

Procurement and reporting of consultancy services

4 SEPTEMBER 2018



NEW SOUTH WALES AUDITOR-GENERAL'S REPORT

SPECIAL REPORT

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In accordance with section 38E of the *Public Finance and Audit Act 1983*, I present a report titled **'Procurement and reporting of consultancy services'**.

A handwritten signature in black ink, appearing to read 'Margaret Crawford'.

Margaret Crawford

Auditor-General
4 September 2018

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Section one

Procurement and reporting
of consultancy services



Executive summary

NSW Government agencies engage consultants to provide professional advice to inform their decision-making. The spend on consultants is measured and reported in different ways for different purposes and the absence of a consistently applied definition makes quantification difficult.

The NSW Government's procurement principles aim to help agencies obtain value for money and be fair, ethical and transparent in their procurement activities. All NSW Government agencies, with the exception of State Owned Corporations, must comply with the NSW Procurement Board's Direction when engaging suppliers of business advisory services. Business advisory services include consultancy services. NSW Government agencies must disclose certain information about their use of consultants in their annual reports. The table below illustrates the detailed procurement and reporting requirements.

	Relevant guidance	Requirements
Procurement of consultancy services	PBD-2015-04 Engagement of major suppliers of consultancy and other services (the Direction) including the Standard Commercial Framework (revised on 31 January 2018, shortly before it was superseded by 'PBD-2018-01')	Required agencies to seek the Agency Head or Chief Financial Officer's approval for engagements over \$50,000 and report the engagements in the Major Suppliers' Portal (the Portal).
	PBD-2018-01 Engagement of professional services suppliers (replaced 'PBD-2015-04' in May 2018)	Requires agencies to seek the Agency Head or Chief Financial Officer's approval for engagements that depart from the Standard Commercial Framework and report the engagements in the Portal. Exhibit 3 in the report includes the key requirements of these three Directions.
Reporting of consultancy expenditure	Annual Reports (Departments) Regulation 2015 and Annual Reports (Statutory Bodies) Regulation 2015	Requires agencies to disclose, in their annual reports, details of consultants engaged in a reporting year.
	Premier's Memorandum 'M2002-07 Engagement and Use of Consultants'	Outlines additional reporting requirements for agencies to describe the nature and purpose of consultancies in their annual reports.

We examined how 12 agencies complied with their procurement and reporting obligations for consultancy services between 1 July 2016 and 31 March 2018. Participating agencies are listed in Appendix two. We also examined how NSW Procurement supports the functions of the NSW Procurement Board within the Department of Finance, Services and Innovation.

This audit assessed:

- agency compliance with relevant procurement requirements for their use of consultants
- agency compliance with disclosure requirements about consultancy expenditure in their annual reports
- the effectiveness of the NSW Procurement Board (the Board) in fulfilling its functions to oversee and support agency procurement of consultancy services.



Conclusion

No participating agency materially complied with procurement requirements when engaging consultancy services. Eight participating agencies under-reported consultant fees in their annual reports. The NSW Procurement Board is not fully effective in overseeing and supporting agencies' procurement of consultancy services.

All 12 agencies that we examined did not materially comply with the NSW Procurement Board Direction for the use of consultants between 1 July 2016 and 31 March 2018.

Eight agencies did not comply with annual reporting requirements in the 2016–17 financial reporting year.

Three agencies did not report expenditure on consultants that had been capitalised as part of asset costs, and one agency did not disclose consultancy fees incurred by its subsidiaries. Agencies also defined 'consultants' inconsistently.

The NSW Procurement Board's Direction was revised in January 2018, and mandates the use of the Standard Commercial Framework. The Direction aims to drive value for money, reduce administrative costs and simplify the procurement process. In practice, agencies found the Framework challenging to use. To better achieve the Direction's intent, the Board needs to simplify procurement and compliance processes.

The Board is yet to publish any statistics or analysis of agencies' procurement of business advisory services due to issues with the quality of data and systems limitations. Also, the Board's oversight of agency and supplier compliance with the Framework is limited as it relies on self-reporting, and the information provided is insufficient to properly monitor compliance. NSW Procurement is yet to develop an effective procurement and business intelligence system for use by government agencies. Better procurement support, benefit realisation monitoring and reporting by NSW Procurement will help promote value for money in the engagement of consultants.



Key findings

1. Compliance with procurement requirements

Agencies did not comply with the Procurement Board Direction

The NSW Procurement Board issued three mandatory directions for procurement of consultancy services between December 2015 and May 2018. These directions outline the approval and reporting requirements for agencies engaging suppliers of business advisory services.

We examined 12 agencies' compliance with the initial Direction from 1 July 2016 to 30 January 2018 and found none complied with all mandatory requirements.

Agencies found compliance with the Standard Commercial Framework challenging

The Board substantially revised the NSW Procurement Board Direction 'PBD-2015-04 Engagement of major suppliers of consultancy and other services' (the Direction) on 31 January 2018. The revised Direction was designed to simplify the approval and reporting process for the procurement of business advisory services, and introduce the Standard Commercial Framework (the Framework) with the aim of ensuring value for money. The Direction was later replaced by 'PBD-2018-01 Engagement of professional services suppliers' in May 2018. 'PBD-2018-01' is substantially the same as the revised 'PBD-2015-04'.

The Framework provides agencies with agreed commercial terms to use in their negotiations with business advisory services suppliers. These terms include a fixed discount structure, capped rates and expenses for standard engagements and consultants' role types.

Agencies were not fully complying with the Framework in part due to the major advisory suppliers not consistently providing all the necessary information or not in a format that enabled agencies to comply. Agencies also reported the Framework was hard to understand, time consuming to apply and difficult to comply with. We tested three agencies' compliance with the revised Direction between 31 January and 31 March 2018 and found none complied with all mandatory requirements.

2. Compliance with disclosure requirements in annual reports

Agencies under-reported their consultancy expenditure

We found that eight agencies under-reported consultancy expenditure in their 2016–17 annual reports. Three agencies did not disclose consultancy fees capitalised in asset costs. One agency did not report consultancy expenditure incurred by its subsidiaries.

The application of the definition of 'consultants' is inconsistent

We surveyed the Chief Procurement and Finance Officers of the 12 participating agencies about their procurement and reporting of consultancy services. All participating agencies defined a consultant with reference to a Premier's Circular 'C2004-17 Guidelines for the Engagement and Use of Consultants' which was archived in 2012. In the absence of an active whole-of-government definition of a 'consultant', one cluster adopts a narrower definition, which is used by all its agencies. Confusion between what is a 'consultant' as opposed to a 'contractor' resulted in further inconsistencies in how agencies reported spends in annual reports.

Some agencies have stringent rules in their financial delegations and approval process for engaging consultants. For example, one agency requires the Agency Head's approval to engage any consultant, regardless of the value. Arrangements such as this may have led to inadvertent or deliberate misallocation.

Thresholds for reporting consultancy expenditure conflict

To promote transparency and accountability, Schedule 1 of the Annual Reports (Departments) Regulation 2015 and Annual Reports (Statutory Bodies) Regulation 2015 require agencies to disclose details of consultants engaged during the reporting year. The level of disclosure depends on whether the cost of the consultancy is over or under a \$50,000 threshold.

The Premier's Memorandum 'M2002-07 Engagement and Use of Consultants' (the Memorandum) outlines additional reporting requirements to describe the nature and purpose of consultancies in agencies' annual reports. However, it refers to a \$30,000 threshold, which was the reporting threshold in the superseded Annual Reports Regulations 2005. We found all the participating agencies elected to apply the higher threshold (\$50,000), which was set in 2010.

3. The effectiveness of NSW Procurement Board

Section 164 of the *Public Works and Procurement Act 1912* established the NSW Procurement Board (the Board). Today's Board consists of the Secretary of the Department of Finance, Services and Innovation as Chair and Secretaries of the other Principal Departments. The Board has the following statutory functions:

- develop and implement procurement policies and issue directions to government agencies
- monitor compliance with Board directions
- develop appropriate procurement and business intelligence systems for use by government agencies
- collect, analyse and publish data and statistics in relation to the procurement of goods and services by and for government agencies.

Compliance monitoring depends on the reliability of agency self-reporting

NSW Procurement is responsible for overseeing and monitoring agency compliance with the Direction, but their oversight of agency and supplier compliance is limited as both agencies and suppliers self-report non-compliance.

NSW Procurement provides a Major Suppliers' Portal for agencies to report their non-compliant engagements. Our sample testing noted three instances where suppliers did not comply with the Framework and none of these engagements were reported in the Portal as non-compliant. The completeness and accuracy of information in the Portal is insufficient for NSW Procurement to check whether agencies comply with the Direction and the Standard Commercial Framework.

NSW Procurement has also identified data gaps in the information provided by major suppliers, but has not yet enforced any penalties for non-compliance.

NSW Procurement has insufficient data for effective oversight and reporting

NSW Procurement has not published any data or statistics related to the procurement of consultancy services by NSW Government agencies. NSW Procurement acknowledges that issues with data quality and systems limitations impede meaningful data extraction or analysis. Better procurement support and benefit realisation monitoring by NSW Procurement are important to ensure the NSW Government achieves value for money when agencies engage consultants.

Ineffective agency engagement and communication of policy changes

All 12 agencies we surveyed indicated NSW Procurement could better support agency procurement decisions by providing timely and tailored guidance.

Agencies considered principles-based and risk-focused directions and guidance might better support their procurement needs, as this approach would promote a more business-driven outcome, especially where the consultancy procurement is large and complex.

Some survey responses indicated NSW Procurement had not provided agencies with enough time to implement policy changes. For example, NSW Procurement provided less than a month for agencies to implement the revised Direction in January 2018.

The Direction contradicted the Act by omitting some entities

The Board does not require NSW Government entities established under the *Corporations Act 2001* to comply with the Direction. This is contrary to the *Public Works and Procurement Act 1912* (the Act) as only State Owned Corporations should be exempted. The Act's definition of a government agency is broad and includes agencies that have been established under the *Corporation Act 2001*.



Key recommendations

1. To improve compliance with the revised NSW Procurement Board Direction, agencies should:
 - align their policies and procedures to reflect the requirements of the Direction
 - implement internal controls to effectively identify, resolve and report breaches of compliance with procurement requirements
 - provide procurement training and awareness programs to relevant staff.
2. To improve compliance with the annual reporting requirements:
 - agencies should review their current process of capturing, analysing and reporting consultancy fees in their annual reports and include consultancy fees capitalised as part of asset costs. Agencies should review their consultancy procurement approval policies and financial delegations
 - the Department of Premier and Cabinet should update or retire the out-of-date Memorandum.

3. To better support agencies' procurement of consultancy services, NSW Procurement should:
 - align the definition of a consultant for procurement and annual report purposes
 - provide tools to help agencies comply, such as checklists, or an automated process using a business intelligence system
 - better understand agencies' procurement needs, improve agency capability and accountability for procurement and compliance
 - require suppliers to provide and present information to agencies in a format that meets the requirements of the Framework
 - ensure new or amended directions are developed and issued with sufficient agency consultation and implementation time.
4. To improve the oversight of procurement of consultancy services, NSW Procurement should:
 - enhance the quality, accuracy and completeness of data collected from suppliers
 - centralise the monitoring of suppliers' compliance with the Standard Commercial Framework and enforce sanctions when suppliers breach the Framework
 - report the savings achieved by using the Framework and the outcomes of monitoring activities
 - amend the Direction to align its application to the *Public Works and Procurement Act 1912*, and include all NSW Government agencies except State Owned Corporations.



1. Introduction

1.1 Background

\$1.4 billion was spent on the top 20 business advisory services suppliers in the last five years

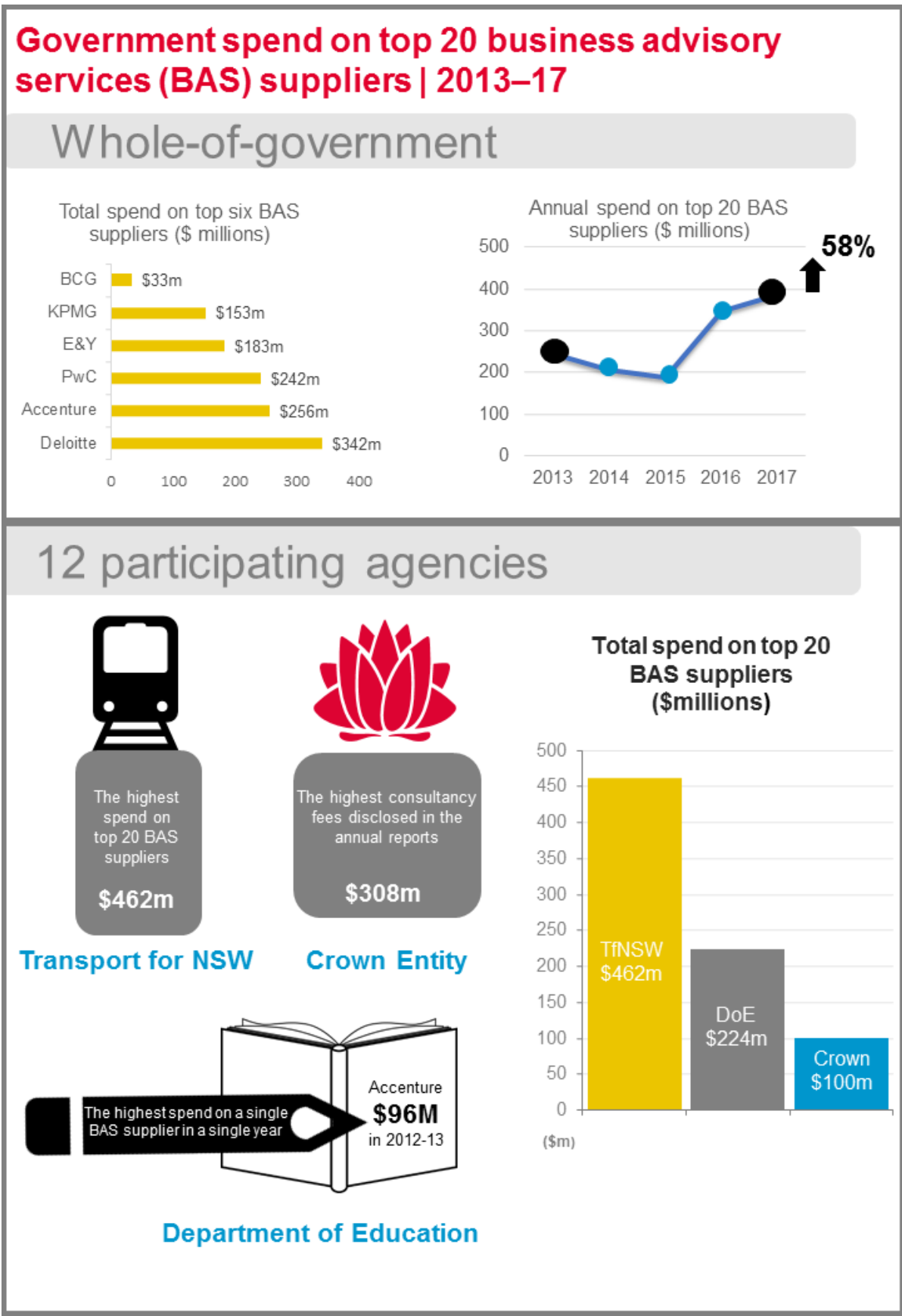
NSW Procurement collects and analyses information on government expenditure on business advisory services. According to their analysis, 20 advisory suppliers accounted for 90 per cent of business advisory services expenditure in 2015–16. 'Business advisory services' is defined more broadly than 'consultancy services'. It includes general, strategic and functional government or business-related advice and services.

From 8 January 2018, the NSW Procurement Board (the Board) introduced a Standard Commercial Framework (the Framework) for the top 20 suppliers with the highest expenditure across NSW Government agencies. The Framework applies to most of the engagement types in the Performance and Management Services (PMS) prequalification scheme. It helps agencies take advantage of pre-negotiated savings when procuring professional services. Of the 20 major suppliers, only Boston Consulting Group and McKinsey & Company do not comply with the standard terms and conditions, e.g. capped rates and discounts within the Framework, and on that basis are deemed to be 'non-compliant' suppliers.

We examined agency expenditure with the top 20 advisory suppliers between 2012–13 to 2016–17. Exhibit 1 presents our observations:

- \$1.2 billion of government spending on advisory suppliers was shared between only six suppliers. Boston Consulting Group (BCG) was deemed a non-compliant supplier in January 2018, but still ranked sixth in the top spend
- The annual spend on the top 20 advisory suppliers increased by 58 per cent between 2012–13 and 2016–17 driven by NSW Government's investment in Information and Communications Technology (ICT) system implementation and infrastructure programs.
- Transport for NSW (TfNSW) delivers significant infrastructure projects, and is the biggest purchaser of business advisory services in the NSW Government sector. It has spent more than \$462 million over the last five years.
- The Crown Entity disclosed the highest spend on consultancy fees in its annual report relative to all participating agencies. A significant portion related to the sale or lease of State assets. The Crown Entity acts as a residual entity for NSW whole-of-government transactions that are not the responsibility of any other State government agency. It collects State taxation, Commonwealth contributions and financial distributions from certain NSW agencies and pays appropriations to principal general government agencies.
- The Department of Education (DoE) spent \$96 million on Accenture in 2012–13, the highest spend on a single supplier in a reporting year across all participating agencies. The majority of its spend related to the build process of the software platform for the Learning Management and Business Reform Program.

Exhibit 1: Government spend on top 20 business advisory services suppliers in the last five years



Source: Whole-of-government data provided by NSW Procurement (unaudited); 12 participating agencies' data provided by agencies (unaudited); and extracts from agencies' annual reports.

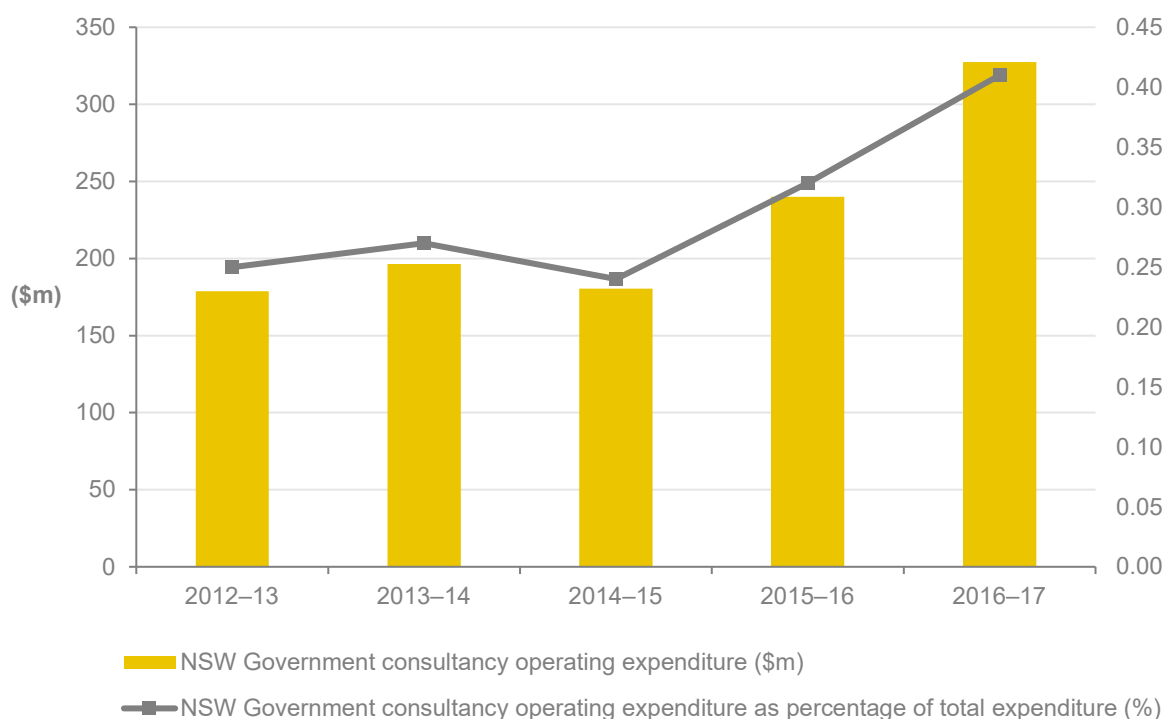
Total consultancy expenses rose 83 per cent since 2012–13

The NSW Government is a major buyer of consultancy services. It is important that government agencies obtain the best value from engagements of consultants. It is also important for government agencies to be fair, ethical and transparent in their procurement decisions.

In 2016–17, the NSW Government recorded over \$327 million as consultancy operating expenses in the Total State Sector Accounts - an increase of 83 per cent since 2012–13. The number does not include the consultancy spend capitalised as part of asset costs. In our 2017 Auditor-General's Report on State Finances, for example, we reported that the NSW Government spent \$298 million over the past five years on consultants specifically in relation to the sale or lease of State assets.

The government's use of consultants has increased in four out of the last five years. The proportion of consultancy operating expenditure to total expenses increased by 64 per cent since 2012–13 (0.25 per cent to 0.41 per cent) whereas total expenses increased by 12.8 per over the same period.

Exhibit 2: NSW Government consultancy operating expenditure and as a percentage of total operating expenditure from 2012–13 to 2016–17



Source: Audited Total State Sector's financial statements.

The NSW Procurement Board regulates the procurement of consultancy services

The objectives of the NSW Procurement Board are to:

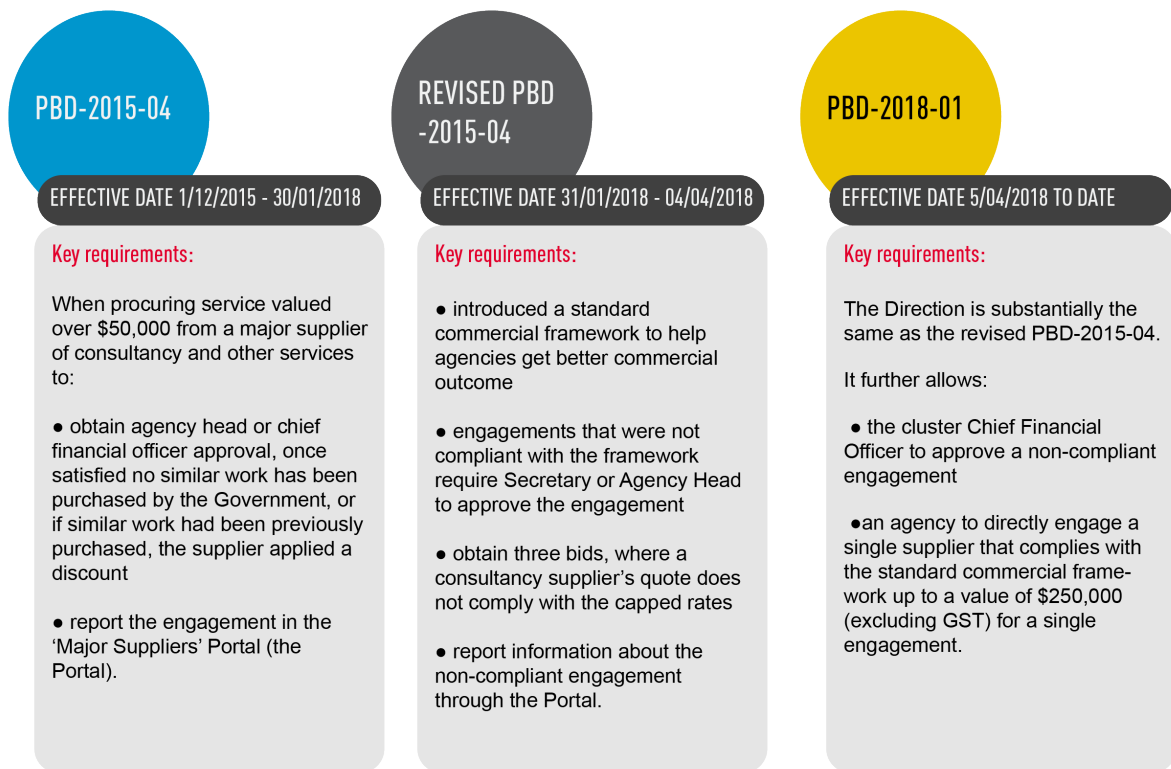
- develop and implement a government-wide strategic approach to procurement
- ensure value for money in the procurement of goods and services
- reduce procurement administrative costs for government agencies and simplify procurement processes.

Section 164 of the *Public Works and Procurement Act 1912* established the NSW Procurement Board. Today's NSW Procurement Board consists of the Secretary of the Department of Finance, Services and Innovation as Chair, and the Secretaries of principal departments. NSW Procurement, a division of the Department of Finance, Services and Innovation, provides administrative support to the NSW Procurement Board.

The NSW Procurement Board has a statutory power to issue Directions to agencies. Board Directions set rules and guidelines for procuring goods and services. The Board issued a mandatory Direction 'PBD-2015-04 Engagement of major suppliers of consultancy and other services' (the Direction) on 1 December 2015. The Direction was substantially revised on 31 January 2018 and then replaced by 'PBD-2018-01 Engagement of professional services suppliers' on 16 May 2018. These Directions outline the approval and reporting requirements when engaging suppliers of business advisory services.

The table below explains the key requirements of the three Directions.

Exhibit 3: The NSW Procurement Board Directions and key requirements



We examined agencies' compliance with the original and the revised 'PBD-2015-04 Engagement of major suppliers of consultancy and other services' between the period 1 July 2016 to 31 March 2018.

Definition of a consultant

Most agencies define consultants based on the definition that was used in the Department of Premier and Cabinet's Circular 'C2004-17 Guidelines for the Engagement and Use of Consultants'. This Circular was archived in 2012. It has not been replaced.

In the archived Circular, a consultant was defined as 'a person or organisation engaged under contract on a temporary basis to provide recommendations or high-level specialist or professional advice to assist decision-making by management. Generally, it is the advisory nature of the work that differentiates a consultant from other contractors'.

The concept in the archived Circular persists and is used by NSW Treasury to support their disclosure requirements for consultancy fees in agencies' annual reports. It is referenced in the active Premier's Memorandum 'M2002-07 Engagement and Use of Consultants' (the Memorandum).

Agencies disclose consultancy spend in Annual Reports and financial statements

The Annual Reports (Departments) Regulation 2015 and Annual Reports (Statutory Bodies) Regulation 2015 (the Regulations) mandate that agencies disclose:

- for consultancies costing equal to or more than \$50,000:
 - a) the name of the consultant
 - b) if the consultant has been engaged for a particular project, the title of the project
 - c) the actual cost of engaging the consultant
- for consultancies costing less than \$50,000:
 - a) the total number of engagements costing less than \$50,000
 - b) the total cost of all those engagements
- if no consultants were engaged by or on behalf of the agency during the reporting year, a statement of that fact.

The Premier's Memorandum 'M2002-07 Engagement and Use of Consultants' further outlines reporting arrangements for agencies to describe the nature and purpose of agencies' consultancies. Because the Annual Reports Regulations and Premier's Memorandum requirements refer to spending, it captures both amounts expensed and capitalised.

NSW Treasury mandates that agencies, in accordance with sections 9 and 45E of the *Public Finance and Audit Act 1983*, disclose consultancy fees expensed during the year in the notes of the financial statements. However, it doesn't require agencies to disclose the consultancy fees they have capitalised in asset costs. This explained some of the differences we noted between the consultancy spend disclosed in the financial statements and annual reports.

1.2 Scope of the audit

We examined 12 government agencies' compliance with relevant requirements for the procurement and reporting of consultancy services, and the effectiveness of the NSW Procurement Board in overseeing and supporting agencies' procurement of consultancy services. Appendix two lists participating agencies.

We designed the audit procedures to conclude whether, in all material respects:

- the agencies complied with the following NSW Government policies and regulations:
 - a) the initial Procurement Board Direction 'PBD-2015-04 Engagement of major suppliers of consultancy and other services' from 1 July 2016 to 30 January 2018, and the revised Direction from 31 January to 31 March 2018
 - b) annual reporting requirements of consultants in accordance with Annual Reports (Departments) Regulation 2015 and Annual Reports (Statutory Bodies) Regulation 2015 (the Regulation) in the 2016–17 financial reporting year
 - c) 'M2002-07 Engagement and Use of Consultants' (the Memorandum) in the 2016–17 financial reporting year
- the NSW Procurement Board (the Board) was effective in fulfilling its functions to support and oversee agencies' procurement of consultancy services, under section 172 of the *Public Works and Procurement Act 1912* to:
 - a) develop and implement procurement policies and issue directions to government agencies
 - b) monitor compliance with Board directions
 - c) develop appropriate procurement and business intelligence systems for use by government agencies
 - d) collect, analyse and publish data and statistics in relation to the procurement of goods and services by and for government agencies.

Our audit procedures included:

- examination of relevant documents, including agencies' procurement guidelines, financial statements, annual reports, and financial transactions relating to consultancy services
- conducting a survey on agencies' procurement practices and reporting of consultancy services
- interviews with key procurement staff and financial officers
- testing of consultancy engagements between 1 July 2016 and 31 March 2018
- analysis of agencies' spend on top 20 business advisory suppliers between 1 July 2012 to 31 March 2018.



2. Procurement and reporting of consultancy services

2.1 Procuring consultancy services

NSW Procurement published '[Consultancy Services](#)' on its ProcurePoint website to help agencies procure, engage and use consultancy services. Agencies refer to ProcurePoint for all NSW procurement policies, guidelines, and support.

The Procurement Board Direction 'PBD-2015-04 Engagement of major suppliers of consultancy and other services' (the Direction) outlines approved reporting requirements and exceptions for agencies engaging major suppliers of business advisory services.

Agencies did not comply with the Direction's approval and reporting requirements

The NSW Procurement Board issued its first Direction for procuring business advisory services on 1 December 2015. We examined 12 participating agencies' compliance with the Direction effective between 1 July 2016 and 31 March 2018. This included the requirements of the Direction before and after the major changes in January 2018.

The initial Direction required agencies, when procuring services valued greater than \$50,000 with a major supplier to:

- obtain approval from the Agency Head or Chief Financial Officer for the procurement after they are satisfied no similar work has been purchased by the government, or if work has been purchased, a discount has been offered by the supplier
- report the engagement in the Major Suppliers' Portal (the Portal).

We identified the following exceptions in our tests of consultancy engagements between 1 July 2016 to 30 January 2018:

- 12 agencies could not provide evidence to support their conclusion that no similar work had been purchased by the government, or that if similar work has been previously purchased by another agency, a significant discount was offered by the supplier. Some agencies said they relied on the information published in the Portal to perform this check but could not provide evidence to support this. Additionally, the Portal was not designed for users to readily assess whether the government had purchased similar work. NSW Procurement could not provide assurance on the completeness and accuracy of engagements listed in the Portal. We also found that the reported engagements (above \$50,000) with major suppliers in the Portal were not complete
- 9 agencies did not seek approval from their Agency Head or Chief Financial Officer (CFO) to procure services of more than \$50,000 with a major supplier. Some approvals were obtained from agencies' Deputy Secretary, because their financial delegation was greater than that of their CFO. However, the Direction explicitly required the Agency Head or CFO to approve these engagements
- 8 agencies did not report engagements in the Portal.

Agencies found compliance with the Standard Commercial Framework challenging

The Board substantially revised the initial Direction on 31 January 2018 to simplify the approval and reporting process for the procurement of business advisory services, and introduced the Standard Commercial Framework to ensure value for money. The revised Direction outlines the following changes:

- the Secretary or Agency Head only needs to approve engagements of business advisory services that are not compliant with the Framework
- agencies obtain three bids, where a supplier's quote did not comply with the capped rates
- agencies report non-compliant engagements through the Portal.

The Framework includes the following elements:

- standard definitions for engagement and role types
- capped rates for each standard engagement and role type
- discount structure
- capped expenses
- target resource mix.

The Framework helps agencies access procurement savings available through the PMS scheme. The Secretary or Agency Head must approve business advisory service engagements that do not comply with the Framework. However, in practice agencies found it difficult to check whether suppliers complied with the Framework because:

- many of the elements of the Framework cannot be checked before or during the engagement and information required from suppliers is not always available. Major suppliers have certain obligations to report data to NSW Procurement, but the information required is not sufficient for agencies to check all elements of compliance
- the Framework is not publicly available. It is published in the Major Suppliers' Portal, which requires a government email address to register and log in. This reduces the visibility of the Framework for compliance purposes, especially for agencies with decentralised procurement functions or agencies that rely on individual business divisions to check procurement compliance.

Therefore, compliance costs and risks have increased and the intended benefits may not have been achieved. The following hypothetical example demonstrates the challenges of checking compliance with the Framework.

Exhibit 4: Checking compliance with the Standard Commercial Framework



The 'Department of Music' called for quotes from three suppliers to provide advisory services for future workforce changes in February 2018. The procurement officer Lily has recently been trained to check compliance with the Standard Commercial Framework for business advisory services engagements. Three suppliers were selected from the PMS scheme.

Elements in the Framework	Tasks	Outcome
There are standard definitions for 16 engagement types with a brief description for each.	Lily thought the engagement could be either 'Government & Business Strategy' or 'Change Management'. She decided to go for 'Change Management'.	✓ Lily selected 'Change Management'.
There are standard definitions for consultants' role types with set resource titles to ensure like-for-like. Comparison of roles and rates across supplier responses.	Two suppliers' quotations did not specify the role titles of the consultants they planned to use. One supplier's quotation used the Framework's set role titles.	! Lily could not evaluate the quotation from two suppliers, due to missing role types. Lily continued checking compliance for the supplier who specified the role types.
Daily capped rates set the maximum ceiling rates consultants can charge based on current market rates.	To check the daily capped rates, suppliers need to provide a daily rate based on eight hours of work. Lily could only find an hourly rate and total hours of work for each role title. She manually calculated the daily rate for seven consultant titles.	! Lily found the capped rates for 'Government & Business Strategy' and the rates for 'Change Management' were quite different in the Framework. The daily rates Lily calculated based on the supplier's quote were above the capped rates for 'Change Management' but below 'Government & Business Strategy'. Lily was unsure if she selected the correct engagement type in the first place.
Discounts must be applied to capped rates based on number of supplier resources engaged and the duration and type of the engagement.	Lily believed the project would take two months, but this could change due to unforeseen circumstances. Lily could not determine the size of the consultant's team as the supplier provided the total hours for each consultant title, but not the number of consultants.	! Lily could not decide the right discount factor for either type of engagement.
Disbursements for consultants' expenses are capped at seven per cent of engagement fees and the disbursement policy is prescribed for 18 cost types.	The supplier's quote stated out of pocket expenses would be recharged to the Department. From Lily's experience, suppliers rarely provide a detailed breakdown of disbursements in their invoices.	! Lily could not check whether the supplier's plan for expense disbursement would comply with the Framework.

Key: ✓ tasks completed; ! tasks failed.

We tested consultancy expenditure incurred between 31 January and 31 March 2018 for three agencies and observed that:

- no agency requested approval by the Agency Head or Secretary for engagements deemed non-compliant with the Framework
- 1 agency did not obtain three bids before engaging a supplier that did not comply with the capped rates
- 3 agencies did not report non-compliant engagements through the Portal.



Recommendations

To address the challenges agencies face complying with the Framework, the NSW Procurement should:

- centralise the monitoring of suppliers' compliance
- require suppliers to provide and present information to agencies in a format that meets the requirements of the Framework
- provide tools to help agencies comply, such as checklists, or an automated process using a business intelligence system.

Agencies should improve compliance with the revised Direction by:

- aligning policies and procedures to reflect the requirements of the Direction
- implementing internal controls to effectively identify, resolve and report breaches of compliance with procurement requirements
- providing procurement training and awareness programs to relevant staff.

2.2 Annual reporting of consultancy expenditure

The Annual Reports (Departments) Regulation 2015 and Annual Reports (Statutory Bodies) Regulation 2015 (the Regulations) require agencies to disclose details of consultancy engagements in their annual reports. The level of disclosure depends on whether the engagement is over or under the \$50,000 threshold.

The Premier's Memorandum 'M2002-07 Engagement and Use of Consultants' (the Memorandum) prescribes a different dollar threshold of \$30,000 and includes additional requirements for agencies to describe the nature and purpose of consultancies, and categorise the nature of consultancy engagements into the following areas:

- finance and accounting/tax
- information technology
- legal
- management services
- environmental
- engineering
- organisational review
- training.

Thresholds for reporting consultancy expenditure conflict

A dollar threshold of \$30,000 was prescribed in the annual report regulations in 2005. In 2010, the regulations were updated and the threshold increased to \$50,000. However, the Department of Premier and Cabinet's (DPC) Memorandum still refers to the \$30,000 threshold. This Memorandum also refers to an archived Premier's Circular 'C2000-47 Guidelines for the Engagement and Use of Consultants' for the definition of the consultant. The Memorandum is an active and mandatory government guideline, but the \$30,000 threshold conflicts with the annual report regulations.

All 12 participating agencies applied the \$50,000 threshold, but disclosed the categories of consultancy fees mandated by the Memorandum when reporting consultancy spends in their 2016–17 annual reports.



Recommendations

The Department of Premier and Cabinet should update or retire the out-of-date Memorandum.

Definition of consultants

We surveyed the Chief Procurement and Chief Finance Officers of the 12 participating agencies and found they defined consultants by reference to a former Premier's Circular 'C2004-17 Guidelines for the Engagement and Use of Consultants' (the Circular). A consultant was defined as 'a person or organisation engaged under contract on a temporary basis to provide recommendations or high-level specialist or professional advice to assist decision-making by management. Generally, it is the advisory nature of the work that differentiates a consultant from other contractors'. Two participating agencies in the Transport cluster further narrowed the definition of consultants to engagements that 'assist strategic decision making by management'. This definition is applicable to all Transport cluster agencies.

As part of the government-wide procurement policy review, the Department of Premier and Cabinet identified some circulars and memoranda that were outdated and/or repetitive. The Circular was archived as part of this process in 2012. There has been no replacement or updated government guideline on the definition of consultants since then.

Agencies used the term 'consultants' inconsistently in their annual report disclosures

While most participating agencies defined 'consultants' consistently with the archived Circular, the application of the definition varied significantly, reducing the reliability of agency reporting of consultancy fees in financial statements and annual reports.

We asked the Chief Procurement and Finance Officers at participating agencies to classify six different types of professional services engagements as 'consultant' or 'contractor'. The variability in the responses indicated it is likely the term was inconsistently applied in practice. In some instances, the Chief Procurement Officer and the Chief Finance officer at the same agency provided different responses.

Exhibit 5: Participating agencies' survey responses for classifying expenditure as 'consultant' or 'contractor'

Scenario	Consultant (%)	Contractor (%)
A firm is engaged to:		
1. evaluate the feasibility of an innovative technology	76	24
2. provide advice on implementation a new Asset Management Plan	81	19
3. conduct training to the executive team on Related Party Declarations	10	90
4. design a new organisation structure	71	29
5. assist the design of key performance indicators for asbestos land contamination management	24	76
6. undertake a valuation of complex financial assets.	48	52

Source: Audit Office compliance survey.

Some agencies have stringent rules in their financial delegations and approval process for engaging consultants. For example, one agency requires the Agency Head's approval for engaging all consultants, regardless of the value of the consultancy services while other agencies have a dollar threshold of \$50,000 before the Agency Head's approval is required. Onerous approval requirements could lead to inadvertent or deliberate misallocation.

Our testing found that eight agencies under-reported consultancy expenditure in their 2016–17 annual reports. Of these eight agencies, three did not report expenditure on consultants that had been capitalised in asset costs in their annual report disclosures. One agency did not report consultancy services incurred by its subsidiaries in its annual report.



Recommendations

Agencies should review their current process of capturing, analysing and reporting consultancy fees in their annual reports, including:

- reviewing their consultancy procurement approval policies and financial delegations
- incorporating consultancy fees capitalised as part of asset costs to ensure the completeness of annual report disclosures.

NSW Procurement uses different terms for consultancy and advisory services

The definition of 'consultants' for disclosure in agency annual reports is quite different to the definition of 'business advisory services' or 'professional services' in the PMS Scheme. 'Business advisory services' is defined more broadly than 'consultancy services'. It includes general, strategic and functional government or business-related advice and services. There were significant differences between some participating agencies total spend with the top 20 advisory suppliers, and their disclosure of consultancy fees with these suppliers in their annual reports and financial statements in the last five years.



Recommendations

NSW Procurement should align the definition of a consultant for procurement and annual report purposes.



3. Effectiveness of the NSW Procurement Board

3.1 Role and functions of the NSW Procurement Board

The NSW Procurement Board (the Board) oversees the government's procurement system, sets policy and ensures compliance. It has the statutory power to issue directions to NSW Government agencies and monitor agency compliance. The Board's functions are supported by NSW Procurement within the Department of Finance, Services and Innovation (DFSI). The Board accredits agencies to conduct their own procurement of goods and services under the agency accreditation scheme.

The Board's objectives are to:

- develop and implement a government-wide strategic approach to procurement
- ensure best value for money in the procurement of goods and services by and for government agencies
- improve competition and facilitate access to government procurement business by the private sector, especially by small and medium enterprises and regional enterprises
- reduce administrative costs for government agencies associated with procurement
- simplify procurement processes while ensuring probity and fairness.

Section 164 of the *Public Works and Procurement Act 1912* (the Act) establishes the NSW Procurement Board. Section 172 of the Act establishes the functions of the Board. In this audit, we assessed the effectiveness of the following Board functions related to the procurement of consultancy services:

- develop and implement procurement policies, and issue directions to government agencies
- monitor compliance by government agencies with the requirements of the Act including the NSW Procurement Board Directions
- develop procurement and business intelligence systems for use by government agencies
- collect, analyse and publish data and statistics in relation to the procurement of goods and services by and for government agencies.

3.2 Develop and implement procurement policies and directions

The NSW Procurement Board introduced a Standard Commercial Framework

Prequalification schemes provide agencies with access to prequalified suppliers. Prequalified suppliers meet the quality, safety and viability standards of the NSW Government. NSW Procurement has published 25 procurement prequalification schemes managed by different agencies. Out of the 25 schemes, 23 are available for use by the whole-of-government. Some agencies manage their own prequalification schemes to deal with specific needs.

Agencies can procure business advisory services through the PMS prequalification scheme managed by the NSW Procurement. The PMS scheme includes about 2,600 prequalified suppliers and covers 16 engagement types, six capability groups and 28 specific capabilities.

The Board implemented a Standard Commercial Framework within the PMS Scheme to drive greater value from prequalified suppliers. The Framework applies to the majority of engagement types under the PMS scheme. All suppliers within the PMS scheme have the opportunity to accept the standard commercial terms in the Framework. Use of the PMS scheme is not mandatory and agencies can choose to use other schemes or transact outside of the existing schemes to procure consultancy services. Procurement Board Direction 'PBD-2018-01 Engagement of professional services suppliers' (the Direction) mandates the Framework within the PMS scheme. However, the Framework does not apply if agencies transact outside of the scheme.

To encourage the use of the PMS scheme and promote the benefits of the Framework, we have recommended the Board publish data on savings achieved under the Framework and make it easier for agencies to comply with the Direction.

The Direction contradicted the Act by omitting some entities

All NSW Government agencies, with the exception of State Owned Corporations, must comply with the NSW Procurement Board's Direction.

The NSW Procurement Board Directions deal with procurement of services by or for a government agency within the meaning of the Act. Section 176 of the Act specifies compliance as an obligation of all government agencies. Section 162 of the Act defines a government agency as:

- a government sector agency (within the meaning of the *Government Sector Employment Act 2013*)
- a NSW Government agency
- any other public authority that is constituted by or under an Act or that exercises public functions (other than a State Owned Corporation)
- any State Owned Corporation prescribed by the regulations.

The Board does not require NSW Government entities established under the *Corporations Act 2001* to comply with the Direction. This is contrary to the Act as only State Owned Corporations should be exempted.



Recommendation

NSW Procurement should amend the Direction to align its application to the *Public Works and Procurement Act 1912*, and include all NSW Government agencies except State Owned Corporations.

NSW Procurement was ineffective in agency engagement

NSW Government agencies rely on NSW Procurement to provide timely and tailored procurement guidance and expertise. The NSW Procurement Board Strategic Directions Statement has three objectives:

- driving value for money
- delivering quality government services
- aligning with business needs.

The initial Direction 'PBD-2015-04' prescribed the approval and reporting requirements for engagements over \$50,000. It approached procurement from a compliance perspective but added little in the way of helping agencies extract better value for money when engaging consultants. The Major Suppliers Portal sought to help agencies better understand the types of engagements already procured by government agencies, the quality, capabilities and experience of consultancy firms. Data quality issues and functionality limitations of the Portal, meant agencies did not use the Portal effectively.

Participating agencies provided feedback in our survey that they would like NSW Procurement to improve how they engage with agencies when designing Board Directions. Agencies considered a principles-based and risk-focused approach in the development and implementation of procurement directions and guidelines might better support their procurement needs. Agencies could benefit from the Board's targeted support, depending on the level of risks and size of procurement engagements, in their market engagement activities.

NSW Procurement provided insufficient time for agencies to implement policy changes

Of the 21 surveyed respondents, 38 per cent advised that NSW Procurement did not provide reasonable notice for agencies to implement new or amended policy directions. Agencies felt that in some instances they were unable to implement the changes in the designated timeframe, and they would prefer NSW Procurement to adopt a 'business partner' approach. This would help NSW Procurement better understand agencies' business needs and help them achieve savings in procurement of professional services.

NSW Procurement conducted extensive briefings with agencies during 2017. However, negotiations with certain suppliers led to extensive delays in approving the Standard Commercial Framework (the Framework) and the revised Procurement Board Direction 'PBD-2015-04'. The change was announced via Procurement Alert on 22 December 2017, with the revised Board Direction approved and published in January 2018. The timing and sequence of the changes, during the Christmas and New Year closedown period, caused difficulties at some agencies publishing and communicating the governance and compliance changes within their organisations.



Recommendations

NSW Procurement should:

- better understand agencies' procurement needs
- ensure new or amended directions are developed and issued with sufficient agency consultation and implementation time.

3.3 Monitor compliance with the Board directions

Compliance monitoring depends on the reliability of agency self-reporting

The Board is responsible for overseeing and monitoring agency compliance with Board Directions. NSW Procurement relies on agencies' internal assurance activities to check compliance and performed limited checks of agency compliance with the mandatory Direction 'PBD-2015-04'. NSW Procurement facilitates reporting of non-compliance via the Major Suppliers' Portal. However, the accuracy of this method relies on agencies accurately self-reporting their non-compliant engagements.

The Performance and Management Services (PMS) prequalification scheme is not a mandatory scheme. Agencies can often find the same services available in schemes maintained by other government agencies. The Framework does not apply if agencies transact outside of the scheme. The absence of complete information limits the ability of NSW Procurement to monitor and enforce compliance with the Framework.

NSW Procurement receives data from major compliant suppliers of business advisory services under the PMS Scheme.

The monthly submission from these suppliers includes the following information:

- pricing model (fixed price, time and material)
- consultant engagement type by agency
- estimated engagement cost
- invoice details charged for the engagement
- daily rates charged for each level of the consultants (e.g. partner, direction, senior manager).

NSW Procurement performs analytical and compliance reviews of the data against the capped rates prescribed in the Framework, but does not currently have the required information to check supplier compliance with other elements in the Framework (for example, discounts and capped disbursements).

NSW Procurement has not enforced any penalties for non-compliance upon suppliers

The effectiveness of the analytics and compliance reviews depends on the quality of the data provided by major suppliers. NSW Procurement's assurance activity to ensure the completeness and accuracy of suppliers' data has been limited. NSW Procurement has communicated data gaps and compliance issues to some suppliers. To date, NSW Procurement has not enforced any penalties for non-compliance. In the absence of sanctions for compliance breaches, suppliers' compliance with the Framework is unlikely to improve.

Our sample testing noted three instances where suppliers did not comply with the Framework and none of these engagements was reported on the Portal as non-compliant.



Recommendations

NSW Procurement should:

- improve agency capability and accountability for procurement and compliance
- improve the data quality provided by suppliers and enforce sanctions when suppliers breach the Framework.

3.4 Develop procurement and business intelligence systems, and publish data

NSW Procurement has insufficient data for effective oversight and reporting

Section 172 of the Act requires the NSW Procurement Board to develop appropriate procurement and business intelligence systems for use by government agencies. NSW Procurement utilises the following systems to carry out its functions:

- Major Suppliers' Portal (the Portal) is a portal used by agencies to report non-compliant business advisory services engagements
- Spend Cube (the Cube) captures aggregated agency spending data
- Supplier Information Dashboard (SID) is used by NSW Procurement to capture, analyse and report monthly major advisory suppliers' data.

NSW Procurement does not have access to agencies' or suppliers' systems that process transactions for business advisory services engagements. It receives separate copies of data sets from agencies and suppliers, which increases the risk of data gaps and overlaps. Systems and data quality issues mean NSW Procurement has not been able to publish data and statistics on the procurement of business advisory services by and for government agencies, as required by the Direction and the Act.

NSW Procurement has collected and analysed data provided by the compliant advisory suppliers and evaluated savings achieved under the Framework. NSW Procurement intends to publish relevant data and statistics when they resolve data quality issues.

The NSW Government could benefit from a procurement system that facilitates the engagement of business advisory services, simplifies the compliance process and addresses known data quality issues. NSW Procurement considers a central vendor management system (VMS) would significantly improve data visibility across all suppliers. It would provide a single system for agencies and suppliers to process transactions for professional services engagements, which could be configured to monitor compliance with the Framework. The effectiveness of the VMS would be increased if suppliers were required to use it to process all transactions for professional services.

In our 2017 Auditor-General's Report to Parliament on Contingent Workforce, we commented on the benefits of using a vendor management system 'Contractor Central', implemented by the Department of Education, to improve value for money and better reporting. However, we concluded that 'Contractor Central' would only address some of the issues highlighted in that report. Better workforce planning and performance monitoring are needed to ensure an agencies' workforce, including contingent workers, meets its business needs and represents value for money. Similarly, in the context of procurement and reporting of consultancy services, better procurement support, monitoring and reporting of benefit realisation by NSW Procurement are important to ensure value for money in the engagement of consultants.



Recommendation

NSW Procurement should enhance the quality, accuracy and completeness of data collection, and report on the outcomes of their analysis and monitoring activities.

Section two

Appendices



Appendix one – Responses from agencies

Response from Department of Finance, Services & Innovation



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ABN 81 913 830 179 | www.finance.nsw.gov.au

Office of the Secretary

Our ref: BN18/1846
Your ref: D1814633

Ms Margaret Crawford
Auditor-General of NSW
Audit Office of NSW

Via email: margaret.crawford@audit.nsw.gov.au

Dear Ms Crawford *Margaret*

Thank you for your letter of 27 July 2018 regarding the Auditor-General's report on procurement and reporting of consultancy services and the opportunity to provide a formal response on behalf of the Department of Finance, Services and Innovation (DFSI) to be incorporated into the final report.

DFSI agrees with the audit report findings and supports the recommendations outlined in the report. The standard commercial framework has introduced a consistent approach to the procurement of consulting services for the first time across NSW government agencies with four key elements that were identified and implemented as best practice by the Procurement Benefits Program:

- Standardised definitions for engagement types and resource types.
- Capped resource rates - a matrix of daily rates by engagement type and resource type.
- Discount structure - a matrix of discount percentages by project duration and team size.
- Capped expenses - a table of expense types with maximum fees payable and a 7% total expenses cap for any individual project.

The Business Advisory Services Program that was completed by NSW Procurement (NSWP) in 2017 included a comprehensive market engagement and benchmarking exercise which removes the effort required for repetitive market engagement by agencies seeking resource rates and discounts.

The standard commercial framework allows agencies to focus on defining business requirements and project deliverables. Agencies are able to achieve improved commercial arrangements through competitive bidding for specific projects as suppliers seek to win work in particular subject areas or to optimise the utilisation rate of the resources available at the time of the agency's project.

There are now more than 1,000 suppliers that have accepted the standard commercial framework and only three non-compliant suppliers. NSWP estimates savings of \$19 million per annum based on expenditure data provided by suppliers, with a further \$5 million per annum from category and demand management activities.

The introduction of a Vendor Management System (VMS) by NSW Procurement will further streamline the procurement of professional services by preconfiguring the standard commercial framework elements in a common system used by agencies and suppliers. NSW Procurement is also implementing a range of measures to assist agencies to increase internal capability in procuring professional services.

We agree with the recommendations outlined in the report that require action by NSW Procurement. We have summarised our response to each of these recommendations as follows:

Report recommendations	Proposed NSW Procurement (NSWP) responses
<p>To address the challenges agencies face complying with the Framework, NSWP should:</p> <ul style="list-style-type: none"> centralise the monitoring of suppliers' compliance. require suppliers to provide and present information to agencies in a format that meets the requirements of the Framework. 	<p>NSWP has developed and published templates that enable suppliers to provide and present information in a format that messages the requirements of the framework, however this is a manual process with significant data quality risks and does not include the majority of suppliers. NSWP has also been collecting data from the top 20 suppliers by spend since January 2018, however this is a manual process with significant data quality risks and does not include the majority of suppliers.</p> <p>NSWP will implement a VMS by supplier to allow all transactions for the top 5 suppliers by spend to be centrally monitored for compliance. Once implemented for the top 5 suppliers NSWP will progressively roll out the VMS to all other PMS Scheme suppliers to enable NSWP to centrally monitor compliance for 100% of suppliers without document-based templates and manual processing.</p>
<p>To address the challenges agencies face complying with the Framework, NSWP should provide tools to help agencies comply, such as checklists, or an automated process using a business intelligence system.</p>	<p>NSWP is progressively improving the templates and other published information to help agencies comply with the commercial framework. In some cases templates will be replaced by automation configured in the VMS. NSWP will also investigate eLearning options for procuring professional services (for example video tutorials, self-paced online learning).</p>
<p>NSWP should align the definition of a consultant for procurement and annual report purposes.</p>	<p>NSWP will work with Department of Premier and Cabinet and Treasury to develop and publish a standard definition for consultancy engagements that will be used for annual reporting compliance and any procurement-related assessment. NSWP proposes the use of the following definition, subject to agreement with Department of Premier and Cabinet and Treasury:</p> <p>"Consultancy" services are engaged under contract on a temporary basis to provide recommendations or high level specialist or professional advice to assist decision making by management. Generally, it is the advisory nature of the work that differentiates it from other tasks commonly performed by contractors.</p>

Report recommendations	Proposed NSW Procurement (NSWP) responses
NSWP should amend the Direction to align its application to the Public Works and Procurement Act 1912, and include all NSW government agencies except State Owned Corporations.	NSWP will amend and re-publish Procurement Board Direction 2018-01 to align its application to the Public Works and Procurement Act 1912, and include all NSW government agencies except State Owned Corporations.
NSWP should better understand agencies' procurement needs.	<p>NSWP responds to ad hoc agency queries on a regular basis. NSWP leads the Category Management Working Group (CMWG) for Professional Services with monthly meetings to allow for management-level representation from each cluster to share insights, provide status updates and endorse (or not) proposed initiatives.</p> <p>NSWP will work with each cluster to convene quarterly performance reviews to discuss cluster-specific insights, status updates, requirements, issues and risks. Agency engagement will be reported by NSWP as part of the wider Category Management Plan for Professional Services.</p>
NSWP should ensure new or amended directions are developed and issued with sufficient agency consultation and implementation time.	<p>For new or materially amended directions, NSWP will consult with agencies through all levels of procurement governance as follows:</p> <ul style="list-style-type: none"> • CMWG • Procurement Leadership Group (PLG) • Procurement Board
NSWP should improve agency capability and accountability for procurement and compliance.	<p>NSWP publishes a range of information and delivers ad hoc briefing sessions as requested to improve agency capability.</p> <p>NSWP will define recommended minimum levels of procurement experience and/or qualifications for agency staff involved in procuring professional services, linked to the Procurement Professionals Capability Set as published by the NSW Public Service Commission, and in consultation with agencies. The proposal will be distributed to the CMWG for endorsement and the PLG for approval.</p>
<p>NSWP should:</p> <ul style="list-style-type: none"> • improve the data quality provided by suppliers and enforce sanctions when suppliers breach the Framework. • enhance the quality, accuracy and completeness of data collection, and report on the outcomes of their analysis and monitoring activities. 	<p>NSWP implemented a supplier data escalation process in June 2018 to address data quality provided by the top 20 suppliers by spend. NSWP will extend this escalation process to apply sanctions when suppliers breach the standard commercial framework.</p> <p>NSWP will provide access to the spend dashboard to CPOs and their nominated representatives. Data quality, accuracy and completeness of data will be significantly improved for all suppliers once a VMS has been implemented.</p> <p>Data quality and compliance will be significantly improved for all suppliers once a VMS has been implemented.</p>

If you would like more information, please contact Greg Grebert, Director Category Management – Professional Services, NSW Procurement, via email at greg.grebert@finance.nsw.gov.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Martin Hoffman', with a stylized flourish at the end.

Martin Hoffman
Secretary

23 August 2018

Response from Department of Education



Education

Ms Margaret Crawford
Auditor-General of NSW
Audit Office of New South Wales
GPO Box 12
SYDNEY NSW 2001

DGL18/590

Dear Ms Crawford

Thank you for your letter of 27 July 2018 providing the Department of Education with an opportunity to respond to the Auditor-General's report on procurement and reporting of consultancy services.

Please find attached a copy of the Department of Education's response to the report. The department supports the audit process, and agrees with the recommended actions which will strengthen our existing control and reporting process.

I would like to thank the Audit Office of New South Wales for their work in completing the report.

Yours sincerely

Mark Scott AO
SECRETARY
DEPARTMENT OF EDUCATION
23 August 2018

NSW Department of Education

105 Phillip Street Parramatta NSW 2150

GPO Box 33 Sydney NSW 2001

1300 679 332

education.nsw.gov.au

Key Finding and Recommendation	Recommendation	Comment by Department of Education	Proposed actions	Actions Complete by
<p>1. Procuring consultancy services</p> <p>Agencies did not comply with the Direction's approval and reporting requirements</p>	<p>Agencies should improve compliance with the revised Direction by:</p> <ul style="list-style-type: none"> aligning policies and procedures to reflect the requirements of the Direction implementing internal controls to effectively identify, resolve and report breaches of compliance with procurement requirements providing procurement training and awareness programs to relevant staff. 	<p>The department has endeavoured to adhere to implementing effective internal controls, however, the Auditor's comments relate to policies associated with the Major Consultancy Portal which was not a fit for purpose tool, hence has provided challenges for Agencies with full implementation. The Direction has had several changes in a short time frame, therefore, the communication and implementation of procedures to comply have been difficult, especially in a large Agency. Procurement training and awareness is in place.</p>	<p>The department has reviewed its internal processes and workflows to ensure alignment with the current NSW Procurement guidance concerning procuring consultancy services.</p>	<ul style="list-style-type: none"> The department has aligned its internal policies and procedures to match the current guidance provided by the Department of Finance, Services and Innovation (DFSI). This action is complete. The department has reviewed its procedures for approval, data capture and reporting of consultancy use. A revised process and workflow has been approved by the Executive. It is expected that the revisions will be fully implemented by December 2018. The department has an existing education program that enhances procurement knowledge throughout the department. The education program will be modified to strengthen policy requirements and messages associated with consultancy use and reporting requirements. The program will be updated by September 2018.

NSW Department of Education
105 Phillip Street PARRAMATTA NSW 2150 1300 679 332 www.education.nsw.gov.au

<p>2. Annual reporting of consultancy expenditure</p> <p>Definition of consultants</p> <p>Agencies used the term 'consultants' inconsistently in their annual report disclosures.</p>	<p>Agencies should review their current process of capturing, analysing and reporting consultancy fees in their annual reports, including:</p> <ul style="list-style-type: none"> reviewing their consultancy procurement approval policies and financial delegations incorporating consultancy fees capitalised as part of asset costs to ensure the completeness of annual report disclosures. 	<p>The Auditor noted the inconsistencies with the application of the definition of consultants and recommended NSW Procurement liaise with DPC and NSW Treasury to align reporting requirements and provide guidance to Agencies on definitions. This guidance is fundamental to the reporting framework and sets the agenda for all Agency policy and procedures for approvals and data capture. Until definitions are clarified and reporting requirements aligned there may continue to be reporting inconsistencies at Agency level. Clarification on the definition of consultancy would be welcomed by the department.</p>	<p>The department will review its current process in line with the recommendation and make appropriate improvements to reporting to ensure accuracy of data.</p> <p>The department will review and consider how consultancy fees identified as a capitalised expenditure will be reported to ensure completeness of disclosures.</p>	<ul style="list-style-type: none"> The department has conducted a review of the consultancy approval process. Modifications to the department's work flow for consultancy approval have been proposed and due for implementation by December 2018. The department has commenced a review of data collection procedures to ensure consultancy fees capitalised as part of asset cost are captured and reported. Due for implementation by December 2018.
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NSW Department of Education
105 Phillip Street PARRAMATTA NSW 2150 1300 679 332 www.education.nsw.gov.au

Response from Department of Family and Community Services



Ms Margaret Crawford
Auditor-General of NSW
Audit Office of New South Wales
GPO Box 12
Sydney NSW 2001

31 AUG 2018

Ref EAP18/7453

Dear Ms Crawford

Auditor-General's report on procurement and reporting of consultancy services

Thank you for the opportunity to provide a formal response on behalf of the Department of Family and Community Services (FACS) on the report.

FACS supports all the key recommendations of the report.

FACS is in the process of reviewing its internal policies to increase alignment to the NSW Procurement Board Direction. This will be achieved by strengthening internal controls, increasing the identification, reporting and resolution of breaches.

FACS has sound internal review processes in place for the reporting of consultancy fees in the Annual Report.

FACS also supports updating the Department of Premier and Cabinet Memorandum and the initiatives by NSW Procurement to better align the definition of a consultant with the annual reporting requirements. Increased support from NSW Procurement for agencies, including a more consistent definition of what constitutes a consultancy engagement, will hopefully remove any inconsistencies and opportunities for error.

The report provides valuable findings on the engagement of consultancy services by NSW Government agencies and FACS supports the increased oversight of suppliers by NSW Procurement in the procurement of consultancy services.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'MGT', with a long horizontal flourish extending to the right.

Michael Coutts-Trotter
Secretary

Department of Family and Community Services
Postal address: Locked Bag 10, Strawberry Hills NSW 2012
[W www.facs.nsw.gov.au](http://www.facs.nsw.gov.au) | [E Secretary.FACS@facs.nsw.gov.au](mailto:Secretary.FACS@facs.nsw.gov.au)
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Response from Department of Industry



Office of the Secretary

SECO18/208
Your ref: D1814633

27 August 2018

Ms Margaret Crawford
Auditor-General of NSW
Audit Office of New South Wales
GPO Box 12
SYDNEY NSW 2001

Dear Ms Crawford

**Re: Auditor-General's report on
procurement and reporting of consultancy services**

Thank you for your letter of 27 July 2018 enclosing a copy of your final report on the procurement and reporting of consultancy services by NSW Government agencies.

I would also like to thank you for providing the Department of Industry with the opportunity to comment on the draft report, and for your consideration of our comments during the preparation of the final report.

The department supports and welcomes the recommendations that have been made in the final report.

We note your finding regarding the complexity of the Standard Commercial Framework and its impact on compliance by agencies. We look forward to working with NSW Procurement on changes to the Framework arising out of your recommendations.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'SD', written over a horizontal line.

Simon Draper
Secretary

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Tel: +612 9338 6600 Fax: +612 9338 6860 www.industry.nsw.gov.au ABN: 72 189 919 072

Response from Department of Justice



Office of the Secretary
Justice Precinct Offices
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Tel 02 8688 7777 | Fax 02 8688 7980
www.justice.nsw.gov.au

Ms Margaret Crawford
Auditor-General for New South Wales
Level 15, 1 Margaret Street
Sydney NSW 2000

Dear Auditor-General,

A handwritten signature in black ink, appearing to read 'Margaret', written over a circular stamp or mark.

I am writing in response to your letter of 27 July 2018. The Department acknowledges receipt of your letter and your invitation to provide a response.

In principle we have no fundamental disagreements with your findings. We note that the report provides suggestions for improving compliance for all agencies' consideration.

Please find below Justice's response to the Audit Office's suggestions for improvement.

Ref.	Key Recommendation	Department Comment(s)
1	<ul style="list-style-type: none">Align their policies and procedures to reflect the requirements of the Direction	<ul style="list-style-type: none">The Department regularly reviews its processes and documents to ensure alignment with the Board Direction and has published a matching Secretary's Direction.To ensure the Department is keeping up to date with changes in policies and procedures, representatives from the Procurement team are involved in the whole of government working groups. In addition, the Chief Procurement Officer (CPO) is part of the Procurement Leadership Group and the Deputy Secretary of Corporate Services is part of the Procurement Board.
	<ul style="list-style-type: none">Implement internal controls to effectively identify, resolve and report breaches of compliance with procurement requirements	<p>The Department has established the following controls:</p> <ul style="list-style-type: none">All procurements above \$150,000 inc. GST are reviewed and endorsed by Procurement before a tender can be published.A clear process and register is in place to capture non-compliance. Procurement and Professional Standards from Human Resources is working closely to address procurement breaches.

Ref.	Key Recommendation	Department Comment(s)
	<ul style="list-style-type: none"> Provide procurement training and awareness programs to relevant staff 	<p>The Department has established the following initiatives:</p> <ul style="list-style-type: none"> The Department invited NSW Procurement to deliver a series of training sessions on the application of the Standard Commercial Framework on consultancy. Three trainings have been conducted to date. To increase awareness, regular updates are provided through a variety of communication channels such as Community of Practice/Forum, Procurement Business Partners meetings, Secretary's Directions and Circulars.
2	<ul style="list-style-type: none"> Agencies should review their current process of capturing, analysing and reporting consultancy fees in their annual reports and include consultancy fees capitalised as part of asset costs. Agencies should review their consultancy procurement approval policies and financial delegations 	<p>The Department has established the following controls:</p> <ul style="list-style-type: none"> Procurement Central (end to end procurement system for procurement >150,000 inc. GST) is planned to be fully rolled out by end of 2018. This will assist in capturing information on engagement with consultants. The Finance and Procurement teams are currently reviewing financial and procurement delegations to be issued by December 2018.

We thank you for the opportunity to respond to this report.

Sincerely,



Andrew Cappie-Wood
Secretary

27 AUG 2018

Response from Department of Planning and Environment



**Planning &
Environment**

Office of the Secretary

Our ref: IRF18/4382
Your ref: D1814633

Ms Margaret Crawford
Auditor-General NSW
GPO Box 12
SYDNEY NSW 2001

Dear Ms Crawford

Thank you for your letter of 27 July 2018 regarding your report on Procurement & Reporting Consultancy Services.

Please be advised the Department of Planning and Environment supports the recommendations of your report and will work collaboratively with Treasury and NSW Procurement on their implementation.

However, the Department would like to raise a number of matters to be addressed:

- NSW Procurement should ensure consistency between Schemes, as these inconsistencies result in ambiguity in applying NSW Procurement Directions;
- The Cluster Secretary being able to delegate consultancy procurement approvals to part of the organisation most appropriate to deal with the subject matter. The Directions should be updated to reflect this.

If you have any further questions, please contact Mr Simon Officer, Chief Financial and Operating Officer, Cluster Corporate Services, at the Department of Planning and Environment on 9274 6490.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Liz Develin'.

**Liz Develin
Acting Secretary**

29/8/2018

320 Pitt Street Sydney NSW 2000 | GPO Box 39 Sydney NSW 2001 | planning.nsw.gov.au

Response from Department of Premier and Cabinet



Ref:A2659404

Ms Margaret Crawford
Auditor-General of NSW
GPO Box 12
SYDNEY NSW 2001

Dear Ms Crawford

Thank you for providing me with a copy of your report on Procurement and Reporting of Consultancy Services (the report), and the opportunity to provide comment on the findings related to the Department of Premier and Cabinet (DPC).

DPC has processes in place to comply with procurement and reporting requirements for the use of consultants. DPC supports controls on the use of consultants to ensure the best possible value and outcomes for the citizens of New South Wales. As with all expenditure categories DPC actively manages costs to ensure compliance with budget limits and to support New South Wales in maintaining our sound financial position.

DPC will liaise with both NSW Procurement and NSW Treasury to:

- review the Premier's Memorandum M2002-07 *Engagement and Use of Consultants* and update or withdraw as appropriate to ensure there is no misalignment with the \$50,000 reporting threshold in the regulation, and
- investigate whether Circular C2004-17 *Guidelines for the Engagement and Use of Consultants* should be reactivated or reissued.

DPC will also work with those agencies to align the definition of a consultant for both procurement and annual reporting purposes, on the understanding that not all engagement types available under scheme SCM0005 *Performance and Management Services* are advisory in nature, and would therefore not be classified as consultancies.

Yours sincerely

A handwritten signature in black ink, appearing to read 'T Reardon'.

Tim Reardon
Secretary

25 August 2018

52 Martin Place, Sydney NSW 2000 ■ GPO Box 5341, SYDNEY NSW 2001
Tel: (02) 9228 5555 ■ www.dpc.nsw.gov.au

Response from Ministry of Health



Ms Margaret Crawford
Auditor-General of NSW
Audit Office of NSW
GPO Box 12
SYDNEY, NSW 2001

Our ref H18/70097

Dear Ms Crawford

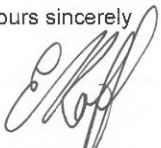
NSW Auditor-General's Final Audit Report on Procurement and Reporting of Consultancy Services

I refer to your letter of 27 July 2018 inviting the Ministry of Health to provide a formal response to be included within the final audit report.

In a cluster as significant as NSW Health, the effective governance of procurement activity is critical. Within the workings of our devolved governance model, consultancy service providers are engaged system-wide in a range of specialty areas. An overarching procurement framework guides our Health Organisations to make appropriate decisions, in alignment with the directions of the NSW Procurement Board. Most recently, in March 2018, I highlighted this alignment in a direction to all of the Chief Executives and key Senior Leaders of the Health System to comply with the new commercial framework and supporting directive of the NSW Procurement Board.

It is important to note the challenges faced by the Ministry of Health in monitoring the procurement of consultancy services across the Health System. The devolved governance structure of NSW Health enables individual health organisations to procure consultancy services through the established procurement framework without notifying the Ministry. Given this, the ability of the Ministry to monitor system-wide procurement activity is currently constrained by the lack of agency-specific reporting being offered. To this end, the Ministry welcomes the recommendations of the report, and particularly those aimed at strengthening the reporting mechanisms available to NSW Government Agencies which are designed to assist in the monitoring of procurement activity at a cluster-level.

Yours sincerely


Elizabeth Koff
Secretary, NSW Health

NSW Ministry of Health
ABN 92 697 899 630
73 Miller St North Sydney NSW 2060
Locked Mail Bag 961 North Sydney NSW 2059
Tel. (02) 9391 9000 Fax. (02) 9391 9101
Website. www.health.nsw.gov.au

Response from NSW Treasury and Crown Entity



Treasury

Contact: Matt Conrow
Telephone: (02) 9228 5382

Margaret Crawford
Auditor-General of NSW
Level 15, 1 Margaret Street
SYDNEY NSW 2000

Dear Ms. Crawford

Report on Procurement and Reporting of Consultancy Services

Thank you for the opportunity to provide a formal response to the above report on behalf of Treasury, including the Crown Entity.

Treasury is committed to ensuring that all expenditure of public money creates value for the people of NSW. Our internal policies reflect this commitment, and mandate robust approval and oversight processes for all consultancy engagements.

Our use of consultants is limited to work that requires specialist skills, experience or knowledge that cannot be provided by permanent or contingent employees. Treasury's consultancy spend mainly relates to complex and unprecedented major asset sales, the proceeds of which have funded record levels of infrastructure investment.

I appreciate your constructive recommendations which aim to improve agency compliance with whole-of-state policies. Treasury will work with NSW Procurement and the Department of Premier and Cabinet to review and amend these policies where necessary to support best practice engagement and disclosure of consultancy services.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Michael Pratt'.

Michael Pratt AM
Secretary

3 September 2018

GPO Box 5469, Sydney NSW 2001 ■ Telephone: (02) 9228 4567 ■ www.treasury.nsw.gov.au

Response from Roads and Maritime Services



Transport
Roads & Maritime
Services

Your ref: D1814633
Our ref: CE18/0688

21 August 2018

Ms Margaret Crawford
Auditor-General of NSW
GPO Box 12
SYDNEY NSW 2001

Dear Ms Crawford

Auditor-General's report on procurement and reporting of consultancy services

Thank you for your letter of 27 July 2018 about the Auditor-General's report on procurement and reporting of consultancy services. I appreciate the opportunity to provide a formal response on behalf of Roads and Maritime Services, to be incorporated into the published report.

Roads and Maritime accepts the audit recommendations. An action plan to address the four recommendations requiring our action is enclosed for your records.

Should you require any further information, please contact Mr Andrew Graham, Director Audit and Assurance at Roads and Maritime, on (02) 9462 6232.

Yours sincerely

A handwritten signature in black ink, appearing to read 'K. Kanofski'.

Ken Kanofski
Chief Executive

Enc.

20-44 Ennis Road, Milsons Point, NSW 2061 | www.rms.nsw.gov.au | ABN: 76 236 371 088

RMS Action Plan in Response to the Performance Audit on Procurement and Reporting of Consultancy Services

Ref	Recommendation	Action Plan	Target Date
1	To improve compliance with the revised NSW Procurement Board Direction, agencies should:		
1a	align their policies and procedures to reflect the requirements of the Direction.	RMS will review its current guidance material designed to assist staff comply with the Direction, to ensure it remains current.	31-Dec-2018
1b	implement internal controls to effectively identify, resolve and report breaches of compliance with procurement requirements.	Although no material breaches were brought to our attention, RMS will review current controls for the approval and review of consultancies to ensure compliance with relevant requirements.	31-Mar-2019
1c	provide procurement training and awareness programs to relevant staff.	RMS will continue to refine online guidance material to assist staff in carrying out their procurement duties.	31-Mar-2019
2	To improve compliance with the annual reporting requirements:		
2a	agencies should review their current process of capturing, analysing and reporting consultancy fees in their annual reports and include consultancy fees capitalised as part of asset costs. Agencies should review their consultancy procurement approval policies and financial delegations.	RMS was advised it has a sound process to review professional service engagements and to report those that meet the definition of a consultancy in its Annual Report. Dashboards are currently being developed on professional service spend to enable Executive oversight. RMS has recently reviewed its delegations relating to the procurement of services from professional service firms.	31-Dec-2018

Response from Transport for NSW



Your ref: D1810918
Our Ref: IP18/07270

Ms Margaret Crawford
Auditor-General of NSW
Audit Office of NSW
GPO Box 12
Sydney NSW 2001

Dear Ms Crawford,

Report on procurement and reporting of consultancy services

Thank you for the opportunity to comment on the audit report.

The Transport Cluster is delivering \$51 billion in transport infrastructure and services over the next four years, an unprecedented level of investment in NSW. Recent spending on business advisory services reflects the resourcing required to deliver this program of work.

Transport for NSW (TfNSW) welcomes the report's efforts to highlight the problems around consistent definitions of consultancy, professional and business advisory services. TfNSW agrees with the report's recommendation for NSW Procurement to align the definition of a consultant for procurement and annual reporting purposes.

TfNSW agrees with the report's findings on the difficulties associated with the compliance requirements set by the Department of Finance, Services and Innovation (DFSI) with respect to Business Advisory Services and support the recommendations to review how these requirements work and the level of support DFSI provides to agencies. TfNSW support DFSI gaining a better understanding of agency business needs and capability when establishing policies and associated compliance requirements.

We look forward to working with the DFSI and the NSW Procurement Board on their implementation of the audit report recommendations.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R. Staples', is written over a horizontal line.

Rodd Staples
Secretary

21/08/2018

Transport for NSW

18 Lee Street, Chippendale NSW 2008 | PO Box K659, Haymarket NSW 1240
T 02 8202 2200 | F 02 8202 2209 | W transport.nsw.gov.au | ABN 18 804 239 602



Appendix two – List of selected agencies

Agency	Agency cluster
<u>Department of Finance, Services and Innovation</u>	Finance, Services and Innovation
<u>Crown Entity</u>	Treasury
<u>Department of Education</u>	Education
<u>Department of Family and Community Services</u>	Family and Community Services
<u>Department of Industry</u>	Industry
<u>Department of Justice</u>	Justice
<u>Department of Planning and Environment</u>	Planning and Environment
<u>Department of Premier and Cabinet</u>	Premier and Cabinet
<u>Ministry of Health</u>	Health
<u>NSW Treasury</u>	Treasury
<u>Roads and Maritime Services</u>	Transport
<u>Transport for NSW</u>	Transport



Appendix three – Performance auditing

What are performance audits?

Performance audits determine whether State or local government entities carry out their activities effectively, and do so economically and efficiently and in compliance with all relevant laws.

The activities examined by a performance audit may include a government program, all or part of an audited entity, or more than one entity. They can also consider particular issues which affect the whole public sector and/or the whole local government sector. They cannot question the merits of government policy objectives.

The Auditor-General's mandate to undertake performance audits is set out in section 38B of the *Public Finance and Audit Act 1983* for State government entities, and in section 421D of the *Local Government Act 1993* for local government entities.

Why do we conduct performance audits?

Performance audits provide independent assurance to the NSW Parliament and the public.

Through their recommendations, performance audits seek to improve the value for money the community receives from government services.

Performance audits are selected at the discretion of the Auditor-General who seeks input from parliamentarians, State and local government entities, other interested stakeholders and Audit Office research.

How are performance audits selected

When selecting and scoping topics, we aim to choose topics that reflect the interests of parliament in holding the government to account. Performance audits are selected at the discretion of the Auditor-General based on our own research, suggestions from the public, and consultation with parliamentarians, agency heads and key government stakeholders. Our three year performance audit program is published on the website and is reviewed annually to ensure it continues to address significant issues of interest to parliament, aligns with government priorities, and reflects contemporary thinking on public sector management. Our program is sufficiently flexible to allow us to respond readily to any emerging issues.

What happens during the phases of a performance audit?

Performance audits have three key phases: planning, fieldwork and report writing.

During the planning phase, the audit team develops an understanding of the audit topic and responsible entities and defines the objective and scope of the audit.

The planning phase also identifies the audit criteria. These are standards of performance against which the audited entity, program or activities are assessed. Criteria may be based on relevant legislation, internal policies and procedures, industry standards, best practice, government targets, benchmarks or published guidelines.

At the completion of fieldwork, the audit team meets with management representatives to discuss all significant matters arising out of the audit. Following this, a draft performance audit report is prepared.

The audit team then meets with management representatives to check that facts presented in the draft report are accurate and to seek input in developing practical recommendations on areas of improvement.

A final report is then provided to the head of the audited entity who is invited to formally respond to the report. The report presented to the NSW Parliament includes any response from the head of the audited entity. The relevant minister and the Treasurer are also provided with a copy of the final report. In performance audits that involve multiple entities, there may be responses from more than one audited entity or from a nominated coordinating entity.

Who checks to see if recommendations have been implemented?

After the report is presented to the NSW Parliament, it is usual for the entity's audit committee to monitor progress with the implementation of recommendations.

In addition, it is the practice of Parliament's Public Accounts Committee to conduct reviews or hold inquiries into matters raised in performance audit reports. The reviews and inquiries are usually held 12 months after the report received by the NSW Parliament. These reports are available on the NSW Parliament website.

Who audits the auditors?

Our performance audits are subject to internal and external quality reviews against relevant Australian and international standards.

The Public Accounts Committee appoints an independent reviewer to report on compliance with auditing practices and standards every four years. The reviewer's report is presented to the NSW Parliament and available on its website.

Periodic peer reviews by other Audit Offices test our activities against relevant standards and better practice.

Each audit is subject to internal review prior to its release.

Who pays for performance audits?

No fee is charged for performance audits. Our performance audit services are funded by the NSW Parliament.

Further information and copies of reports

For further information, including copies of performance audit reports and a list of audits currently in-progress, please see our website www.audit.nsw.gov.au or contact us on 9275 7100.

OUR VISION

Our insights inform and challenge government to improve outcomes for citizens.

OUR PURPOSE

To help parliament hold government accountable for its use of public resources.

OUR VALUES

Purpose – we have an impact, are accountable, and work as a team.

People – we trust and respect others and have a balanced approach to work.

Professionalism – we are recognised for our independence and integrity and the value we deliver.

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Monday to Friday.