

Senate Finance and Public Administration References Committee

Inquiry into the management and assurance of integrity by consulting services (Consulting services)

Department of Finance

Response to Question on Notice

Question 27 (Senator Colbeck)

Finance has previously advised that the ANAO has a compliance role with respect to the conduct of Commonwealth contracts. Does Finance assist the ANAO in any way with the ANAO's compliance role?

Response

Finance supports the ANAO in its compliance activities by, where requested, providing it with AusTender data and/or clarification of procurement and contract management policy.

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Response to Question on Notice

Question 28 (Senator Colbeck)

What training or credentials does Finance recommend or require public sector officials obtain with respect to contract management including the scoping, management, and evaluation of contracts?

Response

Finance is developing and delivering a comprehensive package of both digital and in-person procurement and contract management training courses. The first two courses, the Procurement Basics and the Contract Management Basics courses, commenced in September 2023. Since that time, Finance has delivered 21 sessions across 22 entities to 673 officials. Specialist topics in contract management are in scope of the training package and will be rolled out throughout 2024.

Finance is also exploring the development and delivery of professionalisation pathways for officials to become procurement and contracting specialists.

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Response to Question on Notice

Question 29 (Senator Colbeck)

Does Finance run or recommend courses on developing professional sceptical internal audit capacity for Commonwealth departments and agencies with respect to managing contracts?

Response

Entity heads are responsible under the *Public Governance, Performance and Accountability Act 2013* for internal entity audit practices and assurance activities to meet the needs of their entity; this extends to the relevant audit training courses provided to their APS officials. Due to the range of market offerings provided by private sector organisations on contract management best practices, Finance does not endorse particular courses.

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Response to Question on Notice

Question 30 (Senator Colbeck)

- a. What agreements do suppliers need to sign to gain entry to a Management Advisory Services panel?
- b. Do suppliers need to sign the Supplier Code of Conduct to gain entry onto a Management Advisory Services panel?

Response

- a) The contractual mechanism for the Management Advisory Services Panel is the Head Agreement (<https://www.finance.gov.au/sites/default/files/2022-02/MAS%20Panel%20Head%20Agreement%20-%20February%202022.pdf>) which is executed by all suppliers approved to be on the panel following an open procurement process.
- b) The Commonwealth Supplier Code of Conduct (the Code), which is currently out for industry consultation, is anticipated to become effective in mid-2024 following endorsement by Government. The Code will apply only to new contracts entered into from this date however Commonwealth entities may negotiate the inclusion of Code clauses into existing arrangements where appropriate and agreed. Finance will negotiate with existing MAS panel providers to incorporate Code clauses into their MAS Panel Head Agreement. Any new suppliers added to the Panel from the effective date of the Code will be required to comply with the Code under their Head Agreement.

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Response to Question on Notice

Question 31 (Senator Colbeck)

Please explain the process Finance goes through when reviewing membership of a Management Advisory Services panel?

Response

A review of the Management Advisory Services (MAS) Panel is conducted in accordance with Clause 5.4 of the Head Agreement (<https://www.finance.gov.au/sites/default/files/2022-02/MAS%20Panel%20Head%20Agreement%20-%20February%202022.pdf>) which states:

“5.4.1 Finance reserves the right to, at any time during the Head Agreement Period, review the operation of the Panel and do any one or more of the following:

(a) add to or remove Service Categories or Service Subcategories over the term of this Head Agreement;

(b) suspend or remove the Service Provider or other Panellists from the Panel for noncompliance with this Head Agreement as further described in clause 25;

(c) approach the market to:

i. add suppliers to the Panel in one or more Service Category or Service Subcategory; or

ii. add additional Service Categories and Service Subcategories to the Panel (for which the Service Provider and other suppliers may tender to provide).”

Refresh 1 – Financial Management Advisory Services is currently underway with the Approach to Market released on 16 November 2023 and closed on 18 December 2023. This refresh is for all Financial Management Advisory Service subcategories under the following service categories – Accounting, Financial Advisory, Financial Audit, and Actuarial. The refresh includes the addition of a new service sub-category for Investment Banking Services under the Financial Management Advisory service category.

Refresh 2 for Corporate and Commercial Management Advisory Services is anticipated to occur from August 2024.

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Response to Question on Notice

Question 32 (Senator Colbeck)

Does Finance recommend or require Commonwealth departments and agencies obtain a statement of both the ethical values and principles of potential contracting suppliers?

Response

The Commonwealth Procurement Rules states that officials must consider, among other things, a potential supplier's relevant experience and performance history when assessing value for money. This could include consideration of any unethical behaviour and/or deficiencies in performance under prior contracts (including failure of the tenderer to abide by substantive requirements such as confidentiality provisions). Officials must factor these matters into the evaluation of tenderers, ensuring any decisions are documented as appropriate.

Appropriate due diligence activities, commensurate with the scale, scope and risk of the procurement, should be undertaken to ensure information provided by tenderers and suppliers is current and accurate. Finance publishes guidance for Commonwealth entities on Ethics and Probity in Procurement (<https://www.finance.gov.au/government/procurement/buying-australian-government/ethics-and-probity-procurement>) on the Finance Procurement website.

Officials should monitor the ethical behaviour of suppliers throughout the term of the contract. Provisions that allow for the termination of a contract for a material breach, including breaches of confidentiality and security requirements, should be included in all Commonwealth contracts.

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Response to Question on Notice

Question 33 (Senator Colbeck)

Does Finance recommend Commonwealth departments and agencies obtain clauses in relevant supplier contracts specifying knowledge transfer from consulting firms to the APS?

- a. If yes, how does Finance assure itself that the clause is in the contract?
- b. And, how does it measure knowledge transfer?

Response

The Management Advisory Services (MAS) Panel and People Panel Head Agreements already contain clauses relating to the transfer of knowledge, information and skills to the APS when engaging a labour hire contractor or consultant under a contract. Finance has also uploaded similar model clauses in ClauseBank¹ and will update the Commonwealth Contracting Suite² at the next refresh.

As coordinated procurements, use of the MAS Panel and People Panel is mandatory for non-Corporate Commonwealth entities. Commonwealth corporate entities and Commonwealth companies may opt in to use the arrangements. This means that most consultancy and labour hire contracts already contain the knowledge transfer clauses.

Assurance of applicable contracts to ensure compliance with contractual requirements is a matter for individual entities.

¹ <https://www.finance.gov.au/government/procurement/clausebank>

² <https://www.finance.gov.au/government/procurement/commonwealth-contracting-suite-ccs>

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Department of Finance

Response to Question on Notice

Question 34 (Senator Colbeck)

How does Finance define consulting?

- a. Has Finance conducted audits of agency compliance with its definition of consulting? If so, how many, and of which agencies and contracts?
- b. What work has Finance done with agencies to ensure a more consistent approach to the definition of consulting?

Response

- a) Paragraphs 56 to 64 of the Procurement Publishing and Reporting Obligations (RMG 423) (<https://www.finance.gov.au/sites/default/files/2021-05/rmg-423-procurement-publishing-and-reporting-obligations.pdf>) provides guidance to agencies on how to define a consultancy. In particular, Paragraph 57 states:

“A consultancy is defined as the engagement of temporary services that:

- *involves the development of an intellectual output that assists with decision making;*
- *and*
- *the intellectual output represents the independent view of the service provider.”*

- b) Finance undertakes regular data quality assurance activities of AusTender. Since 2018, Finance has significantly improved data quality and access to procurement information for entities, potential suppliers, and the public. These efforts have involved the review and correction of over 360,000 records across all contract notices on AusTender, including those flagged as consultancy contracts. Additionally, Finance has made available a number of public and entity specific analytical reports within AusTender. These reports make it easier to locate and examine consultancy contracts listed on AusTender, assisting entities in ensuring contract data is consistent with the consultancy guidance outlined in RMG423.

In addition, Finance has established the Management Advisory Services (MAS) Panel as a panel for commonly used consultancy services and established the People Panel as panel for commonly used contractor services to make it easier for agencies to access the services and report these engagements on AusTender.

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Response to Question on Notice

Question 35 (Senator Colbeck)

Does Finance recommend or require consultancy contracts with the Commonwealth to stipulate that the hourly rate for any extension cannot exceed what was paid during the initial engagement? Or process for escalation?

Response

Achieving value for money and encouraging competition are key elements of the Government's procurement framework and the Commonwealth Procurement Rules. Officials must ensure that when extending a contract, it is still value for money.

The Management Advisory Services (MAS) Panel was established as a mandatory Whole of Australian Government arrangement for commonly used management advisory services, commonly known as consultancies (non-ICT). The agreed fees on the MAS Panel are maximum ceiling fees that can be charged by the supplier when entering into a contract with a government agency. Finance encourages entities to negotiate better pricing than the maximum ceiling fees through further competitive tension during the quote process. Suppliers on the panel cannot apply fee increases to existing contracts; fee increases can only be applied after the annual fee adjustment.

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Response to Question on Notice

Question 36 (Senator Colbeck)

Has Finance considered or proposed either pre-determined financial penalty clauses, or damages clauses, for liquidated damages if a supplier fails to deliver what it promised? If yes, what has Finance proposed (and what is the formula for calculation)? If not, why not?

Response

The Commonwealth Procurement Framework is devolved and accountable authorities are responsible for procurement activities within their entities. Finance has not proposed a financial penalty if a supplier fails to deliver.

The Commonwealth Contracting Suite (CCS) and ClauseBank includes Notification of Significant Events clauses. Whilst these clauses do not impose a financial penalty, it will enable an entity to terminate a contract for material breach of contract if an adverse event occurs.

Commonwealth contracts often contain key performance indicators and service levels, and where appropriate, financial abatements are also included in the contracts.

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Response to Question on Notice

Question 37 (Senator Colbeck)

Does Finance have a central repository of the work a firm is doing for different departments?

Response

The Commonwealth Procurement Framework is devolved, where accountable authorities are responsible for the procurement activities within their entities.

Finance does not hold centralised data of the work various organisations perform for individual departments.

AusTender holds a list of reportable contracts valued at or above \$10,000. Utilising the search function, individuals can view contracts for an entity or supplier.

Finance is currently developing the Contractor Reporting, Integrity Information Solution (CRIIS) which aims to hold consolidated information on Labour Hire contracts established under the Whole of Australian Government People Panel. CRIIS is expected to be released progressively throughout 2024.

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Response to Question on Notice

Question 38 (Senator Colbeck)

Does Finance have a database of entities and individuals on:

- a. Management Advisory Services panels?
- b. Commonwealth department and agency panels?

Further, is there a requirement for Department/Agencies to hold consolidated data?

Response

The Management Advisory Services Panel includes 412 suppliers. A list of those suppliers can be found at: <https://www.finance.gov.au/government/procurement/whole-australian-government-procurement/management-advisory-services-panel/mas-panellists>

AusTender includes information on suppliers that have entered into contracts with the Commonwealth to deliver services under specific panel arrangements. Information on individuals is not collected. (Available through <https://www.tenders.gov.au/son/search>)

Finance is currently developing the Contractor Reporting Integrity Information Solution (CRIIS). Once implemented, the CRIIS will hold information on individual Labour Hire Workers engaged under the People Panel.

Further, as part of the 2023-24 Budget measure *Buy Australian Plan*, Finance is expanding the amount of information collected on panel suppliers. This will assist procuring officials to more easily make informed decisions when determining which suppliers they would like to participate in procurement processes. Additional information will include business identifiers such as Small and Medium Enterprises, Indigenous Businesses, the capabilities suppliers can offer, and compliance information such as their statement of tax record.

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Response to Question on Notice

Question 39 (Senator Colbeck)

How much screening work has Finance done to identify 'contract pairs' in agency contracts that may have been entered into to circumvent the additional obligations for procurement over \$80,000?

- a. How many potential breaches of the CPRs has Finance identified in the last 5 years?

Response

The Commonwealth Procurement Rules (CPRs) require entities to estimate the expected value of a procurement, and that a procurement must not be divided into separate parts solely for the purpose of avoiding a relevant threshold (CPRs 9.5).

Accountable authorities are required to report any significant non-compliance with the CPRs within their entities to their Portfolio Minister and the Minister of Finance (PGPA Rule 2014 s17AG and s17BE). In the past 5 years, relevant accountable authorities have provided 3 notifications of significant non-compliance with finance law specifically relating to the CPRs.

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Response to Question on Notice

Question 40 (Senator Colbeck)

At what stage of a contract is it published on AusTender?

- a. Could contracts be published on AusTender immediately after signing? If not, why not?
- b. Does AusTender record changes to contracts that relate to project costs or timing? If not, why not?

Response

- a) The Commonwealth Procurement Rules require relevant entities to report contracts and amendments on AusTender within 42 days of entering into (or amending) a contract if they are valued at or above the reporting threshold.
The length of time taken by entities to publish a contract on AusTender will depend on the respective entity and their administrative processes. Due to internal system capabilities, some entities batch upload their contract notices to AusTender on a scheduled basis, rather than uploading on a contract by contract basis. Requiring the immediate publication of contracts and amendments would place a significant administrative burden on some entities, without a significant increase in transparency.
- b) Entities are required to report amendments which are valued at or above the reporting threshold, including exercised extension options and variations to the contract end date and value.

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Response to Question on Notice

Question 41 (Senator Colbeck)

What problems has Finance identified in Commonwealth procurement processes?

Response

Finance conducts the annual Commonwealth Procurement and Contract Management Capability Self-Assessment Survey (Survey). The Survey's objective is to enhance visibility and understanding of the maturity of procurement and contracting capability across the Commonwealth.

The results of the most recent survey is expected to published in the coming months.

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Response to Question on Notice

Question 42 (Senator Colbeck)

Does Finance conduct reviews of contract performance within Commonwealth departments and agencies?

Response

The Commonwealth Procurement Framework is devolved, and it is up to each entity to conduct reviews of their contract performance. Finance provides guidance material on its website (www.finance.gov.au/government/procurement), which includes a Contract Management Guide to support effective contract management, including performance management.

ANAO also plays an active role in reviewing procurement. Since 1 July 2021, ANAO reported on 22 performance audits with a focus on procurement.

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Response to Question on Notice

Question 43 (Senator Colbeck)

Does Finance have a centralised specialist procurement team to assess all major Commonwealth projects?

Response

The Commonwealth Procurement Framework is devolved, with each entity being responsible for its own procurement processes and establishing appropriate internal control systems to ensure compliance by their entity.

Finance provides advice to entities seeking input on procurement. Depending on resource availability, Finance has seconded staff to agencies to assist with major procurements.

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Response to Question on Notice

Question 44 (Senator Colbeck)

Scenario: a Commonwealth department would like to spend \$450 million on a new IT system over the forward estimates and would like to use consultants to do scoping studies on requirements and costs.

Could Finance explain the process and probity requirements for the above scenario? (e.g. cabinet submission process, consultant scoping study on requirements and costs, Expenditure Review Committee, MYEFO, budget process)

Response

The Cabinet Handbook³ and the Budget Process Operational Rules⁴ outline the relevant cabinet submission processes.

It is the entity's responsibility to determine the appropriate procurement method, and the body of work to be delivered by consultants. Appropriate due diligence activities (including consideration of conflicts of interest), commensurate with the scale, scope and risk of the procurement, should be undertaken to ensure information provided by tenderers and suppliers is current and accurate.

The Finance website offers a range of guidance material to assist officials in their procurement. Amongst the various guidance material available, the following guidance material offers insights for the department when conducting the procurement.

- Procurement Process Considerations
(<https://www.finance.gov.au/government/procurement/buying-australian-government/procurement-process-considerations>)
- Ethics and Probity in Procurement
(<https://www.finance.gov.au/government/procurement/buying-australian-government/ethics-and-probity-procurement>)
- Confidentiality throughout Procurement Cycle
(<https://www.finance.gov.au/government/procurement/buying-australian-government/confidentiality-throughout-procurement-cycle>)
- Due Diligence in Procurement
(<https://www.finance.gov.au/sites/default/files/2023-11/Due-Diligence-in-Procurement.pdf>)

³ https://www.pmc.gov.au/sites/default/files/resource/download/cabinet-handbook_0_0.pdf

⁴ https://www.finance.gov.au/sites/default/files/2023-05/Budget_Process_Operational_Rule_esffective_6%20_December_2022.pdf