



Government of Western Australia
Department of Treasury



Your ref : A727726
Our ref : 00515866

Dr Antonio Buti MLA
Chair
Public Accounts Committee
Parliament House
41 Harvest Terrace
WEST PERTH WA 6005

Dear Dr Buti

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

Thank you for your letter of 4 December 2018, inviting the Department of Treasury (Treasury) to provide a submission to the Public Accounts Committee (the Committee) addressing the Inquiry's Terms of Reference into public sector contract management practices. I have been advised by the Department of the Premier and Cabinet that a four week extension (to 8 March 2019) for submission to this Inquiry was granted by the Committee.

Treasury's key responsibilities are to provide economic, financial and energy policy advice to the Government and act as steward of the State's financial management and regulatory frameworks. As such, Treasury has an indirect role in contract management in its administration of legislation on behalf of the Treasurer and through development and implementation of policy frameworks that impact on public sector contract management.

Legislative and policy frameworks that govern or impact on contract management include the *Financial Management Act 2006* (FMA), the *Government Financial Responsibility Act 2000* and the Strategic Asset Management Framework, for which Treasury is the responsible authority. Additionally, Treasurer's Instructions prescribe minimum requirements to enable FMA agencies to achieve the purposes of the FMA that the Treasurer may issue with respect to matters of financial administration. An outline of these legislative and policy frameworks and how they impact on public sector contract management is provided in the **attached** submission.

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If you would like further information relating to Treasury's role in public sector contract management practices, please contact the Deputy Under Treasurer, Mr Michael Court,

I wish you well with the Inquiry.

Yours sincerely

Michael Barnes
UNDER TREASURER

- 8 MAR 2019

Enc. Submission

ATTACHMENT**PUBLIC ACCOUNTS COMMITTEE INQUIRY INTO PUBLIC SECTOR CONTRACT
MANAGEMENT PRACTICES****SUBMISSION BY THE DEPARTMENT OF TREASURY**

The Department of Treasury (Treasury) welcomes the Public Accounts Committee's inquiry into public sector contract management practices and provides the following submission.

Treasury's role in contract management

Treasury's key responsibilities are to provide economic, financial and energy policy advice to the Government and act as steward of the State's financial management and regulatory frameworks. As such, Treasury has an indirect role in contract management in its administration of legislation on behalf of the Treasurer and through development and implementation of policy frameworks that impact on public sector contract management.

Legislative and policy frameworks that govern or impact on contract management include the *Financial Management Act 2006* (FMA), the *Government Financial Responsibility Act 2000* (GFRA) and the Strategic Asset Management Framework (SAMF), for which Treasury is the responsible authority. Additionally, Treasurer's instructions (TIs) prescribe minimum requirements to enable FMA agencies to achieve the purposes of the FMA that the Treasurer may issue with respect to matters of financial administration. An outline of these legislative and policy frameworks and how they impact on public sector contract management is provided below.

The Department of Finance (Finance) is the provider of whole-of-government procurement advice, as well as delivering some of the capital works' services on behalf of government agencies and for the community. Finance's roles that impact on contract management practices include:

- leading procurement policy and capability building, whole-of-government contracting and high-value procurement;
- providing asset management advice and services across government, including leading the planning and delivery of major projects; and
- managing government office accommodation on a portfolio basis to drive sector-wide efficiencies.

Finance is best placed to advise on the effectiveness of policy frameworks that govern public sector contract management in Western Australia. This includes advice in relation to the robustness of contract management practices and capacity within agencies, and ways to improve or enhance contract management performance across the sector. Finance is also able to inform on the processes by which contract management expertise and good practice within individual agencies are identified, developed and shared across the Western Australian public sector. Additionally, Finance is the agency that can provide advice on the processes and instruments available to ensure agencies can effectively allocate and manage commercial and performance risks on major contracts.

Treasury legislative provisions and policy frameworks

Treasury has responsibility for administering the following Acts that govern or impact on public sector contract management:

- the FMA provides a framework for financial management, administration and reporting for agencies subject to the FMA, including administration of appropriated funds. The FMA is supported by the *Financial Management Regulations 2007* and TIs; and
- the GFRA provides a framework for whole-of-government financial planning and reporting. The GFRA requires the Government to produce a Government Financial Projections Statement (as reflected in the annual State Budget), a Government Mid-year Financial Projections Statement, the Annual Report on State Finances and other reports on State finances.

Other relevant public sector legislation

Other policy frameworks that govern or impact on public sector contract management include:

- the *Constitution Act 1889* requires all revenues of the Crown to be credited to the Consolidated Account and payments from the Consolidated Account to be appropriated by the Parliament (among other matters). Through Parliamentary appropriations, agencies are funded to deliver services, which may include delivery through contractual arrangements;
- the *Auditor General Act 2006* sets out the functions and powers of the Auditor General. The Auditor General is responsible for scrutinising the financial accounts of the public sector and related entities, as well as assessing the efficiency and effectiveness of public sector activities;
- enabling legislation of statutory authorities set out their functions and powers including financial powers e.g. *Metropolitan Redevelopment Authority Act 2011*, *Western Australian Treasury Corporation Act 1986* and *Health Services Act 2016*; and
- the *State Supply Commission Act 1991* sets out the framework for the supply of goods and services to, and disposal of goods on behalf of, public authorities. The powers are exercised under an arrangement between the State Supply Commission and the Director General of Finance.

Treasurer's Instructions

TIs relevant to contract management include: 'Register of Contracts' (TI 820), 'Variances in Capital Expenditure' (TI 813) and 'Authorisation of Payments' (TI 304).

The establishment and maintenance of a register of contracts that contains details of the agency's contracts is essential from an accountability perspective and also assists agencies in meeting their financial reporting obligations. In entering into contracts in procuring goods and services, agencies are required to comply with TI 820. TI 820

requires accountable authorities to establish and maintain a register of their contracts with a dollar value of more than \$50,000 (or a different threshold up to \$100,000 subject to materiality). The register must include, as a minimum, the contract's purpose, duration, relevant financial information, details of the counter party and scheduling of contractor performance reviews.

TI 813 was recently issued to bring more rigour to enhance the oversight of the contract management process in relation to capital works (mainly infrastructure projects). For capital works with an estimated total cost of \$5 million or more, accountable authorities must advise the Under Treasurer in writing of the variance between the pre-tender estimate and the tender outcome, and between the tender outcome and approved estimated total cost for each contract. Accountable authorities must also provide the Under Treasurer with a practical completion report for each contract. The intent of TI 813 is to ensure prudent financial management across the public sector, including seeking the Treasurer's prior approval before repurposing any unspent funds.

TI 304 is relevant in that no payment or transfer may be made from agencies' approved bank account and/or charged to a special purpose account unless authorised by a certifying officer, except in the case of a recurring arrangement. In the case of contract payments, the certifying officer must be satisfied that there is a valid claim.

Treasury's role in Strategic Asset Management

Treasury is the custodian of the SAMF. The SAMF is a framework designed to provide a sound basis for decisions, which will ultimately be made by Cabinet, on the investment in, and the management and disposal of, government assets.

The SAMF provides policies and guidance for agencies to prioritise, invest in, manage and dispose of government assets. Abiding by the requirements of the SAMF assists agencies to deliver value for money outcomes from government programs and projects. Supporting guidance on the SAMF is available from the Treasury website at <http://www.treasury.wa.gov.au>.

The SAMF includes a section on procurement in its Business Case policy. It advises that at this stage, a preliminary procurement options analysis should be conducted to identify the range of procurement models that are most likely to achieve value for money for the State. A detailed works procurement plan is not developed until after the Expenditure Review Committee (ERC) has considered the business case and has made a decision to invest.

Detailed planning is undertaken beyond the original investment decision to ensure that sufficient project definition has been completed before proceeding to tender. A Project Definition Plan (PDP) is completed for asset investment proposals with an estimated total capital cost of \$5 million or more, before seeking approval to proceed to the tender documentation and market engagement stage.

At the PDP stage, procurement and financing advice is focused on the business case investment option that was endorsed by Cabinet. Based on the PDP and support plans, the agency recommends the procurement and financing methods that are most likely to achieve value for money for the State. If, in the event of more detailed planning it appears that key parameters of scope, timing, costs, risk, location or procurement method are

materially different to those endorsed as part of the original investment decision, the project should be referred back to ERC for consideration.

The SAMF also includes a policy on Alliance Contracting that provides principles, governance and an approval framework to be applied to agencies using the alliance delivery method.

Other procurement guidelines

Western Australian agencies undertaking Public Private Partnership (PPP) projects are required to follow the National PPP Guidelines (Guidelines) that have been prepared and endorsed by Infrastructure Australia and the State, Territory and Commonwealth Governments.

The Guidelines provide extensive guidance on the commercial principles that underpin PPP contracts as well as contractual regimes that incentivise performance through, for example, the application of abatements to payments if specified performance levels are not achieved. The Guidelines can be located at: <https://infrastructure.gov.au/infrastructure/ngpd/index.aspx>.

Volume 2 of the Guidelines includes a section on Contract Management that highlights how effective contract management practices will assist government to achieve broader project objectives, maintain risk transfer and value for money outcomes.

Volume 6 of the Guidelines includes a section on Jurisdictional Requirements specific to Western Australia that emphasise the importance of good contract management over the life of the project.

Treasury's role in PPP projects is typically focused upon providing advice in developing the commercial terms of the contracts during the procurement phase and not in ongoing contract management, which is the responsibility of the Agency. However, if any PPP policy related or major financial issues arise during the operational phase, then the agency should consult with Treasury.

Monitoring and reporting on asset management

The Public Sector Commissioner's Circular 2014-03 states that all public sector bodies (that includes Government Trading Enterprises (GTEs)) are required to implement the SAMF. Treasury has a Key Performance Indicator (KPI) for monitoring agency adherence to the SAMF.

The KPI measurement is the proportion of Ministerially-endorsed Strategic Asset Plans (SAPs) received by the due date from agencies that account for 90% of the Government's total budgeted Asset Investment Program across the current financial year. The KPI is reported each year in Budget Paper No.2 and in Treasury's Annual Report.

Treasury has been seeking to improve the quality and timeliness of submission of SAPs by general government agencies and GTEs. For 2019-20, agencies were encouraged to focus on strengthening the asset review component and the assessment of the gaps, strengths and risks of agencies' asset portfolios to meet medium term service delivery objectives.

Issues raised by the Special Inquiry into Government Programs and Projects

Key among the findings of the Special Inquiry into Government Programs and Projects (the Special Inquiry) was the lack of robustness around decision-making, the need to strengthen Cabinet and ERC processes, and the need for Treasury to play a more central role in supporting sustainable financial management.

The Inquiry found that actions are required to change public sector culture and attitude to ensure stricter compliance with the SAMF, including by GTEs. The Special Inquiry into Government Programs and Projects Final Report highlighted the risks and poor outcomes that can occur when the principles, policies and guidelines under the SAMF are ignored or viewed as a compliance exercise, with many points of failure being linked to poor project management. It was further noted that there were missing or inadequate business cases, which are essential to identify the best value for money option in terms of service delivery to the community, success of the agency's business model and best use of scarce funds.