

# AUSTRALIAN GOVERNMENT PROCUREMENT WEBINAR SERIES 2023

## PART 6: TENDER ASSESSMENT AND SUSTAINABLE PROCUREMENT

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## **Acknowledgement of Country**

HWL Ebsworth would like to acknowledge the Traditional Custodians of the land on which we are today. We would also like to pay our respects to Elders past and present.

# AUSTRALIAN GOVERNMENT PROCUREMENT WEBINAR SERIES 2023

Part 1: Planning for a Perfect Procurement... Setting Up For Success – Wednesday, 09 August 2023

Part 2: Probity in Procurement – Wednesday, 23 August 2023

Part 3: Current Issues and Updates in procurement – NACC, Unsolicited Proposals and ECI Processes– Wednesday 6 September 2023

Part 4: Key Learnings from the ANAO Reports – Tuesday 19 September 2023

Part 5: Legal Issues and Updates in Procurement – GPJR and the Process Contract – Wednesday 4 October 2023

Part 6: The Art of Tender Assessment and Achieving VFM – 17 October 2023

Part 7: Managing your Procurement – 1 November 2023

Part 8: Prickly Issues in Procurement – 15 November 2023

Part 9: The Cth Contracting Suite and Cth Procurement Policies – 29 November 2023

To find out more about the additional seminars in our Series and to register to attend, please contact Katarina Szivek on [kszivek@hwle.com.au](mailto:kszivek@hwle.com.au)

# SETTING THE SCENE

- Why do we do Tender Assessment?
- What are we trying to achieve?
- What is Value for Money?
  - A balanced judgment of a range of financial and non-financial factors including taking into account:
    - the mix of quality, cost and resources;
    - fitness for purpose;
    - total cost of ownership; and
    - risk.
- What is not Value for Money ?

# VFM UNDER THE COMMONWEALTH PROCUREMENT RULES (CRPS)

Achieving VFM is the core rule of the CPRs

- VFM is critical to ensuring that public resources are used in the most efficient, effective, ethical and economic manner

This requires consideration of the financial and non-financial costs and benefits associated with procurement

- Price is therefore not the sole determining factor when assessing VFM

CPR 4.4 (Achieving value for money) - to achieve a VFM outcome, Officials **must** be satisfied after making reasonable inquiries. Procurement should:

- encourage competition and be non-discriminatory;
- use *public resources* in an efficient, effective, economical and ethical manner that is not inconsistent with the policies of the Commonwealth;
- facilitate accountable and transparent decision making;
- encourage appropriate engagement with risk; and
- commensurate with the scale and scope of business requirement

# CPRS CONTINUED

- CPR 4.5 (VFM continued) - when conducting a procurement, an *official* **must** consider the relevant financial and non-financial costs and benefits of each *submission* including, but not limited to the:
  - quality of the *goods* and services;
  - fitness for purpose of the proposal;
  - *potential supplier's* relevant experience and performance history;
  - flexibility of the proposal (including innovation and adaptability over the lifecycle of the *procurement*);
  - environmental sustainability of the proposed *goods* and services (such as energy efficiency, environmental impact and the use of recycled products);
    - recognising the Australian Government's commitment to sustainable procurement practices, entities are required to consider the Australian Government's *Sustainable Procurement Guide* where there is opportunity for sustainability or use of recycled content;
    - the *Sustainable Procurement Guide* is available from the Department of Agriculture, Water and the Environment's website; and
  - whole-of-life costs.

# CPRS CONTINUED

- CPR 5.1 – 5.4 – encouraging competition and non-discrimination
- CPR 10.15 – 10.19 – conditions for participation
- CPR 10.28 – 10.31 – late submissions
- CPR 10.35 – 10.36 – awarding contracts – contract must be awarded to tenderer that:
  - satisfies the conditions for participation;
  - is fully capable of undertaking the contract;
  - will provide the best value for money, in accordance with the essential requirements and evaluation criteria specified in the approach to market and request documentation.



# CORE DOCUMENTS

- Procurement Policy
- Business Case
- Procurement Plan
- Probity Plan
- Advert
- EOI / RFT
- Tender Evaluation Plan / Methodology
- Tender Evaluation Report

CONSISTENCY IS PARAMOUNT – CRITERIA MUST MATCH SCHEDULES AND MUST BE USED IN TEP / TEM

# SOME SIMPLE RULES TO PROCURE BY

1

Think About  
What You Want  
to Achieve

2

Identify What  
You Need To Do  
To Achieve It

3

Say What You  
Are Going to Do

4

Make Sure You  
Are Able To Do It

5

Do What You  
Said You Would

# SOME PRELIMINARY CONSIDERATIONS

- Pre-Tender Briefing?
  - Mandatory / Non-Mandatory
- Mandatory Criteria?
- Exclusionary / Protectionist / Anti-Competitive / Free Trade Agreements
- Weightings (Disclose / Don't Disclose)
- Budget (Disclose / Don't Disclose)
- Two Envelope Process?

# GETTING INTO THE DETAIL



What Do We Want To Achieve?



What Information Do We Need From Respondents to Assess What We Want to Achieve?



What Should Be Our Criteria?



What Should Be Our Sub-Weightings – Relativity of Importance?



What Schedules do we need to support this?

# CATEGORISE CRITERIA

Price / Non-Price

Non-Price

- Technical
- Operational
- Commercial

# SUBJECTIVE / NON-PRICE CRITERIA

Most criteria fall into one of three categories:

- Capacity – measures resources
- Capability – measures ability
- Price (e.g., lump sum or unit rates, lifecycle costing)

## FOR EXAMPLE

- Previous experience [supported by referees]
- Understanding of requirements / methodology
- Program
- Key Personnel
- Availability
- Management systems - HSEQ
- [Equipment]
- [Financial Assessment]
- [Contract compliance / Commercial offering]
- Price

# THE TENDER EVALUATION PANEL



How many?



Who?



External / Internal?



You've Gone To All This Effort... Don't Rush It!

# NON-PRICE ASSESSMENT

- Subjective evaluation (0-10 x Sub weighting % = Weighted Score)
  - Adjectives
- Independent Assessment
- Committee Discussion of Independent Scores
- Consensus Reached?
  - Minority Report Noted?
- Overall Non-Price Weighted Score (Out of percentage weighting for non-price)



# PRICE ASSESSMENT

- Objective Assessment

$$\text{Tenderer Price Score} = \frac{\text{Lowest Assessed \$}}{\text{Tenderer \$}} \times \text{Price Weighting}$$

[Result = Cheapest Tender Gets Maximum Price Score AND all others commensurately less]

# BUT WHAT IS THE PRICE? HOW ARE WE BUYING?

Fixed Price / Lump Sum

Time and Materials

Rates and Margins

Incentive Based and KPIs

No Guarantee of Volume

# EVEN IF FIXED PRICE

Is it ever fixed...?

- Lump Sum
- Variations – Rates and Margins – How do we assess that?

Cost of Acquisition vs Cost of Ownership

Total Cost of Ownership / Whole of Life Cost

WWTP \$1 to \$20

Design / Construct / Operate – \$1 / \$10 / \$100

# SUSTAINABLE PROCUREMENT (CONT)

## ■ CPRs

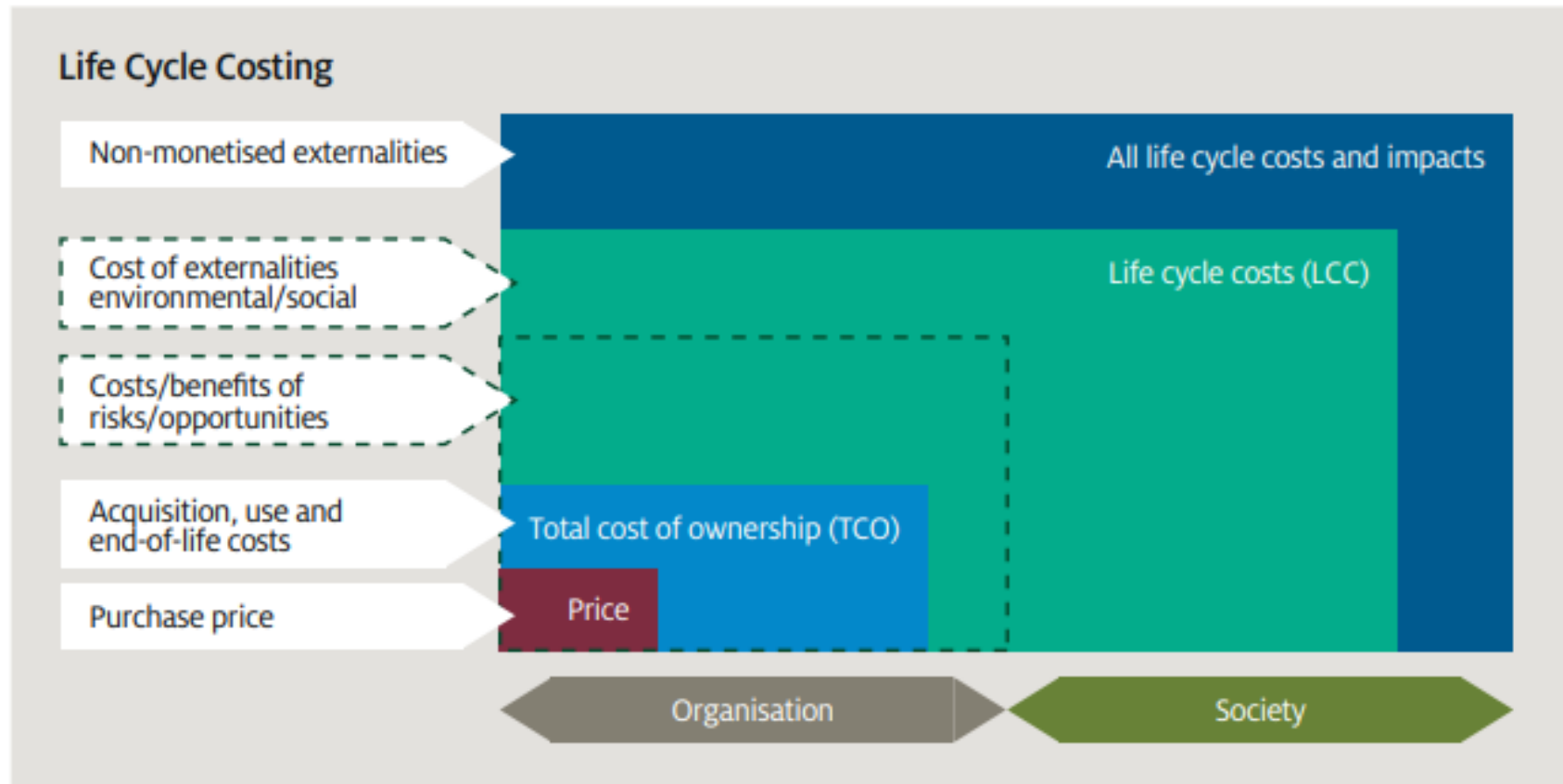
- VFM – defined to specifically include environmental sustainability (CPR 4.5(e))
- Requirement to include the Australian Government's *Sustainable Procurement Guide*

# WHOLE OF LIFE COSTS CONSIDERED

<b>ACQUISITION COSTS</b>	<b>OPERATING COSTS</b>	<b>MAINTENANCE COSTS</b>	<b>END-OF-LIFE COSTS</b>
Purchase Cost	Labour	Specialist Labour	Safe Disposal
Delivery Charge	Materials	Specialist Tooling	Resale
Insurance and Taxes	Consumables	Spare and Replacement Parts	Ongoing Liabilities
Installation and Commissioning	Energy Supply and Consumption	Reduced Output with Age	Decommissioning
Training and Support	Contract and Supplier Management	Maintenance and recommended downtime	Removal for sale or scrap
Internal Costs Associated with Changing Suppliers	Transaction Costs	Servicing and Inspection Regimes	Reinstatement of Land or Buildings for Alternative Use
	Cost of Change	Cost Associated with downtime	

# WHOLE OF LIFE COSTS CONSIDERED

Figure A2 Life Cycle Costing (ISO 20400:2017)



# RESULT

Non-Price Weighted Score (unnormalised?) +  
Normalised Price Score

= Overall Evaluation Result for Tenderer

# ISSUES

Easy to 'Buy The Contract'

What then...

How is that VFM?

A Final Gateway / Risk Review – Is It Too Good To Be True?

Recommendation to Delegate – Approve / Non-Approve



# SUSTAINABLE PROCUREMENT

- ISO 20400 : 2017 – Sustainable Procurement
- Australian Government: Sustainable Procurement Guide 2021
- Triple Bottom Line – Social / Environmental / Economic
- Distinguish – General Corporate vs Project Specific

# WHAT IS SUSTAINABLE PROCUREMENT?

- ISO 20400:2017 definition
  - Sustainable procurement is “procurement that has the most positive environmental, social and economic impacts possible across the entire life cycle and that strives to minimise adverse impacts”
- Australian Government: Sustainable Procurement Guide 2021
  - Sustainable procurement looks beyond the up-front cost to make purchasing decisions based on the entire life cycle of the goods and services, taking into account associated costs, environmental and social risks and benefits, and broader social and environmental implications.

# SUSTAINABLE PROCUREMENT (CONT)

## Corporate Specific

- Sustainability Charter
- Sustainability Index
- Third Party Certification / Accreditation

# SUSTAINABLE PROCUREMENT (CONT)

## Project Specific

- Any Environmental Externalities?
- Any Social Differentiators?
- How Do We Measure?
- How Do We Value?

# HOW CAN SUSTAINABLE PROCUREMENT BE ACHIEVED?

Integrate sustainability principles into all your procurement initiatives / activities

Ethical and transparent supply chains

Training and skills development



Source: Australia Government – Sustainable Procurement Guide, A practical guide for Commonwealth entities

# SOME ISSUES TO CONSIDER

- Presentations – How Does That Work With Criteria
- Shortlisting – What then?
- Best and Final Offer
- Directly Negotiating
- Referees / Reference Sites / Site Visits
- Deemed Referees
- How to deal with non-compliances – Value \$ / Who Values \$
- What's wrong with best proponent within budget?
- Should we exclude outliers?
- Averaging?
- Line Graphs?
- Using other Tenderer's Prices to fill in the gaps?
- Pricing Risk – Add 'Cost to Conform' Column to Departures and Qualifications Schedule

# WAR STORIES

95 / 5

Mandatory Pre-Tender Briefing... or is it

Platypus

Change / Refine the Criteria

Undisclosed BAFO Halfway Through...



ANY QUESTIONS?



# CONTACTS



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