

Joint Committee of Public Accounts and Audit
ANSWERS TO QUESTIONS ON NOTICE
Department of Industry, Science and Resources
Inquiry into Commonwealth Procurement
14 December 2022

AGENCY/DEPARTMENT: DEPARTMENT OF INDUSTRY, SCIENCE AND RESOURCES

TOPIC: Training delivered by Maddocks

REFERENCE: Question on Notice (Hansard, 14 December 2022, Page 47)

QUESTION No.: 2

CHAIR: ... On response 3, recommendation 3, I just note that your delegate training has been delivered by Maddocks on probity and procurement in grants. In the previous hearing with the National Capital Authority, Maddocks were identified as one of the three probity advisers who, it appears, didn't provide adequate service.

Ms Bryant: I can say that the interactions with and the work that we have had with Maddocks in the department have been excellent, and certainly the work that they have done with us on this training has been excellent.

CHAIR: Can you undertake to go and have a discussion with the National Capital Authority and just understand their experience and concerns and satisfy yourself that that is covered off?

Ms Bryant: Certainly.

Mr Mason: We will take that on notice.

ANSWER

The department has initiated contact with the National Capital Authority (NCA) and have met to discuss their experience and engagement.

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TOPIC: Department's Procurement Policy

REFERENCE: Question on Notice (Hansard, 14 December 2022, Page 49)

QUESTION No.: 3

CHAIR: Thanks; that's very helpful. In relation to recommendation 10—maybe you can take this on notice—you've said: The department's Procurement Policy has been updated to strengthen requirements. Can you provide a little more information on what changes you've made to strengthen those requirements? **Mr Mason:** Very happy to. **CHAIR:** Thanks.

ANSWER

The Department's Procurement Framework, which consists of its Procurement Policy, Intranet Guidance, Documents and Templates, has been updated to emphasise the requirement. Key updates include: ensuring appropriate evaluation criteria and performance requirements in the approach to market; procurement evaluation and contract managed in line with what has been outlined in the approach to market; and, strengthened the detail on probity in procurement.

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TOPIC: Following probity advice

REFERENCE: Question on Notice (Hansard, 14 December 2022, Page 50)

QUESTION No.: 4

CHAIR: It's a theme we've seen elsewhere, and we're at the stage of the day where I'll just quote myself—terrible!—but it's almost like there's been a bit of a tick-a-box thing in some areas. It felt a bit like this here, where we've got a probity adviser that's like a magic spell, sort of a Harry Potter, where we wave the wand and therefore probity is assured, because 'Look, we've got a probity adviser,' whereas really you need to provide guidance on what you do when you have a probity adviser and what you do in response to advice. Maybe you need to take it on notice and give us some more information about whether your guidance provides directions on how probity advice should be actually followed when received from probity advisers. Mr Mason: Happy to.

ANSWER

Probity advice in a procurement process is provided by department's central procurement team or external providers. External probity advisers are used for larger and complex procurements.

Probity advisers may be embedded throughout the whole procurement process or engaged at the point that a probity matter has been identified.

The whole of department Probity Framework is being developed to include guidance on how to engage with probity advisers, the type of work they should undertake, what to do in response to their advice and how to support delegates and decision makers. This will strengthen current guidance on the key principle that the use of probity advisers does not remove the department's accountability and obligations for a procurement process.

The Probity Framework is expected to be finalised in early 2023.

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TOPIC: Professional standards for probity advisers

REFERENCE: Question on Notice (Hansard, 14 December 2022, Page 50-51)

QUESTION No.: 5

CHAIR: The parallel that's being drawn in my mind, I suppose, is the audit profession, and ASIC has oversight of the auditing profession. There's a reasonable expectation that, if you engage a thing called an auditor, they know this stuff and they're not going to take a job where they're conflicted, because that's part of their professional obligations. But there doesn't seem to be any such thing from everything we're seeing for this species of creature called a probity adviser. They seem to either get paid for stuff they haven't done, in the case of the National Capital Authority, or take on work which is demonstrably a conflict of interest, as in this case. Are there professional standards for probity advisers, or can anyone call themselves a probity adviser? Can I be a probity adviser? Can Linda be a probity adviser? Not that we could tender for Commonwealth work, because we'd breach section 44, for the record.

Mr Mason: I'd have to take that on notice, Chair.

ANSWER

The Department of Finance's guidance on *Ethics and Probity in Procurement* provides that "probity experts should be independent and free from conflicts of interest, and have a sound knowledge of all relevant government policies and procedures."

From October 2022, external probity advisory services (non-legal) are procured by the department through the Management Advisory Services Panel, which is a Whole of Australian Government panel mandatory for use by non-corporate Commonwealth entities.

The department evaluates responses to requests for quote under this panel considering the required skills and experience needed on a particular procurement when engaging external probity advisers.

As part of the departments work to strengthen procurement practise, additional guidance and support will be offered to business areas when considering the need for, and expertise of probity advisors.

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TOPIC: Advice and support from Department of Finance

REFERENCE: Question on Notice – Written

QUESTION No.: 6

The Department of Finance (Finance) provides advice, support, and services to assist Commonwealth entities when conducting procurement processes.

- a) To what extent does your Department make use of any resources provided by Finance during the procurement process?
- b) Has your Department sought or received any feedback at any stage from Finance on your procurement practices?
- c) What information or data have you provided Finance about procurement processes conducted by your Department?
- d) What support has your Department received from Finance in implementing the Auditor-General's recommendations?
- e) Does the Department have any suggestions for additional resources that Finance could provide to better assist with procurement processes, or with developing procurement skills and capability more broadly?

ANSWER

- a) The department makes use of resources provided by the Department of Finance including the Commonwealth Procurement Rules, the Commonwealth Contracting Suite, Resource Management guides and other guidance. The department also seeks guidance from the procurement agency advice unit as required.
- b) Yes. Typically consultation occurs through the Finance Procurement Agency Advice team when planning a bespoke or highly complex procurement activity.
- c) AusTender is the Australian Government's procurement information system managed by the Department of Finance and is used by the department to provide information on planned procurements, through the department's Annual Procurement Plan. Contracts

awarded for procurements at or above \$10,000 (GST inclusive) are published on AusTender.

- d) As part of implementation of recommendations, the department has engaged with other Commonwealth agencies, including the Department of Finance's corporate teams, to share knowledge and understand their approach to program delivery and governance.
- e) It is standard practice for Department of Finance to seek feedback from entities when updating the Australian Government Financial Framework. The department actively engages in this process as both an entity undertaking procurement, but also from a policy perspective, where a change to the framework may impact Australian industry and businesses.

The department welcomes the work that the Department of Finance and the APSC is undertaking to develop additional procurement training for government officials. Work to better develop and support career pathways for procurement professionals will be advantageous.

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TOPIC: Compliance with Commonwealth Procurement Rules

REFERENCE: Question on Notice - Written

QUESTION No.: 7

The Commonwealth Procurement Rules require that officials undertaking procurement must act ethically throughout the procurement. However, the Auditor-General found several instances where the Department failed to uphold this standard (ANAO report, pp. 38–39 and Appendix 8).

- a. What specific measures has the Department undertaken to improve the compliance by officials with the ethical requirements set out in the Commonwealth Procurement Rules?
- b. What measures has the Department put in place to identify ethical issues or instances of non-compliance as they occur and take appropriate management action?
- c. Given the Auditor-General's findings in relation to non-compliance with ethical requirements, has the Department undertaken any investigations into the conduct of officials undertaking the procurements in question? If not, why not?

ANSWER

- a) The Department's Procurement Framework aligns with the Australian Government Financial Framework and has been updated to emphasise officials' ethical requirements as set out in the CPRs, including their performance and conduct.

The department's procurement policy has been updated to include new probity content including officials' obligations and requirements for disclosure regarding conflicts of interest, due diligence, information management and records. The policy has been reviewed and updated to emphasise procurements must be undertaken in a manner that is fair, transparent, considered value for money and comply with the mandatory requirements of policies and legislation of the Australian Government (including the CPRs).

Changes to the policy were shared with staff via the Departmental Intranet. The Department has also provided broader training and awareness on probity and demonstrating ethics within procurement. This was accompanied with all staff communication, ANAO presentations to Executive Level staff on probity insights and targeted SES and EL2 training.

- b) In August 2022 the department enhanced its compliance reporting framework by implementing a new system for capturing non-compliance of the PGPA Framework. This system allows self-reporting of breaches which are made visible to Senior Executive Service officers and managers at the time the individual breach is reported. The Department is also progressing reforms that tiers procurements by risk. Additional controls are being introduced to those procurements that pose a high risk.
- c) The ANAO did not identify any one individual, nor find any indicators of fraud or corruption as part of the procurement of delivery partners for the Entrepreneurs' Programme. The former Secretary chose not to launch an investigation, as many of the recommendations went to departmental processes and oversight rather than individual behaviour.

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TOPIC: Improving procurement culture and capability

REFERENCE: Question on Notice - Written

QUESTION No.: 8

Your submission to the inquiry refers to a focus on improving the ‘procurement culture and capability’ in the Department (DISR submission, p. 2).

- a. Can you elaborate on what is meant by ‘procurement culture’?
- b. What is the Department doing to address the cultural issues that have been identified? What actions are the senior leaders in the Department taking specifically to bring about cultural change?
- c. What measures is the Department proposing to use to evaluate its success or failure in undertaking cultural change, and the conduct of its procurement activities more broadly?
- d. What steps has the Department taken to distinguish between cultural or systemic issues and issues of misconduct by officials?

ANSWER

- a) The Department of Industry, Science and Resources’ (DISR’s) focus on culture and capability reflects that business improvement needs to go beyond policy and process change.
- b) To address this cultural change DISR is taking an immediate and longer term focus.

To date actions taken have included training for SES and EL2 officers, broader education and awareness activities, and improved guidance and tools for delegates to assist with procurement decisions.

DISR is developing a whole of department probity framework, supported by a central probity function.

The probity framework and centralised function will enhance the department’s identification of cultural and systemic issues. This will be supported with further training and systems that increase visibility of compliance.

All Senior Executive Service (SES) staff are expected to lead by example in modelling appropriate ways of working. They do this by leading the changes within their groups and being held accountable for decisions being taken. To support accountability new reporting is being developed to provide whole of portfolio visibility of procurement

activity being undertaken and its adherence to policy. A number of SES staff are also involved in overseeing the program of work to bring about cultural change, including development of the probity framework.

- c) DISR will continue to use indicators, such as the APS Staff Census, internal and external audit findings, compliance activities and other factors, to monitor progress.

The improved procurement framework will include the development of a risk-based procurement assurance framework. Information gathered through these and other assurance activities will also provide an indication of improvements to procurement compliance and culture.

DISR acknowledge that driving and embedding cultural and capability uplift is a longer term commitment.

- d) DISR is currently reviewing its end to end procurement process. Controls and processes are being examined as part of the review which will ensure high levels of integrity to guard against the potential for misconduct.

The ANAO did not identify any one individual, nor find any indicators of fraud or corruption as part of the procurement of delivery partners for the Entrepreneurs' Programme. The former Secretary chose not to launch an investigation, as many of the recommendations went to departmental processes and oversight rather than individual behaviour.