

## Standing Committee on Social Issues

### Inquiry into Procurement Practices of Government Agencies in NSW and its Impact on The Social Development of the People of NSW - 3 April 2024

#### – Transcript questions

#### QUESTION 1, PAGE 3

**The Hon. DAMIEN TUDEHOPE:** Take us through the process of how they were selected for the process of delivering.

**PAUL HANNAN:** We ran an EOI initially in order to shortlist. That was done probably 18 months ago. I don't have exact dates. I would have to come back to you on exact dates. We ended up with a shortlisted group of organisations. We then went through an RFP process where we got down to two parties. We then ran parallel negotiations with those two parties, and the outcome being that APP was successful.

#### ANSWER

The Expression of Interest was conducted between 7 March 2022 and 26 April 2022. The second stage Request for Tender was conducted between 23 January 2023 and 10 March 2023.

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#### QUESTION 2, PAGE 3

**The Hon. DAMIEN TUDEHOPE:** Do the tender documents in fact require the tendering parties to outline the extent to which they will comply with the Procurement Policy Framework?

**PAUL HANNAN:** Yes, they would do.

**The Hon. DAMIEN TUDEHOPE:** They would do or did do?

**PAUL HANNAN:** I would have to come back to you with specifics in terms of the actual documents themselves.

**The Hon. DAMIEN TUDEHOPE:** The tender document that you in fact require the tenderers to actually use for the purpose of tendering goes through the Procurement Policy Framework requirements?

**PAUL HANNAN:** They are required to meet their obligations under those, as opposed to us meeting our requirements. There's two different sides of that, obviously.

**The Hon. DAMIEN TUDEHOPE:** It's pretty important. The secretary has just told us how you do comply with all your obligations. Here is a contractor that you're engaging with. How are you monitoring their level of engagement with the Procurement Policy Framework?

**PAUL HANNAN:** That contract has only been signed about two months or so ago, so it is really in the ramp-up stage at this point in time. The business unit involved, which would be the school infrastructure team, would be the ones that are overseeing the delivery aspects of that particular contract and the contract management components, with guidance from the procurement team.

#### ANSWER:

The Procurement Policy Framework applies to the procurement of goods and services of any kind, including construction.

During the tender process the tenderer is required to confirm that they will comply with the terms of the contract which includes conformance with the NSW Procurement Policy Framework. Once the contract is active, the contract manager will ensure that the project is delivered as are the terms of the contract.

Construction Sourcing Activities: The Department of Education uses the NSW Government GC21, MW21 and Mini Minor Works Contracts.

Under Section 4.5 of the GC21, Section 4.2 (Conditions of Tendering) of the MW21 and Section T3 (Conditions of Tendering) for the Mini Minor Works contract require all parties in the tendering process to be bound by the Procurement Policy Framework and the Supplier Code of conduct.

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Additionally, tenderers are required to submit tender schedules for the MW21 and GC21 declaring that they will comply to the Procurement Policy Framework and the Supplier Code of Conduct. If these are not submitted the tender is not accepted.

Goods & Services (incl IT) Sourcing Activities: There are various contract documents utilised, but within the tendering documents released to market - Part A Conditions of Tendering states:

Clause 11.1 - All Tenderers must comply, where relevant, with the provisions of the NSW Government Supplier Code of Conduct (Code), the NSW Procurement Policy Framework (Framework) and the NSW Industrial Relations Guidelines: Building and Construction Procurement (Industrial Relations Guidelines). These documents may be accessed through the Buy NSW Website ([www.buy.nsw.gov.au](http://www.buy.nsw.gov.au)).

Additionally, the two following clauses are also relevant:

Clause 11.2 - The ability of a Tenderer to demonstrate compliance with the relevant aspects of the Code, Framework and Industrial Relations Guidelines is an essential condition of the tender. Lodgement of a tender will itself be evidence of the Tenderer's agreement to comply with the relevant aspects of the Code, Framework and Industrial Relations Guidelines for the duration of any Contract that may be awarded.

Clause 11.4 - If any Tenderer fails to comply with the Code, Framework, Industrial Relations Guidelines or Statement of Business Ethics, the failure may be taken into account by Department of Education when considering this or any subsequent Tender, and may result in this or any subsequent Tender being rejected by reason of non-compliance with the Code, without prejudice to any other right of action or remedy available at law or equity to the department.

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#### QUESTION 3, PAGE 4

**The Hon. DAMIEN TUDEHOPE:** In respect of contracts engaged by the agency, and that's in relation to whole-of-government contracts and specific for the agency, what percentage of suppliers are from New South Wales?

**MURAT DIZDAR:** We'd have to take the specific on notice and come back to you by way of contracts awarded and providers in New South Wales.

**The Hon. DAMIEN TUDEHOPE:** Would it be more than 50 per cent?

**MURAT DIZDAR:** I don't have that available here, but we're happy to come back to you.

**PAUL HANNAN:** Again, we'll have to come back to specifics. But because the vast majority of what we do is the maintaining of schools and, therefore, a lot of our tenders are run in that local kind of region, yes, there would be—I would suspect that the large majority is local businesses.

**The Hon. DAMIEN TUDEHOPE:** I would have thought more than 50 per cent would be.

**PAUL HANNAN:** I would suspect that you're right. I don't want to hesitate a guess as to what it is, but I would suggest that it is probably high end.

#### ANSWER:

The Department of Education currently engages with 19,759 suppliers.

Ninety six per cent of these suppliers are located within NSW.

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#### QUESTION 4, PAGE 5

**The Hon. DAMIEN TUDEHOPE:** In the contract awarded to ADCO, was there any provision which required compliance by subcontractors with the Procurement Policy Framework?

**MURAT DIZDAR:** Again, Mr Hannan might give the detail. But on all major capital upgrade contracts there would have been requirements around both the building facilities, landscaping, finished product—

**The Hon. DAMIEN TUDEHOPE:** But are the subcontractors, in the contract documents which they signed with the head contractor?

**PAUL HANNAN:** I would have to come back to you on the specifics of that particular engagement with ADCO. We used the standard GC21, which is the construction contract. We would make sure that our engagement with ADCO would have had that covered out. I can't comment about how ADCO engaged with the market to get those suppliers. I'd have to come back to you with specifics on the documents.

**The Hon. DAMIEN TUDEHOPE:** Is there any provision in the head contract with ADCO relating to ensuring that the contractors that they engage are complying with the Procurement Policy Framework, and what oversight does Education have in relation to the terms of the subcontracts?

**MURAT DIZDAR:** Again, let's come back to you, like Mr Hannan indicated, on the detail. We follow the whole-of-government contract for the construction of schools. We do have a project director that we appoint onto major capital builds, like the example at Liverpool West, who then makes sure that the deliverer of the contract is meeting all the requirements of that contract.

#### ANSWER

The contract with ADCO requires ADCO (the contracted party) to be accountable to the Procurement Policy Framework and supplier code of conduct. The standard GC21 does not require the subcontractor to comply except to the PBD 2023-01 Skills Training and Diversity in construction.

ADCO as the head contractor is responsible for all works including those undertaken by any subcontractors that they utilise. There are assurance processes to ensure that the construction meets the necessary requirements (both contractual and the building codes / relevant standards) and these are the responsibility of the construction contractor.