

## Chapter 10

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Department of Foreign Affairs

## 10.1 EU Presidency

### Introduction

An Interdepartmental Administrative Planning Group met regularly from 2001 to co-ordinate work associated with the EU Presidency and extensive preparatory work was necessary to ensure the successful planning and organisation of the very large number of meetings to be hosted and chaired.

The 2004 Presidency posed new and demanding challenges in comparison with that held in 1996 on account of:

- The progression of ten States from observer to full membership of the European Union during the Presidency which required provision of logistical support for twenty-five Member States and three observer States, Bulgaria, Romania and Turkey.
- The negotiation of private sector sponsorship and
- Significant advances in information and communications technology since 1996.

### Financing the Presidency

The largest proportion of the cost to the State of hosting the Presidency was borne by the Department of Foreign Affairs (the Department). Funding for the costs relating to Presidency events was provided in the Vote for 2003 and 2004. The main expenditure headings were payroll costs of extra staff, travel and subsistence, accommodation and hospitality, information technology, telecommunications and office premises and supplies. The total amount charged to the Vote was €10.7 million in 2003 and €21.4 million in 2004. During the course of audit an analysis was carried out of Departmental Presidency expenditure in 2003 and 2004 and the results are summarised in Table 23.

**Table 23**

	2003 €	2004 €	Total €
Salaries and Allowances	3,871,284	5,312,668	9,183,952
Travel and Subsistence Expenses	414,475	3,220,213	3,634,688
Helicopter Hire	-	159,723	159,723
Accommodation and Hospitality	9,005	2,396,640	2,405,645
Premises Costs	1,429,289	1,611,921	3,041,210
Telecommunications and Postal Expenses	63,329	1,642,534	1,705,863
Publications and Stationery	587,277	2,163,475	2,750,752
Information Technology Costs	3,486,309	559,272	4,045,581
Presidency Training	83,409	64,298	147,707
Press and Information	552,593	1,074,851	1,627,444
European Council Expenses	-	2,255,964	2,255,964
Incidental Expenses	210,841	910,897	1,121,738
<b>Total</b>	<b>10,707,811</b>	<b>21,372,456</b>	<b>32,080,267</b>

The analysis was hampered by an inadequate account code structure. The Department accepts that there were inadequacies and has since simplified and rationalised the structure.

In the course of my audit of the expenditure a number of minor issues arose and were brought to the attention of the Accounting Officer. He has informed me that lessons have been learned from these

instances and such problems will not recur. However in the case of road transport services two specific issues arose and these are addressed in the following paragraphs.

## Road Transport Services

Expenditure on Travel and Subsistence Expenses includes an amount of €920,220 paid in respect of road transport services provided by a single contractor. A further amount of €45,166 paid to the same contractor, is charged to Press and Information bringing the total paid to €965,386.

## Procurement procedure

The procurement process, which resulted in the placing of this contract was as follows:

- A notice seeking expressions of interest was issued on 31 October 2003 to six transport providers seeking expressions of interest by 5 November and detailed proposals by 10 November 2003.
- Three proposals were received and two applicants were interviewed on 24 November 2003.
- Following consideration of factors including cost, management skills, personnel, capacity, capability, experience and quality of service, the Interdepartmental Administrative Planning Group for the Presidency agreed on the supplier to be offered the contract.
- The Department on 26 November 2003 issued a letter of offer to that supplier. The letter stated that the Department would be in contact later to discuss the terms and operation of the contract.
- On 1 December 2003 the supplier confirmed acceptance of the offer in writing.

Under national and EU procurement guidelines the appropriate procurement procedure for services on this scale is an open tendering competition. However in this instance the Department utilised negotiated tendering. The use of negotiated tendering is permitted only in exceptional circumstances or in the case of extreme urgency or unforeseen events. According to the *Guide to Community Rules on Public Procurement of Services*, published by the European Commission for Directive 92/50/EEC, unforeseen events are events which fall outside the field of normal economic and social activity, such as floods or earthquakes which necessitate urgent services to assist victims. Recourse to the urgency procedure is permitted by the Directive only to the extent necessary to procure services necessary to deal with the immediate urgent situation over a period of about one month. For services required after this period it is considered that the contracting authority has sufficient time to publish a contract notice and award a service contract in accordance with normal procedures. I asked the Accounting Officer why the Department did not employ open tendering and place a formal notice in the Official Journal of the EU as required by national and EU procurement guidelines. I also asked how the Department concluded that the negotiated tendering procedure was appropriate in the circumstances as it was not clear to me that the Department could rely on the extreme urgency provision of the EU Directive in the circumstances in which it found itself in October 2003.

The Accounting Officer informed me that the Department acknowledges that it should have placed a formal notice in the Official Journal and regrets that it did not do so. He stated that it was the complex and protracted nature of the ultimately successful negotiation of private sector transport sponsorship that compelled the Department not to employ the open tendering procedure.

For the first time during an Irish Presidency the Department negotiated a range of private sector sponsorship agreements. This sponsorship resulted in an overall estimated saving of approximately €3.5 million. Of that amount the value of transport sponsorship was an estimated €1.8 million.

As the Danish Presidency provided the model for the Department on how to handle private sector sponsorship, an evaluation of the Danish experience was possible only in February 2003 after their Presidency. Cabinet Committee approval to seek private sector sponsorship was received in early April 2003 and the process of seeking sponsors for the Presidency was initiated at that stage. In the transport area a number of companies offered sponsorship. Until an offer of sponsorship was agreed in October 2003, the Department's precise transport needs for the Presidency could not be fully known.

In view of the time constraints, and the absolute need to have transport arrangements in place at the start of the Presidency, the Department was not in a position, in October 2003, to use the open tendering procedure. It came to the conclusion, therefore, that it had no option but to use the negotiated and urgency procedure. This procedure can be used in cases of extreme and genuine urgency where the delay was caused by factors unforeseeable and not attributable to, or within the control of, the contracting authority. Article 20 of Council Directive 92/50/EEC and the Department of Finance 1994 Guidelines provided the framework in operation at the time.

At that time the 1994 Department of Finance Guidelines set out the framework of how to proceed to tender. However, the Accounting Officer stated from Presidency preparatory work, it was known that a new draft Directive was close to completion. The Department contacted the relevant unit in the Department of Finance and received a copy of the new draft guidelines. These had been prepared in anticipation of the conclusion of the negotiations and the imminent adoption of the draft Directive (which became Directive 2004/18/EC published in the *Official Journal of the European Communities*, 30 April 2004). Both sets of guidelines informed the Department's decision to use the urgency procedure. The text of the draft guidelines on the negotiated and urgency tendering procedure supplied by the Department of Finance is identical to Guidelines adopted in 2004. The Department sought to follow best practice in awarding the Presidency contract in that it both anticipated and applied the new regime.

In his reply to me the Accounting Officer also stated that one of the lessons to be learned from the Presidency in 2004 is that, if significant sponsorship arrangements are to be entered into for services such as transport, the negotiations with potential sponsors should start and conclude some very considerable time before the Presidency. The Department now knew that nine months is an insufficient amount of time to negotiate a transport sponsorship arrangement and to conduct a full tendering procedure.

### **Form of agreement**

I noted that the contractual arrangement or agreement between the Department and the service provider took the form of an exchange of letters, comprising a letter of offer from the Department and a letter from the contractor confirming acceptance of the Department's offer. The correspondence did not refer to any terms or conditions relating to the contract. However, the Department did indicate in its letter that it would be in contact thereafter to discuss the terms and operation of the contract. While these matters may have subsequently been discussed no formal written record exists nor did they result in a formal written agreement.

Given the value, scale and nature of the services involved I was concerned that the State's financial and legal interests might not have been adequately protected by a simple exchange of letters. I asked the Accounting Officer why the Department did not follow up the exchange of letters with a formal written contract setting out the terms, obligations and standards required. Such a contract should include conditions regarding the contractor's responsibility for meeting all statutory obligations.

I was informed that the successful tender proposal contained a breakdown of the services to be provided and the terms and conditions of the proposal were acceptable to the Department. At the time, the Department considered that the tender document, together with the performance of those arrangements, gave rise to a contractual relationship that protected the Department. This has been confirmed by legal advisers, including the Chief State Solicitor. The Department accepted and recognised that a formal written contract should have been concluded. However, due to the extraordinary demands of the Presidency, this was not acted on.

He also stated that, determined to learn from this failure, the Department has had a series of meetings with the Chief State Solicitor's Office and its own legal advisers with a view to ensuring that a Departmental wide system is in place to ensure that such a situation could not happen again.

## 10.2 Automated Passport System

A new automated passport application and production system has recently been installed in the Passport Office of the Department of Foreign Affairs (the Department). I carried out an examination of this project to establish that proper public procurement procedures were applied, to review the planning, implementation, and management of the project and to compare progress against plans in terms of costs and implementation timetable.

### Background

By the late 1990s, the systems in the Passport Office for processing applications were in urgent need of replacement. The technology was obsolete and in some cases no longer supported by the manufacturers. The volume of passport applications had grown to the point where the system was overloaded, frequently breaking down and in danger of collapse. The Department was concerned that it was not in a position to provide the high level of service that citizens had a right to expect and that, in a worst-case scenario, it might even be unable to issue travel documents in a timely manner to applicants.

Late in 1998 the Department commissioned consultants to review the passport system. The terms of reference were to

- evaluate the current passport system and identify those aspects that should be retained and, where necessary, improved
- research what was available or being developed in the field of automated passport systems (APS) on the basis of technical factors
- report to the Department with a set of recommendations covering design, specifications and projected costs for the optimum automated system capable of interfacing with those parts of the existing system already identified for retention and/or improvement.

The main benefits of an APS foreseen at that time by the Department were

- a reduction in staffing levels
- more secure passports produced more quickly
- discontinuance of the issue of less secure handwritten passports at diplomatic missions.

### Recommended Replacement System

The consultants recommended the adoption of an automated system which would provide for

- electronic data capture
- verification of entitlement to passport
- production of passports
- a workflow system to link the component parts
- administrative functions such as management reports, stock control and payments.

The report stated that no off the shelf system was available to meet all the Department's needs. Seven different options were costed and specified, based on combinations of different data capture and production technologies, in both centralised and decentralised configurations. The report recommended that the Department take advantage of new technology to produce a higher quality passport with improved security features. The cost of these solutions was estimated at between €2.84 million and €6.47 million. The report was drawn up on the assumption that passport applications would be of the order of 350,000 per annum.

The same consultants were re-engaged in 2000 to make a firm and final recommendation regarding the most appropriate technologies to choose. They were also required to develop a high-level technical architecture and implementation plan that would enable the Passport Office to rapidly move to design, build and deploy the new systems, processes and staff structure.

The consultants' report recommended a system with an estimated overall cost of €13,559,000. This cost included the purchase of hardware and software and consulting costs for design, development and deployment of the system. The report assumed that passport issues would reach 1,000,000 within 5 years and that the maximum daily issue figure would be 7,000.

## Procurement of New System

In 2001 a project team was established to manage the procurement and implementation of the new APS. The tender process used was the open procedure as defined in EU Public Procurement Directives. The Department engaged a firm of business advisers to assist in drafting the request for tender (RFT) and subsequent tender evaluation. The RFT was issued in August 2001 with a closing date in October 2001. Six tenders were received. One of these was subsequently eliminated, as it did not adequately demonstrate an ability to meet the requirements set out in the RFT.

A tender evaluation committee drew up evaluation criteria and a marking system. The heaviest weighting (56%) was given to the ability to meet the functional requirements. A weighting of 2% was given to cost.

The committee short-listed three bidders for further consideration. Each was invited to make a presentation and to attend a question and answer session and subsequently to resubmit detailed costings in response to a clarification notice issued by the evaluation committee. This notice requested the three bidders to supply a fixed price quotation for all aspects of the project. The RFT had previously stated that a fixed price tender was desired. Costing clarifications were submitted, in November 2001 and in January 2002, by one of the three bidders only.

The Department met this bidder in January 2002 and in the course of the meeting sought further clarification of costs. The bidder indicated a willingness to give a fixed price for phases 1 and 2 of the project and to identify areas of phases 3 and 4 for which it would be prepared to fix a price. It was also guaranteed that the price for the remainder of the project would not vary by more than 10%.

In price terms the preferred bidder was ranked second of the three short listed and was over €7 million higher than the lowest tender but significantly cheaper than the third short listed bidder. The lowest price tender was virtually eliminated from consideration after the question and answer session held by the Department. When all evaluation criteria were taken into consideration, the preferred bidder attained a percentage of 68.1%. This was considerably higher than either of the other two short listed tenders. The preferred bidder was a consortium headed, as prime contractor, by the firm of consultants who had prepared the initial strategy plan and conceptual design.

Although there was some uncertainty about the propriety of the manner in which the clarification of costings was pursued, the Secretary General, in May 2002, approved a proposal that, notwithstanding the risks, the Department should continue with the procedure and award the contract to the chosen bidder. In December 2002 a contract was signed with the successful bidder in the sum of €21,819,000. This did not include support and maintenance costs, blank booklet costs, datapage costs or royalties. It did however include datapage redesign costs of €786,500 that were not included in the original estimated cost per the consultants' report.

In response to my enquiries regarding the weightings ascribed in the evaluation the Accounting Officer stated that the RFT was drafted in such a way as to achieve a level playing field that would give all potential bidders the same information about the Department's requirements. The scoring system used to evaluate the tenders against the award criteria was developed in consultation with the business advisers who assisted with the procurement procedure. The Evaluation Committee, with the guidance of the advisers, did not consider that the scoring system conferred any advantage on any bidder.

As regards the uncertainty surrounding the clarification of costings the Accounting Officer accepted that it would have been better to have sought legal advice before the RFT issued.

## Costs

Changes in the expected costs of the project occurred in two distinct phases. The first relates to the period between the consultants' report of October 2000 and December 2002 when the contract was signed. In response to my enquiries as to how a system estimated to cost €13,559,000 in October 2000 came to cost €21,819,000 in December 2002 the Accounting Officer explained that the purpose of the October 2000 report was to update the technology evaluation undertaken in the earlier study and to develop a high level plan for a new passport system. The costs in this report were accordingly described as outline costs which would provide a general overview of the cost of developing the new system. The specification in the RFT of the functional requirements for the new system was much more detailed and it was on this basis that the different tenders were submitted. In addition, the October 2000 report did not propose the use of machines for laser perforating passport booklets as this technology was not available at the time. These machines, which considerably enhance the security of the passport booklet, cost €3.87 million.

The evolution of costs in the period October 2000 to December 2004 is set out in Table 24.

**Table 24**

<b>Non-Recurring Costs</b>			
	<b>Outline Estimate Oct 2000</b>	<b>Estimate on Signing of Main Contract Dec 2002</b>	<b>Outturn Dec 2004</b>
	<b>€</b>	<b>€</b>	<b>€</b>
Systems costs — hardware and software and consulting costs	13,559,000	21,820,000	21,820,000
Contract Price Variation Clause	-	-	754,000
Contract Change Notes	-	-	3,576,000
Other	-	-	907,000
Legal Fees	-	47,000	294,000
External Project Management	-	58,000	423,000
<b>Total</b>	<b>13,559,000</b>	<b>21,925,000</b>	<b>27,774,000</b>

<b>Recurring Costs</b>			
	Estimated at Date of Contract	Year One Expenditure	Estimated Future Annual Expenditure
Support and Maintenance	1,840,000	3,820,000	3,000,000
Blank Booklets, Datapages and Royalties	-	3,700,000	4,760,000
<b>Total</b>	<b>1,840,000</b>	<b>7,520,000</b>	<b>7,760,000</b>

In response to my enquiries the Accounting Officer gave the following explanations for the increased costs in the two years ended 31 December 2004.

### **Non-Recurring Costs**

The contract signed provided for a variation of up to 10% on the cost of phase 2 and certain costs of phases 3 and 4 if it turned out that the contractor's understanding of the project differed from what was originally envisaged. In the course of the design of the new system in phase 1, a number of areas were identified where it was considered that the functionality of the new system could be enhanced. This required additional design and development work and testing on the part of the contractors. The Department accepted these extra costs on the basis of an assessment by the project management consultants that they were reasonable.

The contract also provided for change variation procedures that were formalised by the signing by both parties of contract change notes (CCNs). It was accepted from the beginning of the project that it was likely that additional requirements would emerge from the design phase that would give rise to extra costs. All of the CCNs were considered to be essential enhancements of the original project that were worth acquiring. In the course of the project twenty six CCNs were agreed and signed with a total cost in excess of €3.57 million. The largest of these was for approximately €1.45 million in respect of hardware and software to allow implementation of the APS in diplomatic missions abroad. Another CCN signed was to allow implementation of the APS in the London embassy and the Cork passport office.

While the original concept underlying the RFT was that passport production would be centralised in Dublin it was decided in the course of the project that, because of the volumes of applications handled by Cork and London, it would be more efficient and more reliable to install the full APS system – up to the point of passport production - in those offices. Furthermore, it was concluded that a contingency system would be required in the public offices in Dublin and Cork to provide a fallback in case of a system failure that interrupted passport production. To cover all of these situations, it was decided that the emergency passport module would be an essential requirement.

### **Recurring Costs**

The original tender costed support and maintenance at €1.84 million per annum. However the Department is currently in the process of signing a separate contract for the provision of support and maintenance at a cost of €3.82 million in year one with an option for years two and three at a cost of €3 million. I was informed that the original proposal envisaged an arrangement whereby the Department would make the initial diagnosis of a fault, the resolution of which would then be coordinated or addressed by the contractor. The Department would have had to provide a cadre of expert staff for this purpose and this would have been difficult. The support and maintenance contract now agreed provides for a much broader set of activities and assumes no expert input by the Department in relation to the APS.

The contract also provided for the exclusive purchase of blank passport booklets and datapages from the contractor and the payment to the contractor of a royalty for each passport issued. These costs increase in line with the consumer price index as provided for in the contract. Expenditure to 31 December 2004 amounted to €3.7 million. The estimated annual total of these costs, based on a production level of 650,000 passports, is approximately €4.76 million.

### Legal Fees

The Department requested tenders in January 2002 from a limited number of firms for legal services. These services were for assistance in drawing up the terms of engagement and a contract for the provision of the APS. The firm that provided the lowest quotation was engaged in February 2002 by way of an exchange of letters. This did not specify a number of days for which the advice was required. However, in correspondence the firm estimated that its total professional fees might amount to €41,000 - €47,000.

In response to my enquiries as to why legal costs had risen to €294,238 the Accounting Officer stated that the quotation of €47,000 was based on a very preliminary estimate of the work involved in drawing up a draft contract. In the event it had been necessary to devote a substantial amount of additional time to an examination of the procurement procedure and the negotiation of the contract proved much more difficult and lengthy than originally envisaged. This was partly because of the size and complexity of the project and partly because the Department was dealing with a consortium consisting of a group of companies and not a single supplier. He stated that the advantage from the Department's point of view of devoting considerable resources to the drafting and negotiation of the contract was that it was able to secure more onerous warranties and obligations from the contractor in relation to the performance of the contract than were provided for in the RFT.

### External Project Management

It was estimated in the RFT that a minimum of forty days assistance would be required for project management. The contract was intended to take the form of a draw down of services on a daily basis. Depending on the particular phase of the project, it was anticipated that assistance would be required one day per fortnight or three weeks over the duration of the contract. A fixed price per service day was required. The assignment was awarded following an open competition. The per diem rate varied between €480 and €1,450 depending on the particular consultant used. At the time of audit some €423,000 had been paid for these services that, at the maximum rate (€1,450), would represent some two hundred and ninety days compared to the minimum forty days envisaged in the RFT. As I was concerned by the extent of the increase in these costs I asked the Accounting Officer for an explanation.

The Accounting Officer stated that it was impossible to estimate in advance what the project management costs would be. Initially, it was assumed that one day's consultancy a fortnight would suffice. However, it became clear early on that the size and complexity of the project were such that much more extensive support was required. In addition, it became necessary to obtain specialist support for User Acceptance Testing to ensure that the system would fully meet requirements. This involved significant additional expertise being brought in as provided for in the contract and this accounted for almost three-quarters of the total costs. This was a critical stage in the project and expert input was essential to enable the Department to satisfy itself that the system, as delivered by the contractor, performed in accordance with the specifications. The Department was satisfied that there was no alternative to incurring these costs. Without this support, it would not have had the expertise to manage the contract prudently and effectively. The advice received in this context also enabled it to limit the number and cost of CCNs.

## Implementation Timetable

In response to my enquiries concerning delays in meeting the anticipated delivery dates the Accounting Officer informed me that when the project began in January 2003 it was expected that it would be ready for implementation in May/June 2004. However the Department was concerned that the implementation of the new system should not impact negatively on the EU Presidency or on the operation of the Passport Office during the busy season and, accordingly, it was decided that, if the system was delivered on schedule, implementation would be deferred until after the peak season in the Passport Office i.e. until September 2004. It was also decided, in order to minimise risk, to phase the implementation by commencing the passport production facility in Balbriggan and then moving on to the passport office in Molesworth Street after an interval of a number of weeks. In the event, problems with the development and testing of the system delayed its initial implementation until the end of November 2004 in Balbriggan. Molesworth Street went live in January 2005.

Subsequent teething problems with the system led to a decision to defer the further implementation in Cork, London and the missions until the autumn of 2005, i.e. after the peak season. It is now expected that this will be implemented by the end of this year.

## Cost Benefit

The realisation of staff savings was one of the Department's objectives in undertaking this project. The Evaluation Committee had also recommended that a cost/benefit analysis of the financial impact of the successful tender be carried out. I noted that this recommendation had not been implemented and asked how, in the absence of such an analysis, the Department could establish that the anticipated benefits in terms of cost savings and administrative efficiencies would be realised.

I was informed that the Department had sought a proposal for a cost/benefit analysis from the business advisers who were advising on the procurement procedure. They advised that there were many unknown quantities and that significant assumptions would be required on which to base future costings. They also noted that it would be extremely difficult to quantify, in monetary terms, the benefits of having a more secure passport booklet or to estimate the potential staff savings until the design of the new system had been defined. Taking these constraints into account, it was concluded that it would not be a useful exercise to carry out a cost/benefit analysis at that stage.

Notwithstanding this explanation as to why it was considered inopportune to undertake a cost/benefit analysis at the time of the procurement I made enquiries as to the savings made or envisaged in the level of staffing that might be attributed to the implementation of the APS and as regards the arrangements in place to monitor its performance in terms of output volumes, turnaround times and cost savings.

On the issue of staffing the Accounting Officer replied that one of the benefits foreseen in 1998 of an APS was the reduction of staffing levels by the removal of the labour intensive aspects of the old system. This has been achieved in the data entry and production stages that have been largely automated and require fewer staff to operate than the old system for the same number of passport applications. On the other hand, the constantly growing demand for passports has led to an overall increase in the number of staff, particularly in the area of entitlement checking i.e. verifying that applicants are entitled to receive a passport, an area that requires human evaluation and judgment and cannot be fully automated. In 2005 38% more passports would be issued than in 2001 when the RFT for the new system was issued and 83% more than in 1998 when the new system was first mooted. Furthermore, for risk management purposes, it was necessary to have two production centres, Balbriggan and Molesworth Street, where previously

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there was only one. This inevitably introduced a certain duplication of staff that reduced the potential for staff savings.

He also informed me that the new system incorporates an extensive reporting system designed to provide comprehensive management information. This will provide detailed information on output volumes, turnaround times, productivity levels, efficiencies and breakdowns of applications by age, gender and location.