

30 April 2024

The Hon. Dr Sarah Kaine MLC
Chair
Standing Committee on Social Issues

Re: Response to Supplementary Questions to Procurement Practices Inquiry

Dear Dr Kaine,

Following the attendance of Mr Angus Begg and myself at the Standing Committee on Social Issues Procurement Practices Inquiry on 2 April 2024, please find attached the responses to the supplementary questions submitted.

Should you require any information, please contact me directly on _____ or _____

Sincerely

Drew Varnum
Executive Director
NSW Public Works

Enc. Response to Supplementary Questions

Standing Committee on Social Issues: Procurement practices inquiry

Tuesday 2 April 2024

Response to Supplementary Questions from NSW Public Works

QUESTION

Your submission notes that Public Works provides procurement assurance for unaccredited agencies – what does this entail?

ANSWER

NSW Public Works has a core function of managing the design and delivery of construction infrastructure for local government and state agencies across NSW. We have no assets and therefore don't manage the delivery of our own infrastructure.

Uniquely we have internal engineering, construction and project management expertise and experience in procuring and managing the delivery of all types of civil, building and environmental infrastructure. Our diverse contract management expertise and our wide engagement across government also sees us managing a number of WofG and Multi Agency contracts - Maintenance, Cleaning, Security and Facility Management.

Because of this specific construction procurement expertise and independence from other agencies delivering their own infrastructure, NSW Public Works, in 2018, was charged with administering a renewed government Construction Procurement Accreditation program as well as undertaking basic cross government Construction Category Management activities.

As an accredited construction procurement agency, with mature, well-developed systems and practitioner expertise across a wide range of infrastructure types, NSW Public Works is also able to provide construction procurement assurance for unaccredited agencies.

Unaccredited agencies seeking to undertake a construction procurement >\$1.3M are required to obtain assurance from an accredited construction procurement agency - ideally one with expertise aligned to the infrastructure / procurement that is being undertaken.

Assurance is an affirmation that an unaccredited agency's procurement plan, and their internal expertise and processes, are fit for purpose pursuant to the procurement taking place, and compliant with the NSW Procurement Policy Framework and all other relevant legislation, policies and frameworks.

It aims to:

- ensure that public infrastructure projects are delivered in an efficient and effective manner.
- improve the accountability and manage the risk of unaccredited agencies engaging in high-value construction procurements.
- drive continuous improvement and capability development in unaccredited agencies.

In summary, the process of providing procurement assurance entails the review of key project and procurement documentation, including:

- Business case - which justifies the project and confirms funding availability.
- Project risk assessment – which assesses the level of risk in terms of government priority, interface complexity, procurement complexity and agency expertise and capability.
- Procurement Plan – typically in draft form, which outlines how the agency intends to undertake procurement activities.

Following this initial review, a more detailed review may be considered necessary for example, we may interview the unaccredited agency's key procurement personnel or request additional information.

The procurement plan is then finalised in consultation with the unaccredited agency.

Following finalisation of a satisfactory procurement plan, a letter of assurance is then issued. This letter of assurance may either be unconditional, or impose conditions considered necessary to

- ensure compliance with the NSW Procurement Policy Framework and all other relevant legislation, policies and frameworks.
- minimise risk.
- ensure that the unaccredited agency has the capacity and capability to successfully deliver its construction project.

The unaccredited agency must then:

- complete all procurement activities in line with the NSW Procurement Policy Framework and all other relevant legislation, policies and frameworks;
- ensure that it meets all conditions for assurance imposed by the accredited agency; and
- complete a project completion summary report and issue this report to NSW Public Works (as the agency administering Construction Procurement Accreditation).

QUESTION

What are the processes associated with administering the Construction Procurement Accreditation program?

ANSWER

NSW Public Works, with its expertise in construction procurement and role in whole of government category management, were involved in the development and implementation of the current accreditation program from 2018-2020. The program was developed in consultation with the Construction Leadership Group (CLG), and as there was no operating accreditation process in place at the time, the desire of CLG

and the key large Infrastructure Agencies, was for a relatively light touch approach which did not impose significant administrative burden on agencies.

In administering the accreditation program, NSW Public Works responsibilities include:

Managing the accreditation assessment process by:

- providing oversight during the independent assessor selection process;
- conducting planning meetings with applicant agencies to explain the assessment process and determine if accreditation is appropriate for the agency;
- monitoring the status of accreditation assessments;
- providing clarifications and support to applicant agencies and independent assessors during the accreditation assessment process;
- reviewing draft assessment documents; and
- submitting CLG and Procurement Board papers requesting accreditation on behalf of the applicant agency.

Providing ongoing advice and support to accredited agencies by:

- supporting agencies to set suitable performance targets for annual reporting purposes;
- supporting agencies to evaluate potential trigger events and identify suitable remedial actions when requested by the board; and
- consolidating annual reports from agencies for submission to the board.

QUESTION

It seems in your submission that there is an emphasis on economies of scale by supplying across agency which does make sense but is there also a risk that in focussing on this you end up favouring larger organisations?

ANSWER

The reference to supplying across agencies was specifically related to Whole of Government contracts which are currently in place (facilities maintenance, cleaning and security). Where a decision has been made by government to implement a whole of government contract, wide-scale adoption of such contracts allows Government to leverage its buying power and benefit from economies of scale.

Whole of government contracts offer benefits in some circumstances. In addition to economies of scale, such arrangements avoid the need for individual agencies to procure and manage multiple small contracts, rather than focussing on their core function. For example, a small regional town with a school, ambulance station and police station – each of these agencies procuring and managing their own contract for say maintenance is less likely to lead to efficiencies in terms of pricing, standard of work, consistency of service and performance management.

Whilst larger suppliers are the target market for large whole of government contracts, this does not preclude smaller organisations obtaining work in a sub-contract capacity. These larger contractors are invariably reliant on smaller sub-contractors to deliver the contract work.

When engaging larger head contractors for infrastructure projects, demonstrated capacity and capability of tenderers to use smaller firms, local suppliers, Aboriginal businesses etc. can be considered as part of contract conditions or the value for money criteria in evaluating tenders. KPI's with financial implications are able to be included within such contracts to ensure minimum standards are achieved, and to incentivise enhanced performance, local contractor development or capability uplift, etc. It's important to also understand that contract conditions alone will not necessarily lead to good outcomes in these areas. The expertise of contract managers from government and industry with the participation of appropriate SMEs across government will provide the greatest outcomes.

For example, the 2019/20 Bushfire Clean Up contract which was managed by NSW Public Works, was delivered through a single head contractor who leveraged the capacity of local suppliers and resulted in local content spend of 90% and Aboriginal participation spend of 12%. The contract was written and managed to target these outcomes but relied heavily upon the expertise from the NSW Public Works delivery team, Training Services NSW, local councils and the contractor to achieve this. The head contractor offered the advantage of readily available resources to manage a significant volume of smaller procurements, as such resources were not available within government.

QUESTION

What relationship does Public Works have with the Procurement Board?

ANSWER

The broader Department of Regional NSW is represented on the Procurement Board by Fiona Dewar (Deputy Secretary, Corporate and Performance).

NSW Public Works fundamentally has the same relationship with the Procurement Board as other infrastructure delivery agencies, with the exception of our cross-government functions undertaken on behalf of the Board. These include: -

- Management of prequalification schemes for construction consultants and contractors (approximately 6,000 suppliers).
- Management of whole of government / multi-agency contracts including Facilities Maintenance, Security Services and Cleaning.
- Administration of the Construction Procurement Accreditation Scheme.

NSW Public Works also engages with the Procurement Board through our representation on the Construction Leadership Group.

QUESTION

A. Do you report in the same way as other agencies regarding your procurement activities? B. If not who do your report to? C. How often do you provide this information? D. Have you ever identified or reported non-compliance to the Procurement Board?

ANSWER

- a. NSW Public Works reports its procurement activities to the Board in the same manner as other accredited construction Procurement agencies, that is, through annual self-reporting.
- b. Not applicable
- c. Self reporting is required on an annual basis (or by exception following a Trigger Event).
- d. No.

QUESTION

A. What is your procurement record keeping system? B. Is it compatible with other agencies including DCS?

ANSWER

- a. As NSW Public Works' core business is the delivery of infrastructure under a commercial business model, we necessarily have a well-developed in-house procurement and project management record keeping system, called Envision.
- b. Envision is not compatible with other agencies' record keeping systems.

NSW Public Works also accesses DCS whole of government procurement systems where appropriate, including:

- E-tenders (for calling / closing of tenders and disclosure of contract award)
- reporting.buy.nsw for Aboriginal Procurement Policy (APP), and Infrastructure Skills Legacy Program (ISLP) reporting.
- Supplier Hub, used for managing construction contractor and consultant prequalification schemes.

QUESTION

What data analysis is undertaken, how often and by whom and for what purpose?

ANSWER

AS a project management and construction delivery business operating within a commercial business model, data held within NSW Public Works record management system are used to monitor project delivery performance and improvement. For example, project managers are subject to project reviews from senior managers on a risk-based frequency (typically monthly to quarterly). This information is used by the executive leadership team within Public Works to improve systems and support staff development.

Staff training data is reviewed by operations managers as part of an annual performance development cycle. This information is used to develop training programs to support the capability development of staff.

From an our cross-government construction Category Management role, NSW Public Works

- undertakes basic data analysis by our category management team to monitor the financial viability of prequalified contractors and consultants through review of ASIC financial reports.
- complies annual self-attestation reports provided by accredited agencies for issue to the Procurement board.
- Undertakes monthly review of contractor performance data for whole of government / multi agency contracts for facilities maintenance, cleaning and security. This information is used to monitor contractor performance against specified KPI's as part of routine contract management activities.

QUESTION

A. Who do you deal with in Treasury/NSW Procurement when undertaking a procurement process? B. Who in Treasury/NSW Procurement has oversight of your procurement processes?

ANSWER

NSW Public Works delivers infrastructure projects on behalf of other agencies. The agencies we work for hold, and are responsible for, project funding. On this basis, and as an accredited construction procurement agency, NSW Public Works are not required to, and do not, deal with Treasury when undertaking a construction procurement process.

NSW Procurement do not cover construction procurements and NSW Public Works does not deal with NSW Procurement when undertaking a construction procurement process.

Treasury and NSW Procurement do not have oversight of procurement processes undertaken by NSW Public Works.