

FOI/0019/2008

8 April 2008

Mr Michael Brennan
Irish Independent
Independent House
27-32 Talbot Street
Dublin 1

Dear Mr. Brennan,

I refer to your letter dated 6 March 2008 which you have made under the Freedom of Information Act 1997 as amended requesting

1. A copy of the contract agreed between the Department of Communications and a company headed by a former employee of Enterprise Ireland in 2004. The contract related to certain services to the Irish Offshore Sector
2. The amount of money paid to the company by the Department since the contract was agreed in 2004.
3. The name of the company
4. All correspondence between the Department of Communications and Enterprise Ireland regarding the contract in 2003 and 2004.
5. All correspondence between the head of the company and the Department of Communications and Enterprise Ireland regarding the contract in 2003 and 2004.

The engagement of Keane Offshore Integrity was to satisfy indent 3 of condition 3 of the Plan of Approval for the Corrib Gas Field which stipulates that,

Prior to commencement of gas production (for commissioning or commercial operations) the receipt of a Letter(s) of Acceptance for all Corrib installations, pipelines and associated engineering infrastructure from the Minister's auditor indicating that 3rd Party Independent Verification has been carried out and completed satisfactorily in relation to the development.

For reference purposes, I have used the numbering of your request to respond .

Item 1: I attach copy of the consultancy agreement which does not include the technical details of the work which are commercially sensitive and are refused under Section 26 (1)(b) and Section 27(1)(c) of the FOI Act.

Item 2: On the basis of claims submitted to the Department the total amount paid to the company under the Corrib Gas Field Development Verification contract since 2004 amounts to €52,535.12. You will no doubt be aware that work on the Corrib project was suspended in 2005.

Item 3: Keane Offshore Integrity Ltd

Item 4: No documentation exists

Item 5: No documentation exists between the head of the company and the Department and Enterprise Ireland regarding the contract. There are records between the head of the company and the Department.

In relation to correspondence between the head of the company and the Department, I would inform you that the contract is evolving and the auditors work will not be complete until the field has been fully developed and operational. As the decision maker in this case I have decided to refuse your request under sections 20 and 21 and 27 of the Freedom of Information Act 1997 – 2003 on the basis that the request is exempted under these sections. I have detailed the sections hereunder.

Exemption explained.

Section 20(1) (a) of the Act exempts records relating to the deliberative processes by the public body concerned.

Section 21(1)(a) provides for the exemption of records from release which may prejudice the effectiveness of tests examination, investigations, inquiries or audits conducted by or on behalf of a public body.

Section 21(1) (b) provides for the exemption of records from release which may have a significant adverse effect on the performance by a public body of any of its functions relating to management.

Section 21(1)(c) provides for exemption of records from release relating to disclosure of position taken or to be taken by or on behalf of the Government or a public body.

Section 27(1)(c) provides for exemption of records from release where disclosure could prejudice the conduct or outcome of contractual or other negotiations of the person to whom the information relates.

In reaching my decision I have taken the following public interest factors into account.

Factors in favour of disclosure:

1. The right of the public to have access to information.
2. Openness and transparency of the decision making process.
3. There is a general interest in the disclosure of documents which relate to issues' affecting the wider community.

Factors in favour of non disclosure:

1. Need for the Department to be able to conduct its deliberation process on matters of importance.
2. Release of the record would impair the integrity and viability of the decision making process without any corresponding benefit to the public.
3. Need to preserve confidentiality having regard to the subject matter.
4. Need for the Department as regulator of the Petroleum industry to secure sound advice in exercising this role and not to be impaired in the making of future decision by the release of the record.
5. Release of the record where the decision making process is incomplete would unfairly disadvantage the maker of the decision.

In my opinion of the balance of the public interest lies against the release of the documentation..

I am to advise that if you are not satisfied with this reply you may write to Mr. Frank O'Brien, FOI Unit, of this Department at Elm House, Earlsvale Road, Cavan (quoting the relevant FOI

reference) within four weeks of the receipt of this letter. In that event the matter will be fall to be considered by a more senior member of staff. Please note that there is a charge for all appeals of FOI requests. This charge is currently €75.00. A reduced fee of €25.00

Yours sincerely

A handwritten signature in black ink, appearing to read 'Marian B. Salmon', written over a horizontal line.

Marian B. Salmon
Decision Maker

Dated: 21st June 2006

CONSULTANCY AGREEMENT

THIS AGREEMENT is made as of the 21st June 2006

BETWEEN:

- (1) Department of Communications, Marine and Natural Resources DCMNR (PAD);
- and
- (2) **Keane Offshore Integrity Ltd. (KOIL), 34 Sandymount Avenue, Sandymount Estate, Wilton, Cork ("the Contractor").**

WHEREAS

- (A) **DCMNR/PAD** is engaged in the oil and gas industry regulation and wishes to engage the Contractor to carry out the Consultancy Services.
- (B) The Contractor is engaged in the provision of consultancy services to the oil and gas industry.

NOW IT IS HEREBY AGREED as follows:

1. Definitions

- 1.1 In this Agreement words and expressions shall have the meaning assigned to each of them respectively in the Schedule.

2. Personnel and Duties

- 2.1 The Contractor shall carry out the Consultancy Services specified in the attached Schedule.
- 2.3 The Contractor represents and warrants it shall carry out the work in an efficient, proper and professional manner.
- 2.4 The Contractor shall work such hours as may be required adequately to carry out the Consultancy Services in an expeditious manner.
- 2.5 No consultancy fee shall be payable in respect of any day in respect of which the Contractor does not carry out work on the Consultancy Services whether by reason of annual leave, illness, incapacity, absence or otherwise.

The Contractor shall advise DCMNR (PAD) in the event that the Consultant is unable to carry out the Consultancy Services due to absence through annual leave, illness, incapacity, absence or otherwise.

- 2.6 The Contractor shall furnish DCMNR (PAD) at the end of each month with a short report of work carried out over the month.

Commencement Date and Duration:

3. The Commencement Date and Duration of this Agreement shall be as specified in the Schedule.
- 3.2 DCMNR (PAD) may forthwith terminate this Agreement in the event of any breach by the Contractor of the terms of this Agreement. The Contractor may forthwith terminate this Agreement in the event of any breach by the Company of the terms of this Agreement.

4. Fee

The Operator (Shell E & P Ireland Limited) will pay as agreed the fees in relation to this "verification Audit" at the Specified Rate as set out in the Schedule. However as agreed between DCMNR (PAD), KOIL and SEPIL, DCMNR (PAD) will in the first instance pay the invoice(s) and will immediately invoice SEPIL for reimbursement of the payment.

- 4.2 The Contractor will be reimbursed at cost for expenses reasonably and necessarily incurred whilst on "verification audit" business and in the course of carrying out work on the Consultancy Services, including transportation between a Consultant's home or office and any point to which the Consultant is required to travel in the course of providing the services, provided that all such expenses are fully itemised and documented.

5. Payment

- 5.1 At the end of each month the Contractor shall invoice DCMNR (PAD) for the work carried out on the Consultancy Services and for expenses incurred, if any, during such period. DCMNR (PAD) shall pay the Contractor's invoice(s) by electronic bank transfer within fifteen (30) days of the date of receipt.
- 5.2 On receipt of invoice(s), DCMNR will after checking details invoice the Operator for the reimbursement of the fees as per invoice(s).

6. Independent Contractor

- 6.1 The Contractor represents and warrants that it is an independent Contractor and undertakes and agrees that it is not a servant, employee or agent of the DCMNR (PAD).
- 6.2 Neither the Contractor nor the Consultant shall have any authority to transact any business or make any arrangement for or on behalf of DCMNR (PAD).

7. Confidentiality and Records

- 7.1 The Contractor shall hold all information obtained in the course of carrying out the Consultancy Services ("the Confidential Information") in strictest confidence and shall not reveal such information to any third party or use such information for any purpose other than the carrying out of the Consultancy Services without first obtaining the written authorisation of DCMNR (PAD). This obligation shall continue notwithstanding the completion by performance or the earlier termination of this Agreement.
- 7.2 All written information, drawings, documents and materials prepared by the Contractor or any Consultant and all electronically stored data received or derived therefrom ("relevant electronic data") shall be the exclusive property of DCMNR (PAD) and will be delivered to DCMNR (PAD)

promptly on the completion by performance or the earlier termination of this Agreement or otherwise promptly on request of DCMNR (PAD) together with all written information, drawings, documents and materials provided by DCMNR (PAD) to the Contractor.

- 7.3 The Contractor shall maintain a true and correct set of records pertaining to the carrying out of the Consultancy Services and all transactions related thereto. The Contractor shall retain all such records for a period of not less than two (2) years after completion of the Consultancy Services.
- 7.4 Without prejudice to any other provision of this Agreement the Contractor shall not seek to exploit or derive any advantage or benefit from the Confidential Information. The Contractor shall procure that its officers, directors and employees hold Confidential Information in strict confidence and do not reveal such information to any third party or use such information for any purpose other than the carrying out of the Consultancy Services. These obligations shall continue notwithstanding the completion by performance or the earlier termination of this Agreement.

8. Insurance

- 8.1 The Contractor shall ensure that it is and remain at all times covered by the insurances set out in the Schedule.

9. Compliance with Laws, Practices and Procedures.

- 9.1 The Contractor shall observe all national and local laws and regulations as may be applicable to the Site or the Consultancy Services.
- 9.2 The Contractor shall observe all guidelines, codes and recommendations issued to the Contractor by DCMNR (PAD) or by any professional or trade organisation or other official or responsible organisation as may be applicable to the Site or the Consultancy Services.

10. Payment of Taxes

- 10.1 The Contractor shall pay all corporation tax, income taxes, National Insurance Contributions, Value Added tax and any other taxes whatsoever duly assessed in respect of payments to the Contractor.
- 10.2 The obligations of the Contractor under this clause 10 shall continue notwithstanding the completion by performance or the earlier termination of this Agreement.
- 10.3 You are required to produce a current tax clearance certificate to validate this contract.

11. Assignment

- 11.1 The Contractor shall not assign this Agreement in whole or in part without the prior written consent of DCMNR (PAD).

12. Other Work

- 12.1 The Contractor shall not carry out work for anyone other than DCMNR (PAD) which conflicts with the responsibilities of the Contractor under this Agreement.

Waiver

- 13.1 No failure or failures on the part of either party hereto to enforce from time to time all or any part of the terms or conditions of this Agreement shall be interpreted as a waiver of such terms or conditions.

14. Entire Agreement

- 14.1 This Agreement contains the entire agreement between the parties and supersedes any previous understandings, commitments, agreements or representations whatsoever, oral or written, pertaining to the subject matter hereof. This Agreement shall not be varied except by an instrument in writing executed by both DCMNR (PAD) and the Contractor or by their respective duly authorised representatives.

15. Law and Jurisdiction

- 15.1 This Agreement shall be construed and take effect in accordance with the laws of Ireland and the parties hereby submit to the exclusive jurisdiction of the Irish courts.
- 15.2 You are advised that all records held by the Contractor in connection with this consultancy are in accordance with the provisions of the Freedom of Information Act 1997 deemed to be held by the Department (Section 6, subsection 9 of the Act refers, a copy of which is enclosed) and as such may be subject to access by members of the public in accordance with the provisions of the Act.
- 15.3 In the event of any illegal or improper conduct by you the engagement may be terminated without notice and should the engagement to so terminated no remuneration or compensation will be payable for any unexpired portion of the engagement.
- 15.4 Under the Finance Act 1987 a withholding tax must be deducted from payments for professional services. This tax which is at the rate of 24% will be deducted from payments made to the consultants in respect of work carried out and will be remitted to the Irish tax authorities. A non national firm if awarded the contract can reclaim this tax by making application on form F45/1 to the Revenue Commissioners, Claims Branch, Dublin Castle Dublin 2
- 15.5 You will during the term of the consultancy be subject to the provisions of the Official Secrets Act 1963 as amended by the Freedom of Information Act 1997. In this regard you are required to give a written undertaking in relation to the Official Secrets Act 1963 (Copy of the Department of Public Service circular 15/79 is enclosed)

16 Acceptance of Agreement.

If you are prepared to accept the contract on the foregoing conditions, the undertaking under should be completed and the entire document together with a current tax clearance certificate/Official Secrets Act document duly signed returned to the Petroleum Affairs Division.

FORM OF UNDERTAKING

UNDERTAKING

Corrib Gas Field Development: Independent Verification Audit

I, Gerard Keane

am prepared to accept the contract with the Department of Communications, Marine and Natural Resources on the terms and conditions set out above.

Signed by: Gerard Keane

Duly authorised signatory
for and on behalf of
Keane Offshore Integrity Ltd. (KOIL)

Signed:



"The Schedule" attached to the Consultancy Agreement

Between

The Department of Communications, Marine and Natural Resources DCMNR (PAD)

and

Consultant: Keane Offshore Integrity Ltd. (KOIL)

The Consultancy Services: Independent Engineering Verification of the Corrib Gas Field Development, including the issuance of the necessary KOIL Letters of Acceptance, prior to Corrib First Gas

The Site: The offices of Shell E&P Ireland Ltd. (SEPIL) at Dublin, Mayo and all onshore office locations nominated by SEPIL; offshore installations and workboats contracted by SEPIL; SEPIL onshore construction sites, including the Gas Terminal site and Contractor's own offices.

Commencement and Duration: This agreement shall be deemed to have commenced on 14th December 2004 and shall remain in force until the issuance of the necessary Corrib Development KOIL Letters of Acceptance, prior to First Gas, or until either party terminates this Agreement pursuant to clause 3, whichever is earlier.

Company's Nominated Representative: Gerard Keane

Specified Rate: €1100.00 per Consultant per day (part days pro rata). A "day" shall be seven (7) hours during which a Consultant is engaged on the Consultancy Services; the Contractor shall provide monthly to the Company an accurate record of hours engaged on the Consultancy Services by each Consultant.

Administrative Office: 34, Sandymount Avenue, Wilton, Cork City, Ireland

Insurances: Employers Liability Policy: Cover of Ten (10) Million Pounds Sterling for any one occurrence or series of occurrences arising out of one event. Public Liability Policy: Cover of Two (2) Million Pounds Sterling for any one occurrence or series of occurrences arising out of one event.

Signed Michael J. Daly Date 21st June 2006
For the Company

Signed Gerard Keane Date 21st June 2006
For the Contractor

Dated: 21st June 2006

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- (1) Department of Communications, Marine and Natural Resources DCMNR (PAD);
- and
- (2) **Keane Offshore Integrity Ltd. (KOIL), 34 Sandymount Avenue, Sandymount Estate, Wilton, Cork ("the Contractor").**

WHEREAS

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Signed by: Gerard Keane

Duly authorised signatory
for and on behalf of
Keane Offshore Integrity Ltd. (KOIL)

Signed:

A handwritten signature in black ink, appearing to read "Gerard Keane". The signature is written in a cursive style with a large initial "G".

"The Schedule" attached to the Consultancy Agreement

Between

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and

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