



Australian Government
Defence

JOINT COMMITTEE ON PUBLIC ACCOUNTS AND AUDIT

INQUIRY INTO THE CONTRACT MANAGEMENT FRAMEWORKS OPERATED BY COMMONWEALTH ENTITIES

Introduction

Defence welcomes the opportunity to provide a submission to the Joint Committee of Public Accounts and Audit (JCPAA) in support of its inquiry into the contract management frameworks operated by Commonwealth entities. The submission examines the outcomes and opportunities for improvement arising from the following Auditor-General reports, namely:

1. Auditor-General Report No. 47 of 2023-24 Performance Audit into Defence's Management of Contracts for the Supply of Munitions: Part 1. *[This audit has been conducted in two parts and Part 2 is currently expected to be tabled in the Parliament in late 2024].*
2. Auditor-General Report No. 1 of 2024-25 Performance Audit into Defence's Procurement and Implementation of the myClearance System.

More broadly, the submission details the Defence Commercial Framework and current reforms being implemented across Defence to enhance contract management frameworks and improve contractual outcomes.

Auditor-General Report No.47 of 2023-24 Performance Audit into Defence's Management of Contracts for the Supply of Munitions: Part 1

The Auditor-General Report No.47 of 2023-24 Performance Audit into Defence's Management of Contracts for the Supply of Munitions - Part 1 is the first of two performance audits into Defence's procurement in the establishment and management of the Strategic Domestic Munitions Manufacturing contract with Thales Australia. This first audit report focused on Defence's establishment of the 2020–30 operating arrangements, including the tender assessment process, advice to decision makers and the decision to conduct a sole source procurement. Defence's management of performance against the contract is the focus of the second audit report, which is expected to be tabled in Parliament in late 2024.

Both the Defence Strategic Review and the National Defence Strategy (NDS) placed increased importance on the Guided Weapons and Explosive Ordnance (GWEO) Enterprise and future domestic manufacturing. Over the past eight years Defence has taken, and continues to take, action to improve procurement policy assurance, governance arrangements and effective records management. Defence has also taken measures to strengthen its integrity frameworks, including how it works with defence industry. This work will be fundamental to the delivery of the NDS.

Defence has agreed to all eight of the Auditor-General's recommendations, which aim to improve: procurement planning; advice to decision-makers; management of probity risks and issues; compliance with record keeping requirements; and traceability of negotiation directions and outcomes.

Defence is committed to the implementation of the recommendations through a number of lines of effort, with a significant focus on improving access to, and quality of education and training opportunities available

to staff. There will also be increased focus on how decisions are recorded to ensure compliance with the Commonwealth Procurement Rules (CPRs) and Defence's record keeping policies.

Defence has commenced an internal review and analysis of the existing governance arrangements, recordkeeping, performance measures and probity arrangements to support both current and future contracting arrangements. Defence is focused on ensuring these are fit for purpose and demonstrate effective and compliant project delivery.

Auditor-General Report No. 1 of 2024-25 Performance Audit into Defence's Procurement and Implementation of the myClearance System

The Australian National Audit Office (ANAO) assessed decision making, governance, procurement and implementation processes to determine the effectiveness of Defence's procurement and implementation of the myClearance system to date.

Defence was assessed as partly effective in the procurement and implementation of the myClearance system and largely effective in planning activities. Defence was also assessed as not effective in its initial implementation of the system, although the remediation efforts since it went live were noted. There were several observations about issues related to procurement and contract management, but these observations did not lead to recommendations.

The two recommendations made by the ANAO related to improving Defence's management of risk and the security of the myClearance system. Defence has agreed to these two recommendations and is:

- a. Addressing the development, implementation and maintenance of risk management plans for complex, high value information and communication technology (ICT) projects as part of an ICT project management framework (Recommendation no. 1); and
- b. Implementing a myClearance Account Lifecycle Program that will manage and monitor the myClearance Tech App Manager and other myClearance roles to comply with the requirements of the Information Security Manual (Recommendation no. 2).

From a procurement and contract management perspective, the ANAO noted the procurement processes for the systems integrator and project delivery partner were not conducted in a manner consistent with Defence's procurement policy, or the intent of the CPRs. Defence's approach to some procurements was technically compliant, though it was not consistent with the intent of the CPRs:

- a. For the systems integrator procurement, key processes were conducted in accordance with CPR requirements. However, Defence's approach to conducting offer definition and improvement activities were not consistent with the intent of the CPRs.
- b. Defence engaged 85 per cent of project management and other specialist support services required through approaches to a single supplier selected from a panel. Although technically compliant with CPRs, it was not consistent with the intent to drive value for money through competition, as per the Defence Procurement Manual.
- c. Defence did not comply with the CPRs or Defence's Accountable Authority Instructions (AAIs) for the procurement of the project delivery partner in June 2022.

The ANAO's findings highlight the need for Defence to improve alignment with the CPRs intent for future procurements. The findings also reinforce the need for Defence to ensure that records of conversation with

potential suppliers during a procurement are documented and retained in accordance with the procurement policy framework. In response:

- a. Defence has performed significant analysis and implemented changes to ensure a greater quality of information and communications technology (ICT) procurement is performed, tighter probity controls are implemented and record keeping is uplifted.
- b. Defence has made changes in executing ICT procurement including centralising ICT commercial functions into one branch, allowing better oversight of commercial management and processes.
- c. All approaches to market and new contracts are reviewed independently by the centralised ICT commercial function to achieve stronger compliance to CPRs and AAls.
- d. Relevant Defence personnel are undergoing procurement and commercial upskilling programs to ensure compliance with the Defence Procurement Manual, CPRs and other policy and legislative requirements.

Overarching Observations of Defence

Defence accepts the findings and recommendations from the Auditor-General reports. The issues raised within the reports highlight areas for improvement in our commercial and contracting processes and are not evidence of the standard expected by members of Defence in relation to probity. Defence commits to the remediation of identified issues through the continual education and training of staff, including an increased focus on the recording of decisions and compliance with Defence's record keeping policies.

Defence is committed to upholding the integrity of Defence and its people. Defence continues to instil a culture that supports strong contract management outcomes and sound probity and governance arrangements, commensurate with the scale and complexity of the procurement. In strengthening procurement and governance arrangements. Defence will ensure important projects are delivered in the best interests of Australia and our national security.

The NDS outlines Enterprise Reform as being the transformation of Defence's enabling elements that drives performance. Chapter 5 of the Defence Industry Development Strategy (DIDS) outlines the procurement reform to enhance the ability to deliver and sustain capability in the current challenging operating environment and to respond to the Government approved outcomes of the Defence Strategic Review.

Implementation of Defence Initiatives and Frameworks

The following initiatives and frameworks demonstrate Defence's significant procurement reforms across the enterprise, including initiatives that address the recommendations of the above-mentioned Audit-General reports:

Commonwealth Procurement Framework

The Commonwealth Procurement Framework is the foundation governing the duties and process by which Defence officials undertake procurement and contracting activities within the Commonwealth and Defence. Achieving value for money is the core rule of the CPRs. Officials must be satisfied, after reasonable enquiries, that the procurement or contracting activity achieves a value for money outcome and is consistent with the policies of the Australian Government.

Defence Commercial Framework and Contract Management Framework

Defence's procurement and contract management activities are governed by the Defence Commercial Framework, which aligns with the Commonwealth Procurement Framework. The Defence Commercial Framework supports the achievement of value for money outcomes and consists of mandatory policies, instructions, procedures and operational guidelines that apply to all Defence officials. The Framework is continually changing and improving as a result of whole-of-government policy changes, lessons learned, audit recommendations and Defence centre driven initiatives such as Procurement Reform.

Specific to the recommendations in Auditor-General Report No.47 of 2023-24, Defence is updating elements of the framework to provide improved guidance to personnel with respect to:

- a. Seeking appropriate specialist advice, including if necessary from the Department of Finance, when undertaking complex procurements with high levels of tenderer interaction (Recommendation no. 4);
- b. Ensuring traceability between request for tender (RFT) requirements, the risks and issues identified during the tender assessment process, and the negotiated outcomes (Recommendation no. 6); and
- c. Developing procurement-specific probity advice for complex procurements especially those involving high levels of tenderer interaction or engagement risks in the context of long-term strategic partnership arrangements (Recommendation no. 7).

The Defence Commercial Framework also includes a specific Contract Management Framework (CMF) to support Defence officials from the planning stage of a contract, through the performance management stages and to the contract closure activities. This supports the achievement of value for money throughout the contract management phase.

The CMF captures all operational guidance contained in the Australian Government Contract Management Guide, published by the Department of Finance (Finance). This was done to ensure Defence's contracting processes and activities align with the whole-of-government approach, established by Finance, and with the Commonwealth Procurement Framework.

Once a contract has been entered into, the delivery of the contract needs to be managed effectively to ensure all parties (including Defence) fully meet their respective obligations under the contract and that the anticipated value for money is delivered. Effective performance management and maintaining appropriate governance and risk management arrangements across the life of the contract are key to delivering value for money. To promote effective contract management practice within Defence, the CMF provides guidance on:

- a. Undertaking contract record keeping;
- b. Managing contract performance;
- c. Managing contract risk;
- d. Managing contract changes; and
- e. Managing delivery and acceptance.

Defence Financial and Integrity Policy Framework

The Defence Commercial Framework refers to Defence's Financial and Integrity Policy frameworks, including the Payment and Reimbursement policy, the Gifts, Benefits and Sponsorship policy and the Integrity policy. These policies support effective contract management outcomes and provide mandatory requirements to officials with regards to:

- a. Enforcing contractual obligations;
- b. Managing debt owed to the Commonwealth by contractors;
- c. Making payment only when supplies and services are delivered in accordance with the contract; and
- d. Maintaining integrity and managing conflicts of interest at all times including throughout the contract management activities.

In line with Recommendation no. 8 in Auditor-General Report No.47 of 2023-24, Defence is strengthening its probity requirements and associated guidance that supports procurement and contract management to include the mandatory engagement of external probity advisors for complex procurements with high probity risks.

Defence acknowledges its obligations under the National Anti-Corruption Commission Act 2022 (the NACC Act) including the requirement to undertake mandatory referral obligations of corruption matters considered 'serious' or 'systemic' to the National Anti-Corruption Commission (NACC). Defence has previously publicly confirmed that it has referred the integrity matters raised in the Auditor-General Report No. 47 of 2023-24 to the NACC for assessment.

Defence and the Private Sector: Working With Integrity

Defence and the Private Sector: Working with Integrity document (the document) was released in July 2023. The document was co-developed by Defence with the Australian Industry Group (AIG) Defence Council and the Australian Industry and Defence Network (AIDN). It establishes the expected standards for ethical conduct and probity of both parties so that engagement between Defence and the private sector is conducted in a way that fosters public confidence.

As part of the continual process of strengthening the business relationship between Defence and the private sector, the document provides a practical recognition of the aims of both parties, the constraints under which each operates, and their mutual obligations. It covers a range of ethical and integrity-related issues including:

- a. The declaration and management of conflicts of interest;
- b. The management of Defence post separation and secondary employment (including that of reservists);
- c. Promoting integrity in Defence procurement processes; and
- d. Protecting official information.

Defence endorsed contracting templates require contractors, at the time of tendering, to acknowledge they will act, as a minimum, in accordance with the 'Promoting Integrity in Defence Procurement Processes' section of the document.

Contract Management Professionalisation

Defence is leveraging Finance's whole-of-Government training, including the newly released Contract Management basics and Procurement basics training, and professionalisation initiatives. This will support an uplift in procurement, contract management and commercial acumen. To encourage uptake, Defence has promoted courses through various communications channels. Defence has also contributed to the

development of the Finance-led delegate uplift training to improve procurement, contract management and delegate responsibility awareness.

Defence has a commercial professionalisation program that helps support best practice contract management across Groups and Services. Defence offers various training related to contract management. For example, the Effective Contract Management workshop, which is a practical contract management program to assist the learning and development of officials involved in the management of complex contracts. The Defence commercial professionalisation framework is continually being improved to support best practice and emerging requirements across the procurement and contracting job family.

Specific to the recommendations in Auditor-General Report No.47 of 2023-24, Defence is also undertaking a delegate uplift program designed to increase awareness of, and improve compliance with mandatory procurement requirements. This includes:

- a. For sole source procurements documenting, at the time the proposed procurement activities are decided, the circumstances and conditions justifying the proposed sole source approach, which exemption in the CPRs is being relied upon as the basis for the approach and how the procurement would represent value for money in the circumstances (Recommendation no. 1);
- b. Estimating and documenting the maximum value (including GST) of the proposed contract, including options, extensions, renewals or other mechanisms that may be executed over the life of the contract, before a decision on the procurement method is made (Recommendation no. 2);
- c. Ensuring that advice to decision-makers on complex procurements is informed by timely risk assessment processes that are commensurate with the scale, scope and risk of the relevant procurement (Recommendation no. 3); and
- d. Complying with the Defence Records Management Policy and statutory record keeping requirements (Recommendation no. 5).

Procurement Reform

Defence is currently undertaking significant procurement reform to reduce the time, cost and complexity of industry engagement and tendering processes, as required by the NDS and the DIDS.

Under Defence's procurement reform, a number of initiatives are progressively being implemented, to upskill Defence's workforce, increase understanding of industry's capability and capacity, and minimise the burden of working with Defence. The key objectives are to:

- a. Reduce the time, cost and complexity of industry engagement, solicitation and source selection processes, for both industry and Defence;
- b. Update the contractual framework to ensure it readily facilitates speed to capability delivery, continuous capability development and innovation pull-through, and enables progressive delivery of capability, from an initial minimum viable capability; and
- c. Increase the commercial acumen and procurement skills and knowledge of Defence's workforce responsible for conducting procurements.

Defence is implementing professionalisation initiatives to improve procurement and contract management acumen across the Groups and Services. One such initiative is the Procurement Lifecycle Capability and Skilling Matrix that provides learning opportunities and training which aligns to a continuous learning model, within

Defence. Defence is benchmarking the current skill level across Groups and Services, prior to developing a targeted work plan to upskill officials in procurement, contract management and commercial acumen.

Enhanced Governance and Assurance

Defence has a number of governance and assurance activities, which seek to improve procurement and contract management outcomes.

Defence has implemented enhanced internal compliance monitoring and assurance capabilities to provide greater assurance over achieving compliant, value for money procurement outcomes across all of Defence.

Defence's Smart Buyer program, introduced in late 2016, supports projects and products in their early planning phases through consideration of key strategy drivers, which in turn supports the development of robust project execution strategies. Smart Buyer uses a flexible methodology that has been adapted to address a variety of situations, including the establishment of projects, programs and sustainment activities. All projects approaching Investment Committee for Gate 0, 1 and 2 consideration are subject to the Smart Buyer Framework. These strategies help develop appropriate procurement strategies to deliver strong contract outcomes and are subsequently tested in the Independent Assurance Reviews that follow.

Independent Assurance Reviews consider the health and outlook of major projects and capability products throughout their life. Depending on the risks or issues identified during the course of the review, which in all cases will consider the key aspects of certainty of scope, credibility of schedule and adequacy of funding, a formal Independent Assurance Review Board meeting may be held to better understand the positions of the various parties. The Board Chairperson makes recommendations or proposes actions for senior management consideration regarding the ongoing conduct of the project or product under review, including whether it should be considered a candidate for elevation to Project of Interest or Project of Concern status.

Defence Record Keeping

Updated in August 2023, the Defence Records Management Policy and associated resources provide instructions on how to comply with obligations under the *Archives Act 1983*. The policy aligns with a principles-based approach and balances accountability with more prescriptive guidance to strengthen the integrity of Commonwealth records during the entire lifecycle, including procurement and contract management. To support the updated policy, a series of e-learning courses were released throughout 2023. Defence continues to strengthen governance and assurance under the newly appointed Chief Information Governance Officer. This role will drive enterprise-wide accountability across information assets (records, information and data).

External Workforce Reform

Defence is committed to reform its use of external workforce to support the Government's commitment to reduce spending on consultants and external labour hire. Defence has committed to strengthen the Australian Public Service and Australian Defence Force personnel and extend measures to ensure contracted support is only used where it provides the best value for the Australian taxpayer. Defence will invest in training and development for staff, undertake recruitment, undertake contractor conversions, and establish new teams within Defence to strengthen the workforce. These activities will improve Defence's ability to use external support more effectively.

A series of changes to Defence's AAls were introduced on 1 July 2024 to improve the management of the external workforce and better meet the intent of the CPRs. The delegation to approve hiring of contractors has been raised to SES Band 3/3-Star (previously SES Band 1/1-Star), with all new contractor hiring's reported to the contractor taskforce. It is also now mandatory to approach at least three potential suppliers on a panel for any contractor, consultant or outsourced service provider where the contract is valued at or above \$80,000 (including GST) unless a Group Head or Service Chief has approved otherwise. These requirements will help drive competitive processes under panels and improve value for money.

Defence has also commenced the Enterprise-wide rollout of the Defence Unified Governance (DUG) platform, which will capture and track the use of the external workforce through a single platform. This will standardise how information on the external workforce is captured, with all Groups and Services expected to be enrolled by the end of December 2024.

Conclusion

Defence, as the biggest government procurement agency, is committed to implementing the lessons learned from the recent ANAO audits to uphold the integrity of Defence and its people. Defence is undertaking procurement reform as required by the NDS and the DIDS that will reduce the time, cost and complexity of industry engagement and tendering processes as well as improving contract management outcomes. Defence welcomes the Committee's consideration of its submission.

Matt Yannopoulos PSM

Associate Secretary

20 September 2024