

Chapter 20

**Office of Public Works
National Convention Centre**

National Convention Centre

20.1 In April 2007, the Office of Public Works (OPW), awarded a Public Private Partnership (PPP) contract to the Spencer Dock Convention Centre Dublin Ltd¹⁴⁷ (SDCCD) to design, build, finance, operate and maintain a new national convention centre. The convention centre is on Dublin's North Quays, adjacent to the Royal Canal. It opened on 5 August 2010.

20.2 The objectives of the convention centre are to have a centre of international standing that is capable of handling large conference and business tourism events under a single roof, in order to make Ireland a more attractive business tourism destination and thereby create additional revenues.

Project Approval

20.3 A series of reports were produced from 1991 onwards, broadly supporting the need for a national convention centre. While the reports' conclusions varied, there was general agreement on the need for a dedicated mid-size conference centre based in Dublin. An attempt to build such a centre in the Spencer Dock area in 2001, to be funded by the private sector with ERDF assistance of €3 million, was shelved when the EU withdrew support due to lack of substantive progress.

20.4 The project was revived in 2003. A Government decision in June 2003, agreed in principle to construct a national convention centre in Dublin so long as the construction cost did not impact on the General Government Balance¹⁴⁸.

20.5 In November 2003, advertisements were placed in the media seeking expressions of interest in providing the centre under a PPP arrangement. In February 2007, a contract was awarded to SDCCD. The contract provided for a unitary payment to SDCCD of €27 million¹⁴⁹ together with additional annual payments of €20 million to be made in each of the first five years to partially cover the capital costs. In return, the SDCCD would assume responsibility for the provision of the centre. It also undertook to secure a specified number of delegates over the 25-year life of the contract. The contract provides for profit sharing in circumstances where profits exceed specified levels and penalties for non-performance.

20.6 The main parties involved in the procurement of the national convention centre are

- The Department of Tourism, Culture and Sport¹⁵⁰ (the Department) – the sponsoring government department
- OPW – the project managers and contracting authority
- Department of Finance – the economic advisers to the Government
- National Development Finance Agency (NDFA) – the financial advisers on major State projects

¹⁴⁷ Company Registration Office records indicate that SDCCD is directly controlled by Spencer Dock International Convention Centre Limited, which in turn is controlled by Spencer Dock Development Company Limited. Treasury Holdings is the majority shareholder in Spencer Dock Development Company Limited with Folly Ford Limited holding the remaining shares.

¹⁴⁸ General Government Balance, also called General Government Debt (GGD) is a measure used for comparing member state indebtedness within the European Union.

¹⁴⁹ The unitary payment is €27 million for the first five years of the contract, reducing to €23 million for the remaining 20 years of the contract. 10% of this element will increase in line with changes in the Consumer Price Index, the remainder is fixed.

¹⁵⁰ Formerly known as the Department of Arts, Sport and Tourism.

- A Process Auditor – an appointee who supports the Accounting Officer’s responsibility for the project by checking on his/her behalf that the proper procedures and processes as agreed in the procurement process checklist have been followed.

Chapter Focus

The chapter set out to review

- the quality of the initial business case
- how costs and benefits were estimated
- whether the procurement was conducted in accordance with government guidelines and the bid selected provided the best value
- whether negotiations prior to the award of the contract protected the State’s position.

The Initial Business Case

Where a public body is proposing to commit resources to a project it must complete a business case in order to ensure that all the likely costs and benefits of the project are identified.

20.7 On 19 June 2003, in a Memorandum to Government, the Minister for Tourism, Culture and Sport sought approval from Government to

- agree in principle to the sourcing or leasing of a National Conference Centre in Dublin on the basis that the construction cost, if any, would not impact on the General Government Balance
- authorise the establishment of a Steering Group to advise the Minister on the specification for the new project and in the event that this could not be met from the existing OPW portfolio, to agree the parameters for an open and competitive procurement process on a design, build, finance, operate and maintain basis (DBFOM)
- request the OPW to undertake the procurement process.

20.8 Based on research that had been undertaken in 1999 and 2002 the Memorandum for Government estimated additional tourism revenues to the State at between €25 million and €50 million, per annum.

- In 1999, analysis undertaken on behalf of the Dublin Docklands Development Authority estimated additional tourism revenues at €24 million.
- In 2002, analysis conducted on behalf of the Irish Professional Conference Organisers estimated that there would be an average of 19 additional conferences per annum involving 44,000 delegates. Their total expenditure in Ireland with an allowance for accompanying persons was estimated at €49.7 million — an average of €1,129 per delegate.

20.9 The Memorandum also referred to research conducted in 2001, on behalf of Fáilte Ireland. The research concluded that there was considerable potential for Dublin to grow its potential in the European conference market and, on this basis, recommended a centre with capacity for 2,000 delegates. While it did not include an estimate of the tourism or wider economic benefits arising from an investment of this type, it did note that most such centres were publicly funded.

20.10 The Department of Finance had been consulted in relation to progressing the project to provide a national conference centre. On 5 June 2003, it informed the Department of Tourism,

Culture and Sport (the Department) that in considering the project the Minister for Finance was obliged to have cognisance of the impact on the General Government Balance¹⁵¹. It recommended that if the project were to proceed it must be via a procurement option that would not give rise to significant up front capital costs.

20.11 A Government decision on 23 June 2003 provided approval as sought. As a result, in November 2003 media advertisements were placed seeking expressions of interest. A Project Information Memorandum specified that the centre should comprise

- a main conference auditorium with a minimum seating capacity of 2,000 people and a banqueting hall to cater for 2,000 people
- an exhibition hall of minimum 2,000 square metres and additional adjacent exhibition space of 3,000 square metres
- an appropriate retail centre and parking.

Estimating Costs and Benefits

Two key processes to inform decision makers about the cost of a project are

- the development of a benchmark cost that indicates how much the project would cost if directly provided out of public resources
- an estimation of the wider costs and benefits of the project.

Development of the Public Sector Benchmark

20.12 Before a PPP project could be offered to the market, the contracting authority (OPW) was required to develop a public sector benchmark (PSB). A PSB is a benchmark against which tenders from the private sector are assessed. It is intended to be a comprehensive estimate of whole life cost, inclusive of allowances for risk, of the cost of procuring the services that the private sector is to be invited to tender for through conventional public sector procurement processes. The PSB forms the basis for the value for money (VFM) assessment of the highest-ranking bid.

20.13 In December 2004, private consultants, on behalf of OPW, prepared an estimate of the PSB. The total estimated cost of public provision, including allowances for risk, was €14.4 million in net present value terms (excluding VAT). On 19 January 2005, the Government agreed the affordability cap for the convention centre would be set at the same level as the PSB. Figure 103 outlines the elements of the PSB calculation excluding any residual value that might exist.

¹⁵¹ Where PPP projects involve a sufficient transfer of risk to the PPP company, up-front expenditure by the PPP company does not count for GGB purposes. The subsequent annual unitary charges, however, are reckoned as public expenditure.

Figure 103 PSB - National Convention Centre Project, December 2004

Cost Element (excluding VAT)	Total Cost	Net Present Value ^a
	€m	€m
Land acquisition cost	32	32
Capital costs	206	197
Recurring costs and revenues	<u>139</u>	<u>101</u>
Pre-risk adjustment cost	377	330
Risk quantification	100	84
Benchmark Cost	477	414

Source: OPW

Note:

- a The PSB was compiled using a discount rate of 4.5% to discount all future project cash flows over a 25-year period.

20.14 The PSB included the following components

- **Land acquisition costs** — it estimated the cost of procuring an appropriate four-acre city centre site at €32.1 million.
- **Capital costs** — The PSB included all of the capital costs associated with the construction of a 24,000 square metre building at €20.6 million plus design team fees of €1 million, construction inflation buyout of €31.2 million, furniture and equipment estimated at €8.1 million and insurance and other charges of €6.7 million.
- **Recurring costs and revenue** — it estimated the operating costs such as maintenance, utilities, cleaning, insurance, facilities management, centre marketing and lifecycle costs involved in running the centre at €63.6 million. Revenues were estimated at €62.5 million over the 25 years of the PPP giving a final cost estimate of €101 million.
- **Risk** — it estimated the total costs of risk that would have to be managed at €33.6 million¹⁵². Risks workshops, comprising all key stakeholders, quantified the risk using point estimates, which combine the probability of a risk occurring with an estimate of the cost of that risk. Capital risks were estimated at €42 million and operating risks, including availability and performance risk and operating cost risk, were estimated at €41.6 million.

Inflation rates in relation to operating costs were estimated at 2.5%. All cash flows were discounted using a project specific discount rate of 4.5% as advised by the NDFA.

Estimated Costs

20.15 The cost estimate used for the purpose of cost-benefit analysis was the PSB. Based on the PSB, the estimated cost of providing the centre through traditional public procurement would have been €14.4 million in net present value terms.

20.16 The PSB is designed to be a comprehensive estimate of the cost to the sponsoring agency of procuring the project through conventional means. Since the PSB does not take account of any up-front Exchequer costs that may be associated with the project nor of indirect costs, it would tend to understate the total cost to the State of providing the facility. Indirect costs would include additional costs to the State as a result of the construction of the facility and may include, for

¹⁵² If the contract was awarded to a private partner these risks would be borne by that partner.

example, the cost of new infrastructure required for effective operation of the asset, costs associated with capital and maintenance spending as a result of increased demand on existing infrastructure (e.g. increased road use and waste treatment) as well as costs arising from additional traffic congestion.

Estimated Benefits

20.17 In a separate exercise, consultants employed by Fáilte Ireland and the Department developed estimates of the net economic benefit to the economy using both a 20-year and 25-year horizon and using a number of scenarios in respect of delegate numbers. For the purpose of this report, reference is made only to those estimates relating to a 25-year horizon so that a like for like comparison can be made with the project as proposed.

Basis of Estimate of Benefits

Projected gross tourism revenues were estimated taking account of additional revenues from conference delegates, accompanying visitors and knock-on effects in attracting smaller conferences. A multiplier was applied to this tourism revenue to take account of indirect impacts arising out of expenditure incurred on Irish goods and services.

It was assumed that the tax contribution comprised 36% of the additional revenues with wages and profits making up the balance. These additional revenues were then discounted as follows in order to calculate the economic opportunity cost

- It was assumed that 60% of the additional tax revenues would benefit the economy. The remainder was deducted from the overall benefits.
- It was assumed that only 5% of the wages and profits should be included. This was based on full employment, externalities, including the impact of congestion and infrastructure requirements. It was assumed that these conditions would prevail over the life of the project.

20.18 Using a 25-year horizon, the report estimated net economic benefits at between €170 million and €255 million depending on the number of international delegates the centre would attract. Therefore, from a breakeven cost perspective, taking account of the value of the building at the end of the 25-year period, it was estimated that depending on delegate numbers, between €36 million and €21 million could be spent on the project. After that the costs would outweigh the benefits. The data used to arrive at these breakeven cost figures are set out in Figure 104.

Figure 104 Economic Benefit of National Convention Centre, November 2004

Number of additional visitors	20,000	25,000	30,000
	Net Present Value ^a		
Revenue	€m	€m	€m
Projected gross revenue	683	854	1,025
Economic opportunity cost ^b	513	642	770
Net economic benefits	170	212	255
Terminal value of building ^c	66	66	66
Economic Benefit^d	236	278	321

Source: Consultants report, Estimated Economic Benefits of the Proposed National Conference Centre, November 2004.

Notes:

- a A discount rate of 5% as outlined in Department of Finance guidelines was used to discount cash flows.
- b The economic opportunity cost recognises the benefits foregone by utilising resources on this project. It assumes that if these resources were utilised on an alternative project, a significant proportion of the revenues would still accrue.
- c The terminal value is defined as the anticipated sale or continued use value of any capital items at the end of the project.
- d This is the maximum amount the State could spend on the project before the costs began to exceed the benefits.

Comparison of Cost with Estimated Benefits

20.19 The comparison of costs and benefits was conducted on the basis of relating the estimated net economic benefits with the financial cost as estimated using the PSB. As outlined earlier, the use of the PSB to estimate costs for this purpose was not appropriate.

20.20 Notwithstanding this, the difference between the projected cost and the economic benefits estimated to accrue was highlighted in a briefing note prepared for a meeting between the Minister for Tourism, Culture and Sport, and the Minister for Finance on 9 December 2004. It stated that

- The project represented good value as a stand-alone project when the gross revenues were compared against the PSB. This was based on comparing the gross revenues derived from the consultant's study of €604 million with an adjusted PSB cost¹⁵³ of €493 million. On this basis the project was estimated to create a net benefit of €111 million.
- On the other hand, the results emerging from the November 2004 consultant's analysis was suggesting that if the cost of the centre was much above €200 million in net present value terms it would represent a net economic cost to the economy. The briefing paper concluded that this was mainly due to the conservative estimates of delegate numbers and the writing down of the revenues from the project to take account of the opportunity cost attaching to the allocation of resources. It noted however, that this opportunity cost rationale mirrored the IDA approach to evaluation of large industrial projects.

¹⁵³ The PSB of €414 million was re-calculated using a 20-year horizon and project internal revenues were added back to get a full cost over a 20-year horizon.

20.21 The note went on to say that the Department was of the view that other considerations should be taken into account. These were

- that the Government had made a firm commitment in its Programme for Government to provide a national convention centre
- the Government had agreed in principle to proceed with the project
- the absence of a state of the art conference centre was a barrier to the growth of high value business tourism and might lead to the loss of existing business
- it would be irresponsible to abort the process based solely on the figures in the consultant's report, having signalled to bidders, and the wider tourism market, that tender documentation would be released.

20.22 It also stated that if the process was halted it was likely that one or more of the bidders¹⁵⁴ would seek compensation through the Courts. The Process Auditor also strongly advised releasing the tender documentation.

20.23 Approval was sought to release the tender documentation on 10 December 2004 on the basis that the PSB had been widely researched by independent financial advisors and it would serve as an appropriate comparator against which to measure the responses of those invited to tender. The tender documentation was released on that date.

20.24 The Department noted that the Government also took cognisance of the wider economic and social benefits that would derive from the project. The Memorandum for Government of 14 November 2005 noted

- The cost-benefit analysis of the project demonstrated an economic loss of the order of €66 million to €17 million – the net present value of the costs outweighed the benefits by this amount.
- Notwithstanding this, the Minister considered that the process should proceed to the next stage given his view that the development of a National Conference Centre represented an essential component of modern, international tourism infrastructure and an important addition to the civic landscape of the country's capital city.

20.25 In relation to the decision to proceed with the project, despite the apparent excess of cost over projected benefits

- The Department and the Department of Finance drew attention to the fact that nothing in either the capital appraisal or PPP guidelines should be taken as precluding Government or Ministers from deciding in the national interest to approve projects independent of the application of the guidelines.
- The Department of Finance also noted that both the capital appraisal and PPP guidance are intended to assist Ministers and their officials in carrying out their responsibilities and functions in regard to project appraisal, approval, procurement and audit. Programme evaluation and project appraisal are aids to inform decision-making and do not constitute final decisions in themselves. Nothing in the guidelines should, therefore, be taken as precluding Government or Ministers from deciding, in the national interest, to approve projects outside of these guidelines.

¹⁵⁴ Three short-listed consortia had been invited to tender but tender documentation had not been released.

Tender Evaluation

The effective evaluation of proposals is a key prerequisite to value achievement.

20.26 The project Steering Group approved the placing of advertisements seeking expressions of interest, based on the OPW's Project Information Memorandum, for the provision of the centre on a DBFOM basis with a lease (or other arrangement) to be executed upon satisfactory completion of the development. Proposals were received from four candidates.

20.27 Three of the four were short-listed for tendering on the basis of criteria set out in the Project Information Memorandum. One tenderer, subsequently, withdrew from the competition and tenders were received from the remaining two consortia.

20.28 EU procurement law allows for communication with bidders and potential bidders. During this communication phase, a bidder proposed that instead of spreading capital costs evenly over the life of the project, better value could be provided if these costs were recouped through an increased unitary payment in the earlier years.

20.29 Each tenderer submitted three bids - one base bid to reflect all the requirements as set out in the invitation to negotiate and two variant bids, one to include the payment of €100 million towards capital cost over the first five years. The NDFA, and private consultants working for the State, agreed that up-front payments to cover capital costs would allow the bidders to submit proposals resulting in lower overall costs to the State when measured in net present value terms. This is mainly due to lower financing costs for the bidder as a result of certainty of income in relation to the first five years of operation.

20.30 One bid was found to be non-compliant¹⁵⁵. The remaining five tenders were evaluated in August 2005.

Overall Tender Evaluation

20.31 In November 2004, the Steering Group decided the breakdown of marks for the individual evaluation criteria. The proposed marking system was set out in an invitation to negotiate issued in December 2004. Tenders were received in May 2005 and marks were awarded to each proposal in relation to each of the four criteria. The results are set out in Figure 105.

¹⁵⁵ The bid was deemed non compliant as it did not comply with the requirements of the invitation to negotiate.

Figure 105 Tender Evaluation Results^a

Evaluation Element	Maximum Marks	Bidder A		Bidder B		
		Base Tender	Variation 1	Base Tender	Variation 1	Variation 2
Design and Construction	40	29.60	29.60	21.20	21.20	21.20
Operation and Maintenance	30	19.80	19.80	14.40	14.40	14.40
Financial	20	8.15	11.39	17.00	18.00	19.00
Legal	10	7.2	7.2	8.23	8.23	8.22
Overall marks awarded	100	64.75	67.99	60.83	61.83	62.82
Cost (NPV)		€402.2m	€390.5m	€223.8m	€207.8m	€203.5m

Source: Comptroller and Auditor General analysis of tender evaluation

Note:

a Bidder A's Variant 1 was the winning tender.

20.32 Bidder A's proposal (Variant 1) scored highest overall and under individual evaluation criteria scored higher in design and construction and in operation and maintenance but lower on financial criteria than those submitted by Bidder B.

20.33 The design and construction element of each proposal was evaluated by reference to the impact, quality and functionality of the buildings proposed. The evaluation team awarded higher marks to Bidder A's tender, in particular based on its assessment of the quality of the building proposed and its impact.

20.34 The operation and maintenance element of proposals was ranked by reference to four criteria and included services, operability, management, as well as market positioning and impact. The evaluation team awarded higher marks to Bidder A's proposal deeming that it had placed emphasis on international conferences, had a good marketing plan and clearly defined organisation and management structures.

Financial Evaluation of Proposals

20.35 The Steering Group agreed the allocation of 20% of overall marks to the financial elements of the bid. In a meeting of the Steering Group in 2004, the Department of Finance had concerns when the financial criteria weighting was lowered from 25% to 20%, and the design and construction weighting increased to 40%. The NDFA, which was represented at the meeting, expressed a view that any weaknesses in the design/technical and operation and maintenance elements would ultimately impact on the financial sustainability over the long-term. The Chairman, noting, in particular, NDFA's comments in this regard concluded that the evaluation weightings as proposed were acceptable.

20.36 In relation to the weightings allocated in the assessment of bids, the NDFA commented that its advice regarding tender evaluation criteria is based on the priorities identified for each project and that cost may, depending on the type of project, feature to a greater or lesser degree. It noted that, for example, cost was awarded a higher percentage of marks in the evaluation of tenders for

the provision of schools through PPP than for the convention centre as it is understood that the building of schools is a more straightforward project than building a convention centre.

20.37 Within the financial criterion, 13 of the 20 marks allocated were assigned to an assessment of the cost of the deal. Most of the remainder were awarded based on evaluating the revenue sharing mechanism proposed and the financial robustness of the deal. Figure 106 sets out the scoring of the individual bids under financial criteria.

Figure 106 Tender Evaluation Results — Financial Criteria^a

		<u>Bidder A</u>		<u>Bidder B</u>		
		Base Tender	Variant 1	Base Tender	Variant 1	Variant 2
Cost (NPV)		€402.2m	€390.5m	€223.8m	€207.8m	€203.5m
Evaluation Element	Marks available					
Unitary charge	13	6.15	9.39	13.00	13.00	13.00
Revenue share	3	0	0	1.0	2.0	3.0
Financial robustness	2	2.0	2.0	2.0	2.0	2.0
Agreement on equity IRR ^b as discount rate for compensation on termination	1	0.0	0.0	1.0	1.0	1.0
Agreement on junior debt refinancing	1	0.0	0.0	0.0	0.0	0.0
Total	20	8.15	11.39	17.00	18.00	19.00

Source: FGS, NDFA, Financial Assessment Report, Aug 2005.

Notes:

a Bidder A's Variant 1 was the winning tender.

b Internal Rate of Return.

20.38 The differential in price between the two tenderers was significant. The bids received from one tenderer ranged from €200 million to €220 million. The bids received from the other tenderer were in the range €390 million to €400 million. The main difference was associated with the operational and marketing cost components of the bids¹⁵⁶. The unsuccessful tenderer made substantially lower cost estimates in this area. The capital costs of the bids were broadly similar.

20.39 In relation to the divergence in the cost of the proposals

- The Department of Finance noted that under the PPP guidelines, each sponsoring agency must draw up a detailed output specification, which is issued with the tender invitation. This should guide tenderers in the preparation of bids.
- OPW noted that both pre-qualified bidders were issued with comprehensive tender documentation. It stated that the wide divergence in the cost of the proposals could be attributed to commercial decisions by the respective bidders.

¹⁵⁶

Net of revenue streams.

20.40 The cheapest bid received from the unsuccessful tenderer cost some €187 million less than the successful bid. Due to the assessment weighting used and despite the large cost differential it only received an additional 3.6 marks (out of a total of 13 marks available) in the evaluation of cost.

20.41 The costs of the proposed bids were assessed not relative to each other but by comparison with a level of 90% of the PSB unitary costs. However, in making this assessment, bids costing 90%, or less, of the PSB estimate were awarded full marks irrespective of how much cheaper than the 90% they were. This had the effect of awarding relatively high marks to proposals that were much more costly in absolute terms.

Comparison – Criminal Courts Complex

The financial assessment of the PPP project in relation to the Criminal Courts Complex^a differed in two ways from that utilised in the assessment of the tenders in this project.

- A total of 30% of the overall marks were allocated to financial criteria as compared to 20% for the convention centre. 27% of the overall marks were based on the cost of the bids as compared with 13% in relation to the convention centre.
- The assessment of the cost of the bids in relation to the Criminal Courts Complex compared the cost of the bids relative to each other rather than by reference to the cost as identified in the PSB. The cheapest bid was awarded the full 27% and other bids were awarded marks by reference to their distance from the cheapest bid on the following basis

$$\text{Score} = (1-A)*27$$

Where A = (Tender NPV – NPV of lowest proposal)/(NPV of highest proposal)

Note:

- a Three tenders were received in February 2006 in relation to the project to design, build and operate the Criminal Courts of Justice complex. The contract was awarded in April 2007. A full report on an examination of this project is included in Chapter 17 of the 2008 Annual Report.

20.42 The allocation of marks to the individual evaluation elements, together with the methodology used to assess the cost of bids has a significant effect on the overall ranking of bids. In this project, 20% of the overall marks were allocated to the assessment of the financial element of the bids and in awarding marks based on cost; bids were compared to the PSB as opposed to each other. The outcome is very much dependent upon the evaluation weighting system which it is acknowledged was set in advance.

20.43 In regard to the evaluation marking scheme, OPW noted that the aim of any marking scheme is to deliver the best project outcome while seeking to balance the various components and objectives of the project within the project cost ceiling. It stated that in compiling the PSB, the significance of the cost of operating and maintaining the centre over the 25-year concession period became evident. It went on to say that the knowledge garnered from this exercise together with the experience of all members of the Project Team was instrumental in compiling the marking scheme. It stated that the Project Team gave consideration to the important elements of the project which needed to be evaluated and the marking scheme devised accurately reflected the unique aspects of the project.

Selection of Preferred Tenderer

The preferred tenderer is selected on the basis of presenting the most economically advantageous bid, as long as the cost of the bid is less than the PSB.

20.44 The PSB is developed prior to the evaluation of tenders. It is used as a reference cost for assessing the value of deals proposed. Since the cost of all tenders were lower than the PSB, the tender with the highest score was selected as a provisional preferred tender. In November 2005, the Government decided to appoint SDICC¹⁵⁷ as provisional preferred tenderer and OPW, subsequently, entered into negotiations with a view to completing a contract.

20.45 A memorandum on 31 July 2006 to Government noted the designation of SDCCD as the preferred tender.

Negotiating the Final Deal

20.46 Negotiations with the provisional preferred tenderer took place between November 2005 and August 2006. Two main issues arose in the negotiations before the provisional preferred tenderer or SDCCD, was designated the preferred tenderer. These related to

- title to the site
- the responsibility for rates.

Site Title

20.47 The invitation to negotiate documents specified a site with a free and unencumbered title. The winning bidder's site was owned by CIE with SDCCD having a master development agreement on it. There followed a period of prolonged negotiations to resolve the matter. The winning bidder secured a 500-year lease on the site that allowed it to meet the requirements of the invitation to negotiate.

Rates

20.48 The invitation to negotiate specified that any rates arising were payable by the PPP Company (SDCCD). Although they had no grounds for doing so, SDCCD assumed for the purposes of their bid, that the convention centre would not be rateable.

20.49 The negotiated solution established that the rates liability would be paid from any excess revenue generated by the convention centre above the projected revenues for each year as outlined in the contract and, in the event that there were insufficient funds in the revenue share pool¹⁵⁸, the State would pay the shortfall in the rates bill up to an aggregate maximum of €8 million in net present value terms. Should the rates liabilities exceed that level, then SDCCD would pay rates liabilities between €8 million and €13 million over the operating period. The State is liable for rates in excess of €13 million¹⁵⁹.

¹⁵⁷ Spencer Dock International Conference Centre Ltd (SDICC) later changed to Spencer Dock Convention Centre Dublin (SDCCD).

¹⁵⁸ The revenue share pool is the excess over projected revenues anticipated in the contract.

¹⁵⁹ All figures are in net present value terms.

20.50 The NDFA produced a report analysing the risk of rates movements, based on estimates from the Valuation Office. It concluded that the convention centre's annual rates are likely to be in the region of €1.5 million. Its assessment was that in all probability the States' rates liabilities would not exceed €1.5 million per annum.

The Final Value for Money Test

Prior to signing the final contract, the PSB is updated to reflect changes that have occurred during the negotiation stage. These include any change in the contract terms and changes in interest rate(s) and/or the discount rate used.

The revised PSB is compared against the cost of the final negotiated deal to ensure the PPP project still represents better value for money than traditional procurement.

20.51 At the final stage, the project was estimated to cost €116 million. The comparable PSB was €22 million. The updated calculations included inflation, extension of construction phase, the inclusion of rates costs and the discount rate decreasing from 4.5% to 4.2%.

20.52 The final Process Auditor report confirmed, inter alia, adherence to national and EU tendering and procurement guidelines and, that the process was open and transparent and that the proper levels of fairness and impartiality were observed. The Process Auditor also confirmed that the necessary financial robustness tests for the project were carried out and, the proposals as finally agreed gave value for money against the PSB. The NDFA advised that the cost of the contract could be up to €22 million in net present value terms and represent value for money by comparison with the PSB.

20.53 The Government agreed on 6 February 2007 that the contract should be awarded to SDCCD subject to the cost to the exchequer not exceeding €22 million in net present value terms.

The Final Contract

The final contract with the PPP Company needs to ensure that the company is incentivised to deliver the service as specified. This is achieved through pre-determined key performance indicators (KPI) with appropriate penalties in the case of underperformance.

20.54 The winning bid provides for a unitary payment of €7.3 million for the first five years of the contract, reducing to €3 million for the remaining 20 years of the contract. The contract also provides for additional payments of €20 million in the first 5 years of operation (10% of the unitary charge is index linked).

20.55 Deductions are provided for when predefined KPI are not achieved in relation to convention centre availability, performance and the number of international delegates visiting the centre. According to the level of under performance, deductions from the unitary charge are made in the following year, using an agreed formula, spread evenly over the 12 months.

20.56 Availability will be assessed by reference to agreed standards. Core functions within the convention centre are weighted according to importance. Failure to achieve the required standard will result in a deduction. The frequency and duration of failures will also impact on the level of deduction applied which could in extreme cases be up to 80% of the annual unitary charge.

20.57 Performance is assessed against 11 weighted service areas including health and safety, catering and customer service. Performance deductions apply when services have not been provided in accordance with contract specifications. The contract provides for deductions of up to 10% of the base unitary charge in the first five years of the contract, increasing to 15% thereafter.

20.58 International conference delegates are defined as residents from outside the Republic of Ireland. Failure to attract the requisite number of international conference delegates annually will result in a graduated payment deduction.

20.59 The first five years are perceived to be 'ramp-up years' as the convention centre builds its brand and market position and this is reflected in the international delegate thresholds for those years. No penalties will be imposed if international delegate numbers in the first year exceed 4,660. This threshold increases to 12,140 in the fourth year. The contract provides for penalties of between 0.6% and 3% of the annual unitary charge where delegate numbers fall below this threshold.

20.60 The threshold increases in the fifth year with a graduated system of penalties being applied in situations where the delegate numbers are below 34,140. Penalties of up to 5% of the annual unitary charge can be applied.

20.61 In addition, a five year rolling window will apply to delegate numbers. In the event that SDCCD defaults consecutively over a five year period it will represent an 'event default' of the entire contract.

20.62 In the event of SDCCD defaulting on the contract the senior debt holders (the banks) are responsible for the running of the convention centre on behalf of the State.

Profit Sharing Arrangements

20.63 Under the contract the State is entitled to a share of certain profits. Revenues above specific thresholds will be used to discharge the rates liability. The remaining revenues in the revenue share pool are split 45% - 55% between the State and SDCCD. The threshold in the first year is set at €6 million. It rises gradually from the fourth year until the end of the contract when a threshold of €10 million is applied.

20.64 It is projected that, over the life of the contract, the State will receive revenue share payments of €9.5 million in net present value terms.

Monitoring and Supervision of Construction

20.65 Construction of the centre commenced immediately following the awarding of the contract. OPW ensured compliance with the output specification by reviewing technical information submitted by SDCCD on a fortnightly basis. Design Certificates were submitted to OPW for approval and OPW stated that, to date, 208 such Design Certificates have been approved.

Commissioning and Handover Requirements

20.66 On completion of the building, OPW assisted by technical advisors, ensure that the building as constructed complies with the output specification. This process was completed on 5 August 2010. One yet to be resolved issue relates to sewerage facilities for the overall area. A need to increase wastewater capacity has been identified. However, OPW have informed me that the planning conditions attached to the centre did not require SDCCD to build a pumping station.

Such a development is a matter for the Spencer Dock Development Company¹⁶⁰, Dublin City Council and the Dublin Docklands Development Authority.

20.67 OPW outlined the current status of the pumping station as follows

- The pumping station has planning consent from the Dublin Docklands Development Authority, which is currently carrying out due diligence on a compliance issue attached to the planning consent.
- A Development Agreement is in place between Dublin City Council and Spencer Dock Development Company regarding the pumping station.
- Construction of the facility will take about 16 months.
- Dublin City Council is prepared to permit a further extension of the discharge licence for the convention centre during the construction of the pumping station.

Contract Monitoring and Handover

20.68 The OPW will be the primary State body responsible for convention centre performance monitoring and contract compliance. The OPW have sub-contracted a private sector firm to undertake contract monitoring and evaluation on behalf of the State. This contract currently covers a 36-month period and will cost the State about €85,000 per annum.

Performance Monitoring

20.69 The three key measures of performance are

- availability
- service performance
- the number of international delegates.

20.70 In relation to availability, the conference centre is broken down into key areas and these areas are weighted according to importance, for example the auditorium and exhibition space each have a 16% weighting. Unavailability of any area has to be logged and forwarded to the OPW. The duration and frequency of unavailability impacts on the unitary charge deduction.

20.71 In relation to service performance, it is assessed under headings such as cleaning, general services management and waste management. SDCCD are obliged to promptly inform the OPW if it becomes aware of underperformance in any area and the OPW can carry out inspections at any time to ensure contract compliance. A unitary charge deduction is applied for failure to adhere to the standards as set out in the contract.

20.72 In relation to the number of delegates, on 31 January in each calendar year, SDCCD must submit a booking report to the OPW specifying details of events held in the previous year. The booking report forms the basis for performance evaluation. Fáilte Ireland will also receive the booking report to determine which delegates properly constitute actual international conference delegates.

¹⁶⁰ The Spencer Dock Development Company is involved in the redevelopment of the wider Spencer Dock area. This includes the construction of the convention centre itself and proposed development of a hotel, office, residential and retail property.

20.73 The State have right of access to the convention centre in order to complete audits and verify the accuracy of accounts, charges and claims. The State may undertake its own performance monitoring (consistent with good industry practice) at any stage during the contract in order to ensure that the operations are being conducted in accordance with the contract between SDCCD and the State.

Handover Requirements

20.74 The major structural elements of the convention centre are expected to have a life expectancy of 75 years beyond contract completion. On contract completion SDCCD are required to hand back the convention centre in a condition that will enable the State to continue to use it after the 25-year contract has expired. Account will be taken of maintenance and purchasing records in determining the residual life of the principal elements.

Conclusion

In December 2004, a PSB was developed which estimated the cost of the convention centre at €14 million in net present value terms and in January 2005, the Government set the affordability cap at the level of the PSB. Around the same time, consultants were employed to conduct economic analysis and they estimated the economic benefits at €36 million in net present value terms.

Comparing the benefits against cost, as measured by the PSB, showed that while the project revenues would be positive, after taking account of all the economic factors, the State would be likely to have to invest more than the economic benefit of the project to the economy.

Taking account of all the available information the Government decided that the project should be offered to the market and the PSB would be used to assess the cost of the proposed bids.

Two consortia tendered for the contract to provide the national convention centre. A number of variants were proposed. Two bids provided by one of the consortia were for approximately €400 million, in net present value terms, as compared with bids in the region of €200 million to €220 million by the other bidder. While the capital costs of the bids were broadly similar, both bidders had made significantly differing estimates of the costs associated with operating and maintaining the centre.

One of the bids from the consortium with the most expensive proposal was ultimately selected. Its selection was based on higher marks awarded in relation to design, construction, operation and maintenance which more than compensated for lower marks awarded in relation to financial criteria.

The wide divergence in bids in relation to the proposals for this project would seem to suggest either a lack of clarity (on the part of the bidders) in relation to what was required or a wide divergence in the cost assumptions underpinning the respective proposals.

In order to facilitate bidders in proposing a cost-effective solution there may be merit in making the value of the PSB known to the bidders, in appropriate cases. This is done in some jurisdictions and is decided on a case-by-case basis. The publication of the PSB, in appropriate cases, could give greater clarity about the scope of the project allowing tenderers to balance the quality of their offerings with an effective State affordability limit. At the assessment stage, it would also allow for deeper consideration of the value of what was offered in proposals. In the event, in this case, the selected option was close to the affordability limit.

The Department of Finance commented that a decision to release the PSB would represent a significant departure from current guidance in relation to PPPs. It noted that the main risk in revealing the amount that the State is willing to pay is that it may give tenderers an opportunity to increase their asking price above what they might otherwise seek. The Department went on to say that it plans to consult further on this issue with the NDFA and will seek to learn from the experience in other jurisdictions.

The evaluation of tenders in PPP projects combines an assessment of a range of criteria in order to arrive at a composite score. Financial factors accounted for only 20% of the available marks in this case and within this component, the cost of the bid accounted for 13% of the overall marks.

Despite the fact that it was almost double the cost of some of the other bids available, the winning bid ultimately selected secured 72% of the available marks in the financial component.

The current methodology used to evaluate tenders combines cost and other criteria in order to arrive at a combined score. There could be merit in evaluating bids, initially on the basis of non-financial criteria. Thereafter, bids that satisfy the minimum output requirements could be evaluated on a compare and contrast basis, weighing the relative cost of additional benefits proposed in the more expensive bids.

The Department of Finance noted that it has not, to date, issued guidance relating to how individual tenders should be evaluated and stated that the possible implications of issuing specific guidance on tender evaluation would have to be considered in detail by the relevant authorities, particularly taking account of EU procurement law.

The final contract concluded with SDCCD, provides for payments of about €47 million per annum for the first five years reducing to €23 million per annum for a further 20 years.

The total outflows over the life of the project are estimated at €725 million after allowing for projected inflation. VAT of €29 million was payable in 2010 in respect of construction costs. In net present value terms, the contract as finalised, is estimated to cost the State €416 million over its life. The comparable PSB — the cost of procuring the project by conventional means was €22 million.

The State succeeded in maintaining reasonable competitive tension during negotiations with SDCCD. It assumed responsibility for a proportion of the rates payments which could cost up to €1.5 million per annum, but also succeeded in altering the level at which reduced unitary payments would apply. This will have the effect that the full unitary payment will only be made if higher international delegate throughput is achieved. Annual targets are now set at 4,660 delegates in the first year rising to 34,140 delegates in the fifth year.

Up to 5% of the unitary payment can be deducted if the required delegate numbers are not secured. A cumulative penalty rate of 15% over five years would represent a default on the entire contract.

The contract incentivises performance since penalties of up to 80% of the annual unitary payment can be imposed for non-availability, with further provisions to ensure performance across a range of areas including health and safety and customer service.

A comprehensive system of performance monitoring has been devised to assess performance across the three key areas — availability, performance and delegate numbers. In addition, the contract provides for increased penalties where non-performance in any area is not reported by SDCCD and is discovered by OPW (who are managing the contract).

Chapter 21

Office of Public Works

Decentralisation