



Department of

Health, Social Services and Public Safety

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AN ROINN

Sláinte, Seirbhísí Sóisialta
agus Sábháilteachta Poiblí

MÁNNYSTRIE O

Poustie, Resydènter Heisin
an Fowk Siccar

Subject:

**AASD (Public Audit & Accountability Branch):
Memoranda of Reply on 10th Report from Public
Accounts Committee Session 2008-09**

Circular Reference: HSS(F) 41/2009

3rd July 2009

For Information to:

**Chief Executive and Director of Finance of each
HSC Body and NIFRS**

Summary of Contents:

**This circular contains the DFP Memorandum on the
Tenth Report from the PAC Session 2008-09
concerning the PFI contract for Northern Ireland's
New Vehicle Testing facilities.**

Enquiries:

**Any enquiries about the contents of this Circular
should be addressed to:**

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**Superseded Documents:
Not Applicable**

**Related documents:
Not Applicable**

**Expiry Date:
Not Applicable**

**Status of Contents:
Informative**

**DEPARTMENT OF FINANCE AND PERSONNEL MEMORANDUM ON THE 10TH
REPORT FROM THE PUBLIC ACCOUNTS COMMITTEE SESSION 2008-09**

Purpose

1. This is to inform you that the following document was added to the Memoranda of Reply to Public Accounts Committee Reports category:

MOR on the 10th Report from the PAC Session: Department of Finance and Personnel Memorandum on the Tenth Report from the Public Accounts Committee Session 2008/09 – The PFI Contract for Northern Ireland's New Vehicle Testing Facilities.

This document has been attached for reference.

Action

2. Please ensure that this circular is brought to the attention of the appropriate staff in your organisation and that any relevant action points are noted.

Should you have any queries on this please contact myself on 02890 765647

Yours,

Linda Greenlees

Finance Policy, Accountability and Counter Fraud Unit

**Department of
Finance and Personnel
Memorandum on the Tenth
Report from the
Public Accounts Committee
Session 2008-2009**

**The PFI Contract for Northern Ireland's New Vehicle
Testing Facilities**

**Presented to the Northern Ireland Assembly
by the Minister of Finance and Personnel
23 June 2009**

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Glossary of Abbreviations

CPD Central Procurement Directorate

DFP Department of Finance and Personnel

DOE Department of the Environment

DVA Driver and Vehicle Agency

DVLNI Driver and Vehicle Licensing Northern Ireland

DVTA Driver and Vehicle Testing Agency

EU European Union

NI Northern Ireland

OGC Office of Government Commerce

PFI Private Finance Initiative

RPA Review of Public Administration

SIB Strategic Investment Board

Tenth Report

Department of the Environment

The PFI Contract for Northern Ireland's New Vehicle Testing Facilities

PAC Recommendation 1

The failure to deliver the full vehicle test and the non-compliance with EU emissions and catalytic convertor testing standards has been ongoing for too long. The Committee recommends that the Agency establishes a clear target date to resolve this issue.

The Department of the Environment (DOE) accepts this recommendation and is striving to attain a position where it can set a clear target date for the introduction of an emission and catalytic convertor test that is compliant with European Union (EU) testing standards. The full emission testing process, devised by the Private Finance Initiative (PFI) contractor, was withdrawn for health and safety reasons. An alternative option has been developed and will be introduced subject to reaching agreement with the contractor as to where financial responsibility for introducing this revised option lies. This issue will be considered as part of the performance review of the contract that is due to report in June 2009.

PAC Recommendation 2

While performance has improved over recent years, this has come at a cost, and one which has been borne exclusively by the Agency's customers. The Committee recommends that the Agency undertakes a specific exercise to quantify how much additional cost it has incurred as a result of failing to meet the 18 minute test time. This estimate should inform future negotiations with a view to recovering costs from the contractor.

DOE accepts this recommendation and has recently recalculated how much additional cost it has incurred as a result of the failure to achieve the 18 minute test time. The issue of where responsibility for this failure lies will be considered as part of the performance review of the contract and this will inform the decision as whether costs can be recovered from the contractor.

PAC Recommendation 3

The removal of the employee bonus scheme in a commercial style operation such as vehicle testing is concerning. The Committee recommends that the Agency provides a written report detailing the measures it has in place to optimize productivity in the absence of such a scheme.

DOE accepts this recommendation but would wish to place on record that the bonus scheme that was in place was due for review because of identified weaknesses in respect of the scheme's effectiveness in incentivising productivity. When the Driver and Vehicle Licensing Northern Ireland (DVLNI) and the Driver and Vehicle Testing Agency (DVTA) merged as a result of a decision of the Review of Public Administration (RPA) process the bonus scheme was removed in response to advice from Department of Finance and Personnel (DFP). A written report of measures that the Driver and Vehicle Agency (DVA) has in place to optimize productivity will be forwarded to the Public Accounts Committee (PAC) in due course.

PAC Recommendation 4

The lack of clarity within this contract has made it difficult to identify the extent to which risks have been appropriately allocated between the public sector and the contractor. The Committee emphasises an earlier recommendation, from its session on PFI Pathfinder Projects in Education, that public sector bodies must ensure contracts are properly structured with enforceable penalty clauses and conditions to secure prompt payment of monies due to them.

DOE accepts this recommendation and acknowledges the importance of contracts providing clarity in respect of the ownership of risk. This PFI contract was one of the first to be put in place at a time therefore when much of

the good practice guidance that has subsequently been developed was not available. The fact that the delivery of the vehicle testing service is a shared responsibility between the DVA and the PFI contractor created particular challenges in the transfer and management of risk. Achieving clarity on the ownership of risk is a key part of the performance review of this contract.

PAC Recommendation 5

There has been a disturbing lack of staff continuity and a high number of vacancies in the contract management function and this has undermined the Agency's ability to hold the contractor to account. The Committee recommends that, for all high risk projects, a skill needs assessment is prepared to ensure that the team is adequately resourced and has access to the experience, expertise and skills necessary.

DOE accepts this recommendation and acknowledges that an unusually high level of staff turnover in its contract management function contributed to problems of managing this contract. Both DOE and DVA are committed to learning the lessons of the experience with this PFI contract and the DVA has already taken steps to strengthen contract management. Once the issues with this contract are resolved through the performance review and its outworking, a skill needs assessment will be prepared to ensure that the contract management team is both adequately and appropriately resourced.

PAC Recommendation 6

Transparency of information is a pre-requisite in ensuring that the public sector obtains a good deal in PFI contracts of this nature. It goes without saying that departments should be fully sighted on the level of profits being made on PFI deals. It is not good enough to argue issues of commercial confidentiality – if taxpayers are underpinning private sector profits, they have a right to full disclosure of the extent of such profits. The Committee recommends that the Department of Finance and Personnel should identify PFI contracts where the public sector does not currently have rights of access to relevant financial records held by contractors. In such cases, action should be taken to provide for open book accounting arrangements with private sector contractors.

DFP notes this recommendation and agrees that open book accounting arrangements should be sought in PFI contracts, although it may not be possible to obtain this in contracts already signed. Managing Public Money advises the use of standard forms of contract and HM Treasury and the Strategic Investment Board (SIB), in the Northern Ireland (NI) context, have provided guidance on the standardisation of PFI contracts. The SIB guidance specifically requires the contract to provide for the contractor to maintain a full record of particulars of the costs of performing the service, including those relating to the design, construction, maintenance, operation and finance, and to be made available to the department. The Audit and Accountability (NI) Order 2003 provides for access to relevant documents for the purpose of audit or examination by the Comptroller and Auditor General in connection with the audit of any body where he is the statutory auditor.

PAC Recommendation 7

The Gateway process has the potential to ensure that warning signals are identified, and that necessary remedial action is taken. However the Committee is concerned about whether there are sufficient resources available across the local public sector to staff such reviews. The Committee recommends that DFP compiles a forward programme of Gateway Reviews to assess whether it has a sufficient pool of accredited Gateway Reviewers to meet the planned programme.

DFP accepts this recommendation. Central Procurement Directorate (CPD) is currently undertaking a review of current capability to conduct Gateway reviews. There are currently around 130 trained Gateway reviewers throughout the NI public sector who are currently being accredited to Office of Government Commerce (OGC) standards and this pool of reviewers can be supplemented through operating protocol agreements with the Scottish and Welsh Governments. CPD is also using an OGC contract to source experienced risk reviewers for medium and high risk projects as required. This will ensure that current levels of Gateway activity can be sustained and will help to provide additional support should the level of demand increase.

For the medium to long term CPD is seeking to enhance the pool of reviewers from within the Northern Ireland Civil Service. It is currently developing a marketing strategy to promote the considerable benefits of being a Gateway reviewer to both Senior Civil Service (SCS) and the wider project and project management community.

PAC Recommendation 8

The pilot testing did not take place in a live environment and this should have raised concerns for the Agency. The Committee refers to a previous recommendation, from its session on the Statement of Rate Levy, which it believes can be extended to this type of project. Shortcuts with pilot testing must never be taken, as the costs of subsequent flaws can be very substantial in terms of fixing an underperforming, live system.

DOE accepts this recommendation and acknowledges that this is one of the most important lessons to be learned from this experience. It fully accepts that in advance of entering into any contract that involves a technical solution, full pilot testing must take place in a live environment over an appropriate period of time. The implication from this of the need to invest up front in the testing of possible technical solutions is also recognised. It is important to recognise again that because this was an early PFI contract, the DVA did not have the benefit of advice and guidance subsequently available to those seeking to put in place a contract that involves a technical solution.

PAC Recommendation 9

It has taken much longer than it should have to initiate the performance review of the contract. The Committee recommends that this is commissioned with immediate effect. This performance review should generate a detailed action plan with specific timescales for implementation.

DOE accepts this recommendation and initiated the performance review of the contract in February 2009 and it is due for completion in June 2009. The terms of reference for this work require it to produce a detailed action plan and associated timetable for implementation.

PAC Recommendation 10

It is important that the performance review moves quickly to prepare a complete and accurate estimate of both the total additional capacity and expenditure required as a result of the failure to achieve the 18 minute test, and the proportion of costs which the Agency will seek to recover from the contractor. The Committee recommends that the results of this performance review are reported to it in due course.

DOE accepts this recommendation and will monitor the implementation of the action plan. DOE will provide the Committee with the results of the performance review of this contract.

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