

Department of Finance

Response to Question on Notice

JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

Australian Government Procurement Contract Reporting Auditor-General's report No. 19 (2017-18)

Friday, 23 March 2018

ADDITIONAL QUESTIONS ON NOTICE

Question 1

On-hire labour

What assessment and cost comparison is undertaken internally in regard to the engagement of on-hire labour or contracted workers vs APS staff?

Response

Finance staff adhere to the Commonwealth Procurement Rules, internal guidelines (e.g. Accountable Authority Instructions) and internal procurement advice when undertaking assessment and cost comparison activities regarding the engagement of contracted personnel.

Maximising value for money is a core consideration for Finance officials when making procurement decisions. Other considerations which inform the engagement of on-hire labour or contracted workers include:

- business requirements
- assessment of the capability of existing staff to deliver the requirements and the extent to which existing entity activities could be used to deliver the proposal
- analysis of cost effectiveness and efficiency of the delivery mechanisms proposed
- expected length of the project/engagement
- possible flow-on impacts to other programs within the entity or in other entities.

Question 2

On-hire labour

What workforce planning processes do you undertake that monitor and account for your non-APS workforce?

Response

The department's workforce is closely monitored through the department's Integrated Budget and Business Planning Process. This includes workforce monitoring and planning in respect of both APS and non-APS employees of the department. This process is used to assess workforce capability and operational requirements to ensure that resources are allocated appropriately across all business areas.

Question 3

Value for money

What is your internal process and methodology for determining value for money, both prior to selecting a contractor or consultant, and at the completion of the contract or procurement process?

Response

Finance staff adhere to the Commonwealth Procurement Rules, internal guidelines (e.g. Accountable Authority Instructions) and internal procurement advice when determining value for money prior to selecting a contractor or consultant. Maximising value for money is a core consideration at all stages of the procurement process. Other considerations throughout the procurement process include:

- cost effectiveness of the individual elements of the proposal
- efficiency of the delivery mechanisms proposed
- the extent to which existing entity activities could be used to deliver the proposal
- possible flow-on impacts to other programs within the entity or in other entities.

Business areas review contract performance both throughout and at the end of contractual arrangements to ensure key deliverables are met and value for money is achieved.

Question 4

Value for money

Given payment under contracts is generally milestone-based ('deliver final report by x date') what assessment as to the value of that milestone is undertaken prior to payment and who undertakes that assessment?

Response

Under Commonwealth Procurement Rule 9.2, the expected (maximum) value of the procurement must be estimated before a decision on the procurement method is made.

The responsible officer adheres to the applicable Accountable Authority Instruction to confirm that the goods/services have been received in accordance with the relevant arrangement. Once this has been confirmed payment is approved. Where relevant under the terms of a contract, payment may reflect an assessment of the quality of goods or services provided.

Question 5

Value for money

Does a formal evaluation of value for money form part of the corporate record available on an ongoing basis to other areas of the agency?

Response

For each procurement, paragraph 7.2 of the Commonwealth Procurement Rules (CPRs) requires officials to maintain a level of documentation commensurate with the scale, scope and risk of the procurement.

This documentation is required to include accurate and concise information including, but not limited to, the process that was followed, how value for money was considered and achieved, relevant approvals and decisions and the basis of those decisions. These all form part of the corporate record.

Elements of the corporate record can be shared internally within an organisation subject to relevant confidentiality requirements.

Contracts must also be publicly reported on AusTender.

Question 6

Value for money

How many contracts has the department not paid out in full or ceased prior to contract end, in each of the financial years 2012-13 to 2016-17, as a result of the contractor or consultant having delivered a sub-standard product or service?

Response

More than 5,000 contracts were entered into by the Department over the period, including Whole-of-Government contracts. The Department actively manages each contract to ensure performance to the satisfaction of the relevant delegate. While penalties for non-performance, including early contract termination, are enforced such circumstances are rare. In most cases the Department is able to work with the business to enforce the contract satisfactorily. That approach may include temporarily withholding payment until performance is achieved.

Question 7

Value for money

What assessment have you undertaken regarding prices, timeliness and quality of work by contractors and consultants in June, July and at other times of the year?

Response

The Department reviews the business requirement to commence new activities late in the financial year. Assessment of all departmental procurement activities relating to contractors and consultants is informed by the Commonwealth Procurement Rules and internal guidelines (e.g. Accountable Authority Instructions). Value for money is a core consideration in all assessments.

To confirm that the goods/services have been received in accordance with the relevant arrangement (which would include details on prices, timeliness and quality of work) the responsible officer for the contract adheres to the applicable Accountable Authority Instruction. Once this is confirmed, payment is approved.

Question 8

Taxation

What consideration of a company's domicile for taxation purposes is undertaken during the procurement process?

Response

Information on where suppliers are located for tax purposes is not collected or held centrally. Questions on particular information collected through approaches to market should be directed to individual agencies.

For procurements above \$4 million, officials are required to consider the economic benefits of a procurement to the Australian economy. The Finance guidance on this policy includes a number of examples of how a supplier can provide an economic benefit, including "paying taxes in Australia".

From 1 July 2019, all businesses seeking to tender for Commonwealth Procurement contracts valued over \$4 million will be required to provide a statement from the ATO certifying that they are generally compliant with their tax obligations.

Question 9

Transparency

The Grattan Institute has suggested that, as a measure to improve accountability for contract cost and time overruns, that agencies be required to document changes to contract value or timelines in AusTender.¹ Has Finance considered requiring agencies to report this information in AusTender? Can Finance comment on the Grattan Institute's suggestion?

Response

In its submission to the inquiry, the Grattan Institute suggested '*AusTender data collection should be extended to document changes to the value and timelines of contracts. A record of these changes would increase accountability – by allowing identification of projects with cost and time overruns – while also assisting agencies in scrutinising offers against suppliers past performance.*'

Finance considers that information of this nature is already reported. In particular, paragraph 7.16 of the CPRs requires agencies to report contracts and amendments on AusTender within 42 days of entering into or amending a contract. The threshold for reporting, which is set out in paragraph 7.17, is generally \$10,000. Amendments should be linked to the original contract notice and may include changes to the value or timelines.

AusTender provides search capabilities that enable users to locate individual contracts and their amendment history, and there are also a range of reports which enable users to identify contracts and amendments that have been reported in any selection period.

¹ Grattan Institute, *Submission 50*, pp 7-8.

Question 10

Transparency

The Review of AusTender data against the Open Contracting Data Standard conducted by Maddocks² found that the AusTender data fields currently include information corresponding to 32% of all OCDS data fields. The report referred to a number of key areas of non-compliance including in relation to more granular information regarding the goods and services being procured; detail about the tenderers' identity; and information and documentation about the milestones under the contract, including any amendments to them.³

- a. Has the department briefed Government on the outcome of the review of compliance with the OCDS, and will that brief be made publicly available?
- b. The Government committed in Australia's First Open Government National Action Plan 2016-18 to implement agreed measures to improve compliance with the Open Contracting Data Standard by August 2017. The Midterm Self-Assessment Report notes that this commitment has been delayed. What is the reason for the delay?
- c. What improvement measures is the department proposing following the review, and when will they be implemented? Which of the review's recommendations will the department not be implementing?
- d. How far will these improvement measures go to meeting the Government's professed commitment to support the Open Contracting Global Principles?

Response

- a. The Government has been briefed. On 4 May 2018, the Department of Finance announced the completion of the review of compliance with the OCDS on the Finance website at www.finance.gov.au/node/144551/.
- b. The public consultation period was extended to ensure all interested stakeholders had an opportunity to comment on the *Review of AusTender data against the Open Contracting Data Standard*.
- c. The Government has agreed that Finance will further investigate opportunities to publish existing contracting data in an OCDS compliant format to increase Australia's compliance with the OCDS. Finance will progress this work and will advise on progress on the Finance website, noting that the existing data sets will continue to be published on data.gov.au.
- d. The commitment, which was to review the Government's compliance with the OCDS, has been completed.

² Available at: Department of Finance, 'Open Government –Contracting Data', <https://www.finance.gov.au/blog/2017/07/20-Open-Government-Contracting-Data/>, Accessed 10 May 2018.

³ Background: As the lead agency on the government's Open Contracting commitment 4.3 as part of Australia's First Open Government National Action Plan 2016-18, Finance is responsible for the objectives to ensure transparency in government procurement and continue to support the Open Contracting Global Principles; and to publicly review the Australian Government's compliance with the Open Contracting Data Standard (OCDS). <https://ogpau.pmc.gov.au/commitment/43-open-contracting>

Question 11

Funding

Can an agency engage an APS employee or pay any of their costs under administered funding?

Response

Except in a limited number of circumstances (see below), APS employee costs are not paid for under administered appropriations. Program funding for administered appropriations are subject to eligibility rules and conditions set by the Government and/or the Parliament. There is little, if any, discretion for an agency to determine the allocation of administered resources.

The Public Governance, Performance and Accountability (Financial Reporting) (PGPA) Rule 2015 governs categorisation of funding and sets out the conditions under which agencies must distinguish between 'departmental' and 'administered' funding in their financial statements. Accounting Standard AASB 1050 – Administered Items provides guidance in determining the classification of an appropriation.

Administered funding is usually managed by an agency on behalf of the Government to make payments by the Government. For example, administered funding is provided for payments to state and territory governments, entitlements provided for by legislation and direct program delivery costs (e.g. costs associated with delivery of a program to its intended beneficiaries, such as grant payments). Conversely, departmental funding largely represents the ordinary operating costs of government departments, including operational expenses and provision of goods and services to support departmental operations, including contractor and consultancy services.

There are a very limited number of exceptions, namely engagement of staff who are directly involved in the delivery of official development assistance, staff who provide client and event transport services to members of Parliament or official events (e.g. G20, CHOGM, Commonwealth Games), and staff of current and former members of Parliament.

Question 12

Funding

Can an agency employ a consultant or contractor under administered funding?

Response

An agency can pay for consultant or contractor costs using administered funding only where they relate directly to the delivery of administered activities in a way that is consistent with Accounting Standard AASB 1050 – Administered items. As outlined in the response to Question 11, administered funding is usually managed by an agency to make payments by the Government. As program funding from an administered appropriation category is subject to eligibility rules and conditions set by the Government and/or Parliament, consultant or contractor costs using administered funding would need to adhere to these eligibility rules and conditions. The rules that differentiate between administered and departmental funding are set out in the response to Question 11.

Question 13

Funding

Could those consultants or contractors be undertaking roles that would otherwise be filled by public servants?

Response

No. As set out in response to question 11, except in a very limited number of circumstances, staff costs are not paid for under administered appropriations. Historically, engagement of staff who are who are directly involved in the delivery of official development assistance, staff who provide client and event transport services to members of Parliament or official events (e.g. G20, CHOGM, Commonwealth Games), and staff of current and former members of Parliament, are the only exceptions to this.

The responses to questions 11 and 12 provide further information on the rules of administered appropriations.

Question 14

Funding

Can administered funds be used for departmental staffing, travel, or training?

Response

No. The only exceptions are as set out in response to questions 11 and 13, namely staffing, training or travel costs, from programs for the delivery of official development assistance, for providing client and event transport services to members of Parliament or official events (e.g. G20, CHOGM, Commonwealth Games), and staff of current and former members of Parliament.

Question 15

Funding

What is the approval process to move funds between departmental and administered funding?

Response

Under the Public Governance, Performance and Accountability (Financial Reporting) (PGPA) Rule 2015, changes must not be made to the classification of existing departmental and administered items without the approval of the Cabinet or the Finance Minister.

Question 16

Funding

How is the split between departmental and administered funding monitored?

Response

The Department of Finance manages drawdowns against departmental and administered funding, consistent with the split of funding provided in appropriation legislation. Agencies monitor their departmental and administered funding through program budgets and appropriation acts. Consistent with the *Public Governance, Performance and Accountability Act 2013* Agencies must promote the proper use and management of public resources.

Agencies also report on expenditure of administered and departmental funding according to the financial reporting requirements in the *Public Governance, Performance and Accountability Act 2013* and accounting standards.