

An Inquiry
into certain matters
in relation to procurement
as requested by
the Taoiseach, Mr. Bertie Ahern, T.D.

January 2005

	Page No
<u>Table of Contents</u>	2
Introduction	3
Chapter 1 Framework for examining Norms and Practice	6
Chapter 2 Office of Public Works (OPW)	11
2.1 Circumstances in which arrangements were entered into	11
2.2 Examination of procedures adopted by reference to norms and practice	14
2.3 Examination of whether the services contracted differed materially from those provided	19
Chapter 3 Department of the Environment, Heritage & Local Government	21
3.1 Circumstances in which arrangements were entered into	21
3.2 Examination of procedures adopted by reference to norms and practice	24
3.3 Examination of whether the services contracted differed materially from those provided	31
Chapter 4 Findings, conclusions and recommendations	37
4.1 Findings	37
4.2 Conclusions	41
4.3 Recommendations	42
Appendix Details of payments made under the contracts	44

INTRODUCTION

I was asked by the Taoiseach on 21 December 2004 to inquire into the procurement procedures followed for the engaging of the services of Mrs. Monica Leech and/or Monica Leech Communications by the Office of Public Works and the Department of the Environment, Heritage and Local Government.

The detailed terms of reference are as follows:

- “- To establish the circumstances in which arrangements were entered into for the engagement of Ms. Monica Leech and/or Monica Leech Communications to provide services to the Office of Public Works and the Department of the Environment, Heritage and Local Government since July, 1997.
- To examine the procedures adopted by reference to the norms and practice in respect both of public procurement and the division of functions and responsibilities between Ministers and civil servant Departmental heads.
- To ascertain whether the services contracted for differed in any material respect from those provided.
- To make a report of findings and conclusions in relation to these matters and, arising from them, to make recommendations, if appropriate, in relation to any changes in practice which may be desirable.”

The Taoiseach intimated that he would like the report to be available prior to the resumption of the Dáil on 26 January 2005.

In carrying out the inquiry I sought all available papers relevant to it from the Chairman of the Office of Public Works and the Secretary General of the Department of the Environment, Heritage and Local Government. They cooperated fully with me in making available such papers.

While the terms of reference refer to services provided since 1997 my understanding is that the first such service arose in 2001.

Having examined these papers I had discussions with the current Chairman and immediate former Chairman of the Office of Public Works and the Secretary General of the Department of the Environment,

Heritage and Local Government, as well as with relevant officials of the Office and the Department, by arrangement with the Chairman and the Secretary General and the officials concerned. I also had discussions with Mrs. Monica Leech, Managing Director of Monica Leech Communications. Finally, I met the Minister for Transport, Mr. Martin Cullen, T.D., to discuss the issues arising.

I wish to acknowledge and thank all concerned for the full co-operation which I received in the inquiry. I should note that certain of the officials to whom I spoke, both retired and serving, mentioned that the passage of time since some of the events in my inquiry necessarily meant that in certain instances their recollection of the details of the issues involved would not be as they would wish but they all assisted me to the best of their recollection.

I was aware, as my non-statutory inquiry was proceeding, that the Standards in Public Office Commission had sought formal discovery of documents in relation to the award and implementation of contracts by the Office of Public Works and the Department of the Environment, Heritage and Local Government to Mrs. Monica Leech in order to decide whether or not they will conduct an investigation under the Ethics in Public Office Act 1995 (as amended). I have endeavoured to focus exclusively upon the matters coming within my terms of reference and to avoid pre-empting or prejudicing in any way the role of the Commission.

In the course of my inquiry I received letters from a former member of a committee of the Heritage Council and a commercial firm. I will advert to these in the relevant parts of the report.

I circulated a draft of this report or extracts from the draft, as appropriate, to the relevant persons so as to give them a chance to correct factual or other inaccuracies or to comment upon its contents. I considered, and took account of, in finalising the report, the comments received.

I took the necessary legal advice throughout the inquiry.

I also acknowledge the helpful clarifications on procurement and procedural matters received from the Departments of Finance and the Taoiseach.

Some of the information in the report is already in the public domain partly as a result of replies made to Parliamentary Questions over the period since 2002.

Finally, I wish to acknowledge the great support I received from Mr. Gary Davis of the Cabinet Secretariat of the Department of the Taoiseach in undertaking the inquiry.

For ease of reading I have devoted a specific Chapter to each Department/Office and have divided each Chapter to deal with the specific issues under examination as listed in the terms of reference.

I hereby submit the report to the Taoiseach.

Dermot B Quigley
24 January, 2005.

Chapter 1

Framework for examining Norms and Practice

As the question of the procurement rules applying is central to consideration of the matters to which I am asked to inquire, I have included below a brief summary of the rules/guidelines as they applied in the period under review. I also outline briefly the nature of the statutory division of responsibilities between Ministers and civil servant Heads of Government Departments and Offices.

1.1 Procurement Rules

1.1.1 The procurement rules for engagement of consultants for the purposes of this inquiry are contained in

- Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts as amended and transposed into Irish law;
- the non-statutory guidelines issued by the Department of Finance in the 1994 ‘Green Book’ on Public Procurement and the Guidelines for Engagement of Consultants in the Civil Service of March 1999*. More up-to-date guidelines were issued in 2004 and they reiterate the same basic principles. These latter guidelines, which were not in operation at the time of the events which are the subject of this inquiry, suggest that contracts valued above €50,000 should normally be advertised as part of a formal tendering process; and
- relevant Departmental Administrative Budget Agreements with the Department of Finance. These can contain some conditions in regard to procurement.

1.1.2 Council Directive 92/50/EEC requires, inter alia, that contracts for services such as those sought here be advertised in the Official Journal of the European Communities where they were valued at over €162,293 in 2002 and 2003.

1.1.3 The non-statutory guidelines assess the business need for consultancies, how to ensure value for money which is a basic objective for all public expenditure, and the different methods by which the services of the consultants might be obtained. These methods include:

* The above documents where relevant can be found on the website www.etenders.gov.ie

- full open competition;
- restricted tendering involving a limited number of suitable candidates; and
- single tendering where only one party is asked to submit a proposal.

It is a basic principle of Government procurement that procedures based on competitive tendering should always be used unless exceptional circumstances apply.

- 1.1.4 The guidelines indicate that smaller projects - defined as costing less than €12,697 exclusive of VAT - should be progressed with a minimum of bureaucracy and paperwork. This would allow dispensing with advertising and for an evaluation method in keeping with the cost of the project. However, such projects are not exempt from due consideration of the case for commissioning consultants, from normal procurement procedures nor from the need to document the reasons for decisions about selection and related matters.
- 1.1.5 Apart from the EU thresholds, there were national monetary limits for projects above which Departments/Offices were required to seek approval for specific contracts from the Government Contracts Committee (GCC). This committee oversees procurement in the public service. This requirement applied in certain circumstances e.g. where there was no competitive tendering or where the lowest bid was not being accepted. From November 2001 to December 2002, the monetary limit was the equivalent of €130,000 for Departments/Offices represented on the GCC and €65,000 for Departments/Offices not represented on it. Both the Office of Public Works and the Department of the Environment, Heritage and Local Government were represented on the GCC.
- 1.1.6 As from 1 January 2003, submission of individual contracts to the GCC was no longer necessary. The relevant Department of Finance Circular 40/02 of 20 December 2002 indicated that in future all procurement contracts which a Department proposes to award exceeding €25,000 in value (exclusive of VAT), and where no competitive process took place, should be reviewed within the Department, preferably by the Internal Audit Unit or alternatively

by an appropriate senior officer who is not part of the procurement process.

1.1.7 The essential aim of these non-statutory guidelines is to promote selection of the right consultants for the job at the best price while ensuring fairness to all potential candidates, usually through a competitive process.

1.1.8 For the purposes of the inquiry I have looked to the rules and guidelines referred to above to provide the ‘norms and practice’ against which to compare the procedures used in respect of the contracts awarded to Mrs. Leech. There are two important caveats to make

- Departments and Offices have to make their own judgements in individual cases. There is no absolute ‘right’ or ‘wrong.’ Increasingly, the Department of Finance have delegated authority to Departments and Offices in this area; and
- there is no detailed up-to-date analysis available of actual practice across Departments and Offices on consultancy contracts of this kind which could be used as a yardstick for the purposes of the inquiry, although some information on consultancy contracts awarded and on consultancy expenditure is maintained on a central database in the Department of Finance.

1.2 Division of Functions and Responsibilities between Ministers and Departmental Heads

1.2.1 In general terms, the Minister of the Government is the political head of a Department and the Secretary General is the managerial head. The Minister has statutory responsibility for the performance of the functions of a Department. Under the Public Service Management Act 1997 and, subject to the determination of matters of policy by the Minister, the Secretary General of a Department or the Head of an Office is responsible, inter alia, for

- managing the Department or Office;
- implementing the appropriate Government policies;
- preparing statements of strategy;
- providing advice to the Minister;
- delivering outputs as determined with the Minister;
- ensuring that there is regularity and propriety as well as economy and efficiency in the use of the resources of the Department or Office; and
- managing all matters relating to appointments and performance of staff below the level of Principal Officer.

The Secretary General is accountable to the Minister for the performance of his or her duties.

1.2.2 The Minister may, in writing, give directions to a Secretary General or Head of Office in connection with their obligations under the Act other than in respect of appointment, performance, discipline, or dismissal of staff below the grade of Principal or the equivalent.

1.2.3 Separate from his or her responsibilities under the Public Service Management Act, the Secretary General or Head of an Office is normally appointed by the Minister for Finance as the Accounting Officer for the purpose of the Exchequer and Audit Acts. Each Accounting Officer is personally responsible for the safeguarding of public funds and property under his or her control, for the regularity and propriety of all financial transactions and for the economy and efficiency of administration.

1.2.4 The special nature of the Accounting Officer's responsibilities requires that specific procedures be followed where there is a difference of opinion between the Accounting Officer and the Minister on an issue where the Accounting Officer has a responsibility. In these circumstances the Public Financial Procedures, issued by the Department of Finance, provide that the Accounting Officer should inform the Minister in writing of the reasons for his or her view and suggest a consultation with the Department of Finance. If the Minister then gives a contrary direction in writing the Accounting Officer should comply but should inform the Department of Finance and send the papers to the Comptroller and Auditor General.

Chapter 2

Office of Public Works (OPW)

2.1 Circumstances in which arrangements were entered into

Initial Contract

- 2.1.1 Both the current Chairman and his predecessor told me that the then Minister of State Cullen had made clear from the start of his tenure that he wanted the work of the OPW around the country to be publicised more widely, including its impact on local communities. Senior management felt that this was a valid concern for an Office with a portfolio of projects of €2.5 billion at the time. One method which was being considered, prior to the engagement of Mrs. Monica Leech, was to boost the level of resource available to the Press Office. I was informed that this need became more urgent in the context of major projects in Waterford.
- 2.1.2 The initial suggestion that Mrs. Leech might be of assistance to the OPW came from the then Minister of State and he confirmed this to me. He made this suggestion to the OPW Press Officer (a career civil servant) in introducing Mrs. Leech to that officer. Mention was made of Mrs. Leech's business experience and contacts in Waterford and her familiarity with the media there. (Mrs. Leech intimated to me that she had over twenty years experience in marketing and communications). The view put to me was that such experience and contacts were not available within the OPW. While recollections of the precise sequence of events differ somewhat, it is clear that the then Minister of State suggested that the matter be followed up with Mrs. Leech and this was done. It was discussed again at a later function in which the Minister of State, Mrs. Leech, the Press Officer and possibly others participated. It was stressed to me that the Minister of State had not issued any instruction to retain Mrs. Leech and that his suggestion had to be seen in the general context mentioned at 2.1.1 above.
- ##### **Work of the Press Office**
- 2.1.3 In putting up a submission on 20 November 2001 to propose the formal engagement of Mrs. Leech, the Press Officer indicated that there was a need for a person "on the ground" in Waterford who

would be in a position to respond immediately to issues and queries that arise in relation to OPW projects.

Focus on Waterford

- 2.1.4 Given the number and spread of OPW projects throughout the country I enquired whether the appointment of a Project Information Co-ordinator was unique to Waterford or had been used in other local areas and why it was necessary at that time (November 2001). I understand that other consultants were retained on a previous occasion for work leading up to the launch of the Farmleigh project in Summer 2001 and subsequently, in early 2003, for the John's Road/Military Road development in Dublin. I was unable, however, to establish a precise parallel for any other regional location. The view in OPW was that there was an exceptional need in Waterford at the time because of the number of significant OPW projects.
- 2.1.5 A contract for the engagement as a consultant of Mrs. Leech, of Monica Leech Communications, was issued to her by the OPW on 5 December 2001. The contract was stated to be for work as "Consultant, in the Position of, Project Information Co-ordinator." The contract was for a period of six months and formal acceptance was received later from Mrs. Leech. A valid tax clearance certificate was on file. Under the contract the total fee for the six months was €12,951 plus VAT. While the letter of contract did not specify the exact number of days to be worked it seemed to be envisaged in some OPW papers that the number of days per week would vary between 2-7 days over the period. Availability at short notice to deal with issues arising was seen as a key aspect.
- 2.1.6 The six-month period began de facto in November 2001, prior to the completion of formalities. Discussion with Mrs. Leech, and her briefing by the OPW for the work, took place in the course of November 2001 and she was paid for that month. Subsequently, the contract was allowed to continue in place by the Press Office on an ad hoc basis, without any formal documentation, to include the month of May 2002. In total, therefore, the contract with OPW covered a seven-month period up to and including the month of May 2002.

Other Contracts from OPW

- 2.1.7 After her contract period for the above work, and subsequent to the Minister's appointment to the Department of the Environment,

Heritage & Local Government, Mrs. Leech was again employed by OPW on event management work under two separate contracts. This was for the later stages of two major projects in which she had been involved during the earlier seven-month contract.

Payment

- 2.1.8 Taking account of these additional contracts, Mrs. Leech was paid a total of €23,610 plus VAT in fees for her work for the OPW. She was also paid in respect of travel and subsistence expenses as appropriate and other invoiced costs. Further details of the payments are given in the Appendix.

2.2 Examination of procedures adopted by reference to norms and practice for both public procurement and division of functions

Nature of the initial engagement

- 2.2.1 Recollections differ as to the manner in which the engagement of Mrs. Leech was viewed, whether as a temporary appointment or a consultancy, within OPW at the time.
- 2.2.2 The then Chairman did not regard the retaining of the services of Mrs. Leech as the hiring of a consultant in the normal sense. He said that what was needed was someone with communications expertise and contacts in Waterford. He considered that Mrs. Leech met the requirements admirably and her work proved to be very satisfactory. If similar expertise had been available in-house at the time, he intimated, the person would have been allocated to the Press Office in support of the Press Officer. He also pointed to the amount of the payment for the services (equivalent to Executive Officer Standard rate salary scale at the time, to which specific reference was made in the papers) as indicative of a temporary appointment rather than a consultancy. He said that Mrs. Leech was free to do any other work she chose to outside the time required for OPW tasks.
- 2.2.3 The Press Officer's submission of 20 November 2001, to the Head of Corporate Services, was made after prior discussion and agreement with the latter. I was told that the Head of Corporate Services had also mentioned the matter to the then Chairman. The submission said that "this post will be a temporary one....." The Press Officer did not enter into the modalities of how Mrs. Leech would be engaged: essentially the need was identified and seen by the Press Office as for "an extra pair of hands" in support of its work in Waterford. The Press Officer told me that the rate of payment envisaged was proposed by that officer as appropriate for someone who would be operating in a support role.
- 2.2.4 The person on the OPW Personnel side dealing with the matter told me that initially she was asked to check the approved staffing complement for the Office of the Minister of State. As the limits laid down by the Department of Finance for such posts had been reached any additional appointment, on the basis of a specific exception to the limit, would have required the sanction of the Minister for Finance and the Taoiseach under the Guidelines on

Staffing of Ministerial Offices, as issued by the Department of Finance to all Government Departments and Offices. Neither the Head of Corporate Services nor the then Chairman had any recollection of that option being explored. The Minister said that he was not aware that such a possibility had been considered.

- 2.2.5 In any event, the letter of contract, and Mrs. Leech's letter of acceptance, were explicit in treating the engagement as one of consultancy. Mrs. Leech said she always viewed the engagement as one of consultancy. On this basis, the terms of reference require me to examine the engagement by reference to norms and practice of procurement and division of responsibilities between Minister and Head of Office.

Assessment of OPW Compliance with Procurement Rules

- 2.2.6 The value of the contracts was below the EU threshold and the then limit for submission of contracts to the Government Contracts Committee. There was no infringement of those requirements.
- 2.2.7 In the case of the initial OPW contract the only consultant contacted was Mrs. Leech. OPW proposed and agreed a rate of payment with her, as distinct from asking for a formal tender. Under the 1999 guidelines for the engagement of consultants (paragraph 4.13), confining tenders to a single applicant should be considered only in certain circumstances. The guidelines said it was allowable, for example, where "there is only one suitably qualified specialist in the relevant field" or "there is an overriding urgency, which could not reasonably have been foreseen or avoided....and the project can be limited" or "the consultants concerned had already carried out work in the area and there was an overriding need for continuity". In July 2003, subsequent to the period when the contracts covered in this inquiry were awarded, the Department of Finance issued further guidance on justifiable exceptional circumstances for the award of contracts without a competitive process to supplement provisions previously set out.
- 2.2.8 Under the OPW's Internal Office Notice the single form of tendering should only be used "in very extreme circumstances" and in each case a note outlining the reasons for single tendering should be sent immediately to the relevant Head of Division.

- 2.2.9 In the light of the view taken about urgency at Ministerial and official levels, I consider that the procedures used for this contract, which was cleared by senior management in OPW, were broadly in compliance with norms and practice in dealing with a single contractor. However, the business case for a resource in Waterford and the basis of the urgency should have been fully documented at the time and the extension of the contract to seven months should have been done in a more formal manner.
- 2.2.10 The first of the follow-on contracts related to events in October 2002 and June 2003. These were for the announcement of the results of the Waterford North Quays International Architectural and Urban Design Competition and the display of the models from the competition. Under her original contract Mrs. Leech had been involved in the launch of the competition. The conditions seem to have been broadly met for a single tender but the decision was not properly documented. There is no indication that Minister Cullen, who at that stage had become Minister for the Environment, Heritage and Local Government, was involved in the decision.
- 2.2.11 In the case of the second follow-on contract with Mrs. Leech in relation to an event in May 2003 - the opening ceremony for the refurbished Government offices at The Glen, Waterford - a decision was made at short notice at the appropriate levels of delegated authority. As Mrs. Leech had been involved successfully in the organisation of the earlier ceremony marking the laying of the foundation stone for this building, she was retained for the new work. While again the paperwork should have been better, the rules for single tendering were broadly met. I have seen no evidence that the previous Minister of State in charge of OPW was involved or influenced the decision.
- 2.2.12 Mrs. Leech undoubtedly benefited from her initial contract in being asked to undertake the further work outlined above. There was nothing wrong with this, especially given the widespread positive view amongst the people to whom I spoke about the quality of her work. There is no rule debarring consultants from follow-on contracts – indeed, continuity may validly be a factor in a case such as this. Compliance with procedures should, however, be better documented.
- 2.2.13 The OPW Office Notice on procurement should be reviewed and updated to take account of the reduced role of the Government

Contracts Committee in individual cases and, on the other hand, the enhanced role for Internal Audit. I noted the view of the Chairman that, for an Office handling such a multiplicity of contracts, particular flexibility may be needed for smaller contracts. This is seen to apply particularly in regard to contracts for the management of events which can arise at short notice. This matter should be discussed with the Department of Finance in the review of the Office Notice. Contracts should be reported for inclusion in the central database in the Department of Finance - that did not happen in this instance and I understand it was not OPW practice to do so.

- 2.2.14 I am aware that certain OPW procurement procedures in the Dublin Castle business unit have already been reviewed in greater detail in a report prepared by PricewaterhouseCoopers in May 2004. It found a number of breaches of procedures and weaknesses in the arrangements in the Office, and put forward a series of recommendations to deal with them. I understand that these recommendations are being addressed.

Division of Functions and Responsibilities between Ministers and Civil Service Departmental Heads

- 2.2.15 I have considered whether the action taken by then Minister of State Cullen in suggesting that Mrs. Leech could be of assistance to OPW, and in suggesting that the matter be followed up with her, contravened the norms and practice as regards the division of functions and responsibilities between the Minister of State and the Chairman, as Head of Office and Accounting Officer for OPW. While technically the Public Service Management Act division of responsibilities applies between a Minister of the Government and the Head of a Department or Office, I have used the same framework to consider the division between the Minister of State and Head of Office.
- 2.2.16 I am satisfied that the Minister of State did not give any instruction, orally or in writing, to the then Chairman of the OPW to engage Mrs. Leech.
- 2.2.17 He took an initiative by suggesting that Mrs. Leech could be of assistance to the Office in relation to projects in the Waterford area. It is clear that this suggestion was made within an overall agreed approach on the need to raise the profile of the OPW. The specific need in the Waterford area had already been recognised

within the Office. Given his local knowledge of work she had performed the Minister of State was of the view that Mrs. Leech would be well placed to do the task.

- 2.2.18 It seems to me that the suggestion by the Minister of State could not be said to be contrary to the broad division of responsibilities between Ministers and Departmental Heads in the Public Service Management Act. This is the only framework within which I can realistically assess the matter for the purposes of the inquiry. A Minister retains responsibility for policy and for ensuring that the functions of the Department/Office are discharged. The then Chairman did not regard the Minister's suggestion about Mrs. Leech as representing any problem in terms of the division of responsibilities between the Minister of State and the Chairman. While it could be represented that the Minister benefited from the publicity, both the current Chairman and the former Chairman confirmed to me that they regarded the expenditure involved as a proper use of public resources, given the OPW's work at the time on major projects in the Waterford area. There was no need in their view to bring the matter formally to the Board of the OPW which has certain statutory responsibilities.
- 2.2.19 There was no question either of the former Chairman, as Accounting Officer at the time, sending a note of any dissenting views to the Minister of State. On the contrary, he fully approved the engagement of Mrs. Leech by the Office.
- 2.2.20 While the legal framework is one thing, I should add that there are other considerations - not least how an action may be perceived by others - to be taken into account where any Minister suggests that a person might be engaged for work for an official body. I will return to this in my conclusions and recommendations.

2.3 **Examination of whether the services contracted differed materially from those provided**

- 2.3.1 Under her letter of contract from OPW, Mrs. Leech was required “to provide information and respond immediately to issues and queries that may arise in relation to OPW projects in the Waterford area or to any other matters that might be deemed to have a particular interest to this Office or the Minister of State.”
- 2.3.2 In the internal submission to formalise the engagement of Mrs. Leech it was stated that the number of days work per week would, as mentioned above, vary from between 2 to 7 days; and that the person selected would be required to make themselves available to this extent and to have a flexible approach to this role. The detail about the number of days was omitted, however, from the formal letter of appointment by the Personnel side – at this stage the reason is not apparent.
- 2.3.3 There are in fact some differences in recollection as to the extent of the work required or performed. No detailed inventory of work actually done is available or was requested from Mrs. Leech. While some OPW officials considered that Mrs. Leech would have been engaged on work consistently throughout the period, her own assessment was that she would have put in at most some 25 days work over the entire period. Viewed in this way the average daily rate implicit in the fees payment under the initial contract would have been about €600 a day, whereas the total payment for a commitment of 2 to 7 days a week seems very low for a private sector consultant. It may have been the case that there was an element of a retainer about the payment, with a view to ensuring availability of Mrs. Leech to deal with matters when they arose, and this may have been a factor in OPW not seeking detailed work schedules.
- 2.3.4 There is agreement between the OPW and Mrs. Leech as to the work she actually did under the contract. It was all project-related. The big projects in Waterford in which she was involved included:
- renovation of Christchurch Cathedral;
 - the refurbishment of the Government buildings at The Glen;
 - the North Quays redevelopment project;
 - Tramore Coastguard Station – refurbishment and extension;
 - Kilmacthomas Garda Station; and`

- John's River Drainage Scheme.

2.3.5 Some or all of these projects involved launch events, public consultations, public relations, dealing with the press and other event management activities. According to OPW Mrs. Leech performed extensive work on most of these projects, which would otherwise have had to be done by Dublin staff, and did so in a professional and successful manner. I am informed that she would also have briefed the then Minister of State personally on a regular basis on progress.

2.3.6 I asked Mrs. Leech and also the Minister whether in the context of her contract she had undertaken any political (e.g. fund-raising or canvassing) activities on his behalf, especially during the general election month of May 2002. The answer from both was in the negative. Both did inform me that Mrs. Leech was engaged by a local election committee in Waterford to provide some brief professional advice on the advertising aspect of the Minister's campaign; and that she placed ads for the campaign, in respect of which she was paid by the campaign. I have included this information on a factual basis. There is no formal prohibition on an external consultant being involved with or on behalf of a political party.

Assessment

2.3.7 I am satisfied that the services contracted to OPW did not differ materially from the nature of the services actually provided.

Chapter 3

Department of the Environment, Heritage & Local Government

3.1 Circumstances in which arrangements were entered into

- 3.1.1 Very shortly after his appointment to the Department of the Environment, Heritage and Local Government on 6 June 2002, Minister Cullen made clear to senior management that he wished to have professional communications and PR advice available to deal with a range of policy issues facing him and the Department. He had separate discussions on the matter with the Secretary General and the Assistant Secretary who headed up the Corporate Services Division. He indicated that there was a person, Mrs. Monica Leech, who had worked in a communications role for the OPW and who would be available; that her suitability should be checked; and that he wished to have the arrangements in place without delay and, at the latest, before mid-July. This was to allow a round of discussions to take place with relevant Divisions in the Department before the Summer break on a number of initiatives which would be under immediate consideration.
- 3.1.2 In this regard, the Minister told me that it quickly became clear to him that his policy agenda in the Department included quite a number of initiatives which required major public information elements e.g. on waste management. He felt that both he and the Department needed to take a strategic approach to the design and delivery of the communications messages.
- 3.1.3 In the course of these discussions the question of appointing Mrs. Leech to the staff of the Minister's Office was raised by officials with the Minister. Such appointments were being discussed with him at that time. The Minister said that this would not be feasible as he was aware that Mrs. Leech had other clients and would not be available on a full-time basis. He also made the point to me that he had already identified other persons and roles for his personal staff and that he did not see such a communications role as being purely related to him but as a service required for the Department as a whole.
- 3.1.4 The need to comply with procurement rules for the engagement of any consultant was raised with the Minister by the Secretary General and Assistant Secretary in charge of the Corporate Services Division in the course of these discussions. On 24 June

2002, the Assistant Secretary made a submission to the Minister recapping on the earlier discussions. He pointed out that the timescale envisaged by the Minister would make a full competitive tendering process almost impossible; that, where exceptional circumstances apply, it was open to the Department to proceed on the basis of single tendering provided that the project could be limited; and that if the cost were to exceed €130,000, and if competitive tendering was not being used, the clearance of the Government Contracts Committee would be required. The Assistant Secretary said that the best option might be to invite a single consultancy to quote for a short-term assignment, say the six months from 1 July to the end of the year; and that arrangements could then be made at a later stage to have a competitive tendering process for a longer-term assignment beginning the following January.

- 3.1.5 The Minister approved this approach and suggested that the Department write to Monica Leech Communications to submit a quote. I understand the Department carried out suitable checks on Mrs. Leech's communications experience. Following a conversation with Mrs. Leech a note detailing the services to be provided, and the conditions applying, was sent to her on 2 July 2002. She was invited to submit a tender. She replied on 3 July 2002, quoting a rate of €7,800 based on 12 days a month plus VAT and reimbursement of expenses incurred. This rate of fee, i.e. €650 a day (excluding VAT), was considered to be reasonable by the Assistant Secretary based on his knowledge of similar services provided to the Department. Following approval by the Secretary General, a contract for six months was awarded to Mrs. Leech. The formal contract was signed on 9 July 2002. The official concerned and the Minister, as well as Mrs. Leech, confirmed to me that no assurance was given to her that she would get the follow-on contract.
- 3.1.6 On 1 November 2002, the Head of Corporate Services sought approval from the Minister via the Secretary General to invite tenders for a one-year contract to commence on 9 January 2003, when the six month contract with Mrs. Leech was due to end. At the Minister's suggestion, which he told me was in the interests of continuity, the proposed period of the contract was extended to two years. The request for tenders was then issued on the basis of a two-year contract.

3.1.7 Following the tendering process and evaluation of the two tenders received, the report of the selection committee was submitted to the Secretary General and the Minister on 22 January 2003 proposing to award the contract to Monica Leech Communications.* The tendering process is considered in detail in the next part of this Chapter. As the process had taken a little longer than expected the starting date for the new contract was proposed as one month later than initially envisaged, i.e. 9 February 2003. The initial contract with Mrs. Leech continued up to that point. The proposal was noted as having been approved by the Minister on 7 February 2003. The formal contract was signed between the two parties on 26 February 2003. It included a condition for the avoidance of conflict of interest. A tax clearance certificate in relation to the award of the contracts was on file.

Payment

3.1.8 Mrs. Leech has to date (end-November 2004) been paid a total of €265,806 in fees excluding VAT under the two contracts. Details of fees and other expenses arising under each of the two contracts are listed in the Appendix.

* The firm was registered as a company with effect from 11 December 2002.

3.2 Examination of procedures adopted by reference to norms and practice for both public procurement and division of functions

Initial Contract

- 3.2.1 As indicated above, the initial six-month contract (entered into on 9 July 2002, and which was extended to seven months) was arranged on the basis of a single tender from Mrs. Leech. This was stated to be on grounds of urgency.

Assessment of Compliance of Initial Contract with Procurement Guidelines

- 3.2.2 Under the 1999 guidelines for engagement of consultants, confining tenders to a single applicant should be considered only in certain circumstances. One of these [paragraph 4.13(ii)] is that

“There is an overriding urgency, which could not reasonably have been foreseen or avoided, attaching to the consultancy assignment such that its purpose would be frustrated by the delay otherwise required, and the project can be limited”.

The Administrative Budget Agreement between the Department of Finance and the Department of the Environment, Heritage & Local Government also indicates that sanction to incur expenditure on non-IT related consultancy is subject to various conditions, including that a competitive tendering process is employed unless exceptional circumstances apply.

- 3.2.3 According to a 1998 survey by the Comptroller and Auditor General single tendering is used fairly frequently by Departments and Offices. In this instance the Minister wished to have the services of a communications expert as a matter of urgency to advise on major projects which were in train or planned at that time. The senior officials were disposed to work constructively with the Minister to achieve this objective but pointed out that it would not be possible to arrange a full competition in time; and that, to respect the procurement rules, the initial contract should be a limited one followed by a tendering competition. The Minister approved this approach because of the urgent need he saw to have the expertise available immediately. Because of the amount of the initial contract (fees of €54,606 excluding VAT) the approval of the Government Contracts Committee (GCC) was not required and

the contract was well below the threshold (€162,293) at which EU advertising would be necessary.

- 3.2.4 It seems to me that, given the Minister's view about the urgency, which was accepted by officials and which drove the two-phase approach to the engaging of consultants, the approach followed was reasonably in line with procedure and practice under the guidelines. I am informed that the round of discussions with Divisions (para. 3.1.1) did take place and that Mrs. Leech took part.

Second Contract

- 3.2.5 The second contract requires more detailed assessment under a number of headings because of its size, viz

- number of firms invited to tender;
- question of application of the EU threshold for advertising;
- conduct of the evaluation procedure; and
- referral to the GCC.

Number of firms invited to tender

- 3.2.6 The procedure used in this case was that of a restricted tendering process – as distinct from open tendering where all interested parties may apply. This procedure is used for a high proportion of public contracts, especially those falling below the EU threshold.

- 3.2.7 The 1994 'Green Book' suggests that at least five firms, where possible, be invited to tender for each consultancy contract. The 1999 specific Guidelines for Engagement of Consultants, which are to be read in conjunction with the 'Green Book', indicate (paragraph 3.02 of the Guidelines) that:

“.....Where a restricted tendering procedure is used (see section 4.12) the minimum requirement for these projects, [unless exceptional circumstances apply with the approval of the Government Contracts Committee [GCC], where required], is that, at the least, five firms are invited to tender, except in circumstances where this is clearly not feasible.”

- 3.2.8 In this instance only three firms were invited to tender. In the submission to the Minister on 1 November 2002, seeking approval for a tendering process, it was stated that “we are required to invite at least three firms to tender”. In my discussions in the Department

it was accepted that this was not fully in line with the guidelines and that the Department was aware of the guideline suggestion that five be invited. I stress, however, that the guidelines are just that – they are not legal or absolute requirements – and Departments and Offices undoubtedly do depart from them in specific instances. The decision to go for three rather than five tenders was explained to me on the basis that the Department felt that it was approaching the two major firms that were likely to be able to provide the particular type of consultant required – who would have to work closely with both the Minister and the Department; and that, based on its experience, there were no other firms likely to be in a position to supply the required service. Tenders were invited from these two and from Mrs. Leech who was working under the initial contract. Each of the two other firms had earlier contracts with the Department. It was put to me strongly in discussion that this represented an adequate testing of the market for this contract.

- 3.2.9 There is a purely technical point as to whether a referral might have been needed to the GCC (see paragraph 3.2.7 above) because of confining the invitation to three rather than five firms. I did not pursue this, especially as the requirement for GCC approval for contract award procedures in individual cases was removed by the Department of Finance with effect from 1 January 2003.
- 3.2.10 In the event, only two tenders were received in response to the invitation. The judgement made in the Department was that, as one of the tenderers was the major company in the field, adequate competition was still present. Evaluation of the two tenders proceeded on that basis. There is no specific provision or rule in the guidelines for such a situation. If there were not considered to be adequate competition the options would be to seek additional tenders or run the competition again. It was pointed out to me that either such course would have caused further delay and would have added to work pressures on a part of the Department which was already dealing with major restructuring following the redrawing of its remit by the Government.

EU Threshold

- 3.2.11 Where the estimated cost of a contract exceeds the threshold under the Council Directive 92/50/EEC, tendering procedures must satisfy all criteria laid down in the Directive, including publication of the invitation to tender in the Official Journal of the European Communities. As noted above, the relevant threshold at the time

of this contract was €162,293 (which excludes VAT). I am advised that the services provided in this case come within the scope of Article 8 of the Directive.

- 3.2.12 Clearly, in the event, the cost of fees under the second contract up to the closing date of 8 February 2005 (€230,400 excluding VAT) well exceeds the EU threshold.
- 3.2.13 The onus is on a Department to make the best estimate of the likely cost of a contract from the point of view of compliance with the Directive. In this case, if the contract had proceeded on the basis of the original proposal for a one-year duration it would have been well within the threshold. When the contract switched to a two-year basis the risk of coming up against the threshold was recognised. The view put to me was that it remained possible that the cost of the contract as a result of the competition would come in below the threshold and I understand that this was the basis on which it was decided to proceed. The cost of one of the tenders was below the threshold but it did not secure the highest overall marks in the competition.

Conduct of the evaluation procedure

- 3.2.14 I discussed the conduct of the evaluation process with each of the three officers involved. The request for tenders outlined the services to be provided and the duration and conditions of the contract. It indicated the 'most economically advantageous' basis on which the selection would be made, i.e. on the basis of the lowest suitable tender having regard to the relevant experience of the named consultant and the quality and comprehensiveness of the proposal as measured against the brief supplied. I was informed that a weighted marking scheme was agreed by the selection committee in advance as suggested in the guidelines. A particular formula for marking was not specified in the guidelines. As would be normal for a consultancy of this kind, a higher weighting was accorded to the relevant experience of the named consultant to work on the contract. The tenderers were given an opportunity to make presentations to the selection committee. All three officers signed off on the report of the selection committee, which gave the marks awarded to each of the two tenderers under the various headings. This was the report that passed to the Minister through the Secretary General of the Department indicating the outcome of the process and that it was proposed to award the contract to Monica Leech Communications as the most economically

advantageous tender. I noted that the rate per day had increased from €650 to €800 in the second contract and I understand that this was because there had been a misunderstanding about the scope of expenses entitlement under the first contract (in respect of travel from Waterford to the Department in Dublin and the cost of overnight accommodation).

GCC Clearance

3.2.15 With effect from 1 January 2003, the Department of Finance dispensed with the earlier procedures for approval of certain individual contracts by the GCC. Under the new arrangements, however, procurement contracts exceeding €25,000 in value exclusive of VAT - and where no competitive process took place - were required to be reviewed within the Department itself. This would be done preferably by the Internal Audit Unit or, alternatively, by an appropriate senior officer who was not part of the procurement process. Such contracts over €25,000 were to be included in an annual report to the Comptroller and Auditor General. The new arrangements allowed the GCC to concentrate on advising on procurement issues of general concern.

3.2.16 As there had been a competitive process, the prior approval of the GCC was not needed in this case. There was no requirement either to refer the contract to Internal Audit. The contract was not reported for inclusion in the central consultancy database in the Department of Finance.

Assessment of compliance with procurement procedures

3.2.17 In my view the procedures followed were broadly in line with the guidelines for public procurement. A number of judgement calls had to be made by Departmental officials as regards the estimation of cost vis-à-vis the EU threshold and the number of firms to be invited to tender. While recognising that these areas are not without difficulty, I would underline the importance of inviting at least five tenders, so as to adequately test the market, or at least taking specific steps to confirm from other sources that only three firms could provide the services sought.

3.2.18 I am satisfied, having discussed the matter with the three officials involved in the evaluation of the bids, and with the Secretary General, that the tendering and evaluation process was conducted with integrity and fairness. I have no evidence that the Minister sought to interfere in the process. The officials concerned

indicated categorically that no pressure had been brought to bear on them. They said that they were not influenced by the Minister's suggestion of Mrs. Leech for the first contract, although they acknowledged that she would have derived a potential competitive advantage due to the experience gained from having done the work under the initial contract. The Minister told me that, beyond discussing the policy requirements of the role for a communications consultant, he played no part in the process.

Division of Functions and Responsibilities between Ministers and Civil Service Departmental Heads

- 3.2.20 As in the case of OPW, I have to consider whether the initiative taken by Minister Cullen to appoint a communications expert in the Department of the Environment, Heritage and Local Government represented any departure from norms and practice as regards the division of responsibilities between the Minister and the Secretary General of the Department.
- 3.2.21 The Secretary General informed me that he did not consider that in putting forward Mrs. Leech's name the Minister crossed some line as regards the division of responsibilities between the Minister and the Secretary General. He confirmed that he did not express any dissent – either as Secretary General or Accounting Officer for the Department – and did not advise the Minister not to proceed with such a consultancy. He ensured, however, that the procurement rules were followed and carried out appropriate checks on Mrs. Leech's communications experience. The Secretary General pointed out that he was satisfied that public expenditure criteria were met, and that there were numerous precedents in the Department over many years for engaging professional consultants or appointing a person to the Minister's own staff in the communications area.
- 3.2.22 I am of the view that there is no breach of norms and practice involved. The Public Service Management Act could not prevent a Minister from taking an initiative of this kind. In the event of a significant difference in view, there are standard procedures for the Secretary General to follow to set down his views in writing, although in my experience this rarely arises. It did not happen in this case.
- 3.2.23 I would be concerned, however, that if a Minister suggests a person for a public contract there is at least a risk of a perception of

influencing the award of a contract – even if procurement guidelines are fully respected. As indicated above this is an aspect to which I will return in the conclusions and recommendations sections of the report.

3.3 Examination of whether the services contracted differed materially from those provided

The description of the services to be provided was expressed in the same terms in both the initial six-month and subsequent two-year contracts. It was as follows:

- Advice and assistance in contacts between the Minister and his Department with the various media;
- Advice and assistance in regard to the text and format of speeches, announcements, etc. designed to convey the policies of the Government, the Minister and his Department to the public or to provide information to the public concerning the services provided by the Department;
- Advice and assistance in connection with the arrangements for functions at which the media will be present;
- Advice on how the Department can use electronic media to best effect;
- Advice regarding communication in the public forum of policy proposals under consideration;
- Advice and assistance on gaining public and media support in relation to initiatives taken and problems faced by the Minister and his Department;
- Advice and assistance on improving the public image and media treatment of Government programmes, and the activities of the Department; and
- Advice and assistance on how the Department might best structure and co-ordinate its communications activities across the organisation as a whole.

This description of services is broadly similar to that I have seen on the Department's files in respect of an earlier communications consultancy going back to 1987.

3.3.1 From my examination of the papers I am clear that Mrs. Leech has been heavily involved from the outset of her contracts in the work of the Department on elaborating and implementing communications and media strategies. The areas include

- waste awareness campaign;
- national spatial strategy;
- electronic voting; and

- an awareness campaign and publicity for county publications issued as part of the National Inventory of Architectural Heritage.

While there is little material available on actual inputs and outputs from her work it is clear that she participated in steering groups and meetings about all these issues. She also regularly discussed progress and strategic aspects with the Minister. The breakdown of the time between working in the Department and direct discussion with the Minister is not clear but perhaps 30 per cent of the time was in respect of the latter. All concerned with whom I spoke stated that she made a valuable contribution.

3.3.2 Mrs. Leech also participated in

- an All Island Waste Campaign;
- review of the Department's website;
- a steering group on a local government funding study;
- preparations for the informal meeting of EU Environment Ministers held in Waterford from 14 to 16 May 2004; and
- delegations to a number of EU and other international meetings with the Minister and officials.

Assessment

3.3.3 I had to relate the various areas of work undertaken to the content of the contracts as set out above. Payment claims by the consultant were in general terms up to October 2004, when the format became more specific at the request of the Department. Nevertheless, it was possible to relate fairly readily the bulk of the work to the areas listed in the contract. In a number of areas of work I discussed the position with officials, as well as with Mrs. Leech and the Minister, to get a better understanding of what was involved. These were as set out below.

3.3.4 National Spatial Strategy: I raised the question of the need for an input by Mrs. Leech into this given that Drury Communications were already advising the Department. I understand Mrs. Leech participated as part of a wider steering group which had oversight of the work. The group, which included representatives of Drurys and officials, agreed the audiences to be targeted and the key messages to be got across about the strategy. She was also involved in the preparations for the launch of the strategy in

November 2002. I discussed the matter with the relevant Assistant Secretary in the Department and was told that Mrs. Leech had made a good contribution to the work, which the official regarded as being within the scope of the contract. Mrs. Leech told me that her experience with the Chambers of Commerce had been helpful in identifying relevant audiences and issues.

- 3.3.5 Selection Committees: I examined the relevant papers (on waste awareness, electronic voting, national inventory of architectural heritage) and confirmed that the selection of firms all related to communications campaigns. In the context of my terms of reference I noted that Mrs. Leech participated in this work as part of a wider involvement in the steering or advisory groups planning the campaigns.
- 3.3.6 Local Government Funding Study: The Minister asked that Mrs. Leech be included in the steering group for the project. The work of the initial steering group, which was set up in early November 2003, was taken up with the evaluation of tenders to select a firm who would undertake the study. Originally it was envisaged that this group would stay in existence to manage the project. Subsequently, the group was reconstituted in May 2004, and Mrs. Leech ceased to participate. I was assured by the Departmental Assistant Secretary who chaired the initial group that the work of tender evaluation proceeded in a satisfactory and uncontroversial manner.
- 3.3.7 I was not clear why Mrs. Leech was involved in this work. Unlike other areas discussed above, there was no question of an immediate communications campaign. Rather, it was a question of picking a firm to undertake a study of the policy issues. When I asked the Minister about this he said that the study was going to generate significant communications issues and that even the fact that the study was proposed was already prompting questions in the media and discussion in the Oireachtas. Mrs. Leech saw her participation as part of her professional role.
- 3.3.8 Delegations to international meetings: Mrs. Leech participated as part of the delegation accompanying the Minister to 8 meetings abroad during the period since July 2002. The Minister had made a total of 22 official trips abroad during this period. The Press Officer also participated in most of these trips. The senior Irish official for most of these meetings considered that the participation

in them by Mrs. Leech would be within the scope of the consultant's contract; that Mrs. Leech would have been providing communications support, e.g. assisting in the liaison with representatives of non-governmental organisations in the course of a meeting, would have been networking with other delegations and attending exhibitions relevant to the environmental communications issues arising in Ireland; and, in the case of EU meetings, would have had a role in preparing for the Irish Presidency including in particular the informal Council of Ministers meeting held in Waterford. Mrs. Leech also participated in the delegation accompanying a Minister of State to an informal Environment Council in Greece in May 2003.

- 3.3.9 One aspect about which I had a particular concern was a potential overlap between the role of the Press Officer and Mrs. Leech on such trips. I was informed by the Minister that the Press Officer was primarily focused on domestic issues of relevance. In commenting more generally on this item the Minister said that all of the meetings specifically related to Mrs. Leech's work; that two related to sustainable development and that significant opportunities were taken to gather international experience on communications issues; that the meeting on a Sellafield hearing involved a significant legal move with communications implications; and that the others related to the EU Presidency preparations.
- 3.3.10 Waterford Meetings: The Minister's list of engagements included quite a number of meetings and functions where Mrs. Leech was listed for attendance or as a contact point. Mrs. Leech told me that she did attend some (e.g. to brief the Minister and those related to Waterford Chamber of Commerce) but did not attend all of these meetings. She said she was frequently approached by business people in Waterford purely as a contact point for the Minister. She said that she had not met any lobby groups with or on behalf of the Minister, although she said she did attend briefly at one venue to convey word that the Minister would be unable to attend an arranged meeting; and that, where the meetings or functions did not relate to communications work under her contract, they were on her own time. Detailed information on the subject matter of each of these meetings was not available to me.
- 3.3.11 Heritage Council: In the course of my inquiry I received correspondence enclosing a copy of a letter which the writer had

sent on 24 June 2004 to Minister Cullen as Minister for the Environment, Heritage and Local Government. In the correspondence to me it is alleged that Mrs. Leech conveyed to the Chief Executive of the Heritage Council by phone an effective direction from the Minister about location of a National Biological Records Centre for Wildlife in Waterford. The letter to me said that it would be entirely unacceptable for a person otherwise employed on contract for an entirely different purpose to make not only representations but to direct such a body on behalf of the Minister.

- 3.3.12 I note that this matter is already in the public domain and that the Chief Executive of the Heritage Council is reported in the media to have denied that any such pressure was conveyed to him. I ascertained also that on 15 July 2004, the Department of the Environment, Heritage and Local Government had sent a reply to the letter of 24 June rejecting the suggestion that the Minister or the Department had acted improperly in any way in relation to the Heritage Council and the proposed National Biological Records Centre. In their discussions with me both the Minister and Mrs. Leech rejected any suggestion that they had exerted any pressure on the Heritage Council.
- 3.3.13 I am forwarding to the Secretary General of the Department of the Environment, Heritage and Local Government the correspondence sent to me, for any additional attention that may be necessary.

Policy/Political Role

- 3.3.14 Mrs. Leech said that, as part of her ongoing communications work for the Minister, she would regularly brief him in Waterford on progress. In his discussion with me the Minister said that at no stage was Mrs. Leech a general policy or political adviser to him. While she was a supporter of his and she was latterly involved in some fund-raising activities in November 2004 for the opening of a constituency office, he said in this regard that it was his understanding that there is no legal or other bar to a consultant to a Department being politically involved.

Assessment

- 3.3.15 In the absence of a systematic inventory of work it is not possible to be categorical about the compatibility of every aspect of work actually done with the services contracted for. Although the contract provides for a broad range of advice and assistance in the

communications area, the links between certain work items, including the local government funding study and various meetings in Waterford and abroad, are not clear-cut. Nevertheless, I am satisfied from my examination that, taken in the round, there is little material difference between work actually done and what was contracted for.

Chapter 4

Findings, conclusions and recommendations

I am asked to make a report of findings and conclusions in relation to these matters, and arising from them, to make recommendations, if appropriate, in relation to any changes in practice which may be desirable.

4.1 Findings

My findings are as follows:

OPW: Findings

- (1) Then Minister of State, Mr. Martin Cullen, T.D., suggested to the OPW that Mrs. Monica Leech of Monica Leech Communications might be of assistance to the Office in dealing with communications and media issues in Waterford. This arose from a number of major OPW projects in train or planned there and in the context of the overall workload on the Press Office.
- (2) A need was seen, at both Ministerial and senior official levels, to have a presence on the ground in Waterford. I have established that at the time there was precedent within OPW for the use of a consultant as an information co-ordinator on one major project (Farmleigh), but I was unable to establish a precise parallel for a similar arrangement for consultancy services for any other regional location.
- (3) The initial procurement to secure the services of Mrs. Leech for OPW without a competition, on the basis of an agreed payment, was broadly in line with norms and practice for procurement as set out in the non-statutory guidelines. So also were the follow-on contracts given to her.
- (4) The business need and reasons for urgency - as a basis for departure from competitive tendering - should have been fully documented for both the initial and follow-on contracts in OPW. The exercise of delegated levels of authority was not well documented in the decisions on the follow-on contracts which she obtained.
- (5) There is nothing in the norms and practice as regards the division of responsibilities between a Minister of State and an Office Head, as reflected in the legislative framework, that would prevent a Minister of State from making a suggestion about engaging a

named consultant. I have no information on actual practice across Departments and Offices against which to measure it.

- (6) The former Chairman of OPW did not have concerns about the Minister's suggestion or the follow-up to it and neither the current nor the former Chairman had concerns from the point of view of use of public funds. They agreed with the approach. No dissenting views were expressed orally or in writing to the Minister.
- (7) The work was related to specific projects in line with the emphasis in the contracts.
- (8) While there may have been an element of a retainer about the initial contract, monitoring and recording of the extent of the work actually done under the contract should have been better.
- (9) Although the rate of payment might have been related more directly to the work to be done, it was not excessive for a consultancy.
- (10) OPW were very satisfied with the quality of the work done by Mrs. Leech.
- (11) The de facto extension of the initial contract to seven months should have been formalised.

Department of the Environment, Heritage and Local Government:
Findings

- (12) Minister Cullen made clear to senior officials at an early stage of his tenure that he wished, as a matter of urgency, to have professional communications advice available to him and the Department.
- (13) He indicated that Mrs. Monica Leech, who had worked in a communications role for OPW, would be available and said that her suitability should be checked.
- (14) He accepted the advice of the Secretary General and Assistant Secretary that, to move quickly and at the same time comply with the procurement guidelines, there would have to be an initial contract for a short period followed by a competitive tendering in respect of a contract for a longer period.

- (15) On the basis of the Minister's suggestion the initial six-month contract was offered to and accepted by Mrs. Leech. She submitted a tender at a rate of payment of €650 a day, excluding VAT, which was considered satisfactory by the Department.
- (16) The subsequent approach to the tendering competition was broadly in line with the norms and practices as reflected in the guidelines. Apart from discussing the requirements for the job, there is no evidence that the Minister sought to intervene in the process, which was run by the Department.
- (17) Under the guidelines five firms instead of three should have been invited to tender. This might have resulted in a better testing of the market.
- (18) The Department broke no specific guideline in proceeding with the process when only two tenders were actually submitted.
- (19) While I accept that the outcome was not inevitable, the value of the contract has, in the event, turned out to be well in excess of the EU threshold for advertising in the Official Journal of the EU. Steps need to be taken to reduce the risks of such an outcome.
- (20) I am satisfied that the evaluation of the two bids was carried out with integrity and fairness by the three officials involved.
- (21) The Minister's initiative did not represent an infringement of norms and practice as reflected in the legislation on division of responsibilities. As noted above in the case of the OPW, I have no information on actual practice across Departments and Offices against which to measure it.
- (22) The Secretary General, as Head of the Department and Accounting Officer, did not express any dissenting views either orally or in writing to the Minister. There were precedents in the Department for taking on consultants or appointing an adviser to the Minister's staff in this area.
- (23) Although this may not have been unusual for the type of services provided, there is no comprehensive inventory of work done under the contract. Monitoring and recording of the work done was not satisfactory.

- (24) From my examination of the files I am satisfied, however, that Mrs. Leech has been extensively involved in the communications aspects of the work of the Department and in advising and briefing the Minister on communications issues. The contract will expire on 8 February 2005. Work for the balance of the period has now been specified and is being recorded in more detail than previously and consists of work for the Department directly rather than the Minister.
- (25) I received no evidence that Mrs. Leech acted as a more general policy or political adviser to the Minister. Both the Minister and Mrs. Leech rejected that suggestion.
- (26) In the case of a number of areas of work – participation in a selection committee to evaluate tenders for a local government funding study as well as support work at various international meetings – I was not convinced that the services were fully within the scope of the contract.
- (27) There were also some meetings in Waterford, in the Minister's list of engagements, in which Mrs. Leech participated with the Minister, which were not part of her work in the Department. Some of these meetings related, for example, to business of the Chambers of Commerce with whom Mrs. Leech had an active role locally and nationally. I accept that some of these meetings may well have been held outside the time for which she was contracted to the Department.
- (28) Nevertheless, I am satisfied that, taken in the round, there was little material difference between the services contracted for and those provided.
- (29) All the people I spoke to felt that Mrs. Leech has made a significant contribution to the work of the Department.

4.2 Conclusions

4.2.1 The issues that have arisen indicate that, however well-intentioned, there are risks in a Minister proposing a named person for a contract. Such a procedure may not least give rise to a perception of impropriety, e.g.

- that a supporter, associate or an acquaintance of a Minister was getting special treatment;
- or of a Minister seeking to influence a subsequent procurement process.

4.2.2 Assuming, however, that a Minister does proceed in this way it would be desirable to have procedures in place to minimise any risks arising.

4.2.3 The procurement process is rightly in the hands of individual Departments and Offices who must put appropriate procedures in place to ensure that the principles of the guidelines as well as EU legal requirements are respected and that they can account for decisions made. Any effort to bring more decisions back to the central Departments from individual Departments/Offices, or to require more detailed approvals, would run counter to the thrust of the modernisation process in the civil service. That process rightly focuses on the responsibilities and accountability of individual Departments and Offices. Ongoing review and improvement is, however, desirable. The Department of Finance and the revamped Government Contracts Committee have a significant role in promoting best practice. In this context, I received in the course of the inquiry a letter from a firm in the private sector which specialises in best practice in selection of consultants. The timeframe for the inquiry did not allow me to pursue this but I am forwarding the papers to the Department of Finance for consideration.

4.3 **Recommendations**

I recommend that:

- (1) The Department of the Taoiseach should issue advice to Ministers about the need for care, and the risks that could arise, in a Minister suggesting a particular person for a contract. Special care is needed where a contract provides for services to both a Minister and the Department.
- (2) The advice at (1) should apply for all consultancy contracts for Government Departments and Offices, whether short-term or for a longer period.
- (3) Consideration should be given to requiring the approval of the Taoiseach for an initiative being pursued by a Minister in relation to a consultancy for PR or communications advice which includes the provision of advice to the Minister.
- (4) In all cases where a Minister suggests a person or takes an initiative in relation to a contract the matter should be documented, and the Accounting Officer should be advised if not involved up to this point.
- (5) The need for a process auditor to oversee any subsequent procurement should be considered and the papers should be drawn to the attention of the Internal Audit Unit/Audit Committee.
- (6) The advice on procedures referred to above should be summarised in a briefing note on contract procedures that Secretaries General or Heads of Office, as appropriate, should make available to newly appointed Ministers or Ministers of State. Consideration should also be given to including this material in the Cabinet Handbook.
- (7) In the light of this inquiry, the Department of Finance should arrange for the Government Contracts Committee to review the guidelines for engagement of consultants to see what changes might be needed to promote best practice, especially as regards the use of single tendering on grounds of urgency or otherwise.

- (8) As part of (7) consideration should be given to whether any new conditions should be attached to contracts, in addition to normal provisions on avoidance of conflicts of interest, about involvement of consultants in other activities during the contract period.
- (9) In the review at (7), the Department of Finance should also consider giving further advice on
- monitoring and recording of work done under contracts and its quality;
 - how best to prepare estimates of the cost of projects so as to safeguard, as far as possible, against the value of a project exceeding the EU threshold, taking account of the legal provisions of the Directives;
 - ensuring compliance with the requirement to report consultancy projects to the central database. The content of that database should also be reviewed to ensure that it captures all relevant information.
- (10) The OPW should update its Office Notice on procurement procedures, to take account of developments since 2001. If particular flexibility is needed, especially for event management projects which can arise at very short notice, it should be made specific in the notice in consultation with the Department of Finance.
- (11) The OPW review should have regard to any remaining action that needs to be taken on foot of the report on a Review of Procurement Procedures prepared by PricewaterhouseCoopers in May 2004.
- (12) The Department of the Environment, Heritage and Local Government should also review and consolidate its internal advice on all aspects of procurement.

Appendix Details of payments made under the contracts

Office of Public Works

	Fees ¹ €	VAT on Fees €	Travel & Subsistence €	Vouched Expenses (Third Party), including VAT, paid via Mrs. Leech €
1 st Contract Nov 2001 – May 2002	15,110	3,173	1,866	4,356
1 st follow-up Contract (Oct 2002 and June 2003)	6,000	1,260	–	7,854 ²
2 nd follow-up Contract (May 2003)	2,500	525	–	259 ³
Total	23,610	4,958	1,866	12,469

Department of the Environment, Heritage & Local Government

	Fees ¹ €	VAT on Fees €	Travel & Subsistence and Mobile Phone Expenses €	Vouched Expenses (Third Party) paid via Mrs. Leech €
1 st Contract (7 months to 8 February 2003)	54,606	11,467	5,521 ⁴	22
2 nd Contract (Payments in respect of February 2003 to end-November 2004)	211,200	44,352	20,094 ⁴	–
Total	265,806	55,819	25,615	22

Notes

1. Fees are before deduction of professional services withholding tax
2. Logistical arrangements for two events including electrician, caterers, display of entries for North Quays international competition, media contact and publicity, public announcements, stage podium, supply of invitation cards, banners, panels, etc.
3. Expenses of public announcement system, signage, etc
4. Mobile phone expenses incurred over the period in the Department of the Environment, Heritage & local Government are as follows: 1st Contract: €1,139; 2nd Contract: €5,139
Flight expenditure in that Department also included in the Table figures are: 1st Contract €3,702; 2nd Contract: €11,637.