

PAC-R-172



**Correspondence 3.3  
Meeting – 01/12/2011**

Ref. No. F7/01/11

23 November 2011



To Accounting Officers

**Circular 11/11: Minute of the Minister for Public Expenditure and Reform in response to the Committee of Public Accounts' Third Interim Report on the procurement of legal services by public bodies**

A Dhuine Uasail,

1. I am directed by the Minister for Public Expenditure and Reform to enclose, for your information and guidance, a copy of the Minute of the Minister for Public Expenditure and Reform in response to the Committee of Public Accounts Third Interim Report on Procurement of Legal Services by Public Bodies.

**2. Enquiries**

Enquiries with regard to this circular can be addressed to Government Accounting Unit, Department of Public Expenditure and Reform, telephone: +353 1 6767571, LoCall: 1890 661010 or email: govacc@per.gov.ie

Mise le meas,

Mr. Robert Watt  
Secretary General  
Department of Public Expenditure

**Minute of the Minister for Public Expenditure and Reform for the  
Committee of Public Accounts in response to the Third Interim Report on the  
Procurement of Legal Services by Public Bodies**

The Minister for Public Expenditure and Reform has examined the Committee's Report and has taken account of its conclusions. In relation to the Committee's recommendations, his response is as follows:

***Recommendation No. 1:***

***Competitive tendering should be made mandatory for the procurement of solicitors' and barristers' services by the State, so that a greater number of legal service providers have the opportunity to compete for work. This will lead to better service and better value for money for all State and public bodies.***

The Minister for Public Expenditure and Reform agrees with this recommendation.

The Minister would like to draw the attention of the Committee to the fact that legal services are in a category of services not subject to the full scope of EU Directives on public procurement. However, national guidelines do not make a distinction between categories of services and the public procurement rules of a competitive process being the norm apply to all.

The Minister understands that the National Procurement Service, as part of its education and development role has emphasised to procurement officials throughout the public service the need to correctly address the issue of the procurement of legal services. At a conference of officials in Dublin Castle on 14 April 2011 legal advisors spoke to officials on the requirements regarding the procurement of legal services under the EU Directives.

***Recommendation No. 2:***

***The Department of Public Expenditure and Reform should issue a Circular to all Departments and Accounting Officers requiring that all State and public bodies comply with its guidelines when procuring legal services from private practitioners.***

The Minister for Public Expenditure and Reform notes this recommendation.

It is recognised that many public authorities already tender for legal services. However, to re-iterate that legal services are not an exception to the rules, the Department of Public Expenditure and Reform will issue a Circular outlining that advertising and public tendering should be the norm. The Circular will issue by end of 2011 [following

consultation with the Attorney General's Office, the Chief State Solicitor's Office and the National Procurement Service].

***Recommendation No. 3:***

*The taxation of costs system should be overhauled or replaced so that legal professionals and consumers of legal services have, available to them, clear guidance on current market rates for such services.*

The Minister for Public Expenditure and Reform notes this recommendation.

The Minister wishes to draw the attention of the Committee to the fact that the recommendation made has been encompassed in the proposed Legal Services Regulation Bill, recently published by the Minister for Justice and Law Reform.

***Recommendation No. 4:***

*All State and public bodies must ensure that own and third-party costs for all legal proceedings relating to future tribunals and commissions are decided in advance either by negotiation or through using the court rules for the exchange of detailed fee estimates.*

The Minister for Public Expenditure and Reform accepts this recommendation.

The Minister proposes to issue a direction to State and Public Bodies accordingly.

***Recommendation No. 5:***

*The legislation underpinning tribunals needs to be reformed along the lines proposed in the Tribunal of Inquiry Bill, 2005.*

The Minister for Public Expenditure and Reform accepts this recommendation.

The Minister wishes to draw the attention of the Committee to the fact that the Minister for Justice and Equality has re-introduced the Tribunal of Inquiry Bill, 2005 into the Oireachtas.

***Recommendation No. 6:***

***Restrictive customs and practices in two legal professions which lead to higher legal fees should be challenged and removed and should not be tolerated any longer by the State.***

The Minister for Public Expenditure and Reform notes this recommendation.

The Minister is informed that changes in the structure of the two legal professions, with a view to increasing competition in the legal services area, are proposed in the Legal Services Regulation Bill. This Bill was recently published by the Minister for Justice and Law Reform.

***Recommendation No. 7:***

***The Accounts of all State and Public Bodies should provide the total amount spent on legal services.***

The Minister of Public Expenditure and Reform notes this recommendation.

The Minister would like to advise the Committee that, as provided for in the Programme for Government, developments are underway for Government Departments and Agencies to publish purchase order information in relation to goods and services. The Committee's recommendation will be included in the consideration of groupings under which the information will be categorised.

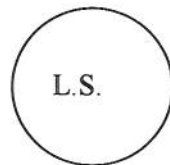
***Recommendation No. 8:***

***Accounting Officers should ensure, unless there are valid reasons to the contrary which should be clearly recorded in writing at the time for audit purposes, that value for money is paramount in the procurement of legal services.***

The Minister for Public Expenditure and Reform accepts this recommendation.

Current public procurement guidelines require that reasons for procedures adopted, including procedures where a competitive process is not deemed appropriate, should be clearly recorded and show a verifiable audit trail. This will be re-iterated in the Circular referred to under Recommendation 2. In the central Government sector, Accounting Officers are required to confirm in an annual report to the C&AG that for all procurements, appropriate procedures were followed, that contract prices were fair and reasonable and represented best value for money.

Given under the Official Seal of  
the Minister for Public Expenditure  
and Reform on this the  
day of November , 2011



Robert Watt  
Secretary General  
Department of Public Expenditure  
and Reform