

Joint Committee of Public Accounts and Audit

Inquiry into Commonwealth Procurement

Department of Finance

Response to Question on Notice

Hearing of 3 March 2023

Written Question on Notice 1 (Proof Hansard, pages 2-3, Mr Hill)

CHAIR: How does the public know how much work is going to PwC, for example? How does the public know how much work is going to what the public might think of as PwC, being lots of people sitting in giant glass towers scattered around the country?

Mr Hehir: The only data available is that on AusTender, and the data is presented according to who they contact with, which is by ABN. Then it requires some sort of analysis to look at supplier names and ABNs and see whether you can bring them together.

Ms Craswell: One of the data observations we also made is that sometimes the same ABN has multiple names recorded against it, because it's reliant on the Commonwealth entity entering into the contract to enter that information into AusTender. If they enter it in a different way—

CHAIR: So, it's not that the entity has multiple identities, it's to do with how the information is typed into AusTender?

Ms Craswell: There are two instances. Firstly, if a department enters into a contract with someone like PwC that has multiple ABNs, they enter the ABN number and then they also enter the entity name. The ABN number is the same ABN number. However, they may enter the name in multiple ways even against one ABN.

Senator REYNOLDS: As to the report and your explanation now, does that allow for not quite phoenixing but if you have companies with multiple ABNs and they're on multiple panels is there any way for those who are in different departments, looking at different panels, to assess whether this is a company that they shouldn't be tendering with or where another department has had a very bad experience with them?

Mr Hehir: I don't think we've looked at that to be able to comment on it. The question goes to the effectiveness of entities sharing information about their contracting experiences, and I think that's probably one more for Finance than us. We haven't really done work in that space.

CHAIR: This is not a political or partisan point, but it goes to transparency. Transparency I suppose has those two aspects, that is, accuracy, so we're confident that what's put in there is accurate, both that the right digits have been typed in and that's a consistent naming convention; secondly—and I'm struggling for the right words—'coherence' perhaps in terms of the public being able to understand that what anyone in the street would think of as a corporate entity, PwC, AGL or EY to take those examples we've been over, namely, that all of the relevant ABNs in that cluster or clearly interrelated group of companies can be aggregated and reported. Maybe 'aggregated' is a better word. They're two separate issues, but perhaps on the first one, this issue around accuracy—if I type into my internet banking a BPay number these days it comes up and tells me that I have the right thing. It links somehow in the back end to a system. Does AusTender link to ASIC's ABN register or the ATO, or whoever maintains that?

Ms Craswell: What we have noticed over the time we've been doing the procurement reports is that, since we've been publishing them, Finance has worked on providing dashboards and information where people can search the publicly available information. The types of dashboards and searching that they have would be a matter for Finance. We can do a piece of work and try to aggregate that in the background, if you would like us to attempt that?

CHAIR: Maybe it's one for the secretariat to note, that basic question to be put as a question on notice to Finance.

Response

Finance is utilising existing Commonwealth data sets to improve the quality of data on AusTender. For example, when publishing Contract Notice information, AusTender verifies the Australian Business Number against the Australian Business Register to ensure that the ABN is valid.

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Response to Question on Notice

Hearing of 3 March 2023

Written Question on Notice 2 (Proof Hansard, page 4, Senator Reynolds)

Senator REYNOLDS: Could I also ask on notice the previous question that I asked; I think it's a broader issue for Finance as well. So, not just for contracting, but when someone's on a panel, for example, or when they're looking at companies more generally, how do they know whether it's just not a phoenix company but if the company itself or the directors associated with it or if it's a smaller company on multiple panels. So, with one department one entity has had a bad experience with them but they pop up in another contract, particularly for consultancies, how do we get visibility of that? It seems on the face of it that it's quite a gap. Perhaps if we could put that issue on notice for Finance?

Response

Under the devolved Commonwealth Procurement Framework, it is the responsibility of the procuring entity to undertake due diligence commensurate with the scale and scope of the business requirement. The Department of Finance (Finance) supports entities through the publication of guidance on ethics and probity in procurement, including the underpinning principles of ethics and probity in Australian Government Procurement.

For Finance panels, tenderers are required to provide a range of information as part of the Request for Tender (RFT) process to support assessment of the tender. This assessment includes assessing compliance with the RFT conditions of participation, such as confirming if the tenderer is a legal entity, is not bankrupt or insolvent, if they are a 'relevant employer' under the *Workplace Gender Equality Act 2012*, and that any required declarations, such as conflicts of interest, are present in the response. The assessment also includes consideration of responses to relevant Procurement-Connected Policies, such as the provision of a valid Statement of Tax Record. These assessments during the tendering phase provide Finance assurance that, prior to placing a supplier on a panel, the supplier is capable of providing the required services and is an acceptable type of entity with the legal capacity to enter into contracts with the Australian Government.

References are also sought to validate the supplier's claims and support Finance's evaluation. This process is managed directly with referees, independent of the suppliers, to gather open feedback about supplier performance history and capabilities. Once a supplier is placed on a Finance panel, they cannot change their ABN or legal name without prior approval from Finance. Documents and information required at the tender stage are also required from the supplier when they request a change to their ABN or legal name.

In addition, the head agreements for the coordinated procurement panel arrangements include service levels, which are monitored by Finance. Finance also monitors feedback from entities to identify trends and reoccurring issues. Finance works with panel suppliers to address concerns and under some circumstances and where warranted, Finance may consider temporary suspension or termination from the panel.

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Response to Question on Notice

Hearing of 3 March 2023

Written Question on Notice 3 (Proof Hansard, page 5, Senator Reynolds)

Senator REYNOLDS: This is maybe another question on notice for Finance. I think having that blurring between standing offer and a panel is suboptimal, to put it mildly. If we could ask Finance to explore that further with us, because in the common use of the language if it's a panel you would expect it to be a panel to choose from, whereas if you already have an existing contract, a standing offer, they should actually be visible as two separate processes or arrangements. I'm wondering if we can put that on notice for Finance?

CHAIR: Yes, it would be good to clarify the distinction. We'll do that, and ask Finance to explain to us the difference, if there is one, between a standing offer and a panel. I'm just struggling to understand how a panel is one.

Mr Hehir: Yes.

CHAIR: Yes. It sounds like a monologue.

Senator REYNOLDS: That's exactly right. I think maybe that's the point. To Finance the question is: more clarity and consistency of definitions really should be made as part of that.

Response

A standing offer is an arrangement setting out the terms and conditions, including a basis for pricing, under which a supplier agrees to supply specified goods and services to a relevant entity for a specified period. A deed of standing offer is the contractual template that contains a mechanism allowing an entity to order goods and services from that arrangement.

The term can be used to describe arrangements involving just one supplier or a number of suppliers. Where there are multiple suppliers under a standing offer providing similar goods or services, this is generally referred to as a 'panel'. Standing offers and panels can be used to support the procuring requirements of a specific program or project where the goods or services are required for a defined period of time, and regularly acquired by entities on an ongoing basis (for example stationery supplies).

While the term standing offer has been explicitly defined in the Commonwealth Procurement Rules and is commonly understood by procuring entities, the definition of a panel arrangement has not been formalised under the Commonwealth Procurement Framework.

As part of the review into Commonwealth panel arrangements, Finance will consult with entities to obtain insights into the application of these terms and better understand whether the definitions need to be clarified to simplify the procurement landscape for both suppliers and procuring officials.

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Response to Question on Notice

Hearing of 3 March 2023

Written Question on Notice 4 (Proof Hansard, page 6, Senator Reynolds)

CHAIR: CPRs encourage competition as a tool to achieve value for money, and this data does suggest that the panels are restricting - not 'find', 'suggest'—inadvertently and not enhancing competition.

Mr Hehir: That's certainly a conclusion that we've put in a number of performance audits, that it looks like that, and in our submission to the committee it's similar. It's not simply about value for money, but also access. One of the principles of the procurement framework is about broad access, that is, competition to drive value for money but also having the ability for multiple providers to access government.

CHAIR: You've got to be in the club to have a crack, but the person purchasing needs to look at all the people in the club, not just their favourite one to have lunch with.

Mr Hehir: Yes.

CHAIR: Deputy Chair, did you have anything you wanted to talk about on panels? I think there's been a real theme. Personally, I've got panels in the gun a bit because I think we've seen this over and over again in numerous reports. The proper use of panel seems to be to take a lot of the friction and risk out of procurement by prequalifying suppliers, checking capability, financials, balance sheet—all that of that. But large chunks of the public service now seem to be using panels as a way of avoiding paperwork or getting the person who they want to do the contract without any competition.

Mr Hehir: I think an observation I've made a number of times is that we see a lot of procurement where the process adopted seems to be for the ease of the agency rather than the benefit of the taxpayer.

CHAIR: Deputy Chair?

Senator REYNOLDS: Yes, you and I think very similarly on that, and it is something that would be good to chase up with Finance further, both in terms of the problem and also how it could be amended to still get the intended benefits but also improve the focus in terms of all the areas you've raised, Chair, with more transparency. I don't know whether now is the right time. I wanted to drill down further into the procurement categories.

CHAIR: You have the call. I'm just checking: have we ruled a line under panels, given this hearing at the moment or for most of the day is going to be a panel of you and me?

Senator REYNOLDS: I think that covers it. It will be very interesting to see what comes back from Finance. Obviously there's two ways they can answer it. One is just humorous,

basically, and to come up with all the reasons why the current system is not too bad, or they can actually seriously address some of the problems and potential solutions. So, I'll just put that on Hansard as a bit of a suggestion to the Finance officials when they start looking at these questions.

Response

Panels deliver considerable benefits and efficiencies for both agencies and suppliers, by streamlining administration and reducing tendering costs and efforts through standardised terms, conditions and templates and can leverage significant purchasing power to deliver consistent pricing for the Commonwealth.

Encouraging competition and non-discrimination are key elements of the Commonwealth Procurement Rules (CPRs). Establishing a panel arrangement requires a transparent and competitive procurement process. Potential suppliers are assessed against evaluation criteria, including the relevant financial and non-financial costs and benefits of each tender relevant to the goods and services being procured. Only suppliers that represent value for money are included on a panel.

When purchasing from a panel, agencies are required to review, and make a judgement about, which of the panellists will best meet their business needs. A recent change to the CPRs now encourages entities, when procuring from a panel, to approach multiple suppliers (refer CPR Paragraph 9.14). Guidance on procuring from panels is published on the Department of Finance website and encourages officials to consider, amongst other things, competition, procurement size and scope, performance and opportunities for new suppliers when considering their procurement activity. The guidance also expresses the importance of justifying decisions and demonstrating value for money.

Many panels are now refreshable, allowing frequent product, service and market changes to be addressed by permitting new suppliers to be added periodically. Refreshable panels increase opportunities for new market entrants to do business with the Commonwealth and provide opportunities for existing panellists, where relevant, to expand their service offerings.

Finance is continuously looking for further opportunities to improve entities procuring practices around the identification and use of panels. This is being addressed through:

- further developing the capability of procurers through increasing training available for all levels of officials, such as delegates, frequent procurers and officials who undertake procurement infrequently or incidentally to their core roles. This work is being led by the Centre of Procurement Excellence, within the Future Made in Australia office at the Department of Finance; and
- future updates to AusTender to report how many suppliers were approached when undertaking a panel procurement.

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Response to Question on Notice

Hearing of 3 March 2023

Written Question on Notice 5 (Proof Hansard, pages 7-8, Mr Hill)

Senator REYNOLDS: Chair, can I just ask another question in relation to procurement categories? I don't know whether we can hold up Defence as an exemplar in some of these matters, but it having fleet managers and capability managers I think is something that works well. So, you get expertise in that area, and you also get better visibility. This might be a question for Finance. What are your thoughts as to looking at that so that we have more of a whole-of-government approach to how we procure and also manage particular, in this case, fleets? So, we have engineering and research, technology based services, the business management and professional admin services, and then the straight out procurement of cars. So, if we've got one department procuring a white fleet and another one, and they have two very different contracts and are probably paying different prices, it doesn't seem very efficient. I'm not sure whether that's an issue for you or whether it's something, Chair, that we put on notice for Finance about, and possibly a recommendation. We'd have to obviously talk offline about how we do that recommendation. Do you have any advice for us or any general observations from the audits that you've done over the years?

Mr Hehir: I don't think we have a view particularly on that issue. The Department of Finance operates a number of whole-of-government procurement contracts, things like travel and accommodation.

Ms Jago: I think office supplies come through them.

Mr Hehir: There are a few whole-of-government contracts. I think it's a matter for them which types of goods and services they think are best suited for that type of whole-of-government approach to procurement.

Senator REYNOLDS: Chair, maybe that's another one for Finance. In their experience, what type is suited to these whole-of-government contracts, which ones are not, and why, and how the current panel arrangements or enhanced arrangements—

CHAIR: We can put a question on notice to Finance to explain to us the basis and criteria that inform decisions to undertake whole-of-government procurements.

Response

Coordinated procurement arrangements are established for commonly used goods or services by the Commonwealth. These arrangements ensure more efficient processes to deliver better prices, service and quality for the Commonwealth. Coordinated procurement arrangements also offer increased transparency, standard terms and conditions and improved contract management that benefits both the government and suppliers.

Finance regularly consults with entities to identify potential future coordinated procurement opportunities. For example, engagement with procurement officials across government in 2019-20 identified demand for a whole-of-Australian-government approach to purchasing consultancy advisory services. Following further consultation activities, analysis of AusTender data and a scoping study to consider the feasibility of establishing such an arrangement, a coordinated procurement process was undertaken in 2020 which resulted in the establishment of the Management Advisory Services (MAS) panel in 2021.

Other coordinated procurement arrangements managed by Finance include:

- People Panel
- Property Services
- Stationery and Office Suppliers
- Government Advertising
- Campaign Evaluation Market Research Services
- Motor Vehicle Leasing and Fleet Management
- Travel Services:
 - Travel management Services
 - Air Travel Services
 - Domestic Accommodation
 - Domestic Car Rental
 - Travel and Related Card Services.