



PAC-R-938

Correspondence 3B.1  
Meeting 85 – 23/05/2013



AN ROINN OIDEACHAIS AGUS SCILEANNA  
DEPARTMENT OF EDUCATION AND SKILLS

**Oifig an Ard-Rúnaí**  
An Roinn Oideachais agus Scileanna

**Office of the Secretary General**  
Department of Education and Skills

Ms. Niamh Maguire  
Committee Secretariat  
Committee of Public Accounts  
Leinster House  
Dublin 2

Ref No: S1310134  
PLEASE QUOTE REFERENCE NUMBER ON ALL CORRESPONDENCE



13 May 2013

Dear Ms Maguire,

I refer to my letter of 14<sup>th</sup> March 2013 in which I undertook to provide information relating to the costs to VECs of legal services, including details of procurement.

With regard to procurement matters generally, it is the Department's policy that proper procurement processes are in place in VECs and in this regard, competitive tendering should be standard procedure.

It is the role of VEC management, and ultimately the Committee, to ensure that procedures are in place to ensure compliance with procurement policy and guidelines. Department circular 39/2011 reminds VECs of these requirements (copy enclosed).

Regarding the procurement of legal services, the position is that there is currently no centralised procurement framework for the public sector and that there are particular difficulties in tendering for such services. For example, it may not be possible to determine at the outset the complexity of an individual case, the volume of work to be undertaken and, therefore, the final cost.

The Department notes that, on a national level, the Government's Public Service Reform Plan recognises the key strategic importance of public procurement and provides for the development of a new policy framework for procurement. A Chief Procurement Officer has recently been appointed and, under his leadership, a new national procurement office for the public sector is being established. The Department understands that the procurement of legal services for the public sector will be considered in this context.

In Point 12 of your letter of 28<sup>th</sup> February 2013 you sought a breakdown of legal costs to VECs for the payment of legal services, including details of the tendering process. I am enclosing details of the amounts paid to solicitors and barristers by each VEC in 2012. Total costs within the sector amounted to approximately €975,000 in 2012. A

tendering process was not entered into for this expenditure, except in the following cases:

- Co. Offaly VEC;
- Co. Wexford VEC (quotes obtained on hourly rates);
- Co. Monaghan VEC (in respect only of legal advice associated with the development of the education campus in Monaghan town (former Army barracks), cost €6,221)

VECs informed the Department that legal services were not tendered for a number of reasons, including:

- (a) The value of the work involved was below procurement thresholds;
- (b) The work was of greater complexity/duration than originally envisaged;
- (c) The VEC required specialist advice;
- (d) The work was a matter of urgency;
- (e) The legal advisor was taken from a panel set up by the IVEA and Unions to resolve HR or other issues arising between the VEC and its employees;
- (f) VECs used solicitors from the locality or with a longstanding relationship with the VEC;
- (g) The VEC was awaiting the establishment of a national procurement framework for legal services.

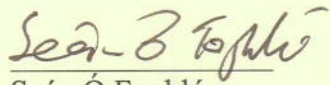
The Department recognises that, for the most part, these are not valid reasons for failing to tender competitively; but they reflect, in part, some of the difficulties which occur when procuring legal service. The Department would also like to point out that, where it is possible, the VECs have actively participated in centralised procurement initiatives and frameworks negotiated by the National Procurement Service (NPS). For example, in 2012:

- VECs availed of a new centralised contract for the supply of ICT Consumables;
- New contracts for the supply of gas and electricity to VECs commenced in May 2012;
- A suitable model for the rollout of Managed Print Services in the VEC sector was developed and detailed print data from each participating VEC was collated; in this regard, a number of competitions will be held in 2013;
- VEC data was submitted to the NPS for inclusion in a competition for the Supply of Bulk Liquid Fuels. The tender outcome on this is currently pending (April 2013);
- VEC data was submitted to the NPS for inclusion in a Waste Management competition, to be held in 2013.

The Department recognises the importance that VECs expend public monies as efficiently and effectively as possible. The development of a policy framework for procurement of legal services would of course significantly contribute to the achievement of this goal and the Department looks forward to its establishment.

In the meantime, the Department will remind VECs that they have a duty to strive for economy, efficiency, transparency and effectiveness in their expenditure, and that this applies equally when procuring legal services.

Yours sincerely



Seán Ó Foghlú  
Secretary General

**Payments by VECs to solicitors and/or barristers (2012)**

VEC	Total paid (€)
City of Cork	16,143
City of Dublin	50,981
City of Limerick	18,412
City of Waterford	60,030
Dun Laoghaire	28,155
City of Galway	6,462
Co Carlow	13,624
Co Cavan	30,000
Co Clare	5,585
Co Cork <sup>1</sup>	154,543
Co Donegal	18,364
Co Dublin	65,990
Co Galway	6,673
Co Kerry	3,621
Co Kildare	39,665
Co Kilkenny <sup>2</sup>	111,505
Co Laois	28,420
Co Leitrim	557
Co Limerick	31,656
Co Longford	47,221
Co Louth	2,295
Co Mayo	36,713
Co Meath	40,924
Co Monaghan	15,060
Co Offaly	6,989
Co Roscommon	48,234
Co Sligo	4,458
Co Tipperary NR	4,225
Co Tipperary SR	12,726
Co Waterford	0
Co Westmeath	27,009
Co Wexford	20,701
Co Wicklow	17,958
<b>Total</b>	<b>974,898</b>

Notes

1. €129k (84%) of Co Cork VEC's expenditure related to matters concerning 2 individuals.

2. €95k (85%) of Co Kilkenny VEC's expenditure related to costs associated with a High Court Judicial Review (Kilkenny Inquiry).

CGO – Airgeadas agus Pearsanra  
Riaracháin  
An Roinn Oideachais & Scileanna  
Cor na Madadh  
Baile Átha Luain  
Co. na Iarmhí



VEC Financial and Administrative  
Personnel  
Dept. of Education & Skills  
Cornamaddy  
Athlone  
Co. Westmeath

Circular 0039 /2011

## **To the Chief Executive Officers/Chairpersons of Vocational Education Committees**

### **Good Practice Guidelines in relation to Contracts for the Provision of Goods and/or Services.**

The attention of Chief Executive Officers/ Chairpersons is drawn to the following good practice guidelines in relation to contracts for the provision of goods and/or services.

#### **1. Evaluation of proposals**

Before entering into a contract/agreement, any proposal must be evaluated in detail in order to establish:

- That the proposal is of clear benefit to the VEC,
- That expenditure on the proposal will represent value for money;
- That the third party has the capacity to provide the goods and/or services contracted for;
- That thorough and robust due diligence is undertaken in relation to the third party prior to entering into a contract.

Once the evaluation has been completed, a memorandum should be prepared to include a summary of, and a conclusion to, the evaluation. The memorandum should be signed by those who undertook the work and approved by the CEO.

#### **2. Procurement**

As the ultimate owners of, and investors in, State Bodies, including VECs, citizens and taxpayers have an important and legitimate interest in the achievement of value for money in the State sector. Whether commissioning public services or providing them directly, VECs have a duty to strive for economy, efficiency, transparency and effectiveness in their expenditure.

It is the responsibility of the Committee to satisfy itself that the requirements for public procurement are adhered to and to be fully conversant with the current value thresholds for the application of EU and national procurement rules.

Competitive tendering should be standard procedure in the procurement process of VECs. VEC management, and ultimately the Committee, should ensure that there is an appropriate focus on good practice in purchasing and that procedures are in place to ensure compliance with procurement policy and guidelines.

In this regard, EU Directives and national regulations impose legal obligations on public bodies in regard to advertising and the use of objective tendering procedures for awarding contracts above certain value thresholds. Even in the case of procurement which might not be subject to the full scope of EU Directives, such as certain 'non-priority' services or service concessions, the EU Commission and European Court of Justice have ruled that EU Treaty principles must be observed.

The National Public Procurement Policy Framework requires that all non-commercial state bodies, including VECs, complete a Corporate Procurement Plan. This plan is underpinned by analysis of expenditure on procurement and the procurement and purchasing structures in the organisation. The plan should set practical and strategic aims and objectives for improved procurement outcomes and appropriate measures to achieve these aims should be implemented. The Chairperson should, following a formal resolution of the Committee, in the annual report to the Minister for Education and Skills affirm adherence to the relevant procurement policy and procedures and the development and implementation of the Corporate Procurement Plan.

VECs must ensure that the Tax Clearance requirements set out in Department of Finance Circular 44/06 (21 December 2006), as regards the payment of grants, subsidies and similar type payments, and Department of Finance Circular 43/06 as regards Public Sector Contracts, are fully adhered to.

Information on procurement policy and general guidance on procurement matters is published by the National Public Procurement Policy Unit. This can be viewed or downloaded from the national public procurement website [www.etenders.gov.ie](http://www.etenders.gov.ie)

### **3. Borrowing and Leasing**

CEOs are reminded that that all borrowing, including leasing arrangements, must be approved in advance by the Committee and the Minister for Education and Skills.

### **4. Losses**

All losses must be reported promptly to the Department and to the Office of the Comptroller and Auditor General.

### **5. Appropriate Funding Source**

You are reminded that funds must only be used by the VEC for the purposes for which they were provided by the Department. The conditions attaching to the expenditure of ordinary non-pay funding are set out in the annual letter of determination, as are the Minister's expectations regarding the prioritisation of services by a VEC. In particular, VECs should not use ordinary non-pay funding for IT research and development projects to develop new teaching methods and technologies.

If a VEC is considering expenditure on IT research and development, to develop "cutting edge" IT classroom-teaching tools or other such innovative IT projects it must, in addition to the steps set out at 1 above, ensure itself that it has the capacity to fully evaluate the proposal

from a technical perspective. It must also obtain the approval of the Department in advance of entering into any commitment in this regard.

CEOs should be aware that the National Centre for Technology in Education (NCTE) is available to provide advice and assistance to schools and VECs on all aspects of the implementation of ICT into teaching and learning. The NCTE may be in a position to offer a view as to whether an innovative ICT project has some merit or whether the proposed project fits with programmes such as the ICT in Schools initiative.

If you have any queries regarding this circular letter please contact the VEC Financial and Administrative Personnel section (Tel: 09064 83767, Fax: 09064 84058, Email: [financialvec@education.gov.ie](mailto:financialvec@education.gov.ie) ).

This circular can be accessed on the Department of Education and Skills web page: [www.education.ie](http://www.education.ie).

**Matthew Ryan**  
**Principal Officer**  
**VEC Financial and Administrative Personnel**  
**June 2011**