

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, 16 February 2018

ADDITIONAL QUESTIONS ON NOTICE

Question 1

The ANAO report states that there is a significant increase (147%) in the number of short-term contracts that commence in the final month (June) of the financial year (Report No. 19, p. 29). Noting DoF's submission cites a number of reasons for an increase in June short-term contracts (DoF submission p.12):

- (a) what does this trend say about agencies' procurement practices, including any issues with the transparency around the reasons/justification for this practice?
- (b) how might this practice be addressed from a guidance/policy perspective, particularly given that for some entities, such as DHS, there was an increase of over 700% over the 5 financial years?

Response

Under the devolved Commonwealth Procurement Framework, individual entities are responsible for their own procurement processes to meet their business needs. While questions about DHS's procurement practices should be directed to them, the DHS submission to the inquiry notes that "the average number of short term contracts awarded in June was 69 contracts compared to 775 total contracts awarded in July. This suggests that an increase in minor works and purchases is undertaken in June each year after the conclusion of major activities undertaken over the course of the financial year."

As noted in Finance's submission, there are a number of reasons for an increase in short-term contracts towards the end of the financial year.

Finance is developing a comprehensive Resource Management Guide to assist procuring entities and officials to better understand their obligations for procurement and contract reporting, which will summarise the various reporting obligations in the Commonwealth Procurement Rules and other government policies into one document.

Finance will continue to remind entities about their procurement and reporting obligations through the various regular communications and forums we have with entities throughout the year.

Figure 6.2 of the ANAO Report shows that, over the five years from 2012-13 to 2016-17, the combined value of short term contracts which commenced in June was approximately \$1.2 billion. This is approximately 0.6 per cent of the \$216.8 billion value of all contracts published over the same period, as identified in Table 2.1 of the ANAO Report.

Question 2

The ANAO found 2457 pairs of contracts (4914 individual contracts) from the same entity, with the same supplier and quarter start-date that had a combined value above \$80 000, but each of the reported contract values were below \$80 000. For 61% (1507 of the 2457 pairs), neither contract was identified as an Open Tender (Report No. 19, pp. 32-33).

The data presented suggests that a single procurement potentially being split into smaller contracts in order to fall below the threshold of \$80 000, may remain an issue in Commonwealth procurement.

- (a) can DoF offer any insights into entities' practices/cultural attitudes in this regard?
- (b) what measures has DoF been taking, or intends to take, to discourage this kind of procurement culture?
- (c) how might this practice be addressed from a guidance/policy perspective?

Response

Each procurement process needs to be justified against the core principle of value for money. Splitting a procurement would mean engaging in two separate procurement processes.

The ANAO identified 2,457 pairs of contract notices over a five year period with the same entity, the same supplier, a start date in the same quarter, and a combined value over \$80,000, but where each of the reported contract values was below \$80 000. However, in 40 per cent of these pairs, at least one of the procurements was an open tender. As an entity is very unlikely to split a procurement to avoid the requirement to conduct an open tender and then conduct one anyway, there would seem to be other reasons for these apparently related contract pairs.

The remaining 1,507 apparently related contract pairs represented just 0.9 per cent of the 337,567 contract notices that were published on AusTender over the same period. Under the devolved Commonwealth Procurement Framework, individual entities are responsible for their own procurement processes to meet their business needs. Questions relating to specific contract notices should be directed to the relevant entity.

Finance is developing a comprehensive Resource Management Guide to assist procuring entities and officials to better understand their obligations for procurement and contract reporting, which will summarise the various reporting obligations in the Commonwealth Procurement Rules and other government policies into one document.

Finance also plans to remind entities about their procurement and reporting obligations through the various regular communications and forums we have with entities throughout the year.

Question 3

Results of the ANAO's analysis indicated that 'almost two per cent of contracts [6358] reported on AusTender may be duplicate entries' (Report No. 19, p. 35).

This would have the effect of overstating reported AusTender contract value, on average, by more than \$100 million per year (approximately 0.25%).

The ANAO's understanding is that the two categories (Temporary Personnel Services and Computer Services) that account for 29.9% of the total value of duplicate contracts (but only account for 2.35% of total contract value) 'may be less likely to reflect duplicate entries as entities may enter into multiple contracts with supplier firms for staff contracted for the same period at the same rate' (p.36).

(a) could DoF please comment on what system controls are in place to prevent duplicate entries from occurring?

(b) is there any work being undertaken to strengthen system controls to eliminate duplicate entries from occurring?

Response

As outlined in the Finance Submission, the 6,358 potential duplicates identified by the ANAO represent only 1.9 per cent of the 337,567 contract notices that were published on AusTender over the same period. Furthermore, 30 per cent of these contract pairs are reported against categories that the ANAO acknowledge "may be less likely to reflect duplicate entries as entities may enter into multiple contracts with supplier firms for staff contracted for the same period of time at the same rate".

Existing system controls include a warning message if the system identifies a potential duplicate where entities batch upload contract notices to AusTender. Approximately 80 per cent of records published on AusTender use the batch upload mechanism.

Finance is also involved in a cross entity project to improve system controls by enhancing how contract data is collected and uploaded to AusTender from financial management information systems. This work is expected to improve data quality and accuracy for the entities involved, which are responsible for approximately 85 to 90 per cent of contract notices that are published on AusTender.

Finance reminds entities of their procurement reporting obligations, including the need to check the accuracy and quality of their data when reporting on AusTender. Finance also provides guidance and training to procuring officials, including through comprehensive user guides, face-to-face train the trainer sessions and a dedicated help desk.

Question 4

Of the 285 procurement panels analysed by the ANAO, more than 80% (149 panels) had a relatively small portion of suppliers awarded the majority of the contract value. Consequently, there were a relatively small number of successful suppliers on these panels (Report No. 19, p. 47 Table 11.1).

- (a) please comment on whether the purpose and benefits of procurement panels are being fully realised?
- (b) is there a cultural issue with regard to the use of panels?
- (c) how might this issue be addressed from a guidance/policy perspective?

Response

The process to establish a panel includes assessing suppliers against a range of evaluation criteria. While each successful supplier will have to show that it can deliver value for money, there may be fundamental differences in the goods and/or services offered. The use of a panel can streamline the procurement process for entities and suppliers when procuring commonly used goods and services, however they still need to make a judgement about which of the panellists will best meet their business needs.

In December 2016, Finance launched Dynamic Sourcing for Panels (DS4P). This AusTender functionality provides government buyers with a standard and streamlined approach to sourcing their goods and services from panels and increased the transparency of panels across government. Transparency and the ability to readily find information about existing panels may be a factor in the use of panels by entities. DS4P can found by clicking on the Panel Buyers link on the front page of AusTender (www.tenders.gov.au).

Finance is also developing a suite of template panel procurement documents that will form part of the Commonwealth Contracting Suite. These documents are being designed to provide a standardised approach to panel procurement that will save suppliers and Commonwealth entities time and money. Following a consultation process, it is expected that the suite will be available in the second half of 2018.

Guidance on establishing and managing panel arrangements is provided on the Finance website at: www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/procurement-practice/panel-and-mul/principles.html.

In 2016-17, less than 15 per cent of all contracts by value were procured through panels.

Question 5

Informal advice from some consultancies has indicated that panel arrangements may not reflect what income they receive from a tender/contract. Can you explain this? What can be done about this to improve reporting/understanding?

Response

A panel arrangement is generally established by open tender through deeds of standing offer with contracts formed under those deeds when the goods or services are acquired by entities. As stated in Finance's Submission, the value of a contract notice reported on AusTender reflects the total estimated maximum value over the full expected life of the contract at the time it was awarded, and may not reflect the actual expenditure that occurs under the contract. For panels, published notices may not reflect the actual income received by an individual panel member.

Question 6

While the published results for procuring Small to Medium Enterprises (SME) show the government target of 10% is consistently being exceeded, there were issues identified with ABS' methodology, including major consultancy/accounting firms being classified as SMEs (Report No. 19, pp. 50-52).

- (a) how will DoF tackle the over-reporting issue? For example, will DoF correct the publicly reported data for previous years?
- (b) has DoF reviewed ABS's revised methodology? Is DoF satisfied that accurate reporting will now occur?
- (c) considering the methodological flaws in previous years, does DoF expect a considerable drop in the results for 2017-18?

Response

The Australian Bureau of Statistics (ABS) is engaged by Finance to estimate the level of SME participation in Commonwealth procurement. The ABS is currently reviewing the methodology it uses to estimate SME participation, in consultation with Finance, with the aim of ensuring that the estimates of SME participation are as accurate as possible.

To date the SME analysis has been conducted on the basis of individual ABNs recorded against Contract Notices reported on AusTender. The analysis to determine SME participation is conducted by the ABS when the annual statistics are produced for the prior financial year.

The ABS are currently assessing options to aggregate ABNs to address potential issues associated with large firms operating under multiple ABNs. This methodology is still being developed, and it is not yet clear what impact it will have on the estimated level of SME participation.

Question 7

Can DoF confirm the expected timing of release of the new Resource Management Guide on the reporting of contract notices? (p. 8)

Response

Finance will take into account relevant observations by the ANAO or recommendations of the Committee in drafting the new Resource Management Guide, which we intend to release in the first half of 2018, subject to consultation and any findings of the Committee. In addition, Finance will continue to work proactively with Commonwealth entities to improve the accuracy and timeliness of procurement contract reporting.

Question 8

Can DoF please expand on and provide more information regarding the following points:

- (a) DoF is currently working on increasing AusTender functionality, including exploring new reports and formats for contract notice reporting (p. 8).
- (b) DoF is working with entities to make 'iterative improvements to AusTender reporting practices,' including through a current cross-entity project focused on improving data entry and reporting systems used by entities to report data to AusTender (p. 8).
- (c) From 1 July 2018, all procuring entities will be required to indicate in AusTender the justification for using a limited tender (not an open tender) that is above the relevant procurement threshold (p.8).

Response

AusTender is currently undergoing a major ICT Platform upgrade, which is scheduled to be completed early next financial year. Following this, Finance plans to develop new ways of providing public reports.

Finance is also involved in a cross entity project, with Defence as the lead entity, to improve the collection and uploading of contract data to AusTender for entities that account for 85 to 90 per cent of contract notices. This project is expected to increase efficiencies, improve data quality, and better link contract amendments to the original contract notice.

Finance recently updated AusTender to include additional fields that will increase transparency. From 1 July 2018, all procuring entities will be required to indicate the justification for using a limited tender that is above the relevant procurement threshold. This information is already required to be recorded internally by entities.

Question 9

Figure 5.1 in the ANAO report shows that the reason reported in AusTender for the use of consultants is overwhelmingly the ‘need for specialised or professional skills’. Further, ‘management advisory services’ is the largest service subcategory (by value) for consultancy contracts over the same period.

- (a) what insights can you provide on this trend?
- (b) what might this indicate regarding the effects of consultancy contracting practices on the APS’s capability and capacity?

Response

- (a) As detailed in Finance’s Part A Submission to the JCPAA, entities may engage consultants for a number of reasons, and the appropriate use of consultants can help to keep government administration flexible.

The following table, which is based on the 3 January AusTender dataset on data.gov.au, shows that the percentage use of each reason code has been fairly consistent since 2012-13.

| Year | Reason 1 | % | Reason 2 | % | Reason 3 | % |
|---------|---|------|---|------|--|-----|
| 2016-17 | Need for specialised or professional skills | 68.3 | Need for independent research or assessment | 26.1 | Skills currently unavailable within agency | 5.6 |
| 2015-16 | Need for specialised or professional skills | 67.0 | Need for independent research or assessment | 27.5 | Skills currently unavailable within agency | 5.5 |
| 2014-15 | Need for specialised or professional skills | 64.4 | Need for independent research or assessment | 29.6 | Skills currently unavailable within agency | 6.0 |
| 2013-14 | Need for specialised or professional skills | 65.5 | Need for independent research or assessment | 26.9 | Skills currently unavailable within agency | 7.7 |
| 2012-13 | Need for specialised or professional skills | 67.4 | Need for independent research or assessment | 25.0 | Skills currently unavailable within agency | 7.5 |

The most commonly used UNSPSC categories for consultancy contracts are *80100000 - Management advisory services* and *80120000 - Legal services*, which were used in 17.9 and 16.3 per cent of contracts flagged as a consultancy over the same period.

- (b) The APS delivers many functions in-house whilst also drawing on external expertise to deliver the best outcomes for government.

There are instances where specialist skills or expertise are required but are not available in-house. The use of contractors or consultants in such instances is appropriate and can provide the most cost-effective delivery mechanism.

Maintaining specialist capability in-house is not always appropriate. For example, where there is a short-term requirement for specialist capability and expertise it is more cost-effective for the APS to procure that capability, rather than to maintain it on an ongoing basis.

In addition, where regular and large investment is required to maintain a capability it is often more cost-effective for these services to be procured from the market. Businesses may maintain dedicated expertise and provide services not only to the Commonwealth but also to other organisations. For example, in ICT, there is rapid innovation and a requirement to update skills and capability at regular intervals.

Flexibility is also required to allow agencies to balance their capability requirements while ensuring that the overall size of the General Government Sector remains sustainable.

Question 10

What should be done to track the use of contractors and on-hire labour contractors within departments?

Response

The Commonwealth's devolved resource management framework enables entities to develop internal systems to track the use of contractors and on-hire labour. Each entity has internal reporting and tracking systems appropriate to their resource management and operational requirements.

Question 11

Given public concern about ex-public servants returning as contractors/consultants at higher cost, how could a tracking and reporting system best be designed and established to monitor and report on this?

Response

Where entities have concerns about ex-public servants returning as contractors or consultants, the Commonwealth's devolved resource management framework enables them to establish mechanisms to track their engagement and costs. Entities' individual operating requirements vary, and their internal monitoring systems will be designed to meet their particular needs.

Question 12

If the Committee was of a mind to recommend more transparency in tracking and reporting on all types of labour procured by agencies to complement the APS FTE figures how could this be efficiently and practically achieved, to capture:

- (a) On hire labour contractors
- (b) Contractors working within departments procured for short or extended periods using ABNs rather than APS or on-hire labour positions?

Response

Please refer to response to the Department of Finance's response to Question 7 of the Hansard Questions on Notice from the public hearing of 16 February 2018.