



**MINISTRY FOR JUSTICE AND HOME AFFAIRS**

**Investigation relating to the Tender issued for the  
Provision of Warden Services and Installation of CCTV Cameras  
by four Local Council Joint Committees**

**Report of the Auditor General**

**March 2009**

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four Local Council Joint Committees**

**Executive Summary**

**Background**

In a letter dated 20 January 2005, the Minister for Justice and Home Affairs informed the Auditor General that his Ministry was in receipt of representations submitted by the unsuccessful bidder alleging lack of transparency and irregularities as regards the Provision of Warden Services' tender.

In terms of the Local Councils Act and the general powers conferred upon the Auditor General in terms of the Constitution, the Auditor General was requested by the Minister to investigate such allegations. The terms of reference, on which the NAO based its investigation, were highlighted by the Auditor General in a letter sent to the Minister.

The call for tenders was issued on 15 October 2004 by four Local Council Joint Committees, namely Sliema, B'Kara, Central and North Joint Committees. The contract was to commence on 1 January 2005 and continue to be in force for a period of five years. By the closing date only two bidders submitted their offers.

**Issues and Concerns**

The following were the audit findings relative to the terms of reference.

*Issue 1: Whether the tendering procedure for the award of a second 5-year term contract for the provision of warden services proceeded regularly and in accordance with established procedures and regulations*

- Tender Document requesting Provision of Ancillary Services - namely the provision of services relating to closed circuit television, monitoring of closed circuit television, towing and clamping and speed camera – which were not specifically mentioned in Government Gazette Advert. The provision of these services could have been split into at least two distinct tenders.
- The four Joint Committees erroneously opted for a 30 day publication period rather than the 52 day one, the latter applicable for an Open Tender procedure.

- Better planning should have led to an earlier date of issue of tender thus guaranteeing ample time for implementation in the eventuality of a new provider winning the bid.
- The Adjudication Board lacked technical expertise and a representative of one of the Joint Committees. The presence in the Adjudicating Board of an Authorised Officer, being one of the signatories to the running contract and to eventual contracts with the agency, was questionable.
- Minutes of meetings of each of the Joint Committees do not provide sufficient evidence that the matter was deliberated upon or discussed and evaluated.
- The *ad hoc* Adjudication Board decided that, because of the similarity in prices tendered for the warden service, apart from the price tendered it had to consider other factors such as past experience of the tenderer in law enforcement, the work plan submitted in the bid and available facilities and equipment. Within this context, the Board felt that the Guard and Warden Service House Ltd had more experience, manpower and equipment although the unsuccessful bidder had tendered lower prices for the ancillary services. However, no recommendation was forwarded and the tender was referred to the four Joint Committees to make their decision.
- The Contract Agreement was signed before all four Joint Committees sent the Notice of Refusal, during the 10 working days appeal period.
- All the four Joint Committees unanimously approved the award of tender to the Guard and Warden Service House Limited. The contractor was informed by letter of acceptance dated 7 December 2004, whereas the unsuccessful bidder was informed of the tender adjudication by each of the Joint Committees in four separate letters dated 14 and 30 December 2004.

Apart from the above, other shortcomings noted concerned:

- The minimum five year Revenue-Sharing Agreement entered into on 6 July 2004, concerning the eventual installation of speed cameras within the defined boundaries of the Councils represented by the Sliema Joint Committee.
- The extension of the 1999 Contract, between Sliema Joint Committee and the Guard and Warden Service House Ltd, for additional enforcement services up to end January 2005.

- The ‘unethical’ meeting held between North Joint Committee and the Guard and Warden Service House Ltd during the evaluation and adjudication phase of the new call for tenders.
- Legal Enforcement System (LES) was eventually drafted into law in 2006.

*Issue 2: Establish whether any of the stakeholders involved in the drawing up of the tender documentation, the adjudication of the offers received and the service recipients (the committees of the four Joint Committees requesting the services) had a conflict of interest.*

Since the law is concerned only with pecuniary interests, it was not deemed within the competence of this investigation to inquire on any other form which the interest could conceivably assume. No Councillor involved in the tender proceedings made disclosure of any pecuniary interests and, in the absence of contrary evidence, this Office concludes that there was no real conflict of interest of the type contemplated by the law.

*Issue 3: Determine whether the CCTV and speed cameras were fixed before or after the date of the letter of acceptance.*

The St. Julian’s cameras started operation on 24 November 2004 – before any of the four Joint Committees adjudicated the 2004 tender. If credit is to be given to the reasoning that the cameras in question related to the 1999 contract, then the issue of irregularity does not arise. The Mriehel speed camera was the first one to be fixed, following the adjudication of the 2004 contract, in mid 2005.

*Issue 4: Establish whether the provider of the cameras had to provide the service within seven (7) days of adjudication.*

As regards the allegation made that the cameras were to be in place and functioning within a prescribed date or within a prescribed period after the date of acceptance, this Office did not find any evidence to this effect in the 2004 tender document.

### **Recommendations**

The report also includes various recommendations intended to ensure more transparent and fair tendering procedures, such as:

- i. Local Councils should invariably ensure strict compliance with the applicable tendering regulations and procedures; and
- ii. Local Councils Joint Committees should better plan the full tendering process.

**MINISTRY FOR JUSTICE AND HOME AFFAIRS:**

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**A. Background**

**Letter of Alleged Allegations to the Auditor General**

In a letter dated 20 January 2005 to the Auditor General, the Minister for Justice and Home Affairs stated that representations had been made to his Ministry and Parliamentary Questions tabled in the House of Representatives alleging lack of transparency and irregularities relating to a tender issued, late in 2004, for the Provision of Warden Services by 4 Local Council Joint Committees, namely Sliema, B’Kara, Central and North Joint Committees.

The Sliema Joint Committee was made up of the Gzira, Pembroke, St. Julians, San Gwann, Sliema, Swieqi and Ta’ Xbiex Local Councils. The B’Kara Joint Committee was composed of the Attard, Balzan, B’Kara, Dingli, Iklin, Lija, Mdina, Mtarfa, Rabat and Santa Venera Local Councils. The Central Joint Committee was made up of the Qormi, Siggiewi, Zebbug, Hamrun, Msida and Pieta’ Local Councils. The North Joint Committee was composed of the Gharhur, Mellieha, Mgarr, Mosta, Naxxar and St. Paul’s Bay Local Councils.

In principle, Local Councils are autonomous body corporates established by law and do not fall under the control of central Government in matters delegated to them and over which Local Councils exercise executive powers.

However, since allegations of irregularities regarding public moneys administered by Local Councils were being made, the matter was referred to NAO under the Local Councils Act and the general powers conferred upon the Auditor General in terms of Article 108 of the Constitution.

Complaints had been addressed concerning the handling of the matter to the Minister responsible for Local Councils by the unsuccessful bidder - who chose not to avail of the opportunity for an appeal to be heard against the Joint Committees’ decision as is provided under the terms of the Local Councils (Tendering) Regulations.

It is pertinent to point out that no official request for an *ad hoc* Public Accounts Committee inquiry was made under the special provisions of the Auditor General and the National Audit Office Act, 1997.

### **Terms of Reference of Investigation**

In a letter dated 26 August 2005 addressed to the Minister for Justice and Home Affairs, the Auditor General submitted the following terms of reference on the basis of which the National Audit Office was to conduct the investigation:

" Examine the adjudication process of all services requested in the call for tender - provision of the warden service, provision and monitoring of the CCTV cameras, provision and monitoring of the speed cameras and the services of clamping, towing, removal of encumbering objects and storage thereof.

Establish whether any of the stakeholders involved in the drawing up of the tender documentation, the adjudication of the offers received and the service recipients (the committees of the four Joint Committees requesting the services) had a conflict of interest.

Determine whether the CCTV and speed cameras were fixed before or after the date of the letter of acceptance.

Establish whether the provider of the cameras had to provide the service within seven (7) days of adjudication."

The above terms of reference were taken as agreed to since no Ministerial comments were subsequently received.

List of Legislation consulted during the conduct of this investigation may be referred to at *Appendix 1*.



## **Issue of Tender**

On 15 October 2004, a call for tenders for the provision of local warden services was made by the above-mentioned 4 Joint Committees.

The call for tenders, under reference KK/1/2004, was published in the Government Gazette on 15 October 2004 and local papers. The closing date for the submission of offers was 15 November 2004.

The tender requested the provision of warden services and the tenderers had to quote rates for hours of services requested and the prices had to differentiate between hours of service if decreased or increased by over 15%, 25% and 50%.

The contract was to commence on 1 January 2005 and continue to be in force for a period of 5 years from the commencement date.

Tenderers had to tender for the provision of the required services for all of the 4 Joint Committees, failing which the tender was to be considered defective and unacceptable. A set of complete tender submissions had to be submitted for each of all the 4 Joint Committees quoting uniform rates for all Joint Committees. Once accepted, the successful tenderer was required to enter into 4 distinct contracts with the Joint Committees offering this tender.

Three (3) tender documents were collected against a Lm200 fee. However, by the closing date only 2 of these bidders submitted their offers, namely The Guard and Warden Service House Limited and the unsuccessful bidder.

## **B. Findings**

**Issue 1: Whether the tendering procedure for the award of a second 5-year term contract for the provision of warden services proceeded regularly and in accordance with established procedures and regulations**

### **1.1 Tender Document requesting Provision of Ancillary Services not specifically mentioned in Government Gazette Advert**

Whereas the advert featuring in the Government Gazette, dated 15 October 2004, read 'Call for Tenders Provisions of Local Warden Services', the tender document outlining the general and specific

conditions of the said contract required also tenderers to submit rates for ancillary services - provision of closed circuit television services, monitoring of closed circuit television services, towing and clamping services and speed camera services.

Thus, “Provision of Local Warden Services” did not accurately describe the tender and could easily have misled prospective bidders when the tender was advertised. The agency entrusted with the warden service had to be the same one operating the services termed as ‘ancillary’ but which in effect were of a different nature. The provision of these services could have been split into 2 distinct tenders.

## **1.2 30 Day instead of 52 Day Publication Period**

World Trade Organisation decision dated 23 April 2004, through the Committee on Government Procurement, recognised that as from 1 May 2004 the 10 new Member States (including Malta) will, as Member States form part of the European Communities for the purposes of the Agreement on Government Procurement and be bound by the Agreement. EU regulations on Government Procurement were transposed into local legislation through Legal Notice 177 of 2005, effective from 3 June 2005. In reality, the EU regulations became effective in Malta from date of accession independently of the date on which they were transferred into Maltese law.

This Office acknowledges the fact that the Open Tender procedure best suited this call since specifications and requirements were clearly defined and the value of the contract could be estimated by each of the Joint Committees. However, the 4 Joint Committees erroneously opted for a 30 day publication period, applicable for a pre-qualification assessment through an Expression of Interest call – referred to as Restricted Tender procedure. This should have been followed by a 35 day period for submission of responses following the call for tenders.

On the other hand, an Open Tender procedure, as the one applied for this call for tenders, required a 52 day publication period, or a minimum of 40 days if the tender publication was done electronically.

### **1.3 Unfair Timing**

Preparations for the issue of a new tender should have been scheduled much earlier so that there could have been adequate time in the eventuality of a new provider winning the bid.

The commencement date fixed for the contract is considered too close to the date when the successful bid became conclusive. Had the unsuccessful bidder been chosen, the agency would have had less than 15 days to start. In this case, the lack of time for a smooth switchover in itself acted in favour of awarding the tender to the incumbent service provider.

### **1.4 Composition of Adjudication Board** **- lacking 1 Joint Committee and an Expert** **- Authorised Officer present**

During a meeting held on 30 September 2004 of the *ad hoc* Committee, set up specifically to oversee the issue and award of this tender, it was agreed that unless a consensus was reached, the tender could not be awarded.

The Adjudication Board or Tender Sub-Committee should have been composed of representatives of all the 4 Joint Committees. In fact, only 3 were represented with 1 absentee. Since the Board failed to forward a final recommendation, then it should have been dissolved and replaced.

Offers were opened at the B’Kara Local Council offices. Present were representatives of the B’Kara, Sliema and Qormi Joint Committees.

This Office also noted the lack of expert opinion on the Board. The subject matter involved technical aspects with direct bearing on the formation of a more informed opinion. Questions about calibration which cropped up later, for instance, could have been addressed at that early stage.

Additionally, the presence in the Adjudicating Board of an Authorised Officer, being one of the signatories to the running contract and to eventual contracts with the agency, was questionable.

## **1.5 Adjudication and Award of Tender**

Meeting minutes of each of the Joint Committees do not provide sufficient evidence that the matter was deliberated upon or discussed and evaluated at a deeper level than had previously been the case in the Adjudication Board. The Joint Committees voted unanimously in favour of Guard and Warden Service House Ltd presumably by a simple show of hands.

According to the *ad hoc* Adjudication Board set up, both Guard and Warden Service House Ltd and the unsuccessful bidder had, more or less, submitted similar prices for the warden service. However, there is no evidence that a full costing exercise was carried out.

The *ad hoc* Board decided that, because of this similarity - and since this service was the main service required - the rates offered for warden services could not be the basis upon which the tender could be adjudicated.

Therefore, the Board felt that, apart from the price tendered it had to consider:

- i. past experience of the tenderer in law enforcement;
- ii. the work plan submitted in the bid;
- iii. facilities;
- iv. equipment; and
- v. interviews held by the Board with tenderers.

The Government Gazette advert itself stated that: *“The Joint Committees will have the right to refuse the most advantageous offers.”*

The Board felt that the Guard and Warden Service House Ltd had more experience, manpower and equipment although the unsuccessful bidder had tendered lower prices for the ancillary services. In view of the above, the Board concluded that it would be more appropriate and prudent if they did not make any recommendations and the tender was referred to the 4 Joint Committees to make their decision.

### **1.6 Contract Agreement signed before all 4 Joint Committees sent the Notice of Refusal**

The Contract Agreement entered into between the Sliema Joint Committee and the Guard and Warden Service House Ltd signed on 15 December 2004, preceded the notice of refusal dated 30 December 2004, sent to the unsuccessful bidder by North Joint Committee.

Furthermore, this Contract Agreement was signed during the statutory term, of 10 working days appeal period from the date of the Joint Committees' decision, as afforded by law to the unsuccessful bidder.

For the future, it is recommended that where these situations occur, the Committees could liaise to ensure that results are published contemporaneously.

### **1.7 Delay in sending Notices of Refusal**

The tender by the Central Joint Committee was adjudicated on 26 November 2004. That by the B'Kara Joint Committee on 2 December 2004. That by the North Joint Committee on 3 December 2004. That by Sliema Joint Committee on 6 December 2004. All the 4 Joint Committees unanimously approved the award of tender to the Guard and Warden Service House Limited. The contractor was informed by letter of acceptance dated 7 December 2004.

The unsuccessful bidder was informed of the tender adjudication by each of the Joint Committees in 4 separate letters dated 14 and 30 December 2004, following submission of the tender guarantee by the successful bidder. This goes against Article 9(2) of Legal Notice 157/93 requiring the publication of the decision within 3 working days.

The contractual obligation on the successful bidder to enter into a bank bond or guarantee does not justify the delay in sending the notices of refusal.

In cases like this, where tenders do not give the global value of the contract but just rates, the appeal could have been determined giving priority to the most favourable bid in terms of cost. The Adjudicating Board in fact considered other different criteria.

## **2. Other Irregularities**

### **2.1 Revenue-Sharing Agreement entered into in July 2004**

On 6 July 2004, when the use of speed cameras was being actively considered by the authorities, the parties in the 1999 contract (i.e. Sliema Joint Committee and Guard and Warden Service House Ltd) formalised a minimum 5 year revenue-sharing understanding concerning the eventual installation of such equipment within the defined boundaries of the Councils represented by the Sliema Joint Committee. This was a one-pager document, not explicitly latched on to the 1999 contract. More than making a definite commitment, it described fees and rates. Technicalities such as calibration and validation of the system, from both technical and legal standpoints, had yet to be sorted out at a later stage.

### **2.2 Extension of the 1999 Contract up to end January 2005**

In Parliamentary Sitting No 221, held on 18 January 2005, the Minister for Justice and Home Affairs, stated that in respect of St. Julians speed cameras, an agreement was entered into between Sliema Joint Committee and the Guard and Warden Service House Ltd for additional enforcement services up to end January 2005, even though the new 2004 contract was to become effective as from 1 January 2005.

### **2.3 Meeting held between North Joint Committee and the Guard and Warden Service House Ltd during 2004 Contract Adjudication Period**

North Joint Committee meeting minutes dated 3 December 2004 reported that a meeting was held with The Guard and Warden Service House Ltd to discuss the November 2004 results. During said meeting, it was decided that the agency was to do everything possible to improve the enforcement situation. This Office questions, from an ethical point of view, the holding of this meeting, considering the critical period in question i.e. during the evaluation and adjudication phase of the new call for tenders.

## **2.4 Legal Enforcement System (LES) not yet in place**

The agreement required a certain infrastructure to be in place as a pre-condition, namely:

- i. allocation of funds;
- ii. the availability of certain expertise;
- iii. the drawing up of technical specifications;
- iv. securing of the necessary permits from other entities/authorities such as the Malta Transport Authority (ADT) regarding location sites; and
- v. the existence of a comprehensive legal framework to regulate the co-ordination of this kind of work between users and providers.

At the time all these factors and elements necessary for a firm commitment were not in place. These were drafted into law - the Legal Enforcement System (LES) – in 2006.

### **Issue 2: Real or Perceived Conflict of Interest**

Many definitions are available for this term; however this Office opted for the following:

“Conflict of interest can be defined as a situation in which a person has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties as public official, employee or a professional” (source: [www.businessethics.ca/definitions/conflic-of-interest](http://www.businessethics.ca/definitions/conflic-of-interest)).

Central to this question are those who were involved in the decision-making process - Councillors that are elected representatives of their respective communities. They are by law required to take an oath of office and to disclose pecuniary interests openly in deliberations on public contracts (*cf.* Section 19 of the Local Councils Act) (*Appendix 2* refers).

Since the law is concerned only with pecuniary interests, it is not within the competence of this investigation to inquire on any other form which the interest could conceivably assume. Nor can this Office go beyond the legal mandatory requirements concerning open disclosure and refraining from active participation in discussion where such disclosure is made. In point of fact, no Councillor involved in the tender proceedings had made any such disclosure and, in the absence of

contrary evidence, this Office concludes that there was no real conflict of interest of the type contemplated by the law.

As for the Authorised Officers, who are employees of the Councils with functions closely associated with supervising and reporting on the day-to-day administration of the warden agencies, these persons were not directly involved in taking any decisions concerning the tender. Ideally, their presence within Adjudication Boards should have been eliminated.

In order to enhance transparency, much more can be done by the stakeholders to ward off suspicions of perceived conflicts of interest. One way could be by compiling and promoting written standards of ethical behaviour and/or signed declarations of adherence to good written practices. In this context, this Office recommends measures similar to those outlined in the September 2005 Policy Brief on OECD Guidelines for managing, resolving or preventing conflict of interest from developing. A downloaded copy is attached as *Appendix 3* to this Report.

### **Issue 3: Fixing of Speed Cameras**

The St. Julian's cameras started operation on 24 November 2004 – before any of the 4 Joint Committees adjudicated the 2004 tender and hence before the award was published and became final and conclusive. If, however, credit is to be given to the reasoning that the cameras in question related to the 1999 contract, then the issue of irregularity does not arise.

The official date of commencement was 1 January 2005. Therefore, it would have been unreasonable for the successful tenderer to be required to execute any part of the contract prior to the expiration of the time allowed for appeal (10 working days from the Joint Committees' decision) when the tender could be said to have become final and conclusive.

On the other hand, the Mriehel speed camera was the first one to be fixed, following the adjudication of the 2004 contract, in mid 2005.



**Issue 4: Whether the Provider of the Cameras had to provide the service within 7 days of Adjudication**

With respect to the allegation made that the cameras were to be in place and functioning within a prescribed date or within a prescribed period (7 days seems to be suggested) after the date of acceptance, this Office did not find any evidence to this effect in the 2004 tender document.

**C. Recommendations**

With the benefit of hindsight, this Office recommends that:

- iii. Local Councils should ensure strict compliance with the applicable tendering regulations and procedures;
- iv. Local Councils Joint Committees should better plan the full tendering process;
- v. separate call for tenders are to be issued whereby the provision of different services is being requested;
- vi. the results of the decision by a Tender Committee should be promptly and timely published - accompanied by a reasonable written motivation for the adjudication;
- vii. the identity of the members forming part of Adjudication Boards should also be made public following the adjudication; and
- viii. decisions should be communicated to all parties concerned (and concurrently to both successful and unsuccessful bidders). Notice should be given with adequate prominence in official communications of the right of appeal against a decision and the limited timeframes during which this can be done.

## **Appendix 1**

### **Pertinent legislation consulted**

1. Local Enforcement System Regulations (Subsidiary Legislation 291.06)
2. Local Councils Act (Cap. 363)
3. Local Councils (Financial) Regulations (Subsidiary Legislation 363.01)
4. Local Councils (Tendering) Regulations (Subsidiary Legislation 363.03)

## **Appendix 2**

### **Extract from the Local Councils Act (Cap. 363)**

#### **Pecuniary interest:**

19. (1) It shall be the duty of every councillor who has any pecuniary interest, direct or indirect, in any contract or proposed contract or other matter and is present at any meeting of the Council at which that contract, proposed contract or other matter is, or is to be, considered to disclose openly to the meeting and as soon as practicable after the commencement thereof the nature of his interest and -

- (a) not to preside over or take any part in the consideration or discussion of, or to vote on any question with respect to, that contract, proposed contract or other matter; and
- (b) unless the contract, proposed contract or other matter is under consideration by the Council merely as part of a report of a committee or sub-committee thereof and does not itself become the subject of separate debate, to withdraw from the meeting while that matter is being considered.

(2) It shall be the duty of every Council to record in the minute of a meeting particulars of any disclosure made to that meeting under subarticle (1) and of any subsequent withdrawal from the meeting.

(3) Any person who knowingly acts in contravention of subarticle (1) shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding one year or to a fine (*multa*) not exceeding one thousand liri or fifty *per centum* of the contract, proposed contract or other matter, whichever is the greater or to both such fine and imprisonment, and any person found guilty of such an offence shall cease to be qualified to hold the office of councillor for a period of five years from such conviction.

(4) For the purposes of subarticle (1) the word “indirect” includes any pecuniary interest which a councillor may have through his spouse, children, parents, brothers or sister or through any company (not being a public company) of which he or any one or more of them is a shareholder or through any company of which he or any one or more of them is a director.

SEPTEMBER 2005

# Policy Brief

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT



## OECD Guidelines for Managing Conflict of Interest in the Public Service

**What is conflict of interest?**

**Why is it so important today?**

**What is the approach of the OECD Guidelines?**

**What principles should guide public officials?**

**How can these principles be put into practice?**

**What is the impact of the OECD Guidelines?**

**What next?**

**For further information**

**For further reading**

**Where to contact us?**

### Introduction

Conflict of interest has become a key issue in public debate worldwide in recent years, not just in the private sector but also increasingly in the public sector. The breaking down of barriers between public and private sectors – through the privatisation of services, public/private partnerships and exchanges of personnel – has created grey zones and opportunities for corruption. For instance, conflicts between public officials' individual private interests and their public duties have multiplied due to the contracting out of government functions such as defence. Temporary public service employees could in particular use information that is not available to the public concerning defence department policies to obtain contracts with future clients.

If not adequately identified and managed, grey zones can provide opportunities for public officials to take advantage of their public position for personal benefit. There is increasing recognition that conflict-of-interest situations that are not properly dealt with can lead to corruption. Considering the volume of transactions between public and private sectors, and the financial interests at stake, unmanaged conflicts of interest can impose a heavy cost on a country's economy. They can in particular distort competition and the allocation of public resources, waste public money and trigger well-publicised scandals that weaken citizens' trust in public institutions.

The OECD, through its *Guidelines for Managing Conflict of Interest in the Public Service* and its *Principles of Corporate Governance*, is helping governments promote integrity and high standards of conduct in both the public and the private sectors. This *Policy Brief* focuses on the conflict-of-interest *Guidelines*, which provide the first comprehensive international benchmark to help governments review and modernise their conflict-of-interest policies for the public sector. They take a practical approach, considering that all conflicts of interest cannot be eliminated and therefore public officials' private interests need to be properly identified and managed in an appropriate manner. Governments are to report in 2006 on progress in implementing the *Guidelines*. ■

**Observer**<sup>oe.cd</sup>

OECD 2005