

**Report by the  
Comptroller and Auditor General**

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**The Foreign and  
Commonwealth Office**

# **The New British Embassy in Berlin**

Ordered by the  
House of Commons  
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## Executive summary

**1** In June 1998 the Foreign and Commonwealth Office (FCO) signed a contract for the construction, operation and financing of a new Embassy in Berlin with a German supplier called Arteos which had been formed by a consortium comprising Bilfinger + Berger, one of the three biggest German construction companies, and Johnson Controls, a large American-based facilities management provider. Arteos is expected to complete the construction of the Embassy in June 2000.

**2** The contract provides for the construction of a new Embassy building and its operation for 30 years and is extendable by re-tender for a further 30 years. Arteos will construct and fit out the new Embassy. The FCO will make a unitary payment (80 per cent of which is fixed in German marks in nominal terms) estimated at £4.5 million a year for 30 years, which amounts to a net present cost of £49.8 million at 1997-98 prices.

**3** In 1993, the FCO identified the need to acquire a new Embassy on or as soon as possible after September 1999, as the seat of the German Government was due to move from Bonn to Berlin by the year 2000. The FCO chose a site at 70-71 Wilhelmstrasse within walking distance of the centre of German Government in the heart of Berlin. This was the site of the pre-World War II Embassy in Berlin; the site was enlarged by the purchase of an adjacent plot for £6.5 million. A design competition was held in 1994 which was won by the British architects, Michael Wilford and Partners.

**4** This was the first and so far only PFI accommodation project undertaken by the FCO. The PFI process commenced in 1996, which was two years after the design competition. The project was therefore unlike other PFI construction deals where bidders employ their own architects to create their own design. The FCO faced difficulties, because they had to undertake a novel form of procurement abroad, at a time when all parties were learning about the complexities of the PFI.

**5** The FCO developed three main objectives for the project:

- to move the Embassy operation to Berlin by September 1999;
- to ensure they would not pay for services unless they received them and that payments would be adjusted according to the availability of the building and the quality of the service provided; and

- to ensure that the contract agreement demonstrated value for money.

**6** We examined:

- how effectively the FCO managed the competition; and
- whether the FCO are likely to obtain a fit-for-purpose new Embassy in Berlin, whether risks were allocated appropriately, and at a lower cost than if they had undertaken the project using conventional finance.

**7** The scope and methodology of our examination are described in Appendix 1. We received advice on legal and contractual matters from DJ Freeman and Partners and on property and construction aspects of the project from King Sturge & Co.

## **Despite some difficulties the FCO managed the competition effectively**

**8** The project began as a conventional procurement in 1994. In the light of a reduction by a third in the FCO capital budget in 1995 the FCO faced having to complete a more difficult project through the choice of a PFI route.

**9** The competitive process was generally handled very effectively. The FCO obtained an impressive amount of interest in the project and sustained this up to the selection of the preferred bidder. There were bids from quality consortia, and the FCO chose the best of the three final bidders in terms of both price and quality criteria.

**10** There were delays in the negotiation of the deal. In particular, it took 11 months to move from the appointment of the preferred bidder to financial close in June 1998 against a planned timetable of three months. The difficulties of incorporating an existing design into the PFI process accounted for some of the delay. The FCO recognises in retrospect that the original timetable was overoptimistic. But the overall estimated cost of the deal did not change significantly between appointment of preferred bidder and financial close.

**11** The German subsidiary of Johnson Controls, a facilities management provider, was involved as a subcontractor to the winning bidder and as the facilities management provider to a rival bidding consortium. Although the FCO took steps to ask bidders about the make-up of their consortia, this process did not identify that the same facilities management provider was involved in both bids.

The FCO did not know of Johnson Controls' involvement in the Arteos bid until well after the appointment of the preferred bidder and Johnson Controls told us that they were similarly unsighted. We have found no evidence that the competition had been weakened as a result of these circumstances.

## **The FCO will obtain a suitable building at a price comparable with a traditional procurement**

**12** The architect's original design was to a high specification. The building, which is likely to be fit for the FCO's purpose, is now due for delivery in June 2000, eight months later than originally intended – a major element of the overrun arose from changes to the Berlin building regulations.

**13** The FCO has the right to occupy the building for 30 years with a possibility of renewing occupation for a further 30. The FCO may share occupation of the building with third parties and obtain income for doing this. In addition, the FCO may occupy the building after 30 years by negotiating new terms or terminating the operator's agreement.

**14** The FCO allocated risks appropriately in most key areas achieving a notable success in ensuring that all of the unitary payment is at risk under the contract, and passed over those construction risks which are usually transferred to the private sector in PFI projects and instituted a performance payments regime which transfers a good deal of performance risk to the consortium. The risks relating to the development of the design were shared, the FCO transferring risks associated with completing the design to the supplier.

**15** When letting the contract, the FCO estimated that there was a small price advantage in the PFI deal compared with the cost of a conventional procurement. This view was based on a broad judgement of the estimated total costs of the PFI and the conventional projects. The value for money comparison is sensitive to assumptions made about the level of operating costs, risks, and the future exchange rate between sterling and the German mark, and the FCO examined these sensitivities and reflected them in their calculations.

**16** The requirements of an Embassy are complex and there were specific planning constraints on this historic site. Because bidders adopted the outline design which had already been developed by the architects, the scope for them proposing design innovations was further limited. And the need for the FCO to take

account of security requirements meant possibilities for innovation in design were constrained. The FCO have managed to achieve some innovation in the construction phase.

**17** The FCO were advised by Dibb Lupton Alsop solicitors and Greenwich NatWest as financial advisors, with Chesterton Consulting (Katalysis) and Schal Property Services (Carillion) as technical advisors. A Berlin-based law firm advised the FCO on German law aspects of the transaction.

## Recommendations

- 1. We recommend that departments look to include provisions in contracts which ensure that all of the unitary payment due to the consortium is at risk.** In the Berlin Embassy project, the FCO achieved a notable success in including such a provision in the contract.
- 2. We recommend that departments should find out from bidders the identities of all the parties to their bids so that they can take an early view on whether conflicts of interest exist.** In the case of the Berlin Embassy, the FCO were not aware that a German subsidiary of Johnson Controls had played a part in two of the three short-listed bids, although there was no evidence in this case that the competition had been weakened as a result of this.
- 3. We recommend that departments should recognise that where they want bidders to demonstrate greater innovation it is more likely this will be achieved by asking bidders to produce their own designs.** In the case of the Berlin Embassy there was less scope for bidders to make their own innovations, particularly because the design had to take account of a complex brief, local planning regulations and security requirements.
- 4. We recommend that departments should put themselves in a position to identify the reasons for major differences between the bids and the Public Sector Comparator, both in overall terms and in different elements such as construction and operating costs.** The FCO followed this as far as they could in the case of the Berlin Embassy, and focussed mainly on total cost comparisons.