



Australian Government
Department of Social Services

Ray Griggs AO CSC
Secretary

Chair
Senate Community Affairs Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Email: community.affairs.sen@aph.gov.au
cc: senator.katy.gallagher@aph.gov.au

Dear ~~Chair~~ *Senator,*

In accordance with my commitment on 17 February 2022 at the Senate Community Affairs Legislation Committee Additional Estimates hearing, I am writing to provide the findings of my desktop review of the 2020 procurement of Boston Consulting Group (BCG) (contract reference number 3676568). Further, I would like to update the Committee on progress in asking officials to review their evidence to the Committee, and the request that I consider the redactions to a decision under the *Freedom of Information Act 1982* (FOI Act) dated 16 December 2021 concerning some of the work produced through this contract.

Procurement process

Based on the information available to me, I have concluded that formal documentary requirements specified under Rule 7.2 of the Commonwealth Procurement Rules (CPRs) were satisfied in relation to the component for review of Disability Employment Services, including the component which added the scope related to Employment Services Assessment (ESAt), but were not satisfied with respect to the additional scope referred to as Partial Capacity to Work (PCW) and associated research. I have reached this view on the basis that these aspects of the procurement did not have sufficient formal documentation to support decision-making for a contract of this value. As you are aware, Rule 7.2, which is a mandatory rule, provides:

7.2 *Officials must maintain for each procurement a level of documentation commensurate with the scale, scope and risk of the procurement.*

This gap in formal documentation also means that, for these components, I was not able to assess the considerations that I have been advised were made at the time with respect to value for money and encouraging competition.

In the process of my review, relevant senior officers who had been involved in various aspects of the procurement process were provided the opportunity to give input. The relevant senior officer for the PCW and associated research component acknowledged that, based on the review, there were shortcomings in formal documentation associated with the

procurement. The officer has also stated that he did not consider those documentary shortcomings compromised the overall procurement.

I have also concluded that internal procurement guidance, which adds additional process steps and documentation requirements to support implementation of the CPRs, was not met in relation to some aspects of the procurement process.

A copy of my desktop review and findings is at **Attachment A**.

Hansard

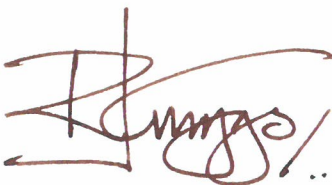
Three official witnesses have individually written to the Committee regarding previous evidence given in relation to this procurement or associated matters. All relevant witnesses have also been advised of the findings of my desktop review so they could again consider their previous evidence in relation to these findings and decide whether there is a need to write to the Committee regarding that evidence.

FOI redactions

I was asked to review the document released under FOI 2021-111 and advise on the appropriateness of the redactions made. I have viewed the document released and the decisions issued to the applicant and third party in this matter. I consider the Statement of Reasons adequately explains the basis upon which the decision maker found those parts of the document to be exempt from release under the FOI Act. I also consider that the redactions applied by the decision maker appropriately reflect the decision made. It remains open to the applicant to ask for an Information Commissioner review if they are not satisfied with the decision.

I trust this information is of assistance to the Committee.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Ray Griggs', with a stylized flourish at the end.

Ray Griggs AO CSC

25 March 2022

Attachment:

A: Secretary Desktop Review of Contract CN 3676568

Secretary Desktop Review of Contract CN 3676568

Review task

At the Supplementary Budget Estimates hearing on 28 October 2021, Senator Gallagher asked the following in relation to contract CN 3676568:

Senator Gallagher: Mr Griggs, I would ask that you have a look at the whole saga from beginning to end and, at the next time we meet, or if there is another opportunity, somehow say that you have run the ruler over this and that it does meet the Commonwealth procurement guidelines or the rules.

Mr Griggs: Certainly. Senator

Senator Gallagher: And if it doesn't, just admit that it doesn't and it could have been done in a better way. No-one is going to jail over this, and I'm not accusing anyone of doing anything wilfully, but I do think that the procurement rules are there for a reason, you go out to tender for a reason and we have transparency for a reason: it stops the potential for corrupt conduct.

In response to this framing, this review has focused on establishing the facts and actions relevant to the Commonwealth Procurement Rules (CPRs) in relation to the procurement activities undertaken by the Department of Social Services (the department) for to this contract. It has focused on system, process and documentary issues.

Review methodology

The desktop review of the contract included:

- Identifying documentation and approvals supporting all procurement activities;
- Assessing completeness, timeliness and adequacy of documentation supporting evaluations, approvals and decision making;
- Documenting and identifying gaps or deficiencies; and
- For gaps and deficiencies identified, determining impacts on compliance with the relevant CPRs and/or internal procedures.

The review assessed official documentation, records and supporting evidence retained within the department's procurement and record keeping systems, demonstrating compliance with relevant Commonwealth and departmental procurement requirements.

Context of contract

The procurement activities took place in 2020, during the first seven months of Australia's COVID-19 pandemic response. During this period, the department worked with other government agencies to develop and implement a range of rapid responses to the COVID-19 pandemic.¹

The department had seen a significant increase in citizens becoming engaged through the social security system and needed to be positioned to provide timely advice and options through what was a challenging period. Public health orders, including working from home arrangements, were in place and the department had re-deployed and dedicated considerable resources, including at very senior levels, to the management of the extraordinary circumstances being experienced.

¹ 2020-21 Department of Social Services Annual Report, Secretary's Review, page 1.

This context is not provided to justify shortcomings, but, is highly relevant to what was an exceptionally busy and stretched operating environment across the Australian Public Service at the time.

Contract overview

The procurement arrangements for contract CN 3676568 comprised:

- The initial contract, which included the review of the Disability Employment Services (DES) program and the research review including consideration of implications from COVID-19 including for people with a Partial Capacity to Work (PCW) for a cost of \$1,879,999 (GST inclusive) (work order executed 11 May 2020).
- The first variation to include an extension of research relating to PCW at an additional cost of \$880,000 (GST inclusive) (29 June 2020).
- The second variation to review the Employment Services Assessment Tool (ESAt) at an additional cost of \$561,000 (GST inclusive). (14 August 2020).

Initial Contract – DES Review and PCW Research

Approval process - Evaluation Report

On the 6 March 2020, the then Secretary approved a spending value of \$1.5 million to undertake a mid-term review of the Disability Employment Services (DES) program and evaluate the impact of reforms and performance (see pages 376 to 378 of [foi-2021-090-document.pdf \(dss.gov.au\)](#)). The Procurement Plan is attached to this Minute (see pages 379 to 385 [foi-2021-090-document.pdf \(dss.gov.au\)](#)).

The procurement was conducted via the Department of Finance's Business Advisory Panel, where three suppliers were approached to respond to a formal Request for Quotation (RFQ). The RFQ is available at pages 361-375 of [foi-2021-090-document.pdf \(dss.gov.au\)](#).

The selection of the preferred vendor, Boston Consulting Group (BCG), was documented in an evaluation report which was signed by the delegate on 17 April 2020. The evaluation report stated that the total contract value would be \$999,999.

Approval process - addition of PCW Research component

On 7 May 2020, the draft Work Order was circulated internally and updated on request to include an additional scope of work relating to a PCW Research project. This research included people with a partial capacity to work, noting that Job Seeker and Youth Allowance (other) recipients with a partial capacity to work make up almost 80 per cent of the DES workload. The cost of this additional scope of work was \$880,000.

The Work Order, encompassing both DES and PCW scope, was executed on 11 May 2020, for a value of \$1,879,999 to be delivered in the period 30 April 2020 – 31 October 2020. This contract was published to AusTender on 27 May 2020.

Scope of work

The Work Order specifies the following scope of work to be performed:

The Supplier will undertake a mid-term review of the DES program and evaluate the impact of the reforms and the performance of the program in relation to:

- delivering the Government's policy objectives to improve the employment outcomes of people with disability
- supporting people with disability to find and retain supported and/or open employment
- the full array of disability needs and supports, including episodic and psychosocial needs
- contestability of service delivery in regional and remote Australia
- other existing and complementary employment service programs, and
- national and international best practice.

The Supplier will also undertake additional research into PCW, payment rates for people with disability, and any other potential implications, which includes but is not limited to:

- consideration of implications from COVID-19
- alignment with payment rates and supplement rates and associated policy settings in the broader welfare system
- recommendations of previous reviews and their continued applicability, and
- any other matters the department deems relevant.

Work delivered

- The Mid-term Review of the DES Program draft report – 26 June 2020 (see pages 1 to 103 of [foi-2021-090-document.pdf \(dss.gov.au\)](#))
- Mid-term Review of the DES Program – August 2020 – (see pages 104 to 253 of [foi-2021-090-document.pdf \(dss.gov.au\)](#))
- For the PCW research component, see under First Variation below.

Findings - Initial Contract – DES Review and PCW research

The level of documentation provided for Approval process – Evaluation Report component of the contract was in my view satisfactory and compliant with CPRs.

The level of formal documentation provided around the decision to include the PCW Research component was limited and in my view did not meet Rule 7.2 of the CPRs. The absence of formal documentation means it is not possible to assess the considerations

made at the time with respect to value for money and encouraging competition (Rules 4 and 5 of the CPRs refer). To be consistent with the CPRs and departmental policy, this documentation shortcoming could have been remedied through the development of a document, signed by the delegate, detailing the objectives of this component of the scope and the basis of decision making with respect to how value for money and encouraging competition was considered and achieved.

There was insufficient documentation supporting formal approval for the commitment of additional funds prior to the contract being executed. This could have been remedied through a minute seeking this approval (pending minute), rather than relying solely on subsequent delegate approval of the pending commitment.

First variation – Extension of research

Approval process

An additional amount of \$880,000 was approved for further PCW Research over an eight-week period. On 29 June 2020, the Work Order was formally endorsed by the delegate.

Scope of work

There were no changes made to the scope of work documented in the Work Order. A variation to the AusTender record, reflecting the increase in contract value (\$2,760,000), was published on 1 July 2020 (Variation #1).

Work delivered

- For the PCW research component, BCG provided research materials, presentations, charts, and modelling services. This was documented through a bundle comprising 334 Power Point Slides, produced over the course of the engagement.
- The research included comparing the impact of the COVID-19 pandemic with that of the GFC and the 1991 recession to see what lessons might be drawn from previous economic slowdowns.
- On 16 December 2021, 95 of the slides were released in full and the remaining 239 slides were either released in part or refused in full (FOI 2021-111).

Findings - First variation – Extension of research

The level of formal documentation provided around the decision to expand the PCW Research component (Variation #1) was limited and in my view did not meet Rule 7.2 of the CPRs.

The absence of formal documentation means it is not possible for me to assess the considerations made at the time with respect to value for money and encouraging competition (Rules 4 and 5 of the CPRs refer).

To be consistent with the CPRs and departmental policy, this documentation shortcoming could have been remedied through the development of a document, signed by the delegate, detailing the objectives of the additional research and the basis of decision making with respect to how value for money and encouraging competition was considered and achieved. Additionally, the scope should have been modified to reflect the expanded research component.

Work contracted under Variation #1 started 14 days before the Work Order was executed, which is inconsistent with departmental policy. This could have been remedied by ensuring the work order was signed and in place before commencing work.

There was no evidence of formal approval for the commitment of additional funds prior to the contract being executed. This could have been remedied through a minute seeking this approval (spending minute).

Second variation – Employment Services Assessment Tool (ESAt)

Approval process

Following discussions around the findings of the DES review during July, the department requested that BCG undertake an Employment Assessment Tool (ESAt) review of the policy and processes for referring people to Jobactive Stream C and DES, and to provide recommendations to improve the quality and consistency of the referral process. This had the aim of improving the quality and consistency of the referral process of participants to Disability Employment Services, noting this is the tool used to determine if, and to what level, a person has a partial capacity to work.

The spending proposal was approved on 12 August 2020. The second Deed of Variation to the Work Order was executed on 14 August 2020, increasing the overall value for the contract to \$3,321,000. This second variation was published to AusTender on 18 August 2020 (Variation #2).

Scope of work

The scope of work added by Variation #2 was:

The Supplier will also undertake a review of the Employment Assessment Tool (ESAt) policy and processes for referring people to Jobactive Stream C and DES, and provide recommendations to improve the quality and consistency of the referral process.

The Supplier will:

- Undertake analysis of the characteristics of people referred for ESAts and their outcomes in employment services (range of analysis depends on data availability).
- Engage with stakeholders from the department, Services Australia, the Department of Education, Skills and Employment and the National Indigenous Australians Agency.
- Undertake a detailed assessment of the ESAt referral policy and operational guidelines.

- Recommend options to improve the process for referring people to DES, by those within the department's or Service Australia's authority to implement and those requiring Ministerial or legislative authority to implement.

Work delivered

- 2020 ESAt Review Final Report (21 August 2020) – see page 254 to 360 of [foi-2021-090-document.pdf \(dss.gov.au\)](#)
 - This Report identified 16 recommendations (see page 4 of this Report)

Findings - Second variation – Employment Services Assessment Tool (ESAt)

The level of documentation provided in relation to the 2nd variation was in my view satisfactory and compliant with CPRs.

The work contracted under the Variation #2 started 18 days before the Work Order was executed, which is inconsistent with departmental policy. This could have been remedied by ensuring the variation was signed and in place before commencing work.

Actions initiated to strengthen procurement arrangements

As detailed in my letter of 15 February 2022, I have initiated a number of measures to strengthen the department's control framework around procurements:

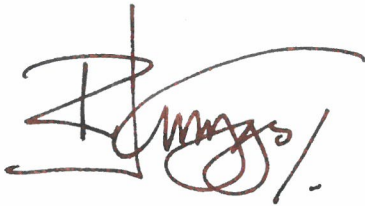
- Delegation approvals for procurement of consultants have been raised. All procurement of consultants must be approved at least at Deputy Secretary level, and any work order that is greater than \$1m must be personally approved by me as the Secretary.
- In December 2021, a new Procurement Hub was established on the department's intranet to provide centralised access to procurement resources.
- All departmental SES officers (not seconded elsewhere or on long leave) have participated in externally conducted refresher procurement training focused on their responsibilities for planning, documenting, and seeking approval of all procurements, but with particular focus on procurement of services from consultants and other providers from panels. The training specifically covered issues such as the required documentation, when a variation can be put in place as opposed to when a fresh procurement is required, and the general obligations of officials to promote competitive value for money transactions for the Commonwealth.
- An internal audit has been commissioned by me to examine the department's procurement processes and support arrangements and will also audit a sample of contracts the department has entered into. The internal audit will be completed in the third quarter of 2022 to provide additional assurance to me as the accountable authority and to inform any additional measures that may be needed to improve the department's procurement processes and practices going forward.

Conclusion

Consistent with the framing of this desktop review at the Supplementary Budget Estimates hearing on 28 October 2021, this review has focused on ensuring a proper understanding of the facts; and that the process and systems issues identified have been properly captured; the lessons learned and reinforced; and, that the right controls remain in place to ensure there is no recurrence.

This review has found shortcomings in some aspects of the procurement process for this contract. I have not, however, identified any evidence that those involved in this procurement wilfully did not comply with the CPRs and departmental policy. Had any evidence of this nature been identified, then I would have taken actions over and above the actions initiated that are detailed above.

I will keep the Committee updated on the progress in implementing the actions and next steps through future hearings.

A handwritten signature in dark ink, appearing to read 'R. Griggs', with a large, sweeping flourish above the name.

Ray Griggs AO CSC

25 March 2022