

PUBLIC ACCOUNTS COMMITTEE

**INQUIRY INTO THE DECISION TO AWARD SERCO AUSTRALIA THE
CONTRACT FOR THE PROVISION OF NON-CLINICAL SERVICES AT
FIONA STANLEY HOSPITAL**

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
TUESDAY, 24 APRIL 2012**

SESSION TWO

Members

**Mr J.C. Kobelke (Chairman)
Mr J.M. Francis (Deputy Chairman)
Mr A. Krsticevic
Mr C.J. Tallentire
Ms R. Saffioti**

Hearing commenced at 11.32 am**NOLAN, MS ANNE****Director General, Department of Finance, examined:****ALDERTON, MR RODNEY LEONARD****Executive Director, Government Procurement, Department of Finance, examined:****McLEAN, MR GRAEME****General Manager Planning and Practice, Building Management and Works, Department of Finance, examined:**

The CHAIRMAN: On behalf of the Public Accounts Committee, I thank you for your appearance before us, and I apologise that we ran a bit late with our earlier hearing. The purpose of this hearing is to assist the committee as it gathers evidence for its inquiry into the decision to award Serco Australia the contract for the provision of non-clinical services at Fiona Stanley Hospital. You have already been introduced to the members of the committee. The Public Accounts Committee is a committee of the Legislative Assembly of the Parliament of Western Australia. This hearing is a formal proceeding of the Parliament and therefore commands the same respect given to proceedings in the house itself. Even though the committee is not asking witnesses to provide evidence on oath or affirmation, it is important that you understand that any deliberate misleading of the committee may be regarded as a contempt of Parliament. This is a public hearing and Hansard will be making a transcript of the proceedings for the public record. If you refer to any documents or documents during your evidence, it would assist Hansard if you could provide the full title for the record. If during the course of today's hearing you feel that information being requested by the committee breaches commercial confidentiality requirements, please let us know and we can possibly go into closed session to deal with such matters.

Before we proceed to the questions we have for you today, I need to ask you a series of questions. Have you completed the "Details of Witness" form?

The Witnesses: Yes.

The CHAIRMAN: Do you understand the notes at the bottom of the form about giving evidence to a parliamentary committee?

The Witnesses: Yes.

The CHAIRMAN: Did you receive and read the information for witnesses sheet provided with the "Details of Witness" form today?

The Witnesses: Yes.

The CHAIRMAN: Do you have any questions in relation to being a witness at today's hearing?

The Witnesses: No.

The CHAIRMAN: Thank you very much. Hopefully we will not have to keep you here for too long. The issue comes down to the panel from which a company was chosen for quite critical work relating to the Fiona Stanley contract that went to Serco. The Department of Finance, we understand, establishes panels from which departments can select companies to provide a range of services, including commercial advisers on major projects. We know that there has been a bit of history of the development of those panels over the years. What I would like to know is what role

does the Department of Finance play in assisting agencies when it comes to actually selecting companies from the panel? So, agencies know that you have the panel. There is a descriptor as to the type of work covered by companies on a particular panel. What particular assistance does the department give to agencies when it comes to selecting companies?

Ms Nolan: I will ask Rod to respond with regard to government procurement, and Graeme to respond on behalf of Building Management and Works.

Mr Alderton: Broadly speaking on behalf of government procurement there are two types of panel arrangements, I guess, for general goods and services. One is a common-use arrangement, which is a whole-of-government arrangement for commonly purchased goods and services, and the other one is where we help agencies develop their own agency-specific contracts. Our role once the panel contracts have been established is to support them when they come to us asking for advice—should they ask for advice—about who is the appropriate organisation to engage, what particular skills and experience they bring, and what other work have they done around the sector. We actually have staff located in about 25 agencies who are a focal point for providing that sort of advice on behalf of government procurement. In this case I am only talking about goods and services procured under the State Supply Commission Act. I am not talking about works for these particular contracts.

Mr McLean: From the Building Management and Works panel, we provide a list of 50 or so different firms on that panel. For small commissions, it does operate under pick-and-buy arrangement, so subject to not all the work going to one particular person on the panel. We could suggest, if we were asked—it is commonplace for us not to suggest—that if a particular agency or body has comfort working with three or four of the different panels, they would tend to favour one of those. So we do not direct that they necessarily follow a particular firm.

The CHAIRMAN: So are there times when the Department of Finance will tell an agency, in terms of giving it some direct advice or guidance, as to which particular panel would be most suitable for the type of work it is doing?

Ms Nolan: That would very much depend on the occasion. Obviously on many occasions we are asked to recommend a particular company on a panel. It is not normally our role to recommend particular people on a panel. The panel is about pre-qualification, effectively, and therefore providing the opportunity for the agency to consider what it needs and to clearly specify what it needs and then match that to the availability of personnel on the panel and companies. Where we may get involved is in helping the agency understand what its needs are. We may not do this first task very frequently, but, if asked, we will provide advice to assist them in understanding their needs to enable them to choose the most appropriate firm on the panel.

The CHAIRMAN: I am gathering from what you are saying that you set up the panel, and you do the due diligence in checking out the companies that they meet the criteria to go on a particular panel or more than one panel. But from what you are saying, it does not sound as though you really see it as your role to advise them as to which panel a company should choose from.

[11.40 am]

Ms Nolan: Are you saying which panel or which client on the panel?

The CHAIRMAN: There are two levels. Let us start at the panel first.

Ms Nolan: We may provide them advice on which panel is more appropriate to their needs. It goes again to what their needs are. And with respect to which firm, company, individual on that panel, we would not in general provide specific advice to that.

The CHAIRMAN: Yes, but if we can just start with the panels, as opposed to picking a company off a panel.

Ms Nolan: Right.

The CHAIRMAN: What is the frequency or the level of advice the Department of Finance gives to agencies when it comes to looking for panels to choose from?

Mr Alderton: It would be quite a regular occurrence, I would think, for agencies to come to government procurement, for example, particularly in the area of common-use arrangements and asking which is the most appropriate panel to use. There are obviously quite a number of different arrangements in place and our people are well placed to provide that advice. On the other hand, many agencies have long experience with a lot of these contracts and are quite capable themselves of picking contractors and they know how the contract works and the buying rules are quite clear. Where it gets a little bit hazy, I guess, is there are panels set up under different statutes, such as the State Supply Commission Act for example, for, as I mentioned earlier, general goods and services, and other panels through BMW for works-type contracts. And agencies themselves may also have had their own contracting powers and they may set up their own arrangements. So there are quite a lot of different sorts of panel arrangements in place across government, so it is actually quite difficult to give one definitive answer because there is not one definitive answer.

The CHAIRMAN: The heart of the issue is when the Department of Health was looking for the advice in terms of risk management, procurement and tendering advice in the public sector comparator for the biggest contract this state has ever signed, it had a choice between the audit services and financial advice panel or the project management services panel. It is my view, not being an expert in this area, that the audit services and financial advice panel was the more appropriate one for a \$4.3 billion contract to run under PPP guidelines. But they did not; they worked off the project management services panel. And when we asked them about this, they told us the Department of Finance advised them to use the project management services panel. So, is that the sort of thing that perhaps in this case advice was given by the department?

Mr McLean: We did not have any information; we did not provide any specific information to Health that they must use this panel.

The CHAIRMAN: This is back in 2010.

Mr McLean: Yes, in the day. What we would have done, I am sure, is we would have shared the details of the panel, which were freely available, and the agency would have been aware of the things that we assessed in deciding what firms should be on that panel, but we did not provide them advice as such.

Mr Alderton: To my knowledge they never asked government procurement that specific question, and we would not necessarily have expected them to because it was an infrastructure-related project which they probably would not have thought to use that CUA. That is why I presume they probably headed straight towards the BMW project management services panel.

The CHAIRMAN: That is what we are trying to get an understanding of, given that it is such as a major contract. For instance, let us take an alternate example. Treasury is running a process with respect to the Midland health campus. They have gone to the audit services and financial advice panel and then the contracts have been let for technical advice, which may or may not be off the project management services panel—I have not checked that. So would they have come to you asking for advice on that?

Ms Nolan: I would have to ask either gentleman to answer that.

Mr Alderton: They did not ask us for advice.

Mr McLean: They did not. To my knowledge they did not come to us for advice on that.

The CHAIRMAN: But would you see that as an appropriate way to go with a major contract which is following the guidelines for a PPP, because they are using Infrastructure Australia guidelines? The Fiona Stanley contract with Serco was clearly not PPP, but they were using Infrastructure Australia PPP guidelines. So that is the nature of the work that they are seeking financial advice on.

QEII car park was also a similar one. So in terms of if you were advising agencies for a major contract, what would you see as the respective roles of these two panels?

Ms Nolan: I would have expected that if the Department of Health had wished to discuss their options, they would have discussed both of those examples with the Department of Treasury in respect to its strategic projects area.

The CHAIRMAN: Not to the Department of Finance?

Ms Nolan: Because, as you said, they are very large infrastructure projects which come under the bailiwick of strategic projects.

The CHAIRMAN: But if I could seek some more general advice in terms of these panels, do both these panels come under BMW; that is, the project management services panel and the audit services and financial advice panel?

Mr Alderton: No, they are separate. The project management services comes under BMW, and the audit and financial services CUA comes under government procurement. I think that is what you are highlighting, that there is some overlap between various contracts, which is probably quite right. But they have been set up for different purposes, I guess, is the issue.

The CHAIRMAN: So the point is I am trying to get some advice from you people who are experts in this area as to what would be the type of work that you would go to the audit services and financial advice panel to start with; and then perhaps we could get what advice you would give to agencies as to why they should use a company off the project management services panel.

Mr Alderton: Yes, I can start with the CUA for audit and financial services. That was set up more to give general advice, I guess, in those particular areas. There are subcategories under each particular one, but it was not envisaged under that contract setting up contracts with suppliers for really large, major infrastructure-type advice; it was more general advice. So, for specific infrastructure-type advice you would expect them to go elsewhere. Although, having said that, it is possible to use the audit and financial services anyway.

Mr McLean: From that, the project management services panel was really set up to handle the sorts of projects that Building Management and Works project-manages on behalf of government. When the panel was first set up back in 2005, I think it was, it was to cover all of the major building works. Now, since that date, 2005, Strategic Projects was set up and they have a focus on the largest of the large projects; and subsequent to that they have looked to set new ways of always contacting the large firms, and I think they have since set up another CUA or panel arrangement for commercial services for those major projects. So, at the day that the panel was set up in the first place in 2005, it would have been set up to cover any government building project.

Ms R. SAFFIOTI: If I was wanting to develop a public sector comparator in respect to contracting out a significant range of services, which panel would you suspect I would go to to find the company to develop that public sector comparator?

Mr Alderton: I think the right answer to that is probably the commercial advisory services contract that was set up by the office of special projects.

Ms R. SAFFIOTI: Okay, so another one!

Mr McLean: Yes, there are a few around.

The CHAIRMAN: When was that set up?

Mr McLean: I think that was about April 2010.

Ms R. SAFFIOTI: And so basically that is an OSP in Treasury?

Mr McLean: That is right.

Ms R. SAFFIOTI: And they deal with the more sophisticated financial modelling services?

Mr McLean: Exactly.

Ms R. SAFFIOTI: Because what you are suggesting here is that the audit services and financial advice panel is for your everyday type of financial services, but that for more complex and detailed analysis, particularly for large contracting out or large privatisations in a sense, you would want to go to some specialist companies beyond that other panel?

Mr McLean: That is right, and that is the whole reason why the Office of Special Projects went down that path.

The CHAIRMAN: I turn now to how companies actually get on a particular panel. Not so much the detailed process of assessment you do, but what does it mean if a company is on a panel for an agency? Does the agency take it that all companies on a particular panel can cover the same range of work, or are there specialities within different levels of competence? What does it mean for companies that are on a panel?

Mr McLean: For the project management services panel there are three categories associated with it. Firms on the panel need to cover a broad spectrum of work. But the three categories are for business-case development; project definition, which is project planning; and then management through the project delivery phase. So firms can be assessed as competent in one, two or three of those, or any one of those particular categories.

The CHAIRMAN: But not necessarily all of them?

Mr McLean: Not necessarily all of them, although there would be a number of firms that are capable in all of them. So that gives a very general view that they are competent in that category. Within that, though, the requirements of one agency—because Education might require something quite different from what Corrective Services require—are certain firms that specialise or they have particular people with particular knowledge within that. Being on the panel means that BMW's assessment against those three general categories that I mentioned are deemed as being capable of providing services within those broad categories.

[11.50 am]

The CHAIRMAN: How do agencies get advice as to which companies they should go to if they just throw a dart and pick a company and find that that company does not really match their needs? Where do they get that advice from?

Mr McLean: A small agency that very infrequently accesses such services would probably come to us and ask what they should do. An agency that regularly engages services would have developed over time its own relationships and had a level of confidence in particular firms, used from the panel, presumably, so they would know of the number of firms on the panel. They would work regularly with five or 10 of those and know which ones they had confidence in.

The CHAIRMAN: The use of a panel without any competitive tendering is allowed up to \$150 000; is that correct?

Mr McLean: I think it is \$130 000 on an hourly rate basis for the project services management panel. Where you get into the management of delivery and beyond, you can have up to \$300 000 on a percentage basis of the project's value.

The CHAIRMAN: Where do they get \$150 000, or are you giving a figure without the GST?

Mr Alderton: It is \$150 000 for the goods and services area. It differs slightly from the works area. Different contracts actually have different thresholds.

The CHAIRMAN: If we deal with the project management services panel —

Mr McLean: It is \$130 000 for an engagement under hourly rates.

Ms R. SAFFIOTI: Including GST?

Mr McLean: I believe it is exclusive.

The CHAIRMAN: So it is plus GST, which takes it up to \$150 000.

Mr McLean: Yes.

The CHAIRMAN: What role does the department play if companies are simply using the panel for contracts that go above \$150 000? Do you put up a red flag? Does the department play any role in that?

Mr McLean: In the days of this arrangement, we were very much in a facilitating role and we would have raised a red flag, but once you are in an arrangement, it is difficult to recover. We have a different approach today, but at that time it was very much a matter of facilitating a project. There would have been cases from time to time that slipped a bit over. That would not have been done intentionally when it was originally set up, but there would be occasions, particularly in the planning-type projects under the banner of business case development when often things are less certain in that phase of a project.

The CHAIRMAN: What drew our concern with the contract to a company called Paxon was that on 9 April 2010 there were three separate contracts let to the same company, each for \$136 400. That looks to me to be an example of splitting the work in order to get under the limit. What role does the department play if companies are splitting contracts so they do not have to go to the market and have a competitive element in seeking people to do the work?

Mr McLean: Certainly contract splitting, as you are referring to, is not at all supported by the Department of Finance. It is something we advocate against as a practice, for obvious reasons. The three subsequent commissions you are referring to were presented to us by the department as three separate commissions—three separate projects. In the facilitating role we were taking at that stage we would have taken that at face value and set up the commissions. There is no question that in hindsight it does appear to be related to the same core project. The arrangements today would have picked that up.

The CHAIRMAN: Could you explain the new arrangements you have now?

Mr McLean: Since that time, we have set up a dedicated asset planning team to work with agencies who are undertaking a business case development. We have a team of 10 people who are dedicated to this task. We take a much more proactive role in that than we did at that time of sitting down and working out the scope of the work required during the business case stage. We take a much greater role in collaborating during the completion of that work. Where the delivery of the project would be delivered by Building Management and Works, we have a sign-off process to verify the findings—for example, that the estimated cost of the project is legitimate—rather than just leaving it to that party.

Ms R. SAFFIOTI: When was this new process established?

Mr McLean: It would have been in 2010, I think, when we got it going. It was before my time with the organisation. I am not exactly sure of the dates.

The CHAIRMAN: But not before April 2010 when those three contracts were let for the same amount on the same day?

Mr McLean: It would have been in the transition period. I do not know precisely.

The CHAIRMAN: If an agency, for whatever purpose, felt that the current guidelines which you provide were a problem—that is, they simply could not get the work done by the company that they thought best able to do it—one option is to split the contract and therefore make it look on the surface like they are under \$150 000. Is that one way they can go?

Ms Nolan: It is not our situation to speculate on that here in respect of that example.

The CHAIRMAN: I am talking in terms of general practice.

Ms Nolan: In general practice we are very vigilant about project splitting.

The CHAIRMAN: So you would try to make sure that that did not happen?

Ms Nolan: As Graeme just explained, yes.

The CHAIRMAN: Another way an agency might seek to get around those guidelines and requirements is to go to three or four companies on your panel knowing that only one of them can do the work. What oversight do you have to make sure that is not case? For instance, when they did go to competitive tendering with respect to the Serco work, they asked Paxon and five other companies. One of those companies was a one-man operation, which put in a price that was ridiculously low and he could never do the work. It is open for agencies to get the company they want through a supposedly competitive process by putting companies on the list that ask for a price when they know the other companies cannot do it. How can you oversight that sort of arrangement if any agency should attempt it?

Mr McLean: Today, with that dedicated asset planning team, the main thing is we get much more involved in the process to develop the scope of the project and work out how that will be set up. If one firm was capable of doing the work and two other firms were not in the ballpark and had no skills in the area, we would pick that up because we are much more involved in what is going on.

The CHAIRMAN: Thank you. The next question I would like to come to is with respect to agencies engaging a company or a contractor to undertake work without a contract. Are there any special circumstances where you would actually give a tick to people starting work for an agency and then saying, “We will do the contract later”?

Ms Nolan: It is not the most desirable course of action and you generally try to ensure that you have the contract in place, but I think it would be realistic to acknowledge that there are occasions when contract negotiations are not finalised when the work can commence. That is usually because of the urgency and time lines associated with the project, but it certainly is not the sanctioned way for them.

The CHAIRMAN: What role does the Department of Finance take if you become aware of an agency that has someone working for them and, for whatever reason, they have not been able to sign a contract with them?

Ms Nolan: We would approach the agency and request them to finalise their contractual arrangements ASAP.

The CHAIRMAN: The final issue I have is the appointment of probity auditors. Which panel—I think I know, but can you confirm—do you go to for probity auditors? What, generally, is the role of a probity auditor?

Mr Alderton: The probity auditor could be engaged off the audit and financial services—CUA. Their role is generally to provide advice throughout the process to the agency that they are acting in accordance with government policy and process. At the end of the process, they provide a signed-off report at various stages, depending on the terms of the engagement, that the agency has used to support their means of the process according to the governing rules. Quite often, the probity auditor or adviser’s report is tabled with an evaluation report, for example, that is considered by the State Tenders Committee to provide some assurance that the process has been run appropriately.

The CHAIRMAN: What part of the process tries to ensure there is no potential or perceived conflict of interest between the probity auditor and other major contractors providing the work?

Mr Alderton: That should be conducted right at the start of the process and is really an agency responsibility; that is, the agency that is engaging the probity auditor to make the appropriate inquiries. Under the government’s standard conditions of contract the probity auditor also has responsibility to declare any conflicts of interest, perceived or real, and generally speaking, they do.

The CHAIRMAN: Is that a standard process of documentation?

Mr Alderton: Yes.

The CHAIRMAN: There has been a process to try to clear the way to make sure there is not a potential or perceived conflict of interest?

Mr Alderton: By declaration, yes.

The CHAIRMAN: Thank you for your evidence before the committee today. A transcript of this hearing will be forwarded to you for correction of minor errors. Any such corrections must be made and the transcript returned within 10 days from the date of the letter attached to the transcript. If the transcript is not returned within this period, it will be deemed to be correct. New material cannot be added via these corrections and the sense of your evidence cannot be altered. Should you wish to provide additional information or elaborate on any particular points, please include a supplementary submission for the committee's consideration when you return your corrected transcript of evidence. I thank you very much for appearing before the committee today and for the advice you provided us.

Hearing concluded at 12.00 noon
