



An Roinn Airgeadais
Department of Finance

PAC-R-25

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Ms Eimear Lavelle
Committee of Public Accounts
Leinster House
Dublin 2



Re: Review of the Purchase of the FÁS site in Birr, etc

Dear Ms Lavelle

I refer to your letter of 8th December 2010 regarding property matters relating to the decentralisation of FÁS to Birr raised at the meeting of the Committee on Thursday 2nd December 2010. The Committee asked this Department to co-ordinate with the D/Education & Skills; D/Jobs, Enterprise & Innovation and the OPW a review of:

- (i) the purchase of the site for the decentralised FÁS office in Birr
- (ii) the lease and fit out of the temporary FÁS office.

My Department has liaised and consulted with the relevant Departments and the OPW. The Department of Education and Skills has, in turn, liaised with FÁS. This Department's own files were also examined. The outcome of this review is outlined below and constitutes an agreed response from the Departments concerned.

(i) Purchase of Birr Site

During the early stage of the decentralisation process the OPW were involved in the search for suitable sites for all of the 52 decentralisation projects announced in the Budget, including the new FÁS HQ in Birr. It subsequently emerged that some agencies, like FÁS would be sourcing their own accommodation. Unlike Government Departments whose accommodation is generally provided by the OPW, such organisations would have a clear statutory power to acquire and hold property for their own use and the necessary management capacity to do so. The OPW remained tasked with the provision of accommodation for the vast majority of the proposed decentralisation projects which it was envisaged (at that stage) would involve some ten thousand civil and public service staff at almost 50 locations in twenty-five counties (by any definition a complex and demanding exercise).



The circumstances leading to the acquisition of the site for the FÁS headquarters were outlined in Mr O'Toole's letter to you of 21 December 2010. The Board of FÁS approved the purchase (subject, inter alia, the necessary funding being forthcoming) at €275,000 per acre on 3rd February 2005. From records provided by FÁS, the property advisers retained by FÁS (HOK) originally placed a value of €140,000 per acre on the property on the basis that it was to be used for offices, did not have such planning permission, and would be surrounded by social and affordable housing. However, they later revised the valuation upwards to €300,000 per acre based on the original planning permission for 256 residential units which pertained at the time. HOK advised FÁS that they would have to pay close to €300,000 per acre if they wished to acquire the property.

FAS sought the views of the OPW in relation to the purchase price of the Birr site. The OPW wrote to FÁS on 17th February 2005 confirming that the cost of €275,000 per acre negotiated for the site was well within the range of values that they were encountering as part of the decentralisation programme. The OPW also confirmed that they had no reason to question the advice of the consultants engaged by FÁS in this matter and they repeated their view on the professionalism of the various consultants engaged by FÁS on the project. Other than giving their view on price, the OPW had no involvement in the acquisition of the site in Birr.

The sanction of the Department of Finance was sought and received by the then parent Department of Enterprise, Trade and Employment and subsequently conveyed to FÁS.

The C&AG employed property consultants (Lisney) to identify benchmark costs for property in order to facilitate his Office in evaluating the extent of value for money achieved by bodies purchasing property during this period. The cost per acre for the Birr site was less than the upper benchmark level provided by these property consultants.

On the basis of the above and the supporting documentation provided by FÁS it appears that FÁS acted on best advice available at the time in the purchase of this site.

(ii) Lease and fit out of temporary FÁS office in Birr

At the time there was a policy to encourage Departments and Agencies that were due to decentralise to establish advance offices in order to get people decentralised, to minimise the disruption on the final transfer and to encourage further people to volunteer to decentralise. FÁS proceeded on this basis and leased a building which needed to be configured as office space.

The professional team, retained by FÁS, involved in that project included: Ganly Waters (Property Advisors), Murray O'Laoire (Architects-Lead), White Young Green/PH McCarthy (Engineers), Wm Fry (Legal) and Molloy (Quantity Surveyor). The office accommodation available in Birr was very limited and the Birr Technology Park was chosen as it was the only suitable premises in the vicinity. Ganly Waters (property consultants) inspected this property and stated "*As mentioned in previous correspondence the rent of €13 per square foot is a very modest rent for a building*

of this quality and I would have no hesitation in recommending it to the Board of FÁS”.

In relation to the fit-out cost, Molloy QS drew up a detailed cost plan in conjunction with the other consultants. This cost plan came out at €1,090,293 (excl Vat) compared to the tender sum of €1,187,274. However, the final account on a like for like basis was €994,224.

FÁS took occupation of approximately half the space in this development. The landlord’s contractor was already on site. The decision in relation to the Agreement to Develop and Lease was negotiated between both parties (Landlord and Tenant). With the imperative to deliver the policy objective of establishing a presence in Birr as soon as possible it was a matter for FÁS to consider the balance of advantage between availing of a contractor already on site or seeking to arrange for an alternative contractor. The QS did state that having only one tender could have a possible negative effect on the competitiveness of the tender submitted. However, he also stated that the tender compared favourably with the cost plan sum and the final account was under the cost plan sum.

The C&AG reported, in his annual report, that the cost of the lease was 77% higher than the upper benchmark for leased offices in that area as reported by property consultants employed by his office (Lisney Auctioneers). This values the cost of the lease at €200,000 per annum based on €99,000 annual rental plus amortising the fit out over a 10 year period. FÁS dispute this claim on the basis that the Comptroller was comparing the cost of a fully fitted office (FÁS Birr) with the cost of a shell and core office (Lisney Auctioneers). The OPW also contested the inclusion of fit-out costs in calculating the real rental costs of such properties (page 296 of the C&AG Report on Accounts of the Public Services 2009).

The basic principle in awarding public contracts is that a competitive tendering process should be used as this generally achieves best market value for public money. However, the procurement rules recognise that there can be exceptional circumstances in which competitive tendering would not necessarily result in this outcome. Exceptions should be strictly interpreted and it is a matter for the contracting authority to justify and defend, where necessary, the appropriateness of the procedures they adopt. Guidance for works, supplies and service contracts is updated and supplemented from time to time but the general principle of tendering, or non-tendering in exceptional circumstances, does not change. In a situation such as that pertaining in this case with a contractor on site it was for FÁS to make a judgment call as to whether a competitive process might have forced the contractor in situ to be more competitive and / or if it would be considered VFM to get an alternative contractor bearing in mind mobilisation costs and the additional time and resources involved in conducting a competitive process.

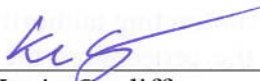
FÁS stated that it conformed to Public Procurement Guidelines whereby the Competitive Process followed was Direct Invitation (without advertising). In effect there was no other suitable accommodation in the area and this was treated as a sole supplier situation. However, while FÁS did not pursue an open tender process in the acquisition of the lease or the fit-out of the temporary accommodation in Birr, it

appears from the information obtained from FÁS and the facts as outlined above that FÁS was acting on best advice and the approach taken FÁS was not unreasonable for the following reasons:

- FÁS sought advice from a number of professional bodies with expertise in this area for the lease and fit-out of the temporary accommodation;
- The property consultants retained by FÁS concluded that the rent of €13 per square foot was a very modest rent for a building of this quality;
- There was no other suitable accommodation in the area and this was treated as a sole supplier situation;
- FÁS appear to have applied a structured approach to the fit-out tender in that they retained a Quantity Surveyor to evaluate the tender and the tender price was roughly in line with the QS cost plan;
- The final cost was approximately €190,000 less than the tender sum;
- At that point in time there was a high demand for builders and the likelihood is that it would have been difficult to get a suitable builder on site in a reasonable length of time.

I would like to reiterate that the role of the Department of Finance in relation to public procurement and public expenditure generally was outlined by my predecessor Mr David Doyle in his letter of 8 May 2009 to Mr McEnery. As indicated in that letter, any level of non-compliance with public procurement rules and guidelines would be of concern to my Department, but it is not within its capacity to monitor and ensure full compliance at operational level across the entire public service – this is a matter for the parties in the systems of accountability, audit and reporting also referred to in that letter.

Yours sincerely



Kevin Cardiff
Secretary General