

## **Joint Committee of Public Accounts and Audit**

Inquiry into contract management frameworks operated by Commonwealth entities

### **Department of Finance**

### **Response to Question on Notice**

**Hearing of 04 December 2024**

#### **Question on Notice 1**

Mr Danks: Senator, I think you're right. I think more capability needs to be developed in the system to be able to manage these large contracts.

We did hear some of the testimony before our appearance. The creation of KPIs is absolutely critical to make sure contracts operate correctly. We probably aren't best, as we're not subject matter experts on the issue, to pass judgement as to whether it's an appropriate KPI or not.

As part of that capability work we're doing, we are also providing greater tools out there for agencies. We've recently entered into a commercial relationship with WorldCC and the Chartered Institute of Procurement & Supply. They are two industry bodies whose whole focus is around capability building and developing across the entire life cycle. We provided free membership to procurers across the Commonwealth. Do you have the numbers, Ms King?

Ms King: No, we're probably 1,500 or so—

Mr Danks: We can take that on notice

CHAIR: Take that on notice, please.

Mr Danks: There are around 1,500 public servants that have memberships to those things, but we can take that on notice.

CHAIR: If you could provide that, it would be helpful.

#### **Response**

As at 10 December, there are 766 APS officials with a membership with World Commerce and Contracting and 150 APS officials with a membership with the Chartered Institute of Procurement and Supply through the Finance-led arrangement.

## **Joint Committee of Public Accounts and Audit**

Inquiry into contract management frameworks operated by Commonwealth entities

### **Department of Finance**

### **Response to Question on Notice**

**Hearing of 04 December 2024**

#### **Question on Notice 2**

Mr Danks: What I can say is that we are working on guidance called outcomes based contracting guidance. This was one of the requirements, I think, out of the Thodey review into the APS, where there was too much of that input based procurement. It was more that we need to move to this is the outcome we're trying to achieve and we want the private sector to show the innovation that they can deliver in delivering that outcome. It's not our job to tell them how to do their job. So that guidance is under drafting at the moment. We're hoping to launch it next year.

Mr BRIAN MITCHELL: That was my next question. Thank you for that. So it's under draft at the moment. Next year is a long timeframe. Can it be pegged to any particular quarter—first, second, third, fourth?

Mr Danks: Unsurprisingly, we have a lot on the list of procurement, so I might take that one on notice and we'll come back to you.

#### **Response**

The Department of Finance is finalising draft guidance on outcomes-based contracting. Following this, Finance will go out for consultation on the draft guidance in the first quarter of 2025. Relevant feedback from the consultation, and from this inquiry, will be incorporated into the final guidance with an aim to release it in the second quarter of 2025.

## **Joint Committee of Public Accounts and Audit**

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#### **Question on Notice 3**

Senator REYNOLDS: That makes sense. We've been talking about KPIs, outcomes and measurement—and having some of those standard clauses, mandatory or not. Is there any opportunity to have more guidance in terms of how those things are expressed in contracts—particularly the larger ones that we've been talking about—to achieve a greater focus on outcomes and perhaps even how they are reported on?

Mr Sebar: It's a bit difficult to answer that question without seeing something in front of me, but there would be an opportunity there, whether it is guidance that sits within ClauseBank or guidance that sits around the more general information that we provide to entities on how to develop and manage contracts.

Mr Danks: I will add to that. The Contract Management Guide, which we are currently reviewing, has a section about how to set up performance measures and what you need to take into account when you consider those measures. That is something we will look at as part of the latest refresh.

Senator REYNOLDS: That's good to hear. Could I ask you to take that on notice? We heard about one specific example this morning. All of our reports are full of examples—such as contracting for air hours for surveillance, or delivery of widgets. Could you take that away and provide us more information about what you're looking at at the moment and whether that has the potential to go further through the procurement cycle?

Mr Danks: We can take that on notice, Deputy Chair, yes.

#### **Response**

The Department of Finance is reviewing and updating a range of guidance material which forms part of the Commonwealth Procurement Framework. Refreshed guidance is being developed to cover the entirety of the procurement and contract management lifecycle.

The new and updated guidance will include information for officials on the importance of designing and planning procurement activities which deliver the required outcomes. The

***Inquiry into contract management frameworks operated by Commonwealth entities***

guidance will incorporate advice on the need to align specified requirements and outcomes with the most appropriate approach to market and contracting model.

Guidance includes the Australian Government Contract Management Guide (Guide). The updated Guide will include information on the importance of monitoring and managing supplier performance and the delivery of specified and agreed outcomes. The refreshed Guide will also outline the practical application of performance management and provide examples of typical performance measures included in Australian Government contracts. The updated Guide will highlight the characteristics for different types of contracts to assist officials determine the level of performance monitoring required to manage contracts, which is based on the complexity and risk profile of a specific contract.

Guidance will be supplemented by digital on-demand and in-person training for entities which Finance is delivering in collaboration with the Australian Public Service Commission. Training materials have been developed in alignment with the procurement and contract management lifecycle.

Finance is also developing an Outcomes Based Contracting Guide that will introduce concepts for officials to consider when planning procurement activities. The Guidance will provide practical examples for designing outcomes-based approaches when planning a procurement, and guidance on monitoring and measuring agreed performance indicators to support delivery of value for money outcomes.

## **Joint Committee of Public Accounts and Audit**

Inquiry into contract management frameworks operated by Commonwealth entities

### **Department of Finance**

#### **Response to Question on Notice**

**Hearing of 04 December 2024**

##### **Question on Notice 4**

4. Can you further please discuss the web-based and other guidance that you provide to entities in relation to contract management practices.
- Do most entities request this guidance before entering into new contracts?
  - How do you monitor the effectiveness of this guidance?
  - Are different types of contract management training offered?

##### **Response**

The Department of Finance is responsible for the Australian Government Contract Management Guide (the Guide). The Guide provides information for Commonwealth officials who manage contracts. The Guide is organised into the key phases of the contract management cycle including planning for contract management, contract start up, contract performance and contract closure. The Guide also includes information on managing standing offers. For each phase the Guide includes information on key steps to be undertaken in that phase, additional information that is relevant to the phase, tips for each phase and further reference material individuals can access.

Finance is currently updating the Guide. To date, proposed changes include:

- Updates in line with Recommendation 10 of the APS Integrity Taskforce report 'Louder Than Words: An APS Integrity Action Plan'
- Refocussing the guidance to promote the lifecycle approach to procurement, instead of a linear process.
- Greater information provided about assessing, identifying and addressing risk in procurements.
- Updated information on types of contracts and associated documentation required for risk management and due diligence.

***Inquiry into contract management frameworks operated by Commonwealth entities***

- Greater practical advice on each step of the procurement lifecycle, with a particular focus on ensuring value for money and stakeholder management.
- Practical advice on managing supplier relationships.
- Updated information on ethical behaviour, including content on the Supplier Code of Conduct, conflicts of interest and the National Anti-Corruption Commission.
- Guidance on the use of Estoppel.
- Inclusion of advice on how to conduct a 'lessons learnt' process at the closure of a contract.
- An expanded appendix, including a larger glossary of terms, more details on whole of Australian Government arrangements and information on standing offers.

The Guide is for the management of commercial contracts coming from procurements. However, it may be useful for other arrangements such as grants, memorandums of understanding (MoU) or investments as they generally require similar management activities to the phases in this guide.

**4a.**

All of the guidance available to entities is on the Finance website. It is a matter for each entity to determine how they incorporate this guidance into their contract management processes.

**4b.**

All guidance is periodically reviewed by Finance to ensure the information is accurate and meets current practice. Finance meets regularly with entities as part of an outreach program where feedback can be provided on existing guidance.

**4c.**

Finance manages the Commonwealth Procurement and Contract Management Training Suite. The suite is available to all officials from non-corporate Commonwealth entities and prescribed corporate Commonwealth entities, free of charge.

The suite consists of training courses that deliver a sustainable and enduring contract management capability across the APS. The suite strengthens the capability and confidence of APS contract managers to ensure value for money is achieved. These courses are available to all APS officials on the APS Academy. The suite is suitable for APS officials who are new to contract management, need a refresher, or want to move to a role in contract management. Courses benefit APS working in contract management on an ad hoc basis, regular contract managers, or delegates (including SES).

The below course is currently available:

- **Procurement and Contract Management Basics**

This course provides APS employees with an introduction to Commonwealth procurement and fundamental knowledge and skills essential for contract management. Awareness and understanding of the Commonwealth Procurement Framework is essential to ensure compliance when APS employees are required to commit and expend Commonwealth funds through procurement and undertake contract management activities. This course has been designed to build the procurement and contract management capabilities of employees as the Commonwealth seeks to deliver more strategic value for money outcomes when undertaking the purchase of goods and services.

The below courses are being developed and expected to be available in 2025:

- **Contract Management Basics eLearning**

This course introduces the essentials of contract management, including the roles, tools, techniques, and methods contract managers use to add value. Participants examine key aspects of managing contracts and obtaining better performance and relationships with contractors and suppliers. This course explores the contract's lifecycle, the responsibilities of key stakeholders within the lifecycle, and strategies for effective contract management.

- **Contract Management in Practice**

This course includes management of the resulting contract to deliver value for money outcomes. This course includes contract start up, ongoing management, and contract closure through to disposals consistent with the project's governance and assurance requirements. In this course, participants will use case studies and scenario-based simulations to make relevant decisions and judgements to effectively manage a contract.

## **Joint Committee of Public Accounts and Audit**

Inquiry into contract management frameworks operated by Commonwealth entities

### **Department of Finance**

#### **Response to Question on Notice**

**Hearing of 04 December 2024**

##### **Question on Notice 5**

5. You mention in your submission that you are currently refreshing your contract management guidance.
- a. How often is this done and what are the inputs into these updates?
  - b. How does Finance determine what is best-practice for contract management by Commonwealth entities?

##### **Response**

The Australian Government Contract Management Guide (the Guide) is updated on an as-needs basis. This is generally when underpinning rules or policies of the Commonwealth Procurement Framework are updated or added.

Since the Guide was released in 2019, it has been updated 6 times. A list of the changes is available at [Contract Management Guide Change Log](#).

Finance engages with a range of jurisdictions and industry associations to ensure that guidance is relevant and up to date including current best practice. As part of the current update of the Guide, Finance has undertaken a comprehensive review and engaged with key stakeholders to ensure it remains fit for purpose.

What best-practice in contract management looks like will vary based on the size and scope of the contract as well as individual entities' operating environment. The Guide provides general advice only and it is up to individual entities to incorporate it into their processes and policies.



## **Joint Committee of Public Accounts and Audit**

Inquiry into contract management frameworks operated by Commonwealth entities

### **Department of Finance**

#### **Response to Question on Notice**

**Hearing of 04 December 2024**

##### **Question on Notice 6**

6. Please outline the activities of the Commonwealth Procurement and Contract Management Community of Practice (CoP) mentioned in your submission.
- a. How does Finance assess or measure the influence and impact of the CoP?
  - b. Does every Commonwealth entity participate in the CoP?

##### **Response**

###### **Question 6.**

The Commonwealth Procurement and Contract Management Community of Practice (CoP) was launched in May 2023 with three components - an online GovTEAMS community, a SharePoint site and bi-monthly meetings. The CoP is now a central element of the recently announced APS Procurement and Contract Management Profession (Profession).

The online GovTEAMS community enables interactive discussions, knowledge sharing and resource sharing between members of the CoP.

The SharePoint site serves as an information platform. Members can access procurement and contract management news, policy updates, and notices, as well as training opportunities and events.

The bi-monthly meetings are an opportunity for members to hear about the latest issues and points of interest from within the Procurement and Contract management space. This includes changes to the Commonwealth Procurement Framework, as well as recent trends and research from external organisations.

The meetings are predominantly virtual with 1-2 in person meetings held each year. In addition to the regular content, the in-person meetings provide officials with the opportunity to network and discuss issues with their colleagues directly.

***Inquiry into contract management frameworks operated by Commonwealth entities***

**Question 6a.**

Finance assesses the influence and impact of the CoP through the level of engagement we have seen and periodic surveys to ensure the content and approach of the CoP remains fit for purposes.

Over the past 6 months, Finance has seen increased engagement with the CoP. From May 2024 (1 year into the CoP), the CoP grew from approximately 900 members to currently over 2,200 members. Similarly, CoP events have seen an increased engagement level which has been higher than the growth rate of members. Prior to May 2024 attendance at CoP virtual meetings averaged 300 attendees, recent CoP virtual meetings have had attendance rates ranging from 900 - 1,000 members.

Since 2023, Finance has run two surveys to gauge members' interests, topics to be discussed at the CoP and the format for running the CoP. Based on feedback from these surveys, Finance has increased the frequency of CoP meetings, introduced in-person meetings and allowed for longer topical presentations.

**Question 6b.**

The CoP and the Profession is open to staff from all Commonwealth entities with an interest in or a role in procurement and contract management.

## **Joint Committee of Public Accounts and Audit**

Inquiry into contract management frameworks operated by Commonwealth entities

### **Department of Finance**

#### **Response to Question on Notice**

Hearing of

##### **Question on Notice 7**

7. Can Finance please outline how it assesses contract management capability across the Commonwealth and how it responds to clear evidence of deficiencies?
- a. Are there particular aspects of contract management that are commonly weaker than others?
  - b. Are there particular types of contracts for which management capabilities are more problematic among public sector entities?

##### **Response**

###### **Question 7.**

The Department of Finance (Finance) undertakes an annual Procurement and Contract Management Capability Self-Assessment Survey (the Survey). The Survey is comprised of 4 Categories and 7 Sub-Categories. Contract and Supplier Management is a Sub-Category under the Procurement Lifecycle category which explores the extent to which the entity's relevant procurement processes, and contract and supplier management activities support the achievement of outcomes.

The results of the survey show there has been a gradual increase in capability under the Contract and Supplier Management Sub-Category since 2021. Following the 2021 results there was an increased focus by Finance in building contract management capability across the APS. This has included expanding the Centre of Procurement Excellence to include contract management in 2022 and rolling out increased training opportunities on contract management since 2023.

The Survey results also indicate that typically larger entities with a central procurement function have a higher level of capability in the Contract and Supplier Management Sub-Category.

The Survey is voluntary and is distributed to all non-corporate Commonwealth entities and prescribed corporate Commonwealth entities. A summary of the 2023 results are available at [2023 Commonwealth Procurement Capability Self-Assessment Survey](#).

The Survey doesn't identify particular contract types for which management capability is more problematic. However, Finance monitors and responds to ANAO audit reports which identify deficiencies in contract management practices.

## **Joint Committee of Public Accounts and Audit**

Inquiry into contract management frameworks operated by Commonwealth entities

### **Department of Finance**

#### **Response to Question on Notice**

**Hearing of 04 December 2024**

##### **Question on Notice 8**

8. Does Finance intervene in any way if it becomes aware of any serious breaches in contract management by a Commonwealth entity that could cause significant risk to the Commonwealth?
- a. Is there a potential for Finance to have an oversight role in relation to very serious contract management issues?
  - b. Are there types of contracts that should not be entered into because of the risks involved?

##### **Response**

Procurement and contract management are the responsibility of each accountable authority under the devolved Resource Management Framework, and each entity is responsible for implementing its own procurement and contract management processes in order to meet its business needs. Entities are supported in the management of their contracts through the Department of Finance's (Finance) Contract Management Guide, other procurement guidance, and our training suite.

Finance has no specific role or authority to intervene in other agencies processes. However, should Finance identify an issue of concern, Finance would inform the relevant entity of the potential issue and, where appropriate, support any corrective action that the relevant entity decides to take.

The identification and management of risk is key to determining what remedial activities should be included either in, or around, a particular contract. Risk assessment should occur during the procurement planning process, and should be reviewed and assessed regularly. It is up to Accountable Authorities to determine whether the risks of a particular contract can be appropriately managed, in line with the entities' risk appetite, or whether the contract contains significant unmanageable risk and should not be entered into. Finance's Contract Management Guide includes guidance on assessing and managing contract risk.

## **Joint Committee of Public Accounts and Audit**

Inquiry into contract management frameworks operated by Commonwealth entities

### **Department of Finance**

### **Response to Question on Notice**

**Hearing of 04 December 2024**

#### **Question on Notice 9**

9. Can Finance please outline the operation of the Commonwealth Contracting Suite (CCS) in more detail.
- a. How long has the CCS been in use?
  - b. Does the CCS enable Finance to identify issues with contract management approaches by entities?
  - c. Why is the CCS not mandatory for procurements above \$200,000 or for corporate Commonwealth entities?

#### **Response**

The Commonwealth Contracting Suite (CCS) provides entities with access to a set of standardised templates for use in lower value procurements. It provides a consistent set of terms and conditions to ensure consistent approaches to market (ATM) and contracts by Commonwealth entities. Through the use of standardised terms, Commonwealth entities do not need to seek legal support to prepare procurement documentation when approaching the market, and suppliers similarly can be confident that the clauses within lower value contracts are consistent with any existing, or recent contracts they may have been awarded by the Australian Government.

Functionally, CCS is a document creation website used by entities to create standardised ATMs and Commonwealth Contracts.

**9a.** On 1 January 2016 the CCS became mandatory for all non-corporate Commonwealth entities (NCEs) when purchasing goods or services under \$200,000 (GST inclusive). Corporate Commonwealth entities (CCEs) are encouraged to apply the policy.

In certain circumstances an entity may be exempt from being required to use the CCS, such as when using a mandated whole-of-government arrangement that prescribes particular contractual arrangements, or it is industry practice to use the supplier's terms and conditions e.g. venue hire. Further detail of exemptions can be found in the Resource Management Guide [Mandatory use of the Commonwealth Contracting Suite for procurement under \\$200,000 \(RMG 420\)](#).

9b. The CCS was designed to create uniformity across Commonwealth contracts to reduce the burden on suppliers contracting with the Commonwealth Government. It does not collect information on entities contract management practices.

9c. The CCS was developed for low-risk procurements under \$200,000. In February 2017, the policy for CCS use was broadened to encourage its use for contracts valued between \$200,000 and \$1 million.

A condition of using the CCS is that the terms cannot be changed. The Department of Finance (Finance) recognises that higher value contracts may be more complex and require tailored contracts and contract term negotiation to meet the Commonwealth's requirements. The relevant Accountable Authority is best placed to determine the appropriate contracting approach dependent on the scale, scope and risk of the specific procurement. In recognition of the value of consistent clauses across the Australian Government, Finance provides a range of standardised clauses as part of the Commonwealth [ClauseBank](#) allowing Commonwealth entities to make use of, where appropriate, contract standardisation.

A CCE is a separate legal personality from the Commonwealth and can enter into contracts and own property separate from the Commonwealth and are therefore not required to adhere to the CPRs (unless prescribed) and related policies. Both the CCS and Clausebank are therefore encouraged for use by CCEs, recognising that CCEs are best placed to determine the appropriate procurement and contract development approach, taking into account their governance arrangements and the specific scale, scope and risk of the relevant procurement.