions with the supplier on implementation issues, the IBTS ordered the eProgesa system.

5.13 From January 2005, the project was dogged by a series of problems, many technical in nature:

- The supplier, following a visit to the IBTS in January 2005, highlighted certain gaps in the IBTS requirements as set out in the Project Definition in May 2004; it was agreed that the supplier would address these issues and have them resolved by the time the system hardware was supplied
- There were issues relating to the ability of users to run reports from the system
- Development of a tool to manage the configuration of eProgesa proved much more complex than the supplier had anticipated
- Multiple issues were being raised by 'super users'
- From May 2005, the system showed a continuous flow of issues and 'bugs' which were difficult to resolve.

5.14 In view of the problems experienced with eProgesa, I asked the CEO what evaluation had been carried out prior to acquisition and how the Board expected to mitigate risk in purchasing the system.

5.15 He informed me that in 2003 there was a need for the IBTS to move from its current version of Progesa so that it could have improved functionality. All options open to it would have required an investment in hardware irrespective of the solution. He said that an upgrade to a different version of Progesa, other than eProgesa, would have given improved functionality but would contain the same database structure which has constraints similar to those being experienced at the time by the IBTS. eProgesa was being developed by the supplier using web technology and a database which was the IBTS preferred option for all future system development.

5.16 The CEO said that the biggest risk was to do nothing and remain on the current version of Progesa and hardware. Along with the IBTS Director of Quality and the IT Manager, he travelled to the headquarters of the eProgesa supplier to discuss the implementation of eProgesa and the issues that would impinge on the success of the project. There were regular meetings with the supplier and half-weekly telephone calls where certain assurances were given and followed up when not delivered. He also said that some risks had been identified in the Project Definition document which were monitored as the project evolved.

5.17 Given that the implementation of Progesa had been beset with difficulties, I also asked the CEO the extent to which the IBTS had considered its experience with Progesa before acquiring eProgesa from the same supplier.

5.18 He said that the experiences gained from the implementation of Progesa were carried into the eProgesa project and that any delays attributed to the implementation of Progesa were not a feature in the failure to roll out eProgesa. In looking at an alternative supplier, the CEO said that the IBTS was aware of all major vendors through visits to other blood transfusion services, through its involvement in the European Blood Alliance and attending various conferences. In 2004, when the IBTS was deciding to upgrade from Progesa, it had examined the progress of a company that had a blood banking system on the market at that time. It found that no blood service outside of the United States had purchased that system. The CEO further stated that subsequently, in 2007, when the decision had been taken to discontinue the implementation of eProgesa, the IBTS had evaluated that company's system and deemed it unsuitable to meet the current requirements for the IBTS. It would have been another 18-24 months before the company would release a version of its software that IBTS would deem capable of providing a better solution than Progesa and then only after a number of other blood services had implemented the system.

Decision to Continue with Implementation

5.19 The ESG examined the following options in September 2006

- Continue with the implementation of eProgesa
- Migrate the current version of Progesa to new hardware and upgrade later to a different version
- Upgrade to Progesa 4.4g directly on new hardware.

5.20 The ESG decided at that point, primarily due to the lack of viable alternatives, that the IBTS should proceed with the implementation of eProgesa.

5.21 Nevertheless, the project continued to pose difficulties after that decision, primarily to do with the inability of the IBTS and the supplier to develop effective fixes for the difficulties that were being reported.

5.22 In March 2007, the Project Manager reported that the system was unstable and its critical users had lost confidence in it. A major concern was that solutions being implemented in some eProgesa functions had been found to cause problems in unrelated areas.

5.23 The ESG then suspended the project and the IBTS decided to concentrate its efforts on achieving stability in the existing (Progesa) system.

Review of Attempted Implementation

5.24 Up to the end of April 2007, the sum of €1,887,625 had been spent on the eProgesa project. Costs associated with hardware, software and licensing amounted to €1,252,804 while IBTS staff costs and professional services totalled €634,821.

5.25 The IBTS wrote off €729,000 attributable to the eProgesa project in 2006. It noted in its accounts for that year that no value had been obtained for this expenditure. Pending the final outcome of the project, the Board has recorded the remaining €1,158,625 as an asset in progress in its annual accounts. This represents an investment of €500,000 in software licences with most of the balance of the expenditure having been incurred on hardware.

5.26 The CEO informed me that, although the software licences were acquired for eProgesa, the IBTS was able to use these for other applications. The hardware acquired is currently being used to replace Progesa hardware. The CEO stated that the technical specification of the hardware is greater than is required for Progesa but has the benefits of greater performance and resilience. The IBTS is also utilising it in other operational areas rather than investing in new hardware. The changeover to the new hardware was expected to be fully implemented by the end of March 2008.

5.27 In response to my enquiry as to whether the IBTS had plans to review the attempted implementation of eProgesa, the CEO told me that the Finance Committee and the Board had reviewed the implementation of the project and agreed that an external review should be undertaken. The IBTS has not yet received the report.

5.28 He also said that the current focus for the IBTS was in stabilising Progesa and that as part of this project the IBTS had adopted PRINCE2 Project Management methodology which had not been used for the eProgesa project. Stabilisation, which was being carried out on some of the hardware purchased for eProgesa, was scheduled for completion in March 2008. At that stage he said the IBTS would consider the options available to expand functionality and make a decision on future developments. He further stated that the IBTS was monitoring the various other implementations of eProgesa worldwide and, depending on their success, would then decide if eProgesa was a viable option.

Conclusions

5.29 It is evident that by 2004 the IBTS was faced with a serious risk to its operations if it continued with the existing Progesa system. The Board took positive steps to mitigate this risk by commissioning a project definition which set out the business case for eProgesa and included some of the benefits and risks associated with moving to the new system. When it became apparent that the project had run into serious trouble, it took the decision to suspend it.

5.30 However, it is evident that the requirements of the IBTS had not been adequately or completely specified and that these gaps led to implementation problems with the project.

5.31 It is also not clear to what extent the Board evaluated the alternatives to eProgesa and how it proposed to mitigate the risks associated with moving to a new and untried system; neither the Board nor the supplier were able to resolve all the issues and system problems that arose during implementation.

5.32 Ultimately value for money was not achieved in this project and the Board has written off €729,000 attributable to the project in 2006.

Chapter 6 – Science Foundation Ireland

Information Technology Procurement

6 Science Foundation Ireland

Background

6.1 The vision of Science Foundation Ireland (SFI) is to help build in Ireland a body of research of globally recognised excellence and nationally significant economic importance through strategic investments in the people, ideas and partnerships essential to outstanding research in strategic areas.

6.2 The SFI mandate involves the evaluation of proposals for grants to carry out basic research. To evaluate such proposals SFI envisaged a web-based system that would manage all aspects of the registration, eligibility, evaluation/review and approval of all awards made by SFI in respect of its funding of research projects.

6.3 In April 2003, SFI invited proposals to tender for the provision of an Award Management System (AMS) that would underpin the process of allocating substantial funds from the initial receipt of proposals from researchers through to the receipt of final reports on funded projects.

Project Requirements

6.4 The invitation called for processing solutions for

- Receipting and reviewing proposals
- Shortlisting proposals and negotiation and approval of award of grants
- Updating SFI budgets
- Award management and monitoring.

6.5 Following the tender process, in June 2003 the Board approved the award of a fixed price contract in the sum of €168,746 in respect of the software required for the development and implementation of AMS.

6.6 The contract was to deliver, in broad terms, three modules

- a Submission Module to facilitate receipting, checking and recording the eligibility of proposals
- a Reviewer Module which would allow external review of proposals by authorised reviewers
- an Approval Module to record grant approvals and declinations and the grant payment process.

Changes to Scope and Specification

6.7 The scope of the contract was widened to include hardware requirements, security implementation and assistance in data migration and assessment of the proposed integration of AMS with the financial system. These changes cost SFI €92,505. SFI did not look beyond the existing supplier to procure these additional services, notwithstanding the fact that these changes brought the total commitment for the system over the EU advertising threshold for the supply of goods and services.

6.8 I asked the Director General of SFI what factors had led to the parameters of the original system being changed and what consideration had been given to acquiring the additional features by competitive tender.

6.9 He told me that the specification drawn up for the request for proposals was an accurate reflection of SFI's requirements, based on the grants programmes in place at the time. As the nature of these programmes evolved, based on feedback and market needs, it necessitated certain modifications to the original technical specification provided to the supplier.

6.10 He also stated that AMS was a bespoke system, designed specifically to meet the needs of SFI. In such circumstances it was not practical or cost effective to seek competitive tenders for additional functionality, security and data migration, as this would, of necessity, require the involvement of the designer of the core bespoke system. The IT project group recommended engaging the existing supplier as this decreased the risk of disruption to the wider project. All such work conducted by the supplier was subject to quotation and approval by SFI prior to the work being undertaken, in accordance with a formal 'change request' procedure.

6.11 After SFI completed its internal user acceptance testing in December 2004, it accepted the system from the supplier at a fixed price contract sum of €168,746. When the changes in scope requested by SFI are included, the total cost of the initial investment was €261,251.

6.12 However, subsequent to acceptance of the system, SFI conducted pilot testing with a number of key institutions and the output of this testing resulted in a number of changes to the original specification being made at a further cost, in 2005, of €121,439.

Cost of Project

6.13 At the end of December 2006, the total cost of implementation had risen to €382,690. Furthermore, while the contract stipulated an annual charge for maintenance of €25,312 (including VAT), SFI paid a total of €136,125 for five quarters maintenance or over four times what might have been expected. Figure 6.1 breaks down all system costs to 31 December 2006.

Figure 6.1 Costs associated with implementing the AMS project to 31 December 2006

	€	€
Fixed Price Contract (including VAT)		
Software	20,691	
Implementation/development	148,055	168,746
Changes in Scope		
Hardware Implementation and Security Policy	22,361	
Data migration	22,143	
Security Implementation	41,346	
Assessing the proposed integration of AMS with financial system	6,655	92,505
Changes in Specification		
Institutional Signatory details	6,292	
Alignment with HRB and IRCSET	4,840	
Reviewer Changes	5,324	
Programme and Reviewer Changes	67,322	
Various	37,661	121,439
Total		**382,690**

6.14 The Submissions Module, which accounted for most of the development, together with subsequent modifications, cost around €212,000.

6.15 In response to my enquiries as to the higher level of maintenance charges compared to those expected under the contract, the Director General informed me that the original quote was based on 15% of the underlying fixed contract price of €168,746. The final cost incurred by SFI was €382,690 and, when acknowledged cost overruns absorbed by the supplier were taken into account, an agreed base solution cost of €450,000 (excl.VAT) was used to calculate the annual maintenance charge at 20% i.e. €90,000. When VAT is taken into account the annual cost is €108,900 or €136,125 for the five quarters concerned.

Internal Review of AMS

6.16 An Internal Audit review of AMS carried out in November 2006 by a firm of accountants found that the system had been delivered within budget. The review found that the fixed price contract entered into with the contractor and the expenditure on licensing, development and maintenance of the AMS matched what was initially agreed. However, the review did not comment on the additional costs that arose as a result of changes to the original specification of the system. These added a further €121,439 to the overall cost.

6.17 The review found that the project had been delayed and did not meet the initial agreed timelines. Furthermore, the review noted that the intended benefits of AMS were not delivered and the system was not being used as intended.

6.18 In its analysis, Internal Audit also found

- Weak project governance structures. There was an absence of a robust project management methodology and approach applied to the overall system implementation. The report also stated that there was a high turnover of key stakeholders within the project and there was no evidence of a formal handover process between the different project managers and programme officers.
- Absence of AMS business owner. The absence of an overall effective project governance function had led to a failure to drive the full delivery and acceptance of the system in SFI; instead of insisting that Programme Officers utilise AMS to its fullest, workarounds were introduced which allowed staff to avoid using the system when processing a grant application.
- SFI acceptance of AMS before all testing was complete. After AMS had been accepted by SFI, changes were identified by a number of key institutions but these had to be implemented as change requests in the support and maintenance phase of the system rather than the development/implementation of the project.

6.19 I asked the Director General why SFI had accepted AMS at a time when development/implementation issues remained unresolved. He informed me that all aspects of the original contract had been delivered on time and the system was accepted following internal user testing. However, the system had not been externally pilot tested with a number of key third level institutions and the output from this testing resulted in a number of change requests being made.

6.20 He also stated that the technical design of AMS was ‘of its time’ and that there had been many technical advances in the intervening period which may help to overcome the usability problems encountered.

Outcomes

6.21 Only the Submission module is being used as intended and the Reviewer and Approval modules of the system have not been implemented by SFI. The Review process and every stage thereafter are conducted outside AMS.

6.22 The Review process is conducted outside AMS because the reviewers, who are selected on a once-off basis, are not frequent users of the system. Feedback to SFI revealed that the reviewers find the system cumbersome. The system is operated on a workaround basis for this element of the process. Output from the Review stage is up-loaded to the system by SFI staff.

6.23 The Approval process also takes place outside the system due to its paper intensive and multi-layered nature. Applicant researchers are informed by phone whether they have been successful or not and this is followed up in writing.

6.24 No entries are made on AMS to reflect the output from the Approval stage of the process.

6.25 As the Approval module is not used, no database of approved awards is created in AMS and, as a consequence, the Payment module has no data to work from or reconcile to.

6.26 Prior to AMS being initiated SFI had specified a particular database to assist with the management and control of each award. This database was shelved when AMS was implemented. At present, SFI maintains an alternative database on which to record information relating to awards. A number of control weaknesses, associated with the use of this type of database, have been identified and SFI proposes reverting to its preferred choice of database to record all current and future awards.

6.27 Following the Internal Audit review carried out in November 2006, SFI decided to retain the Submissions module but to suspend further development on the Reviewer and Approval modules.

Conclusions

6.28 The Board of SFI set out to acquire a system that would underpin its process of allocating research funding. To this end, it approved the award of a fixed price contract of €168,746 for the delivery of the system which was to comprise three modules. In the event, only one module has been implemented and SFI has suspended development of the remaining modules.

6.29 Good project management requires appropriate planning to ensure that all foreseen system needs are incorporated in the call for proposals. However, SFI's failure to carry out adequate prior evaluation of needs necessitated changes to the original specification while the system was being implemented. These changes cost SFI €121,439. In addition, as the result of the increase in specification required by SFI, maintenance charges were renegotiated with the supplier resulting in an annual charge over four times that originally anticipated.

6.30 Good practice also requires the early and clear identification of project governance, and the empowerment of those personnel responsible for delivery of the project. In the case of AMS, weak project governance structures, exacerbated by high turnover of key personnel, contributed to a failure to have the system delivered and accepted in full in SFI.

Chapter 7 – Beaumont Hospital

Information Technology Procurement

7 Beaumont Hospital

Background

7.1 Beaumont Hospital ('the Hospital') is an acute general hospital governed by a statutory board that is appointed by the Minister for Health and Children. The Hospital is funded mainly by way of grant from the Health Service Executive (HSE).

7.2 The Hospital engaged in a number of Information Technology (IT) procurements in the period 2002-2006 that give rise to concerns both as to the value for money achieved and the manner in which the procurements were effected. These concerns can be summarised as follows:

- The adoption of an open source[6] desktop strategy in 2002 proved ineffective and was out of line with the policy adopted in the health service generally.
- The acquisition in 2006 of a software system to allow the development of the Hospital's own patient administration system ran counter to Department of Finance policy on the integration of IT systems in the health service, and resulted, from the Hospital's point of view, in nugatory expenditure that may be as high as €311,000.
- The Hospital repudiated a number of contracts entered into in 2006 because they involved lease arrangements which ran counter to Hospital policy and because the expenditure had not been properly approved.

Management and control of IT matters

7.3 Prior to May 2006, the Hospital senior management team ('the Senior Executive') was responsible for policy and oversight of IT procurement. At that time, the arrangements for obtaining senior management approval for IT-related expenditure were that periodic work plans were presented to the Senior Executive describing planned and ongoing projects and outlining costs in global terms. An overall budget for IT expenditure was set each year by the Senior Executive and approved by the Finance Committee. The budget was in the order of €3.6 million in 2006.

7.4 The Senior Executive made decisions in relation to IT expenditure on the basis of the work plans and the IT Department was then responsible for implementation. While overall IT spending against budget was reviewed regularly, there was no detailed oversight exercised by the Senior Executive over the progress of these work plans.

7.5 There was no formal IT strategy in place. Work on drafting a formal strategy started in July 2005 but a consultancy report on the IT function said that, by December of that year, there was a general lack of acceptance of the draft strategy within the Hospital. It also stated that the appropriateness of the strategy had not been proven and that there was no evidence of stakeholder involvement in formulating or providing input to this strategy. This lack of involvement by stakeholders had raised concerns regarding the appropriateness of the various IT investments that were then underway.

7.6 In May 2006, the Hospital established an IT Steering Committee. This Committee now considers all matters relating to IT projects, including procurement, and advises the Board on its options in relation to the direction of IT policy and on progressing significant IT projects. The Board continues to be responsible for decision making in relation to committing Hospital resources to such projects.

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[6] Open source software is software whose underlying code has been made available for users. Users are then able to read it or change it as they wish. Linux is an example of open source software.

7.7 Prior to May 2006, there were no spending limits imposed on individual transactions but managers were expected to comply with public financial procedures and operate within a set annual budget.

Open Source Desktop Software

7.8 In 2002, the Hospital changed its desktop computer strategy by replacing its existing proprietary software with open source software.

7.9 The Hospital experienced significant difficulty in getting staff acceptance of the open source solution. There was disagreement amongst staff about the effectiveness of the system on desktop computers.

7.10 From 2004 onwards, the Hospital became increasingly concerned about the open source desktop strategy and, in February 2006, it commissioned an external review to assess the relative merits of the open source software. This review found that

- while there was a reliance on the open source system in the Hospital, there was also a high level of user dissatisfaction with the system
- users were deciding to move back to the proprietary system that the Hospital had previously used and many computers at the Hospital had that software installed on them
- senior and junior staff were divided by the difficulties associated with open-source
- IT personnel surveyed stated that the IT function was not fully in tune with the concerns of users
- while open source software resulted in lower licence costs, these costs were only a fraction of the total cost of ownership which included training, server hardware and support.

7.11 The review recommended that the Hospital either upgrade or replace the software. In May 2006, the Hospital decided to switch back to the proprietary desktop software previously in use in the Hospital. It plans to complete the changeover by mid-2008.

Patient Administration System

7.12 In May 2006, prior to the establishment of the IT Steering Committee, the Hospital entered into a contract with a supplier for a product which would allow the Hospital to develop its own patient administration system and expand a number of other applications.

7.13 The development by the Hospital of its own patient administration system may be at odds with the developing HSE strategy in this area. This is because, as a condition of obtaining sanction from the Department of Finance for its expenditure on IT, the HSE has committed to ensuring that its IT systems are, as far as possible, properly integrated and designed on a national basis and that shared platforms/services within the HSE, across the public service and with the private sector are maximised, as appropriate. The Hospital has stated that the product was unsuitable to the requirements of a single hospital such as Beaumont, as was the proposed strategy of carrying out an in-house development. In the circumstances, the Hospital does not believe that it will be able to make full use of the product.

7.14 The total contract value was €601,330 in respect of software and maintenance charges. The Hospital has stated that it expects to obtain value in respect of €153,196 of this expenditure and that further software valued at €137,184 can be transferred to the HSE, leaving it with potential nugatory expenditure of €310,950. The Hospital is endeavouring to further mitigate this loss by negotiating an agreement with the software supplier under which value equivalent to this amount will accrue to the HSE.

Equipment and Software Finance Leases

7.15 By early 2006, the Hospital's computer equipment had run out of capacity. The equipment supplier, through its agent, proposed a new solution that would meet the difficulties being experienced. In June 2006, a finance lease was entered into at a cost of €1.246 million to acquire the hardware and software necessary to implement the solution and in September 2006 a second finance lease was entered into for desktop management software costing €142,000.

7.16 These contracts breached two Hospital policies in that

- the contracts had not been approved by the IT Steering Committee
- acquisition of IT equipment under finance lease arrangements was not permitted.

7.17 In December 2006, the Finance Department of the Hospital became aware of the finance lease arrangements relating to the IT acquisitions. The Hospital then repudiated the contracts and suspended further payments to the supplier. An officer at the Hospital has been placed on administrative leave and an investigation is proceeding.

7.18 In December 2007, the agent agreed to refund €295,000. This represented a full refund of €195,000 in respect of certain software included in the first lease and which the Hospital believed it would be unable to use plus an ex-gratia payment of €100,000. The remaining €1.09 million in lease charges have been accepted by the hospital and will be paid as they fall due. The Hospital does not regard this as nugatory expenditure.

Views of the Chief Executive Officer

7.19 I asked the Chief Executive Officer (CEO) what failures in governance, management or control the Hospital had identified that contributed to the outcomes described. He told me that the lack of an effective IT Steering Committee and of independent understanding at senior management level over a prolonged period led to an overdependence on the IT Department as the developer and implementer of IT strategy as well as the sole source of guidance to the Hospital on IT matters.

7.20 He said that growing concerns among senior Hospital management about the inadequacies of the Hospital's IT systems and of the strategies being pursued led the Hospital to take a number of initiatives to achieve change. These included

- an extensive audit by the Internal Audit Department on the spending of the IT Department
- an external review of the IT function by a firm of consultants
- the establishment of an IT Steering Committee composed of members of the Senior Executive with professional external advisers available to it
- a review of the major systems developments underway, led by external consultants
- a decision to go to tender for an alternative to the Hospital's open-source desktop infrastructure.

7.21 The CEO assured me that appropriate governance arrangements are now in place for all IT projects and that the technology strategy for the Hospital for 2007-2010 had been reviewed and approved by the IT Steering Committee.

7.22 I also asked the CEO to describe the steps taken to improve the management and oversight of procurement. He informed me that successive internal and external audits had identified shortcomings in the tendering procedures of the IT Department. After close attention from senior management and Internal Audit, compliance with the Hospital's tendering regulations was achieved in 2004.

7.23 The CEO said that the Hospital had clear guidelines on purchasing and tendering, a clear prohibition on the leasing of equipment, clear budgetary limits and monthly reviews and projections of expenditure. He stated that the procedures of the Hospital's Supplies and Accounts Payable Departments laid appropriate emphasis on sign-off of orders and invoices by budget holders. He also pointed out that it was these controls that ultimately led to the discovery of the unauthorised finance lease arrangements.

7.24 He said that the Hospital had in place robust policies on tendering and procurement which reflected public sector rules as well as specific local requirements and that these were backed up by clear and robust procedures on communications with suppliers, advertising of tenders, award criteria, tender opening, tender evaluation, etc. These policies applied across the Hospital including the IT function and the IT function complied with these policies on all major tenders since 2003.

7.25 A number of improvements in the management and oversight of procurement have been made.

- The IT Steering Committee exercises very close scrutiny over IT activities and spending including the approval and progress review of all IT projects. In particular, the level of professional advice available to the IT Steering Committee as well as the professionalism of its procedures has created very considerable transparency in relation to IT.
- In 2007, the Hospital implemented a policy which limits the sign-off authority for Senior Executive members to €50,000 for an individual transaction and a lifetime value of €100,000 for related transactions. There are specific delegated authority levels for other budget holders and, in addition, all service contracts now require the co-signature of the Financial Controller or the CEO.
- All IT expenditure over €5,000 requires the co-signature of the Financial Controller.

Conclusions

7.26 It is clear that the Hospital's IT governance prior to May 2006 was inadequate in that

- there was no formal IT strategy in place
- the Hospital lacked effective IT management oversight
- there were no monetary spending limits set for managers in respect of individual transactions.

7.27 The Hospital's IT expenditure did not take due account of Department of Finance policy on the integration of IT systems in the health service and it acquired a product that, ultimately, it does not intend to use, at a potential nugatory cost of €311,000. In addition, the decision to change from one desktop computer strategy to another has failed and the Hospital is now reverting to the system it used previously.

7.28 The CEO has indicated the steps taken to improve its governance and oversight arrangements.

- The Hospital has achieved IT Department compliance with tendering regulations.
- It has established an IT Steering Committee which exercises close scrutiny over IT activities and spending.
- It has limited the sign-off authority for senior managers and has given specific authorities to other budget holders.

Chapter 8 – Marine Institute

Governance and Financial Management

8 Marine Institute

Background

8.1 The Marine Institute (the Institute) is the national agency responsible for Marine Research, Technology Development and Innovation (Marine RTDI). Its function is to undertake, to co-ordinate, to promote and to assist in marine research and development and to provide such services related to research and development that, in the opinion of the Institute, will promote economic development and create employment and protect the marine environment.

8.2 Up to and including 2007, the Institute received annual funding from the Department of Communications, Energy and Natural Resources (the Department). With effect from 20 October 2007, funding has been provided by the Department of Agriculture, Fisheries and Food. Grant-in-Aid from the Department comprises three elements: current funding, capital funding and National Development Programme (NDP) funds which are considered to be capital in nature. In 2006, the Institute received €28.22 million from the Department in respect of its annual grant-in-aid, representing €18.96 million for current purposes, €4.26 million for capital (non-NDP) purposes and €5.0 million for NDP.

8.3 It is not permissible for a State agency to use funds allocated by its sponsoring Department for one purpose (e.g. capital expenditure) for another purpose (e.g. current) without departmental approvals. In each case where the agency wishes to reallocate funding, it must seek the approval of its sponsoring Department and the Department of Finance.

Appropriation of VAT Refund

8.4 In 2002, the Institute completed the purchase of the marine research vessel *Celtic Explorer* at a cost of €31.68 million including Value Added Tax of €5.14 million. The vessel was funded through the Marine RTDI measure of the NDP 2000-2006. This measure had three sub-measures

- Research Vessel (the *Celtic Explorer* was purchased under this sub-measure)
- Laboratory Infrastructure
- Marine Research.

8.5 The funding originally provided for the vessel was based on the assumption that VAT at 21%, i.e. €5.14 million would have to be paid by the Institute on taking delivery of the vessel. This was duly paid in 2002. In the event, the Institute successfully appealed the application of VAT with the Revenue Commissioners and received a refund in May 2005, which, together with interest, amounted to €5.24 million.

8.6 Public Financial Procedures require that money acquired in these circumstances should either be returned to the Exchequer, via the Department, by way of an Exchequer Extra Receipt or that the Department should recover the money by reducing the grant-in-aid for the year in which the refund was received. It is essential that this be done as otherwise funds that were provided by Dáil Éireann for one purpose, in this case the purchase of the *Celtic Explorer*, may end up being spent for a purpose not envisaged when the original estimate was voted.

8.7 From the date that the VAT refund was received, neither the Department nor the Institute operated on the basis of Public Financial Procedures. The Institute has indicated, and the Department accepts, that the former received oral assurances from the Department that it could retain the VAT refund and apply it for the purposes set out in the NDP Marine RTDI measure.

8.8 In December 2005, the Institute made a specific proposal on how the funds should be used. In summary, it proposed that €1.7 million be spent on fitting out its new headquarters and laboratory complex at Oranmore, €650,000 on refitting another research vessel, the *Celtic Voyager,* and that €2.7 million be allocated to the Marine RTDI fund which supports specific research projects.

8.9 Over the following year these proposals, and variations of them, were debated by the Department and the Institute. The Department's concerns revolved mainly around the lack of a proper business case for some of the expenditure proposals, the lack of an explanation for proposed increases in expenditure on the Oranmore complex and the fact that some of the proposed expenditure, such as the allocation to the Marine RTDI fund, had already been provided for in the grant-in-aid.

8.10 Eventually, in December 2006, the Department agreed that the VAT refund could be applied as follows

- Subject to full costing being provided, a maximum of €3.0 million could be used for the fit-out of the new headquarters at Oranmore, Co Galway
- €650,000 for the refit of the *Celtic Voyager*
- €500,000 for the laboratory infrastructure call for proposals
- €330,000 for fisheries projects
- €769,308 to the Marine RTDI fund to be paid in 2007.

8.11 The Department agreed to this on the basis that the funds could be satisfactorily accounted for under the rules and reporting procedures laid down in the Programme Complement of the Marine RTDI measure.

8.12 In fact, none of the expenditure intended by the letter of 1 December 2006 to be met from the VAT refund was new. The 2006 grant-in-aid had already provided

- €1.5 million for the fit-out of the Oranmore development
- €650,000 for the re-fit of the *Celtic Voyager*.

8.13 In addition, the Marine RTDI allocation had been increased by €1.0 million at the start of 2006 and, at the Department's suggestion, the Institute agreed to apply some of this additional funding to the laboratory infrastructure sub-measure. The Institute made a call for proposals in respect of laboratory infrastructure projects in June 2006 and received applications for funding of €877,000. Thus, sufficient funding to deal with the call for proposals had already been made available.

8.14 The fisheries projects referred to in the letter were being undertaken at the behest of the Department but the Department's original intention had been that the cost would be met from the grant-in-aid.

8.15 As regards the allocation to the Marine RTDI Fund, additional unsanctioned commitments in relation to projects intended to be met from the Fund had already been entered into by December 2006.

8.16 A substantial portion of the expenditure had already been incurred or committed by the Institute on the new headquarters building and on the refit of the *Celtic Voyager* by the date of the Department's letter. The Institute had incurred €2.24 million on the new headquarters building to the end of 2006, with €758,000 remaining to be spent. It had already spent approximately €1.0 million on additions to the *Celtic Voyager* by that date.

8.17 It is clear that the Institute did not keep its expenditure in line with its 2006 grant-in-aid. There was a shortfall of almost €2.0 million between what the Institute had bid for non-pay purposes and that which the Department eventually allocated by way of grant-in-aid.

8.18 The Department asked the Institute in December 2005 to set out its 2006 expenditure priorities taking account of this shortfall. In the event, no proposals were made by the Institute to the Department to deal with the shortfall. Instead, the Institute used the VAT refund to meet the shortfall, to incur unsanctioned expenditure and to enter into unsanctioned commitments.

8.19 In agreeing to the reallocation of the VAT refund, the Accounting Officer of the Department wrote to the Chief Executive Officer of the Institute in December 2006 setting out his concerns in the following terms

- The use of capital allocation to meet the shortfall in current allocation was not acceptable
- The VAT refund properly belonged to the Marine measure of the NDP and, on receipt (by the Institute) of the refund, specific proposals should have been made to the Department as to how the funds could be reallocated within the measure
- Any proposal to transfer funds approved for specific capital projects to current or any other capital expenditure, including reclassification of that expenditure, must be approved by the Department in advance of spending.

Views of the Chief Executive Officer of the Marine Institute

8.20 The Chief Executive Officer (CEO) informed me that the efforts of the Institute in seeking a refund of the VAT in 2002 had the sole objective of ensuring that moneys allocated in 2002 for the purposes of the Marine RTDI measure were productively applied for the purposes of that measure. He said that the Institute had applied considerable time and effort, with direct contact on occasions between the Department and the Revenue Commissioners in support of the Institute's efforts, in securing the refund.

8.21 The CEO said that there was no doubt that the Institute would not have pursued the case so energetically or over such a long period if it was required to pass any moneys received from Revenue back to the Exchequer. He said that the Department fully supported and encouraged the efforts of the Institute at all stages of the negotiations with Revenue. The purpose of this support and the interest in the Institute's efforts succeeding in achieving the refund was, he said, quite simply to ensure that the moneys were not lost to the Department's NDP allocation during a period of intense pressure on resources as a consequence of the financial downturn occurring at that time.

8.22 He also said that, from the outset of the negotiations with the Revenue Commissioners, there had been no intention, on the part of the Department or the Institute, that any proceeds of the refund would be allocated other than to purposes consistent with the Marine RTDI measure. Moreover, he said that it had always been recognised and understood by the Department and the Institute that specific sanction would be required for the attribution of these funds within, and for the purposes of, the measure.

8.23 The CEO told me that the delay the Institute experienced in obtaining the sanction of the Department to spend the VAT refund as it had requested, coupled with an underprovision in the Institute grant-in-aid for 2006, had put the Institute in an invidious position in terms of its ability to maintain funding of major on-going programmes such as the outfitting of the new Institute HQ at Oranmore, the essential refitting of the *Celtic Voyager* and the maintenance of an appropriate level of funds to support the Marine RTDI. He said that the Institute fully accepted that, faced with the prospect of severely cutting back on essential expenditure such as the outfitting of HQ and the *Celtic Voyager*, it acted in anticipation of the sanction of the Department. During 2006 it had commenced spending the VAT refund. It also fully accepts that in doing so it exceeded its estimate for capital in 2006.

8.24 He said that, at all times, the Institute had considered that sanction for spending the VAT refund on areas consistent with the Marine RTDI would ultimately be forthcoming. From the outset of the negotiations with Revenue, the Institute had been given to understand that the proceeds of the refund could and would be allocated for 2000-2006 NDP purposes, albeit following a request for specific sanction in respect of its particular spending proposals. While no formal expression of this intention had been received from the Department, the Institute had received assurances to this effect at the political level, supported at a high level from the Department. The CEO continued that, with hindsight, the Institute therefore had inappropriately envisaged that the issuing of a formal sanction for specific expenditure would be in the nature of a technicality, especially given that the Department had not given a contrary communication to it following the submission by the Institute of a detailed business case in December 2005.

8.25 The CEO said that 2006 saw very significant pressure on the Institute's financial position on a number of fronts

- The costs of the fit-out of the Institute HQ in Oranmore escalated from €1.5 million prior to building to around €3.0 million, all of which had been required to be spent in 2006 to facilitate opening that year
- The Institute's allocation for 2006 was €2.0 million below that requested.

8.26 He said that the Institute took a corporate decision to anticipate sanction for spending the VAT refund and commenced drawing down these funds to meet the pressures outlined.

Views of the Accounting Officer of the Department

8.27 The Accounting Officer of the Department of Agriculture, Fisheries and Food (the Accounting Officer) prepared a response to my enquiries in consultation with the Accounting Officer of the Department of Communications, Energy and Natural Resources.

8.28 In response to my enquiries as to why the Department had not directed the Institute to repay the VAT refund to the Exchequer or, alternatively, provide for the amount as a reduction in its annual allocation, the Accounting Officer accepted that the correct procedure in this case would have been the surrender of the VAT refund to the Exchequer or a reduction in grant-in-aid.

8.29 The Accounting Officer said that the Department's understanding was that the Institute's initial assumption that the VAT refund could be retained stemmed from informal communications between it and the Institute. He said that these did not obviate the need to proceed with a request for Department of Finance sanction and, of themselves, were not an adequate basis for the subsequent retention of the VAT refund. Nonetheless, he said that it was against this background that the Institute subsequently set out proposals as to how the VAT refund should be expended.

8.30 The Accounting Officer also told me that he understood that the possibility of reducing the 2007 grant-in-aid by the amount of the VAT refund to the Institute was examined in October 2006. In the event, the Institute was not directed to repay the VAT refund to the Exchequer nor was a reduction in its annual allocation applied because to have done so would have severely impacted on the marine research function as commitments had not only been entered into but had also been incurred.

8.31 In addition, the Accounting Officer said that there had been a considerable passage of time from receipt of the VAT refund from the Revenue Commissioners in May 2005 to July 2006 when a comprehensive business case setting out the Institute's proposals to spend the refund moneys was provided to the Department. While awaiting a business case, the grant-in-aid continued to issue in line with the agreed operating budget. When it became apparent from examination of the business case that the funds had already been committed without prior sanction, the Accounting Officer of the Department of Communications, Energy and Natural Resources issued a severe reprimand in his letter to the Institute of 1 December 2006 concerning its non-compliance with Government financial procedures.

8.32 The Accounting Officer also said that while he accepted that the proper financial procedures had not been followed in this case, it was to be noted that the VAT refund was deployed within the Marine RTDI measure and the Department was satisfied, from a policy perspective, that this had been the priority area for allocating the resources.

Issue of Grant-in-Aid

8.33 A separate but related matter is the issue of grant-in-aid by the Department to the Institute at a time when the Institute maintained large cash balances.

8.34 Public Financial Procedures require that departments should obtain cash flow statements from the grantees before deciding on issues from a grant-in-aid subhead and should subsequently check on the accuracy of these statements. Where it transpires that grantees have obtained moneys from the Exchequer before they are actually needed, departments should take appropriate action, including, if necessary, the refund to the Exchequer of the premature or excess payments.

8.35 In the course of 2006, the Institute reported projected monthly expenditure to the Department in the general range €1.8 million to €3.3 million and the grant-in-aid issued to the agency was generally in line with those projections.

8.36 However, due to the impact of the retained VAT refund and an accumulation of unspent Marine RTDI research grants, the net end of month cash balance held by the Institute at no point fell below a minimum of €6.6 million. The largest monthly balance was €9.6 million.

8.37 I asked the Accounting Officer how the Department ensured that grant-in-aid issues to State Bodies were made only in accordance with Public Financial Procedures and, in particular, why the Department had issued the Institute grant-in-aid in the manner it did when the Institute held significant cash balances.

8.38 The Accounting Officer informed me that, in this particular case, it appeared that checks carried out on the Institute's 2005 and 2006 cash flow projections did not address the extent to which the cash surpluses being carried by the Institute could be used to reduce the monthly profiled grant-in-aid drawdowns.

8.39 He said that Divisional and Departmental staff were aware of the need for strict compliance with Public Financial Procedures and with all conditions attaching to Department of Finance expenditure sanctions. The need for compliance with all financial requirements and guidelines was continuously stressed in the Department's financial courses. He also stated that the specific rules relating to financial procedures for the administration of grants-in-aid were being separately brought to the attention of all officers concerned.

8.40 The Institute said that the large cash surpluses it held arose as a result of holding the VAT refund, and NDP funds. The Institute had drawn down NDP funds from the Department in line with its profile of expenditure; however, many institutions to which it provided grants were unable to provide progress reports and audited cost statements, as required under the grant scheme, resulting in delays in payments to those bodies.

8.41 In the new NDP 2007-2013, the Institute said that it had adopted a new and more conservative approach to scheduling payments. These measures included

- a reduction in the advance payment amount to ensure regular and more frequent submission of cost statements
- payments scheduled evenly over the lifetime of projects
- the engagement of significantly more expert monitors to monitor projects and advise of any delays or adjustments early so that these may be factored into cash flow
- application to all contracts of financial penalties for delayed submission of cost statements.

8.42 The Institute also said that, from 2007 onwards, payments on contracts have been scheduled for the first quarter of each financial year, thus reducing the risk of late project reports/milestone achievements causing delayed payments beyond that financial year. This would ensure that funds were drawn down to meet contractual obligations only, and were not held by the Institute.

Conclusions

8.43 The vigorous pursuit by the Institute of the case for the refund of VAT ultimately was of no benefit to the Exchequer as it merely resulted in a transfer of moneys from the Revenue Commissioners to the Institute.

8.44 The Department should have acted early and decisively and in accordance with Public Financial Procedures by either instructing the Institute to return the VAT refund to it or by reducing the Institute's grant-in-aid accordingly. In the absence of such action by the Department, the Institute effectively presented it with a fait accompli. Furthermore, the Department failed to take into account the fact that the Institute held large cash balances, partly arising from the retention of the VAT refund, when issuing grant-in-aid to the Institute.

8.45 For Departmental sanctions to be meaningful, bodies seeking sanction must not anticipate them. In this case, the Institute acted inappropriately by incurring certain expenditure in anticipation of the receipt of the sanction of the Department to do so.

Chapter 9 – Vocational Education Committees

Governance and Financial Management

9 Vocational Education Committees

Background

9.1 Vocational Education Committees (VECs) were established under the Vocational Education Act, 1930. The principal function of a VEC is to establish and maintain a suitable system of continuing education and to provide a system of technical education in its area of responsibility.

9.2 The Department of Education and Science (the Department) provides substantial funding to VECs for current and capital needs. Capital funding includes grants to acquire land, property and equipment, including equipment to meet health and safety requirements. In 2006, total capital funding to VECs amounted to €104 million.

9.3 In some cases, VECs may spend more, or less, on a capital project than the Department had agreed to fund, or may spend in advance of funding, resulting in either surplus or deficit balances on their capital accounts. The aggregate of the various balances on individual projects within a VEC is disclosed in its accounts as the net balance on Capital Account.

Balances on VEC Capital Accounts

9.4 Public Financial Procedures require that grant payments should be vouched and that any unexpended balance should be surrendered at year-end. In any event, good financial management requires that grants should not be paid by Departments in advance of a clear need for funding having been established. In 1996, I issued a report entitled *Report on the audit of the 1994 accounts of Non-Commercial State Sponsored Bodies, Health Sector Bodies and Vocational Education Committees*. In that report I noted that the net aggregate balances on VEC Capital Accounts at 31 December 1994 amounted to 0.35% of the Capital funding provided in 1994.

9.5 In the course of audit of VEC accounts for the financial year 2006, I reviewed the Capital Accounts and noted a significant number of cases where large balances had accumulated representing unexpended Departmental funding for projects. The total amount of unexpended capital moneys held by VECs at year-end was €46.7 million. However, VECs had in some cases spent more on capital projects than the Department had agreed to fund, or had incurred expenditure in advance of funding, resulting in deficit balances on Capital Account amounting to €5.6 million. The net balances on Capital Accounts amounted, therefore, to €41.1 million as at 31 December 2006.

9.6 Overall, for the year ended 31 December 2006 the net aggregate balances on Capital Accounts amounted to 39.44% of capital funding provided in 2006.

Capital Funding for Specific Purposes

9.7 The Department's practice in relation to the disbursement of capital grants prior to November 2004 was that funding would be provided for capital projects on the basis of certain critical points having been reached. In the case of land acquisition by a VEC, the VEC would be put in funds in time to pay the vendor when Contracts for Sale were ready for execution.

9.8 In November 2004, the Department changed the practice in relation to capital grants to VECs and introduced, on a pilot basis, a scheme of devolved grants to put VECs in funds to meet their contractual commitments. However, difficulties arising in the administrative process, following a move to public private partnership funding of the schools building programme, led to the cessation of the pilot scheme in 2005.

9.9 I reviewed the funds held by VECs relating to two categories of expenditure

- Funds advanced for the acquisition of land for VEC school building projects
- Funds advanced for health and safety projects in VEC schools.

Acquisition of Land

9.10 I noted that in the case of five VECs, the Department had issued sums ranging between €1.3 million and €6.3 million to acquire land for school building purposes but the VECs concerned had not used this money by the end of 2006. Figure 9.1 shows the position in relation to these issues.

Figure 9.1 Site Acquisitions

VEC	Funds unspent €m	Month issued by Department
County Donegal	5.8	November 2005
County Dublin	5.0	December 2006
City of Galway	3.1	September 2005
County Sligo	6.3	December 2006
County Wicklow	1.3	December 2006
Total	**21.5**	

9.11 I asked the Accounting Officer of the Department whether it had investigated the reasons for the delays in spending the capital funds disbursed and, if so, what action it had taken.

9.12 She informed me that it had been considered prudent to put the VECs in funds where a firm commitment had been made to those VECs to provide capital funding for specific authorised site purchases in order that the funding could be ring-fenced for that purpose and the VECs could have the flexibility to move forward with the acquisitions as soon as possible and as required.

9.13 She also informed me that moneys advanced by the Department to VECs remained unspent for a variety of reasons

- The Department's advance to Donegal VEC in 2005 was for the purchase of a site for Coláiste Ailigh. However, the purchase was subject to planning permission for the development sought by the VEC and this had not yet been obtained. The Accounting Officer also told me that the information available to her at February 2008 was that the acquisition of the site was due to close imminently.
- In the case of County Dublin VEC, the Department advanced the funds to purchase land for the construction of a school at Phibblestown. However, the VEC had experienced delays in finalising the purchase, and matters had not yet been resolved. The Accounting Officer expected that this acquisition would be completed imminently.
- The acquisition in Sligo was completed in 2007; the Galway site would close later in 2008 and the Wicklow site would not be finalised until after 2008.

9.14 The Accounting Officer stated that consideration to recovering the funding provided for site acquisitions was kept under review by the School Building Section of the Department. The unforeseen delays in the finalisation of these acquisitions were a cause of concern to the School Building Section but, at the end of 2006, the indications were that each of the acquisitions would be finalised shortly. It is for that reason that no action was taken regarding recovery or offsetting of funding against other projects in 2006.

9.15 She stated that in the second half of 2007, when it became apparent that delays were continuing, the School Building Section wrote to all of those VECs (with the exception of County Dublin VEC) where capital funding had been granted for the acquisition of sites in 2005 to 2006 and where unexpended balances remained, to instruct that the balances held be used to pay any other outstanding matured liabilities on existing capital projects being administered by the VEC. A total of €4.76 million was off-set from the capital balances in this manner in 2007. The balance held in County Dublin VEC was not affected as, at the time, all indications were that the purchase of the site in question would be completed before the end of 2007.

9.16 She further informed me that since January 2007, because of the delays experienced in getting specific sites legally concluded, payment to VECs of deposits for sites and balances due on closing of the purchase are made only when these aspects of a purchase are imminent. Even short delays in executing contracts can give vendors the excuse to seek to renegotiate previously agreed financial terms and this can lead to higher prices. The Department will continue to monitor these transactions carefully in order to mitigate any risks and will review the balances in capital accounts currently held by VECs and, as appropriate, will assess what adjustments need to be made.

Health and Safety

9.17 In the case of minor works or equipment purchases, the Department provides funding from time to time by way of devolved grants as it considers that the VECs are best placed to administer these at local level.

9.18 In 2004, the State Claims Agency, in co-operation with the Department, reported on a risk review to assess the occupational health and safety standards in post–primary technology workshops.

9.19 The report found that a significant number of larger machines in use in the workshops did not comply with statutory requirements for health and safety. It recommended the upgrading or replacement of non-conforming equipment to ensure compliance with safety standards.

9.20 In 2005, the Department devised a grant scheme to address the health and safety risks in VEC technology workshops. Grants would be based on the number of qualifying rooms in schools as set out in Figure 9.2.

Figure 9.2 Grant Scheme for VEC Technology Workshops in 2005 and 2006

Room function	Total grant per room	Payable in 2005	Payable in 2006
	€	€	€
Metalwork/Engineering	70,000	56,000	14,000
Technology	15,000	12,000	3,000
Personal Protection Equipment	1,500	1,200	300

9.21 In December 2005 the Department advised VECs of the report findings and informed them of the grant scheme. At the same time, it transferred 80% of projected funding to each qualifying VEC's bank account by Electronic Fund Transfer. The balance of 20% was to be paid in 2006, subject to a number of conditions that were to be confirmed to the Department by the VECs.

9.22 The Department provided that, where the funding available was greater than the amount required for health and safety purposes, the excess could be used by the VECs on machinery and equipment in Materials Technology (Wood)/Construction Studies Rooms.

9.23 The Department paid almost €12.5 million to 32 VECs as part of this grant scheme, giving an average €390,000 to each VEC. In my review of the more significant health and safety technology capital balances in VEC accounts, I noted a very low level of expenditure compared with the sums received in respect of these grants. Figure 9.3 shows, in relation to those who received the highest level of grants, the grants paid in 2005 and 2006, the amount spent and the balance remaining at 31 December 2006.

Figure 9.3 Health and Safety Technology Grants

VEC	Received 2005/6	Spent 2005/6	Balance at 31 December 2006
	€	€	€
County Cork	1,588,000	178,503	1,409,497
County Dublin	1,505,000	35,320	1,469,680
County Kildare	782,500	0	782,500
City of Dublin	691,600	59,773	631,827
County Wicklow	610,400	0	610,400
County Galway	600,800	253,407	347,393
County Louth	527,800	100,505	427,295
County Kerry	475,600	65,621	409,979

9.24 I asked the Accounting Officer

- why the Department had disbursed the bulk of the health and safety grants at a time when it was apparent that there was no prospect of the funds being used by the VECs in 2005 and very little prospect of this in 2006
- what consideration had been given to the apparent lack of capacity in the market to provide health and safety equipment to VECs prior to instituting the grant scheme
- what consideration had been given to a centralised procurement process that might have provided better value for money than a scheme under which VECs competed for scarce resources.

9.25 The Accounting Officer stated that this grant lent itself to being devolved because the schools would have available to them local expertise in the form of the subject teachers who would be most familiar with their own specific requirement and would also be familiar with the technical issues involved. It would not have been possible for the Department to administer the grant centrally in view of the varying nature of the schools' requirements.

9.26 She said that, in view of the findings of the State Claims Agency in 2004, the Department considered that it was essential to empower schools to deal with the issues on a priority basis.

9.27 The Accounting Officer also said that the recovery from VECs of unexpended capital balances for Health and Safety Grants was not considered by the School Building Section as these funds were granted on a devolved basis and were intended to be fully expended in accordance with the conditions of the scheme.

Conclusions

9.28 It is clear from the terms of the Departmental Circular on Health and Safety Technology Grants that VECs would have required a significant lead-in time to ensure compliance with its terms and conditions and, hence, to be in a position to incur expenditure on the measures concerned. In accordance with the terms of that Circular, VEC management would have had to have considered its options in relation to the grants, carried out an audit of all its equipment and engaged in appropriate tendering processes before it could enter into contractual arrangements which would in turn lead to commitments for the grants available. Therefore, the Department was premature in putting the VECs in funds for such expenditure at a time when no expenditure planning had taken place.

9.29 Where funds are disbursed, not on the basis of need, but on the basis of future commitments, there is a risk of financial loss to the Exchequer since the investment return to the VEC may be less than the Exchequer's cost of funds.

9.30 This practice may also represent an inefficient use of the capital budget. Allocating scarce resources to projects before they are clearly in a position to proceed may unnecessarily delay other projects of equal merit due to a perceived lack of the availability of funding.