

Department of Finance

Response to Question on Notice

SENATE STANDING COMMITTEE ON EDUCATION AND EMPLOYMENT

Inquiry into the exploitation of cleaners working in retail chains

Thursday, 18 October 2018

QUESTIONS ON NOTICE

On page p. 15 of the 18 October transcript Mr Andrew Jagers, the A/g Deputy Secretary stated the following regarding the ethical procurement approach:

Mr Jagers: A lot of effort, as I explained earlier, was put into outlining the ethical procurement approach that the government was insisting on with its property service providers.

Question 1

Can the department outline for the committee the “ethical procurement approach that the government was insisting on with its property service providers” under the Property Services Coordinated Procurement?

Response

The coordinated procurement Deeds require ethical behaviour from service providers in relation to procurements, as well as a requirement to comply with all relevant Commonwealth policies, laws and regulations. This includes requiring service providers to:

- operate within the conflict of interest framework in the Deed at all times;
- pass through any discounts or other benefits received by the service providers in connection with their status as a service provider under the property services coordinated procurement arrangements to the Commonwealth;
- in assessing whether a procurement represents value for money, consider whether the proposed procurement uses resources in an efficient, effective, economical and ethical manner than is not inconsistent with the policies of the Commonwealth;
- work within the approved budget set by entities when procuring services from subcontractors and be able to demonstrate value for money;
- comply with all applicable laws and policies including entity requirements that are notified to them (including certain entity-specific policies) and legislation, for example, the *Privacy Act 1988* and the *Crimes Act 1914*;

- comply with all relevant Commonwealth policies, laws and regulations, including unique factors relevant to procurement and downstream contract management for an entity, and must upon request, promptly provide assurance and supporting evidence to confirm that procurement and downstream contract management has been conducted in a compliant manner;
- supply the services in accordance with all applicable laws, relevant Australian industry standards, best practice and guidelines; and
- not enter into arrangements with potential subcontractors that have had a judicial decision against them (not including decisions under appeal) relating to employee entitlements and who have not satisfied any resulting order.

The drafting in the Deed reflects that certain requirements (such as conflict of interest or compliance with laws) apply to all activities undertaken by the Service Providers, not only procurement activities.

Question 2

Is the ethical procurement approach under the Property Services Coordinated Procurement arrangements different in any way to the requirements under the Commonwealth Procurement Rules (and in particular clauses 4.4 and 6)? If so how?

Response:

The Department of Finance has passed down relevant practical elements of the Commonwealth Procurement Rules to the service providers through the coordinated procurement Deeds. This includes adapting the ethical procurement framework set out in the Commonwealth Procurement Rules to reflect that procurement by the service providers will be undertaken by a company, rather than Commonwealth officials.

Question 3

The Commonwealth Procurement Rules state that “Officials responsible for a procurement must be satisfied, after reasonable enquires, that the procurement achieves a value for money outcome. Procurements should: ...b. use public resources in an efficient, effective, economical and ethical manner that is not inconsistent with the policies of the Commonwealth...” Before signing the contracts for cleaning services with Broadspectrum and any other head contractors, what measures did the department take to ensure that public resources were being used in an ethical manner?

Response:

Broadspectrum (and the other service providers) are appointed to manage a range of leasing and facilities management services, including cleaning.

The appointments were made following an open tender process which was conducted in accordance with the Commonwealth Procurement Rules. The tender process was managed by the Department of Finance and a number of entities participated in the tender evaluation process. External business and legal (probity) advisers provided advice throughout the process.

The evaluation of all tenders was considered against a range of criteria, including assessing respondents’ capacity to deliver the services, and a comprehensive risk and pricing assessment.

Question 4

Is there a definition of “value for money outcome”? If a contractor negotiates an enterprise agreement or an over award payment, how is this considered in the context of value for money?

Response

Under the the coordinated procurement Deeds, Service Providers are required to work within the approved budget set by entities when procuring services from sub-contractors and must be able to demonstrate value for money to the Commonwealth at all times.

For example, Service Providers must consider relevant financial and non-financial costs and benefits of each proposal, including the:

- overall quality of the goods or services being provided;
- suitability of the goods or services for business requirement/s;
- potential supplier’s relevant experience and performance history;
- adaptability of the proposal to business requirements over time; and
- whole of life costs.

Service Providers should also ensure procurement processes are non-discriminatory and encourage competition. Service Providers should also ensure procurement processes are commensurate with the sale and scope of the business requirement, to facilitate efficient use of resources.

Question 5

Since 22 August 2018 when the department became aware of United Voice's concerns that cleaners for the Department of Jobs and Small Business had had their wages cut by 6 per cent (see AQON 1), what actions has the department taken to ensure that the contracts under the Property Services Coordinated Procurement arrangements comply with the ethical requirements of the program and of the Commonwealth Procurement Rules?

Response:

The Department of Jobs and Small Business's former cleaning services provider, Asset Industries, had an enterprise agreement in place with its cleaners under which they were paid above the rates set in the modern award. Under the arrangements with Jarrah, the cleaners are still being paid above the award rate, however the rate is different to the rates paid by Asset Industries.

The Department of Finance has worked with Broadspectrum and is satisfied that there are appropriate processes in place to verify that the correct wages are being paid to cleaners for the Department of Jobs and Small Business. This includes Jarrah providing Broadspectrum with a Statutory Declaration on a monthly basis, prior to Broadspectrum paying Jarrah for its services, confirming that all cleaners have been paid in accordance with the agreed rate. In addition there are regular audits of Jarrah's payments.

The Department of Finance is working with the property service providers to ensure that they are aware of their obligations in relation to vulnerable workers. In April 2018, Finance held a workshop with the property service providers that included a presentation from the Fair Work Ombudsman on obligations in relation to vulnerable workers.

All property service providers and their subcontractors are required to comply with all applicable legislation and Commonwealth policies including the *Fair Work Act 2009*. Therefore, the minimum amount any subcontracted staff can be paid is in accordance with the relevant award wage, for cleaners the Modern Award.