



Australian Government

Department of Defence
Security and Estate Group

Defence Infrastructure Panel 2022-27 Project Management and Contract Administration (PMCA) Training

Directorate of Quality, Assurance and Compliance

Capital Facilities and Infrastructure

14 August 2024



Agenda for today.....

Lisa Drummond, Director Quality Assurance and Compliance

- Completing the DIP PMCA Streamlined Approach – Master DCAP Request for Proposal (RFP)
- Managing a procurement under the Panel

Graham Read, Partner, Clayton Utz

- Promoting effective PMCA performance

Completing the DIP Request for Proposal (RFP)*

*Based on the DIP PMCA Streamlined Approach – Master DCAP RFP

Engagement Process

- Optional: Expression of interest letter
- Step 1: Commonwealth issues an RFP (using the Streamlined Approach – Master DCAP RFP)
 - Master DCAP approach exists for PMCA and CFISS service categories only
 - All other service categories use the standard (General/Simple) RFP
- Step 2: Panel Consultants provide a conforming proposal
- Step 3: Evaluation is conducted
- Step 4: Negotiations if required
- Step 5: Official Order is issued to successful Panel Consultant
- Step 6: Unsuccessful Panel Consultants notified in writing and debriefs offered

All of these steps are supported by template documents

Expression of Interest Letter

- This is optional and can be used to inform your procurement strategy.
- Used to ask which Consultants are interested in or available to perform the services.
- No obligation for the Commonwealth to proceed and no commitment by issuing.
- Template is available on the Panel webpage.

Request for Proposal Template

RFP Table

These are your conditions of tender and care must be taken in completing these.

Some points to remember

- Closing Date and Time
- Proposal Lodgement Process
- Evaluation Criteria (Mandatory)
- Conforming Proposal Requirements
- Security Clearances Required
- Contact Officer / Commonwealth Representative
- Key Personnel Interviews

Do not contain information / directions in your covering email that contradicts these.

Request for Proposal Template

Annexure A - Brief

To be completed by the Commonwealth and includes:

Part 1 - The Project

This is where you need to identify all you can on the project – everything that is relevant needs to be here. This will inform the issues and risks that the Panellist will provide in their submission.

Part 2 - Scope of Services (This is the basis for the contractual promises)

This is where you define the scope of services you wish for the Panellist to deliver in support of the defined Project. You should copy and paste the PMCA Scope of Services found on the Panel page as a starting point. This then must be tailored for the specific needs of your project.

Part 3 - Project Specific Special Conditions (if any)

This is where you draft any special conditions of contract additional to those within the Terms of Engagement.

What is the Master DCAP?

- The Master DCAP provided by each Consultant in its tender for appointment to the Panel
- Obligations in respect of the Master DCAP in the Panel Conditions
- Not required to be evaluated with proposals in response to an RFP
- The Master DCAP and the DCAP supplement (being the document submitted in response to the RFP) comprise the 'Project DCAP'
- Obligations in respect of the Project DCAP in the Terms of Engagement

Request for Proposal (RFP) Template

Annexure B – DCAP Supplement

To be tailored to the specific requirements of the Project by the Commonwealth:

- Think about what you want to see in the response and what is important for your project; and
- Reflect that importance where you are asked to insert key issues and risks in the table.

The Annexure seeks:

- Approach to key issues and risks of the Project and Services;
- Approach to programming the Services;
- Minimum Resource Schedule;
- Key people and sub-consultants; and
- Joint bid arrangements.

Why is the quality and accuracy of Annexure B critical for the success of your project?

- **Annexure C - Fee Schedule**

- Tailored for the Project by the Commonwealth.

- **Annexure D - Contract Particulars**

- Defence partially completes and the Tenderer completes remaining information. Refer to Terms of Engagement

- **Annexure E - Alternative Proposals**

- Tenderers must submit a conforming proposal before an alternative will be considered.
- Commonwealth has the discretion whether to accept or not.

(Panel Consultant is to lodge Fee Schedule and Alternative Proposals in separate files to the rest of the proposal)

Annexure C - Fee Schedule

Option 1
Lump Sum (no
phase or two
phase)

Option 2
Schedule of
Rates

Milestone Fee Payment Schedule (Optional)

Reimbursable Costs

Proposal for submission of payment claims (Optional)

Lump Sum v Schedule of Rates

Lump Sum Engagements

- No entitlement to reimbursement of any disbursements (including travel costs, car hire etc) unless otherwise explicitly stated by the Commonwealth in the Official Order.
- No entitlement to reimbursement of any additional costs/ disbursements connected with:
 - A change in the location of the Consultant's business;
 - A change in the location of the Consultant's personnel; and
 - Internal promotion for personnel.

Schedule of Rates

- All disbursements are deemed included in the Schedule of Rates except for:
 - Travel Costs;
 - Car hire and taxi fares;
 - Other disbursements specified in an Official Order;
 - Panel Consultant must have prior written consent of the Commonwealth before incurring these costs; and
- Items which are not reimbursable costs include: telephone calls, printing, email or internet charges, royalties, taxes (excluding GST) and employment related levies.

Escalation of Rates

Issuing the RFP

- You do not have to send the RFP to all members of the Panel.
- Your procurement strategy is as per the PDDP Part 1.
- If you elect to sole source the opportunity you need to defend this decision to your Delegate and for sourcing two or less now the DEPSEC (refer to next slide).
- You must tailor the RFP documentation to the requirements of your project.
- The RFP is to be issued by email and you are to ensure Panel Consultant acknowledges receipt of the request. If not acknowledged follow up.

Sourcing under the Panel....

When implementing a new contract through the Panel arrangements or through the use of a Limited Tender procurement the following is to apply:

- b. Two or less quotations. When seeking two or less quotations, personnel are to ensure that prior to approaching the market, a Decision Brief is prepared for the relevant Group Head, that clearly documents:*
- i. the decision to seek two or less quotes, and details of discounts to be sought;*
 - ii. justifies the reason for sole sourcing and the impact of not conducting a competitive procurement if the request was denied; and*
 - iii. demonstrates that there will be a reasonable undertaking to negotiate, where possible, at least a 25 per cent discount off relevant panel rates for the entire provision of services (including future variations).*

Receiving the RFP

- You will receive from the Tenderer
 - Completed DCAP Supplement (Annexure B)
 - Completed Fee Schedule (Annexure C)
 - Completed Contract Particulars (Annexure D)
 - Alternative Proposals (Annexure E) OPTIONAL

What documents form a DIP contract

- The terms of the **Official Order** (including all of the documents listed in the Official Order, such as the Contract Particulars and attachments to the Contract Particulars, the DCAP, the Brief, the Fee Schedule etc....).
- The **Terms of Engagement** – specific contractual promises in respect to the delivery of the Project. These are defined as Section 4B of the Panel Agreement.
- The **Panel Agreement** – Higher level contractual promises that relate to the Panellists' membership on the Panel and can only be enacted by the Panel Manager.

The fully completed Official Order is issued to the successful Panellist.

Executing the Official Order

When issuing the RFP a **draft** Official Order is also provided in order to provide the **indicative** contractual terms for the Engagement.

This draft Official Order should then be finalised once a successful Panel Consultant has been selected and issued to the successful Panel Consultant to constitute acceptance of its proposal for the Services.

The completed Contract Particulars **must** be attached to the Official Order. It is also strongly suggested that the following documents are also attached so that the terms of the Engagement are clear:

- ANNEXURE A - Brief
- ANNEXURE B – DCAP Supplement
- ANNEXURE C – Fee Schedule

I have a particular requirement for the Contract. How do I approach that?

- Project-specific Special Conditions are now to be written into Part 3 of the Brief.
- Legal review must be applied for complex procurements to ensure that wording in the Brief (including any Special Conditions) does not contradict the Panel terms and conditions.

Insurances

- I want to identify the insurance requirements for my project, but I don't know what Panellists already have. What can I do?
 - Conduct your own risk assessment.
 - All Panellists have insurances suitable for Panel membership.
 - If you want to discuss the amount, ask the Panel Manager.
 - If you request an amount that is greater than their existing coverage, this may be reflected in pricing.

DIP - Do not's:

- Do not source a proposal from a DIP Consultant and a non DIP Consultant in the same procurement.
- Do not delete “bits” from the RFP documents and Contract Particulars. Use the language of “Not Applicable, Nil Additional or none stated” where required and seek advice from your Legal Advisor or DQAC.
- Do not include terms and conditions in the Brief that will negate or conflict with the Panel Conditions or Terms of Engagement or impose new contractual obligations. Legal advisors should be checking this before RFP release.
- Do not relax your probity framework because it is a Panel sourcing.
- Whilst not subject to a JR Complaint the procurement can be subject to a general procurement complaint.
- **No construction or design activities.**

DIP – Do's:

- Ensure you seek a legal review of the RFP before release
- Ensure you seek a probity review of the RFP before release
- Allow a reasonable and fair time for the Panellists to respond to the RFP

What Should I Do About Poor Performance?

- Address the poor performance immediately and ensure you document the issues via an email, meeting minutes or formal correspondence.
- Do not pay for services not received or services you have to re-work.
- Know and understand the Project DCAP, Official Order and Terms of Engagement.
- Document the occurrences.
- Raise with the Panellist's Consultant's Representative if no resolution is seen at the Project level. At this point also notify the Defence Panel Manager.
- Agree remedial action.
- Track progress.
- Advise continued poor performance to Panel Manager.

Managing a procurement under the Panel

Procurement Policy Framework

- Commonwealth Procurement Rules (CPRs)
 - Sets out the **rules** that we must comply with when we undertake procurement. They also indicate good practice.
 - Value for money is one of the core rules of the CPRs. This requires consideration of the financial and non-financial costs and benefits.
(Judicial Review Act – will look at a breach against the CPRs)
- PGPA Act
 - **Endorsement to Proceed** – Policy states a formal Endorsement to Proceed must be obtained for all procurements with an estimated value of \$200,000 and above. Best practice dictates that this should be done regardless of the value. In addition the CPRs (para 7.2) require that procuring officials maintain records for each procurement and this includes – the requirement, the process, how V4\$ was considered and achieved, approvals and relevant decisions and the basis for each.
 - **Sect 23(3)** (Required before entering into arrangements that commit money)
 - To approve the commitment of relevant money (Commitment Approval)
 - **Sect 23(1)**
 - To enter into, vary and administer arrangements

Procurement Complaint Process

- JR Complaint - *Government Procurement (Judicial Review) Act 2018* (Cth) allows tenderers to lodge a complaint if they believe a procurement process has not complied with the principles of the CPRs. Not applicable to Panel procurements.
- General Procurement Complaints – tenderers can lodge a complaint to the Defence Procurement complaints area. Complaints under DIP engagements will come under a general procurement complaint.

Tender Document Preparation - RFP

- Align with the Procurement and Evaluation Plan (Probity Risk – CPR Requirement).
- Ensure the content reflects accuracy and quality.

The Brief/Scope of Services

- Has sufficient time been dedicated to its development?
- Have stakeholders had the opportunity to review and comment?
- Cutting corners now will cost you more later.
- Do you reference Policy or other sources? If so, are these accessible?
- Do not include content that contradicts contract or tender condition terms.
- Listen to the questions from Panel Consultants – we may have it wrong.

General considerations in preparing your Request for Proposal

- RFP conditions – These are important.
- Has the RFP been completed correctly?
- Tender closing details – check they are correct.
- Industry Briefing details.
- Security levels of personnel.
- Process for asking and responding to questions.
- Timeline for stopping questions.
- Confidentiality Agreements – use and benefit.
- Tender restrictions/conditions in the covering email narrative used to release the tender and **not** in the tender conditions.

Tender Period Management

Throughout the entire tender period ensure that you....

- Act ethically.
- Act fairly.
- Treat all tenderers the same and provide all the same opportunity.
- Respond in a timely manner to all questions.
- Isolate immediately any potential probity issues to be resolved and act on the required action asap.

Tender Period Management

- Contact with Tenderers
 - Controlled process.
 - Your actions and behaviour could form the basis of the legal promise/relationship with the tenderer.
 - Avoid any verbal communication – refer the Panel Consultant to the process within the RFP.
 - Fairness and treating all tenderers equally.
 - Importance of Probity.
- Responding to queries during this period
 - Responses must be timely – do not stockpile them.
 - Responses to questions should be provided to all tenderers unless they can demonstrate a reason for them not to be. As such inform them of this as soon as you receive the question and give an option to withdraw.
 - Process and records management.
- Addendum/Documents for Information
 - Difference between the two.
 - Process for promulgation – must be issued in writing and in line with process in RFP conditions.

Industry Briefings

- The purpose of an industry briefing is to provide tenderers with information in relation to the RFP and should cover the RFP process and the project scope complexities, issues and risks.
- They are for the purposes of providing background information only.
- The industry briefing involves Defence interacting with tenderers so that they can better understand and respond to Defence's requirement for a project.
- Should always be considered for large, complex and difficult Engagements and if applicable a site tour should be provided.
- Ensure you record any questions or any issues raised that may amend or alter your scope.
- Think about logistics and agenda:
 - briefing venue, base access, probity risks; and
 - Speakers and the probity framework for them.
- Probity has a role on the day.

Tender Lodgement

- Compliance with the tender lodgement process is a CPR requirement in respect to a conforming proposal.
 - late is late!!!!
- Consistent with paragraph 10.32 of the CPRs, receipting must demonstrate fairness.
- If you are unsure on the conformance of a submission refer to your probity advisor and Director Quality Assurance and Compliance.
- Record any issues or non compliances and ensure they are also reflected in the evaluation board report for the Delegate's awareness/consideration.

Tender Evaluation

As an evaluator ensure you know the approved Procurement Strategy. Refer to the Chairperson or probity advisor at any stage if you are unsure....

Broadly 4 Stages of Evaluation

- Conformance check.
- Detailed individual assessment of submissions (no consideration of \$\$).
- Detailed Board and Comparative Assessments (no consideration of \$\$).
- Value for Money/recommendation.

Negotiations happen after Delegate approval. There is no authority to enter into negotiations prior to Delegate approval.

Stage 1 - Conformance check

Typically comprises of.....

- Tender validity period – non compliant or unintentional error??
- Any project specific Legislation/Policy Compliance.
- Tenderer's acceptance (without departure, qualification, amendment, limitation or exclusion) of the Contract except to the extent provided for in Annexure E (Alternative Proposals). Be on the look out for exclusionary, qualifying, limiting and departing language when you read submissions:
 - *Our fee excludes any subconsultants that we consider should be appointed – these will be reimbursable;*
 - *We have not allowed for any site investigations in the Fee – This will be a variation;*
 - *We reserve the right to re-negotiate our fee if Services take longer than currently programmed; and*
 - *Our tender remains open for acceptance for 60 days.*

Stage 2 - Detailed Individual Assessment

- Individual assessment with no consultation and discussion with other board members.
- No consideration of price at this stage.

Stage 3A - Detailed Preliminary Board Assessment

- Board discusses each Board members' view on the strength, weakness and risks as evaluated during the individual detailed assessment. Board should then decide upon a preliminary agreed score.
- At the conclusion of this the Board should then agree if any **Key Personnel Interviews** are needed, if any **Clarifications** are needed and/or if any **Referee Reports** need to be obtained. The Board must agree on the content of each.
- The Board must consider the outcome of any Clarification/Referee Reports and decide if the results require adjustment of the preliminary Board score.
- The Board must not accept **new** information that is submitted under the guise of a clarification response. Clarification should be targeted to resolving ambiguities not giving a second chance to provide information.
- If unsure, always have clarifications checked by a Probity Advisor.

Clarifications

- Need to have a basis for seeking the clarification.
- Be careful to manage attempts to improve the bid.
- Should be targeted to resolving ambiguities not giving second chance to provide information.
- If appropriate, seek advice on clarifications from a probity perspective.
- Think about how to ask the question so as to not lead the tenderer too much and result in Defence feeding the answer.

Referee Reports

- Ensure these are sought in line with your Tender Evaluation Plan principles.
- Ensure you apply a structured process.
- Should be used to verify information.
- Must demonstrate fairness.
- Board members cannot be sought as a referee whilst the Board is evaluating.
- Record the outcome of the Referee report.
- Record the Boards considerations of these, in particular if they change scores.
- Include the received reports as an attachment to the Report.

Stage 3B - Comparative Board Assessment

- The **Comparative Board Assessment** then occurs post this process which will then result on **Final Board Agreed** scores.
- The comparative assessment seeks to remove any imbalance arising from the preliminary assessment.
- This assessment must be done criterion by criterion and be done relevant tenderer by tenderer.
- The result of this will provide you the final Board Agreed Scores.
- The Tender Evaluation Board Report must detail if this assessment stage changed the preliminary Board agreed score.

What **CANNOT** be considered in your evaluation

- Lack of Defence experience.
- Lack of experience on a Defence base or Defence environment.
- Lack of experience in a specific form of contract.
- Key personnel that have no Defence experience.
- Proposal font too small.
- Asked too many questions during tendering period.
- Information not contained in the Panel Consultant's RFP response.
- Personnel views and opinions.

Non Weighted Schedules

- These are typically assessed as yes/no.
- Must be reviewed/assessed with the observations detailed in the board report.
- Some may affect the commercial capacity of the entity and as such should be considered.
- Some may impact on legislative/policy compliance and may affect the validity of the tender submission.

Stage 4 - Value for Money

- The value for money assessment evaluates the relative price offered by each tenderer in relation to the technical merit and risk profile.
- It should not be the lowest prices.
- The objective of this stage is to determine the best value for money solution for Defence and to reach a preferred tenderer recommendation.
- Not cost divided by score, not cost divided by days.....value for money determination must align with the agreed procurement strategy.
- Watch the Ese Rainey video regarding value for money and tender evaluation available on ERIK.

Tender Evaluation Board Reports

- Objective – To detail the deliberations of the Board and to justify the value for money recommendation to the Delegate. They must be:
 - Defendable;
 - Auditable;
 - Accurate;
 - Stand on their own merit in describing the process; and
 - Represent an official document.

Tender Evaluation Board Reports

- They should be succinct, accurate and reflect the board's deliberations.
- Must align with the allocated score.
- Will form the basis of the debriefs.
- Can be sought under FOI.

Things to Remember

- Narrative must justify the score.
- Balance in the narrative the strengths and weaknesses to ensure alignment with the score.
- Narrative will form the agenda and content for the Debriefing.
- Finish Statements.
 - “The tenderer provided a Plan detailing their traffic management plan”*
 - “The tenderer provided a quality management approach”*

Things to Remember

- Ensure that any weaknesses that have impacted on the Board's score are reflected in detail but are also in line with the requirements as defined within the scope of work.
- You can reference page numbers and serials in the Board Report for future reference and to assist during debriefs.
- Remember that your agreed Board narrative is what you will base your debrief on for unsuccessful Panel Consultants.
 - be prepared to defend your narrative;
 - be succinct; and
 - comments must be evidence based.

Things to Remember

- Do not record knowledge that is not provided within the submission or sourced through referees. Comments like this are a risk:

“The Chairperson was aware that they had a significant OH&S incident on work undertaken at another site and as a result the Chairperson felt that the score should be amended to reflect this incident”

“We googled the company to validate their capability and the results indicated a weakness”

“I spoke to the relevant Director who confirmed that the tenderer's role on a past project was restricted to only elements of the scope”

Board Report Approval

- You cannot communicate the outcome to any of the tenderers until the Board report has Delegate approval.
- Must be approved before any negotiations or discussion can occur.
- You cannot execute the Official Order before the Board Report has Delegate approval.
 - No letters of intent.
 - No *“heads up get yourself ready”* discussions.

- **Contract execution (Official Order)**

- Legal role.
- Reflection of any negotiation outcomes.

- **AusTender notification of contracts awarded**

- Ensure correct title is used.
- Mandatory that this is done within 42 days.

Panel Consultant Debriefs

Debriefs

- For the development of long term relationships with Industry and for maintaining tenderer confidence in the conduct and outcomes of Defence tender processes.
- Can assist unsuccessful tenderers to further improve their services which could:
 - improve their competitiveness;
 - enhance future value for money outcomes for Defence; and
 - enhance their performance rather than be content with their current level.
- MUST focus on the strengths and weakness of the proposal – no comparative.

Things to Remember

- Attendees/Structure of debriefing.
- You cannot refer to another Panel Consultant's proposal. Must also address only that Panel Consultant's strengths and weaknesses.
- Debrief content and alignment with approved Evaluation Board Report.
- Statements that align with evidence in the submission and Board Report.
- Recording debrief outcome.
- Administrative feedback should clearly be given but not as scored assessment.

Bad Debrief Narrative

- Your response represented less risk than the winning tenderer.
- Your font size was too small.
- You did not have CFI Experience.
- You did not have major projects experience.
- You do not have PWC experience.
- You submitted too many requests for information during the tender period and were deemed as not having a sufficient understanding of the scope.
- We could not find your approach to a core part of the scope in your tender response.
- We could not read your submitted program as the font was too small.
- The winning tenderer had a better approach to management of the risks.