



Our ref PSC1904219/01

20 February 2019

Dr Tony Buti MLA
Chair
Public Accounts Committee
Parliament House
4 Harvest Terrace
WEST PERTH WA 6005

Dear Dr Buti

INQUIRY INTO PUBLIC SECTOR MANAGEMENT CONTRACT MANAGEMENT PRACTICES – INVITATION TO PROVIDE A SUBMISSION

I refer to your letter dated 4 December 2018, inviting a submission from the Public Sector Commission (Commission) to the Public Accounts Committee's Inquiry into Public Sector Contract Management Practices.

Having regard to the Inquiry's Terms of Reference, it is understood that the Government agencies with principal involvement in the areas under consideration may be those such as the Department of Finance, State Supply Commission, the Department of Treasury and State Solicitor's Office. The Commission's direct responsibilities are seen to fall largely outside the scope of the Inquiry.

This submission nevertheless seeks to cover areas relevant to the Commission's functions that might be of general background interest to the Committee and assist the Committee's appreciation of the role of the Commission as it relates to contract management.

General observations

By way of generalised observation at the outset, the current framework provides high level guidance on contract management processes.

The role of a procurement professional is well defined whereas the role of a contract manager may not be as clearly understood. The Department of Finance has recently established a Contract Management Interdepartmental Steering Group to lead the development of a WA contract management framework which aims to improve commercial expertise in agencies and promote best practice contract management.

In the Commission itself, contract management knowledge is shared through a regular contract managers' forum which builds contract management capacity and skills across the agency. Ideas, principles and information are communicated and discussed via a central network of contract managers.

Integrity oversight

The *Public Sector Management Act 1994* (PSM Act) provides the Commissioner with the authority and power to review the functions, management or operations of public sector bodies. The subjects which may be reviewed under the PSM Act are extensive and may sometimes involve assessing actions taken by public sector bodies in regard to contract management.

While it is noted that the Committee will not be considering the management of corruption risks, the PSC nevertheless does take this opportunity to draw attention to the relevant functions it performs through its Integrity and Risk Division. The following information is therefore provided having regard to the Inquiry Term of Reference:

'b) the extent to which compliance with these frameworks is monitored and reported'.

A recent example of this type of work, arising from the Corruption and Crime Commission (CCC) report into bribery and corruption within the North Metropolitan Health Service (NMHS), involved the Commission coordinating a review and preparing a report (PSC Review Report) of contracts reported to it by public sector bodies.

PSC Review Report – Matters arising from the CCC report on the NMHS

On 16 August 2018, the CCC released a report into bribery and corruption within the NMHS (the CCC report). The CCC report covered allegations of serious misconduct in regard to several former public servants and numerous contractors engaged by the NMHS. Given the findings in the CCC report, and at the Government's request, on 22 August 2018 the PSC took the following two actions which resulted in the stated outcomes

Action 1

The Commission requested all government agencies (including government trading enterprises) to provide details to it of all existing contracts held with the external contractors referenced in the CCC report.

Outcome

The request from the Commission for details of all existing contracts held with the contractors referenced in the CCC report resulted in 129 agencies responding. From these responses 18 existing contracts were identified, eight of which had already been terminated.

Action 2

The Commission coordinated an independent review of all the contracts reported to it, drawing on the expertise of relevant government agencies. The details of the 18 contracts reported to the Commission by government agencies were referred to the Department of Finance (the Department) on 12 September 2018, following which a detailed examination of each contract¹ was undertaken.

Outcome

Key findings from the examination conducted by the Department:

- The majority of the contracts (13 of 15) were established in accordance with procurement policies and financial delegations, although a number of minor process issues (not pertinent to the review) were identified
- Material process deficiencies were identified in two instances, these two contracts had been awarded by the NMHS and the Disability Services Commission (DSC)

In parallel with undertaking the examination, the Department continued to work with the State Solicitor's Office (and the relevant government agencies) to terminate the remaining contracts where appropriate. At the time of drafting of the Department report, 10 of the 15 contracts had been terminated, three were in the contractual notice period for termination and two were largely inactive as they are related to construction projects in the "defects liability period".

On 28 September 2018, in addition to the examination work of the Department, the Commission sent a CEO Gateway message to all public sector authorities (public sector agencies, government trading enterprises and local governments) advising that it would be prudent for CEOs to use the Department's 'Targeted Procurement Review Framework – Agency Guidelines', to conduct their own internal review of processes used to award contracts to any of the named companies since July 2016; and ensure appropriate checks and balances are in place to guide procurement and minimise the risk of fraud and corruption occurring in this area

The review also suggested that any future work by the Department or Office of the Auditor General on the subject of procurement may use as a reference point the Commission request to agencies to conduct their own internal review of procurement processes

KPMG Governance review into matters identified in the CCC Report on the North Metropolitan Health Service (NMHS).

At the request of the Hon Minister for Health, the Commission also commenced a governance review into a number of matters identified in the CCC Report on the NMHS. The review is ongoing and is being undertaken pursuant to section 24B(1) of

¹ From this action, it was identified that two of the contracts reported by agencies were in fact separate invoices under the same arrangement, and a further two contracts were procured by third parties (i.e. the State was not a party to the arrangements and they were therefore deemed to be out-of-scope of the review). As a result, a total of 15 individual contracts held across 13 government agencies were examined

the PSM Act, and in accordance with the prevention and education function provided for in section 45A of the *Corruption, Crime and Misconduct Act 2003*

The terms of reference for the review (Attachment) examine a number of the concerns identified in the CCC Report relating to the possible failure of administrative and governance systems within NMHS, and where, relevant the Department of Health.

Misconduct prevention and education

The Commission has a role to prevent misconduct and more broadly to promote integrity within public authorities. As part of undertaking this role and planning its integrity promotion activities the Commission considers information from a number of sources, including Parliamentary Committees

Approved Procedure 5

Employing authorities may engage people on a contract for services basis provided that they act in accordance with the relevant Commissioner instruction. The current instruction is Approved Procedure 5 – Approved Contracts for Services Procedures

Approved Procedure 5 (AP5) sets out the circumstances where it is appropriate for an employing authority to engage a person on a contract for service basis - for example, where appropriate expertise is unavailable in the public sector in the time of need. It also lists circumstances in which it would be inappropriate to use a contract for services - for example, to resource ongoing functions and activities.

Agencies are also required to adhere to any relevant procurement policies, such as Common Use Arrangements for Temporary Personnel, which are managed by the Department of Finance, when appointing a person on a contract for service basis.

Compliance with AP5 is reviewed during the term of each Public Service and Government Officers CSA General Agreement. The next review is to commence shortly.

The Commission is currently reviewing AP5 as part of the *Standardising the Use of Temporary Personnel Services Reform Project*. This project aims to ensure temporary personnel services are engaged and deployed appropriately and effectively based on public sector and workforce requirements to achieve better value for money for the sector and the State. This project also involves the collection of data on the use of temporary personnel across the sector

Public Sector Commission Annual surveys of the public sector

The Commission, through its various annual surveys across the public sector, periodically asks questions about or that relate to the subject of procurement and contract management, as matters arise and priorities permit. Examples of this in recent years include.

- In 2017 and 2018 agencies were asked how they advise contractors, clients and suppliers about how to report unethical behaviour. The results indicate 41% of agencies advise them through contracts/tenders/service agreements.

- In 2014, agencies were asked whether they had systems in place to ensure compliance with AP5. AP5 refers to agency responsibilities to ensure conduct of a contractor complies with the Code of Ethics and relevant code of conduct. At that time, two agencies reported no systems in place to ensure compliance, two reported 'under review' and two reported partially in place. All other agencies reported systems in place.

The Commission has also previously asked agencies about whether their procurement strategies target opportunities to contract Aboriginal suppliers. For example, in 2013 one-third of agencies were targeting Aboriginal suppliers of goods and services, and a further 10% were developing strategies. The remainder did not have strategies in place.

The surveys also capture disciplinary breaches relating to any code of ethics data which includes all misconduct behaviour, not just "minor misconduct" and "serious misconduct" as defined in the CCM Act. However, currently this data is not able to be defined by the Commission into a sub-category covering poor or non-compliant contract management behaviour.

Following the 2018 CCC report into bribery and corruption within the NMHS, and the associated PSC Review Report of contracts reported to it by public sector bodies, the Commission will seek input from the Department of Finance in deciding what questions it might be able to include in its 2019 survey program on the subject of contract management.

I trust this information will be helpful to the Committee's work. Please do not hesitate to contact Lindsay Warner, A/Executive Director Policy and Data Analytics, on telephone no. [redacted] or email: [redacted].

Yours sincerely

SHARYN O'NEILL
PUBLIC SECTOR COMMISSIONER

Att:

ATTACHMENT

Governance Review – North Metropolitan Health Service & Department of Health

Terms of Reference

A Governance Review (the Review) will be conducted by the Public Sector Commissioner (the Commissioner) pursuant to section 24B (1) of the *Public Sector Management Act 1994*, and in accordance with the prevention and education function provided for in section 45A of the *Corruption, Crime and Misconduct Act 2003*.

KPMG will be engaged by the Commissioner for the purposes of undertaking the Review.

The purpose of the Review is to identify possible failure/s of governance and administrative systems within the North Metropolitan Health Service (NMHS), and, where relevant, within the Department of Health, that contributed to the events and issues highlighted in the Corruption and Crime Commission (CCC) report titled “Report into bribery and corruption in maintenance contracts within North Metropolitan Health Service” (the CCC Report) which was published on 16 August 2018.

Specifically, the Review should, in the context of the contents of the CCC Report, consider the adequacy, or otherwise, of:

1. Relevant policies, procedures and management practices around procurement and contract management issues identified in the CCC Report in the period 24 October 2014 to 23 May 2016, with specific attention to the granting and management of maintenance and service contracts within NMHS.
2. Relevant policies, procedures and management practices around risk management arising from the issues identified in the CCC Report, including the identification and management of risks around procurement and contract management; conflicts of interest; gifts, benefits and hospitality; and misconduct.
3. Governance and oversight mechanisms in place to ensure that executive level leadership, particularly the Chief Executive Officer, and where relevant the Board of the NMHS, and the Director General of the Department of Health, were fully briefed by relevant NMHS and/or Department of Health staff in a timely manner on the concerns and issues ultimately highlighted in the CCC Report. This should include, but is not limited to, briefings on the outcome of the Department of Health internal investigation/s undertaken following the CCC referral on 24 October 2014 of the original allegations back to the Department. [Note that in March 2016 the Department of Health referred the matters back to the CCC seeking their involvement, and in May 2016 the CCC commenced its own investigation and served the Department of Health with a Notice pursuant to section 42 of the *Corruption, Crime and Misconduct Act 2003*.]
4. Information provided to support decisions made by the Chief Executive Officer and where relevant the Board of the NMHS and/or the Director General of the Department of Health relating to:
 - a. The extension of the employment contract of Mr John Fullerton (former Executive Director of Facilities Management at NMHS) in 2015; and
 - b. The approval of redundancy packages for Mr Fullerton and Mr Shaun Ensor (former Acting Manager Area Facilities Development at SCGH and PMH); and, if applicable, Mr David Mulligan (former Executive Director of Perth Children’s Hospital Integration) in late 2016 (Fullerton/Mulligan) and in mid-2018 (Ensor).

5. Responses of the NMHS and the Department of Health, particularly changes to relevant policies, procedure and management practices, following previous reports relating to Health Service Providers and the Department of Health which highlighted inadequacies in governance around fraud prevention and detection (e.g. CCC Report titled “Report on Fraud and Corruption in Procurement in WA Health 2014”; and Department of Health Internal Report on Procurement in NMHS prepared in April 2015 following the CCC referral on 24 October 2014).
6. Changes to relevant policies, procedures and management practices by the Department of Health and the NMHS in response to the concerns and issues identified in the internal investigation/s undertaken following the CCC referral of these matters back to the Department on 24 October 2014. This should include changes since the enactment of the *Health Services Act 2016* on 1 July 2016 with the establishment of Health Service Provider Boards, and any improvements enacted and/or still required following the most recent CCC Report tabled in August 2018.

The Public Sector Commission (PSC) will consult with the CCC to facilitate, as much as is possible, leverage by KPMG and the PSC on the work already undertaken by the CCC relevant to these Terms of Reference.

KPMG will prepare a draft report setting out their observations and recommendations for improvement for consideration, review and issue by the PSC. The PSC may undertake further work and will be responsible for liaison and consultation with relevant stakeholders to facilitate relevant feedback prior to finalisation of the report and any recommendations which may arise.

The PSC will report back to the Hon Minister for Health (the Minister) on the outcome of the Review and any recommendations.

The Commissioner will separately consider any application to the wider public sector of recommendations arising from the report.

25 September 2018