

Defence Portfolio

INQUIRY QUESTION

(Question No.1)

Ms Peta Murphy MP asked the Department of Defence the following question, upon notice, on 14 December 2022:

Ms Murphy: Is there are definition that gets these proposals into innovation? How are they assessed the difference between an unsolicited proposal and an unsolicited innovative proposal?

Rear Admiral Wendy Malcolm: What the audit report actually demonstrated to Defence is that perhaps our policy needed to be clearer and the reference to something being innovative unsolicited verse being unsolicited was not necessarily helpful in providing clear explicit policy from inside Defence and so our actually policy has been updated so that it really focuses on all unsolicited proposals rather than trying to categorise them as to whether they are innovative or not

Ms Murphy: The concept of an innovative treated differently through an innovation hub is redundant now, you've moved on from that and all unsolicited proposals that turn up without any prior discussion in an inbox are dealt with in the same way.

Rear Admiral Wendy Malcolm: There is clear guidance that must be explicitly followed for any unsolicited proposal.

Tony Dalton: There is still a pathway to the innovation hub, we will take that on notice Ms Murphy and bring something back for you.

The Department of Defence has provided the following answer to the member's question:

The Defence Procurement Manual contains guidance regarding the identification and handling of unsolicited proposals, including when unsolicited proposals may be considered innovative. The Defence Procurement Manual notes that the Defence Innovation Hub Portal is the primary gateway for companies seeking to submit solicited innovation proposals or ideas to the Defence Innovation Hub.

When an unsolicited proposal is received by Defence it is assessed to confirm whether it fits within the scope of an innovative proposal consistent with paragraph 10.3(c) of the Commonwealth Procurement Rules (CPRs). There are three main factors to be assessed in considering application of a 10.3 Limited Tender exemption, being:

1. the opportunity exists only in the short term;
2. the goods and/or services are not (and cannot be) routine procurement from regular suppliers; and
3. the proposal is unsolicited and innovative.

Should Defence wish to accept an unsolicited innovative proposal it is required to be treated as a Limited Tender, consistent with above Limited Tender exemption under the CPRs. [Proposers are advised where their unsolicited proposal is not deemed innovative to ensure that Defence achieves value for money outcomes that are efficient, effective, economical and ethical and adhere to the CPRs].

The Defence Innovation Hub (the Hub) solicits innovation proposals from Australian industry and academia through an online portal. These proposals are evaluated against defined criteria and processes that are publically available (www.innovationhub.defence.gov.au). If the Hub receives an unsolicited proposal (that is, not through the portal), the Hub will refer the proposer to the Hub's online portal, or in some cases may suggest approaching another area in Defence if it is more appropriate.

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INQUIRY QUESTION

(Question No. 2)

Mr Julian Hill, MP, asked the Department of Defence the following question, upon notice, on 14 December 2022:

1. How was the decision to provide a life-of-type extension (LOTE) to the Armidale class patrol boats made, and was an open tender procurement process considered when deciding upon a LOTE?
 - a. Was the LOTE evaluated as being the best value for money against any other potential procurements?
 - b. Why weren't the Evolved Cape class patrol boats procured by Defence earlier, via an open tender procurement process?
 - c. How much consultation was done with other departments or agencies regarding whether the LOTE was value for money, and whether the procurement of the Evolved Cape class patrol boats was value for money?

The Department of Defence has provided the following answer to the Member's question:

1. The timing of the Armidale class patrol boat replacement project (SEA1180 Phase 1) drove planning to extend the life of up to six Armidale class patrol boats. This was considered by the then Government as part of the second pass approval for what became the Arafura class offshore patrol vessel project (SEA1180 Phase 1) in 2017.

Extending the life of up to six Armidale class patrol boats was planned to be a sustainment activity predominately consisting of an additional major servicing (that has a periodicity of 60-months) and subsequent minor servicings to carry the fleet over the transition period. As a sustainment activity, these additional servicings would have been completed by the in-service support contractor, Thales Australia. Thales Australia was awarded the in-service support contract for the Armidale class patrol boats in 2017 following an open tender approach to market. A separate approach to market for these servicings was not considered necessary.

- a. No alternative transition pathways were considered prior to the receipt of Austal's unsolicited proposal for additional Cape class patrol boats.
- b. The Cape class patrol boat is a propriety Austal Ships design (Austal Patrol 58); it is a derivative of the Armidale class patrol boat design. To seek a Cape class patrol boat (or an evolved version) would have required a restricted (sole source) tender approach to the designer/builder – Austal Ships.

At the time of the Arafura class offshore patrol vessel project second pass decision, Cape class patrol boats were not in production and were not considered as an alternative transition pathway. In 2018, with financial support provided by Export Finance Australia, Austal secured the sale of two new-

build Cape class patrol boats to the Government of Trinidad and Tobago. Austal's unsolicited proposal to the Department in 2019 was made on the basis that follow-on Cape class patrol boats off a 'hot' production line could be less expensive and less risky than extending the life of the Armidale class patrol boats, a position the Department's subsequent assessment supported.

c. The Australian National Audit Office has detailed the process followed by the Department subsequent to the receipt of Austal's unsolicited proposal for additional [evolved] Cape class patrol boats (Report No. 15, 2021-22), including the assessment of value for money. Up until this point, the project to replace the Armidale class patrol boats (SEA1180 Phase 1), including the transition between the Armidale class patrol boats and the larger and more capable Arafura class offshore patrol vessels, and the requirement to extend the life of up to six Armidale class patrol boats, had followed the standard Defence project approval pathway. This included review by the Department's investment committee with representatives from both the Department of the Prime Minister and Cabinet and the Department of Finance.

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INQUIRY QUESTION

(Question No. 3)

Mr Julian Hill MP asked the Department of Defence the following question, upon notice, on 20 December 2022:

The ANAO report noted that the department consistently noted issues with the quality of Austal's monthly reports (ANAO report, para 3.57, p. 63).

What were the procedures for reviewing these reports, and what follow up action occurred when issues were discovered?

The Department of Defence has provided the following answer to the member's question:

Austal is required to submit a Contract Status Report every two months. The Department then responds to Austal, typically within two weeks. Austal then reviews the response and either provides a subsequent response or updates the next report as appropriate. Outstanding issues are then addressed at quarterly reviews.

A range of issues were managed over the early stages of the project, as described in Australian National Audit Office Report No. 15, 2021-22. The Department has worked with Austal to resolve issues and, with three boats now delivered, there is more stability in the working relationship and reporting quality has improved.

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INQUIRY QUESTION

(Question No.4)

Mr Julian Hill MP asked the Department of Defence the following question, upon notice, on 20 December 2022:

4. The Department of Finance (Finance) provides advice, support, and services to assist Commonwealth entities when conducting procurement processes.
- To what extent did your Department make use of any resources provided by Finance during the procurement process?
 - Has your Department sought or received any feedback at any stage from Finance on your procurement practices?
 - What information or data have you provided Finance about procurement processes conducted by your Department?
 - What support has your Department received from Finance in implementing the Auditor-General's recommendations?
 - Does the Department have any suggestions for additional resources that Finance could provide to better assist with procurement processes.

The Department of Defence has provided the following answer to the member's question:

- 4a-c. The Department of Defence (Defence) and Finance work closely and collaboratively on Defence procurement activities through a variety of established processes. A senior representative of Finance is a permanent member of the Defence Investment Committee (at the Senior Executive Service Band 3 level). The Defence Investment Committee is responsible for exercising strategic control over the Defence investment portfolio, bringing the future force and supporting enablers into being in accordance with Government requirements. To support full and effective participation in this process, detailed working level briefings on Defence projects are provided to Finance officials by Defence. Defence also has a number of established mechanisms and fora to share information with Finance, including seeking Procurement Agency Advice, and contributing to the annual Commonwealth Procurement Capability Self-Assessment Survey.

Officials from Finance were consulted throughout the procurement process for the Evolved Cape class patrol boats, and provided advice on appropriate financial mechanisms for this procurement.

Defence actively seeks input and feedback from Finance when developing and implementing procurement policy and guidance to ensure effective implementation of the requirements under the Commonwealth Procurement Framework.

- 4d. Finance recently provided a secondee to Defence, in efforts to share knowledge and expertise across the departments, including the provision of advice to support the development of procurement policy with respect to the ANAO recommendation.

- 4e. Defence welcomes Finance's assistance in improving Defence's procurement processes, and appreciates Finance's existing support, particularly in relation to complex procurement matters. While the allocation of Finance resources is a matter for Finance consideration, Defence regularly engages with Finance to provide advice and input to the Commonwealth Procurement Framework and procurement practices, and to further enhance value for money outcomes for Defence.

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INQUIRY QUESTION

(Question No.5)

Mr Julian Hill MP asked the Department of Defence the following question, upon notice, on 20 December 2022:

The ANAO's submission to this inquiry noted that larger entities such as Defence have sought to build their procurement capacity and invest in a professional procurement function (ANAO submission, p. 13).

- a. How has Defence developed its knowledge and expertise in procurement?
- b. Based on Defence's experience, can you identify any lessons for other Commonwealth entities seeking to build their procurement capability, or for the public service as a whole?
- c. How does Defence evaluate its procurement capability? What benchmarks does Defence use to measure its performance in this area?
- d. To what extent are procurement experts in Defence given authority in terms of their advice—how does Defence ensure their advice is given proper consideration?

The Department of Defence has provided the following answer to the member's question:

- a. Given the scale, cost and complexity of the systems and services Defence acquires and sustains, Defence is recognised by the Department of Finance and other agencies as a lead government procurement and contract management agency in terms of its knowledge, practices and expertise. This lead role was recognised by the formation of the Defence and Finance Procurement Hub to assist other Federal and State Government procurement agencies with urgent procurements in response to the COVID-19 Pandemic. This specialised procurement support to other agencies continues today, including through expert performance based contracting advice to agencies and continues to be a rich source for Defence process improvements.

Defence's central procurement policies and processes are under continuous improvement, including to incorporate related recommendations flowing from ANAO audits, internal Defence audits, formal lessons learned processes, review of procurement complaints and to implement recommendations from key government reviews including the First Principles Review.

Working with the central agencies and following the First Principles Review, Defence has established formal Independent Assurance Review and Contestability processes and governance to support sound investment decision making and value for money outcomes. Defence's procurement and contracting processes are integral to the One Defence Capability System processes and guidance to promote the development and implementation of sound capability procurement strategies. This includes independent Smart Buyer Reviews early in the procurement life cycle to inform the optimal commercial approach.

In addition to the institutionalised procurement policies, lessons learned and improvement elements outlined above, Defence has developed its knowledge and expertise in procurement through:

- i. establishing a clear policy framework based around the Commonwealth Procurement Rules in a central, on-line, interactive set of Defence procurement policies and guidance;
 - ii. modifying that framework where lessons are learned based on practical experience, including areas for better practice identified through the Procurement Complaints function;
 - iii. reflecting lessons learned into Defence's procurement templates, training and contract management processes and guidance;
 - iv. maintaining a Procurement and Contracting Job Family that offers targeted internally-developed procurement and contract management courses available to all Defence staff;
 - v. leveraging recognised external procurement and contract management training as well as developing and continuously improving its internal Defence procurement training; and
 - vi. actively engaging its large Procurement Community of Practice to identify gaps in procurement and contract management knowledge and promote externally recognised procurement certifications, such as relevant Certificate IVs.
- b. Defence acknowledges that its procurement processes and training can continue to be improved, including in the area of training for staff where procurement is not their core role. Defence continues to actively engage with the Department of Finance and Federal and State Government procurement agencies, including through the Australasian Procurement and Construction Council, to leverage shared experience and lessons learned.

The key lessons Defence suggests are:

- i. maintain a strong relationship with the Department of Finance as the central agency responsible for the Commonwealth Procurement Framework;
 - ii. empower the entity's central procurement team as the source for supporting and improving departmental procurement policy and practice;
 - iii. invest in training officials involved in procurement and contract management; and
 - iv. when difficult issues arise, seek advice from other Commonwealth agencies, such as Defence or the Procurement Coordinator in the Department of Finance, as to whether similar issues have been encountered, how they were addressed and what lessons can be shared across the Commonwealth agencies.
- c. Defence evaluates its procurement capabilities and outcomes through independent review and assurance of its procurement activities, including the capabilities of the procurement teams as an aspect of Smart Buyer Reviews, Capability Gate Review Boards and Independent Assurance Reviews. This includes Defence-wide surveys on Defence's procurement framework and services as an enabling service. Defence also collects feedback from Defence commercial staff through a range of help desks and formal feedback mechanisms, lessons learned databases, training surveys and course completion forms to identify improvements to procurement processes and training.
- Further, Defence maintains a broad procurement capability supported by a flexible policy and practice framework that can evolve readily as opportunities for better practice are identified. This reflects the scale, complexity and diversity of Defence procurement. Defence also responds and implements lessons learned across its procurement and capability life

cycle, including findings and recommendations of internal review processes and external processes, such as ANAO audit recommendations.

- d. Defence provides and promotes a central Defence-wide Commercial Framework that contains effective and compliant procurement policies, processes, guidance, systems, tools and templates, including when and how to engage the Defence Commercial Division. The requirement to seek Defence Commercial Division advice, endorsements and approvals for certain procurement activities is mandated in the Defence Procurement Manual and is supported by embedded and/or dedicated commercial staff supporting operational domains, Groups and Services. This includes requirements to seek Defence Commercial Division advice and endorsement of commercial strategies and approach to market documentation for major procurements.

The Defence Commercial Division also operates the Defence Procurement Complaints Scheme and recommends certain actions where procurement process issues have been identified. Commonwealth officials within Defence exercising a financial delegation are accountable through the implementation of Defence's delegation framework, accountable authority instructions and administration instruments, including for procurement. Staff are further supported with professionalisation training and opportunities to further their knowledge and expertise.