

IN THE MATTER OF the *Inquiries Act 2014*

AND IN THE MATTER OF a Board of Inquiry into the COVID-19 Hotel Quarantine Program

WITNESS STATEMENT OF HAYLEY BAXTER

I, Hayley Baxter, Acting Executive Director of Strategic Sourcing at the Department of Treasury and Finance (DTF) of 1 Macarthur Street Melbourne in the State of Victoria, provide the following details in response to the questions set out in the Notice to Produce dated 13 August 2020.

- 1 I have prepared the following answers based on the various policies and other documents published in respect of the Victorian Government's procurement of goods and services. I have also had assistance from others within DTF in preparing some of the detailed answers. The policy and guideline documents are numerous and, in some instances, very detailed and long. I have therefore sought to summarise the material in order to answer a question clearly and to provide the information I understand the question to be seeking. If there is any aspect or details of a document that I have not included in my summary it should not be taken that I consider that information irrelevant or unimportant.
- 2 I have also attached certain documents to my statement as identified with a Ringtail Number and where a document is publicly available, I have included a reference to where that document can be located.

Roles and Responsibilities

- 1 **What is the role and function of the Department of Treasury and Finance (the Department and or DTF)?**

Role

- 3 At a very high level the Department's role is to:
 - (a) support the ministerial portfolios of the Treasurer, Minister for Economic Development and the Assistant Treasurer; and
 - (b) provide leadership in economic, financial and resource management to help the Victorian Government deliver its policies.
- 4 I understand that DTF comprises the Office of the Secretary and four divisions which themselves have numerous units that perform a large range of functions and services. These functions range from matters such as supporting the Government in responsible budget and financial management, policy advice on economic, social and environmental issues, and providing leadership and assistance to the Victorian Public sector in a range of projects

including infrastructure projects. The Department also provides oversight and assistance with respect to contractual matters which I describe further below.

- 5 I have not worked in and have not sought to summarise the functions of the different divisions or units within DTF in this statement. I work within the Strategic Sourcing group which sits within the Corporate and Government Services Division. I have summarised my role and that of Strategic Sourcing in response to question 2 below.

2 What is your role and what are your key accountabilities within the Department?

- 6 I am the Acting Executive Director for Strategic Sourcing and I commenced in this role on 6 July 2020. My substantive role is Director, Procurement within Strategic Sourcing and I have had this role since 16 March 2020. Prior to that I was the Director, Strategic Sourcing primarily responsible for procurement policy and reform which I held for around 4 years. I have worked in the Strategic Sourcing group for more than 10 years.

- 7 Strategic Sourcing has the following responsibilities:

- (a) management of policy and reforms for the whole of government procurement of goods and services (including through supporting the Victorian Government Purchasing Board);
- (b) delivering and managing the whole of government goods and services State Purchase Contracts (other than for legal services and Information Communication and Technology contracts);
- (c) management of the Standard Motor Vehicle policy, VicFleet's operations and the vehicle finance lease facility for the Victorian Government; and
- (d) management and responsibility for certain of DTFs' own procurement needs.

- 8 In this acting role my key accountabilities are to oversee Strategic Sourcing's delivery of its functions and to also:

- (a) contribute to the group's strategic direction;
- (b) communicate and develop plans for Strategic Sourcing consistent with the achievement of the Department's vision, mission, business and organisational objectives;
- (c) develop strategic and influential relationships across the public sector and proactively manage relationships with external stakeholders in respect of the procurement areas; and
- (d) participate in committees and forums as part of ensuring DTF is a well governed and functioning organisation.

Legal and policy framework for procurement

3 What role does the Victorian Government Purchasing Board have with respect to the procurement of goods and services by the Victorian Government?

- 9 The Victorian Government Purchasing Board (VGPB) is a body corporate established under section 54A of the *Financial Management Act 1994* (Vic) (the FMA). It reports to the Assistant Treasurer. Various details about the VGPB are made available on the Buying for Victoria website at [<https://www.buyingfor.vic.gov.au/victorian-government-purchasing-board-vgpb>].
- 10 In this statement I have included links to various policies and guidelines from the VGPB that are found on the Buying for Victoria website. For clarity I confirm that the Buying for Victoria website is not only about the VGPB's work. Whilst the website does contain information about the VGPB and the material it has published, the website also contains other policies and guides concerning categories of Victorian Government procurement for which the VGPB is not responsible such as construction.
- 11 VGPB is a separate and independent entity from DTF although Strategic Sourcing does work to support the VGPB in fulfilling its functions and meeting its objectives. DTF also assists the VGPB in providing certain oversight of the whole of government procurement program (subject to some exceptions which do not fall within the remit of the VGPB such as procurement for public hospitals and health services which are covered under the *Health Services Act 1988* (Vic) and construction procurement which is covered under the *Project and Construction Management Act 1994* (Vic)). The VGPB's role in the procurement of goods and services by Victorian Government departments and some public entities is to broadly:
- (a) develop, implement and review supply policies and practices;
 - (b) monitor compliance with supply policies;
 - (c) help organisations build procurement capability; and
 - (d) work with stakeholders to make procurement more efficient.
- 12 As part of its role the VGPB has developed and published five policies that cover the following areas in respect of procurement for goods and services:
- (a) governance;
 - (b) complexity and capability assessment;
 - (c) market analysis and review;
 - (d) market approach; and

- (e) contract management and disclosure.
- 13 I refer to some of the requirements of these policies further in my answers to question 5 below.
- 14 The policies are available on the Buying for Victoria website, and are published together with various guidance notes, tools and templates that prospective buyers or suppliers of services to a Victorian Government department or agency can access.
- 15 The VGPB policies are designed to satisfy these key principles in respect of the Government's procurement of goods and services:
- (a) Value for Money, taking into account the total benefits and costs over the life of the procurement; plus environmental social and economic factors and risks related to the procurement;
 - (b) Accountability;
 - (c) Probity; and
 - (d) Scalability, meaning that the procurement policies and processes are appropriate and efficient taking into account the capability of available resources and the complexity of the procurement undertaken.
- 16 There are a number of departments and agencies that must follow these policies as listed in my answer to Question 4 below.
- 4 Which agencies are subject to Victorian Government Purchasing Board directions about the purchase of goods and services?**
- 17 The departments, offices, bodies and entities that must follow the goods and services supply policies described above are known as "Mandated Agencies".
- 18 Other government organisations and local governments are not mandated to comply with the VGPB goods and services policies. However, those entities are encouraged to apply best practice procurement policies and processes and they can choose to align their policy for procurement with the VGPB policies.
- 19 To the best of my knowledge the current list of Mandated Agencies that must follow goods and services supply policies are as set out at <https://www.buyingfor.vic.gov.au/goods-and-services-mandated-agencies>. These include:
- 20 The following Victorian Government departments:
- (a) Department of Education and Training;

- (b) Department of Environment, Land, Water and Planning;
- (c) Department of Health and Human Services;
- (d) Department of Jobs, Precincts and Regions;
- (e) Department of Justice and Community Safety;
- (f) Department of Premier and Cabinet;
- (g) Department of Transport; and
- (h) Department of Treasury and Finance;

21 The following Victorian Offices or bodies:

- (a) Commercial Passenger Vehicle Commission;
- (b) Essential Services Commission;
- (c) Game Management Authority;
- (d) Independent Broad-Based Anti-Corruption Commission;
- (e) Infrastructure Victoria;
- (f) Office of Public Prosecutions and Associate Crown Prosecutors;
- (g) Office of the Chief Commissioner of Police (Victoria Police);
- (h) Office of the Commissioner for Environmental Sustainability;
- (i) Office of the Commission for Children and Young People;
- (j) Office of the Legal Services Commissioner;
- (k) Office of the Ombudsman;
- (l) Office of the Commissioner for Privacy and Data;
- (m) Office of the Road Safety Camera Commissioner;
- (n) Office of the Victorian Information Commissioner;
- (o) Victorian Auditor-General's Office;
- (p) Victorian Commission for Gambling and Liquor Regulation;

- (q) Victorian Electoral Commission;
- (r) Victorian Equal Opportunity and Human Rights Commission;
- (s) Victorian Fisheries Authority;
- (t) Victorian Inspectorate;
- (u) Victorian Responsible Gambling Foundation; and
- (v) Victorian Public Sector Commission.

22 The only specified entity that I understand is currently required to follow the goods and services supply policies is CenITex.

5 What, if any, internal arrangements must an agency have in order to comply with Victorian Government Purchasing Board directions or policies?

23 I have understood this question to be directed at the internal arrangements of the Mandated Agencies as listed above. As I have already stated, these Mandated Agencies must comply with the 5 supply policies of the VGPB being again:

- (a) Governance;
- (b) Complexity and capability assessment;
- (c) Market analysis and review;
- (d) Market approach; and
- (e) Contract management and disclosure.

24 Each of these VGPB policies set out a large number of requirements and obligations on the Mandated Agencies including the arrangements they need to establish so as to implement the best practices for procurement. I have not sought to summarise all of these requirements or arrangements as they are numerous and quite detailed. All of the policies can be accessed on the Buying for Victoria website. Broadly these policies impose the following requirements on the Mandated Agencies.

5.1 Governance Goods and Services Policy

[\[https://www.buyingfor.vic.gov.au/governance-goods-and-services-policy\]](https://www.buyingfor.vic.gov.au/governance-goods-and-services-policy)

25 The Governance Policy covers three areas which broadly include the following requirements on Mandated Agencies:

- (a) *The procurement governance framework.* This section of the policy sets out the governance framework which the department or organisation must set up. This includes requirements to establish:
- (i) a chief procurement officer (CPO) whose role is to implement and oversee the framework for that department/ organisation and manage the complaints system; and
 - (ii) an internal procurement unit (IPU) whose functions include to identify and manage supply chain risks, develop and manage the different procurement plans that are required for each department/agency, ensure compliance with VGPB policies, assess and manage procurement capability and attend to reviews and reporting obligations.
- (b) *The Assessment framework.* A Mandated Agency is required to be accredited by the VGPB. The accreditation process requires the organisation to make a submission and presentation using the VGPB's accreditation assessment tool.
- (c) *Complaints Management.* Each Mandated Agency must also develop a complaints management system that sets out the process and procedures for addressing complaints including oversight by a person independent from the conduct involved and for the system to be accessible to a complainant.

5.2 Complexity and Capability Assessment Goods and Services Policy

[\[https://www.buyingfor.vic.gov.au/complexity-and-capability-assessment-goods-and-services-policy\]](https://www.buyingfor.vic.gov.au/complexity-and-capability-assessment-goods-and-services-policy)

- 26 The Complexity and Capability Assessment Policy requires each Mandated Agency to assess:
- (a) the complexity of each proposed procurement activity addressing a range of factors or considerations such as value for money queries, what internal and external factors impact the procurement, the potential for aggregating purchasing demand and the best way to approach the market; and
 - (b) the capabilities needed to carry out procurement/s and identify whether the capabilities in the organisation need to be developed or supplemented to undertake procurement.

5.3 Market analysis and review Goods and Services Policy

[\[https://www.buyingfor.vic.gov.au/market-analysis-and-review-goods-and-services-policy\]](https://www.buyingfor.vic.gov.au/market-analysis-and-review-goods-and-services-policy)

- 27 The Market analysis and review policy requires Mandated Agencies to:

- (a) conduct a market analysis and review so as to identify the optimal market engagement strategy and approach;
- (b) look to achieve efficiencies by using the mechanisms for aggregated purchasing through the form of State Purchase Contracts and or Sole Entity Purchase Contracts. I have addressed the details of State Purchase Contracts in the answers below; and
- (c) develop and apply an asset disposal process that deals with risks and safe disposal options and strategies.

5.4 **Market Approach - Goods and Services Policy**

28 Market approach involves informing the potential supply market about the procurement. The Market Approach Policy requires Mandated Agencies to:

- (a) Develop a plan as to how they will approach the market/s which encourages participation, engages with suppliers fairly and equally, eliminates barriers, provides sufficient time for proper submissions and makes all changes to any procurement requirement consistently. The Mandated Agency must have a clear approach to ensure that all the requirements are identified and explained clearly and appropriately to all potential suppliers. The policy details that the required minimum information that must be provided to potential suppliers and the specific requirements for the appropriate management of submissions.
- (b) Respond to critical incidents by adopting streamlined and flexible procurement processes to facilitate an immediate response to an emergency, crisis or disaster. In accordance with the VGPB Policy and Guidelines for such unique times; this requires agencies to suspend normal procedures to the extent they are not practical or adversely impact on the management and response to the incident. Mandated Agencies are still required to adopt arrangements to ensure that even during critical incidents the agency takes into account value for money, accountability, information security and probity principles to the extent they can be applied, and to put in place minimum record keeping processes and disclosure obligations. The Mandated Agencies must develop a plan or adopt a format that will allow for the minimum recording of certain information in relation to procurement decisions during a critical incident.
- (c) Ensure it has high standards of probity and systemic application of evaluation criteria and weightings in place reflecting the complexity of the procurement so that it can evaluate supplier submissions in a fair and equitable manner. This includes considerations such as security risks, probity and fairness requirements, managing real or potential conflicts of interests and documenting the stages of the decision making process transparently so that the supplier selection process can be explained and defended. The Mandated Agencies are required to ensure their evaluation process only consider bids that meet

mandatory requirements detailed in the market engagement documents and that the persons conducting the evaluation have the necessary capability for the complexity of the procurement activity.

5.5 Contract Management and Contract Disclosure

[\[https://www.buyingfor.vic.gov.au/contract-management-and-contract-disclosure-goods-and-services-policy\]](https://www.buyingfor.vic.gov.au/contract-management-and-contract-disclosure-goods-and-services-policy)

- 29 The Contract Management and Contract Disclosure policy sets out broad requirements on Mandated Agencies requiring that each agency:
- (a) manage its contracts in a manner appropriate to the complexity and risk of its activities and also to ensure a contracts register is maintained. As a minimum each Mandated Agency must develop a contract management plan (CMP):
 - (i) for categories that represent a significant proportion of the organisation's spend;
 - (ii) for each individual procurement activity that is critical or high risk; and
 - (b) disclose the details of the contract as specified in the policy which requires that:
 - (i) for contracts with a total estimated value equal to or exceeding \$100,000 (including GST) (excluding contracts under head agreements), they must within 60 days of a contract being awarded disclose the key details on the contract publishing system;
 - (ii) for contracts with an estimated value exceeding \$10 million (including GST) they must disclose full contract information on the contract publishing system. Only trade secrets or genuinely confidential business information will be withheld from such disclosure, along with material which if disclosed would seriously harm the public interest; and
 - (iii) each variation with, or variations with a cumulative value exceeding \$100,000 (including GST), must be disclosed on the contract publishing system against the relevant contract.

6 Please describe what, if any, directions or policies apply to the sourcing of private entities to provide security services to the Victorian Government.

- 30 The Victorian Government uses centralised government contracts to buy common goods and services. These are called State Purchase Contracts (SPCs). I discuss the relevant SPCs further below at question 12 and following.

- 31 There are 32 SPCs for goods and services all of which are listed on the Buying for Victoria website and non-confidential details can be seen by the public, potential suppliers and of course the Mandated Agency or other prospective buyers of services. The types of goods and services range from the SPC for printing, legal services, different energy providers, software licensing etc. Security Services is one of the SPCs as discussed below.
- 32 SPCs can be either contracts with a sole supplier or with a panel or register of multiple suppliers that have already been pre-qualified and from which the Mandated Agency can select to procure services from.
- 33 To provide security services, DTF as the lead Department, has supplier arrangements, or a panel, with five suppliers. These are:
- (a) G4S Custodial Services Pty Ltd;
 - (b) MSS Security Pty Ltd;
 - (c) National Protective Services Pty Ltd;
 - (d) SECUREcorp (Victoria) Pty Ltd; and
 - (e) Wilson Security Pty Ltd.
- 34 These five suppliers are all private entities and are listed within the SPC for Security Services.
- 35 As I describe below, a Mandated Agency in sourcing the security services from a private supplier is required to follow the policies and guidelines described in question 5 above. This includes a direction that they are required to use the SPC for Security Services and follow the rules and requirements set out in that SPC unless one of the conditions existed in which it was appropriate and permitted to source services from an entity not on that panel.

Deciding to procure services

7 When an agency determines to obtain services provided by the private sector, what if any factors guide how the agency should source those services?

- 36 Agencies use their own procurement processes to obtain services provided by the private sector. In the case of Mandated Agencies, those processes are required to be consistent with the VGPB supply policy framework. As I have summarised above, the five VGPB policies set out in some detail the factors the Mandated Agency has to take into account and the steps they are required to follow or address when sourcing services.
- 37 The VGPB also has published a guideline for buyers covering matters such as how to give notice of and manage the invitation process, and how to prepare documents such as the

specification, evaluation criteria and model, tender process and contracting templates. This guideline can be found at <https://www.buyingfor.vic.gov.au/guide-procurement>.

- 38 If the good or service is of a kind that is being sourced using a SPC, then the agency would also be guided by the rules of use, if any, which apply to the relevant SPC as detailed on the Buying for Victoria website.

8 Ordinarily, who makes that determination?

- 39 The Mandated Agency's own procurement governance framework (required to be established under the Governance Policy) would set out and provide for a formal delegation of authority process. I would expect that this would specify who or what role in the relevant agency is to make the determination to obtain services provided by the private sector.

9 What documents are ordinarily prepared to document the decision to procure services?

- 40 As I have noted above, the Policies and the Guide for Buyers set out certain plans and reports a Mandated Agency has to prepare. If the procurement was through a SPC then there are specific rules and templates that need to be completed under the relevant SPC.

- 41 In terms of the further documentation to record the specific decision for a particular service then each Mandated Agency would have its own documents to record and outline the decision process and confirmation to procure services. The agency's procurement processes would detail what decision document and/or record of approval was required.

10 Are procurement processes standard across the Victorian Government or can agencies develop their own?

- 42 As I have noted above, the VGPB policies provide for a framework for the governance of and review and reporting or procurement by Mandated Agencies. To that extent there is a standard approach to the framework. However, Mandated Agencies are required to develop their own plans and processes for procurement so that they are appropriate for the nature and size and complexity of their relevant agency or department. To this extent the procurement processes are not standard but tailored to the department/agency and type of service.

11 What are the steps that are taken in order to procure services?

- 43 Within the broad framework and policy rules, the individual procurement steps would be unique to each agency's procurement process and in accordance with the plans they have developed.
- 44 It is my experience that the steps involved may vary depending on the specific service identified to be procured, the size and complexity or importance of the procurement and whether the service is to be procured under a SPC.

- 45 Where the procurement of a service is required to be pursued under a SPC, the steps would include those outlined under the relevant SPC, in addition to the specific steps required under the agency's procurement process.

Approaching potential providers

State Purchase Contracts

12 What are the purposes of State Purchase Contracts?

- 46 A SPC is a head agreement that Mandated Agencies must use for the particular category of goods or services unless it is a non-mandatory SPC or where there is a non-mandatory component of a SPC or certain circumstances have arisen. SPCs provide standard terms and conditions and streamlined processes for the purchasing of common goods and services.

- 47 The purpose of SPCs as explained on the Buying for Victoria website is to establish whole-of-government contracts with the aim to:

- (a) achieve value for money through using the collective purchasing power of government; and
- (b) standardise how government buys from suppliers.

- 48 DTF has broad supervisory responsibilities for the majority of SPCs for goods and services across the Victorian Government, other than those that are information communication and technology SPCs or for legal services.

- 49 SPCs are typically in the form of head contracts, which specify the key terms under which Victorian Government departments and agencies may transact with panel suppliers (or the sole approved provider which is currently the case with some categories of goods and services such as banking). SPCs also contain a template Purchase Order Contract (or similar) (POC), pursuant to which specific services are procured by relevant departments and agencies.

13 How is a potential supplier selected to form part of a panel of providers under a State Purchase Contract?

- 50 The process for a supplier being selected to be on a panel of providers for the relevant category of services (and therefore listed in the relevant category SPC) is overseen by DTF. As I summarise further below, DTF organises and oversees the process (for those SPCs for which DTF has supervisory responsibility). An evaluation group, usually made of representatives from different departments and agencies that are expected to be the largest users of the SPC evaluates the submissions. The final endorsement is made by the project control board.

- 51 The process for being selected to a panel is also made transparent to suppliers on the Buying for Victoria website at the page headed “Apply to join a contract, panel or register”:
- <https://www.buyingfor.vic.gov.au/node/580>
- 52 In summary, the process to be selected as a supplier on a panel of providers (for those panels that DTF is the lead Department and with which I am familiar with) involves the following:
- (a) As the SPCs run for different fixed terms, the process for panel selections or panel review will usually commence around one year or so before the expiry date that is published for that SPC. This is in contrast to registers that are always open. Their process is also on the website.
 - (b) DTF runs a portal that allows suppliers to register if they are interested in applying for a panel and they are thereby kept up to date of key milestones in the selection process.
 - (c) A business case is developed internally for that relevant category of services in accordance with the VGPB’s Supply Policy Framework.
 - (d) Once approved, DTF develops the Request for Tender (RFT) documentation including the Specifications and Contract for release to the market via:
www.buyingfor.vic.gov.au/browse-tenders.
 - (e) Each individual SPC tender process has bespoke evaluation criteria for evaluating tenderers as set out in the tender Evaluation Plan. The tender Evaluation Plan sets out the parameters for any short-listing, best and final offer process and/or negotiations.
 - (f) Evaluation criteria and weightings are published in the RFT.
 - (g) Submissions from suppliers are assessed by an evaluation team in accordance with the Tender Evaluation Plan and Procurement Conduct Plan, which have been endorsed by the probity adviser and the project control board. The evaluation team generally consists of representatives from across a range of purchasing entities.
 - (h) A tender recommendation report is prepared for the endorsement by the project control board.
- 53 The head contract for the particular SPC is then executed with the selected supplier/s either by the Assistant Treasurer (who is the responsible Minister) or by the Assistant Treasurer providing the necessary authority to a DTF authorised officer (commonly either the Deputy Secretary, Corporate and Government Services or the Executive Director, Strategic Sourcing).

14 What, if any, process must an agency follow in order to source providers under a State Purchase Contract? If there is no mandatory process, what is best practice?

54 As each SPC is unique in its commercial structure, there are different requirements for each SPC. Instructions for each SPC are outlined at: <https://www.buyingfor.vic.gov.au/browse-government-contracts>.

55 As I have noted above, the Mandated Agencies must also ensure that their procurements comply with their own internal procurement processes and with the VGPB principles and policies.

15 What services can be procured under the 'State Purchase Contract: Agreement for the Provision of Security Services' (Security Services SPC)?

56 I have been advised that a copy of the Security Services SPC as signed by Wilson and a copy of the Security Services SPC as signed by MSS have previously been produced to the Board of Inquiry. The Wilson Security Services SPC is dated 1 February 2018 and is numbered DTF.0001.0001.3254. The MSS Security Services SPC is dated 1 February 2018 and is numbered DTF.0001.0001.3063. Both Security Services SPCs contain various annexures which form part of those agreements, including the template POCs.

57 Under the Security Services SPC, the list of 'Security Services' that can be procured, subject to the terms and conditions of the Security Services SPC are those set out in clause 2 of Annexure B of the SPC. In summary the list of the general category of security services that can be procured include:

- (a) **static guarding** [cl.2.1.1, Annexure B], which is the employment of a Security Officer at a specified post for a specified period. Their duties which may include (but are not limited to) monitoring and controlling entry of personnel and/or vehicles to a site, concierge or reception duties, producing and issuing passes to authorised personnel, gate guarding and giving directions to people;
- (b) **patrolling sites** [cl.2.1.2, Annexure B], which requires, among other things, a mobile Security Officer to patrol specified sites either on foot or by vehicle to confirm site integrity, provide a physical presence to deter crime and monitor sites for safety and security. Patrols may also include evening lock-up and morning open-up assignments, inspections of doors, windows and gates for security;
- (c) **mail and parcel scanning** [cl.2.1.3, Annexure B], which involves visual and technology screening methods to examine mail and parcels prior to delivery;

- (d) **control room operations** [cl.2.1.4, Annexure B], which requires, among other things, a Service Provider to appropriately staff a Control Room in order perform such tasks as monitoring surveillance equipment, CCTV, maintain contact with mobile and foot patrols, control vehicular access to a site, direct patrols to incidents that have been noted on surveillance equipment; and
 - (e) **alarm response** [cl.2.1.5, Annexure B], which requires, among other things, a Service Provider to ensure that Security Officers promptly respond to any alarm activation notified to them and to attend and to secure the site of the alarm before leaving that site.
- 58 In addition to the above the Suppliers under this SPC can also be required to provide ad hoc Security Services pursuant to clause 2.2 of Annexure B, such as providing Security Services at corporate events, in remote locations, providing events requiring crowd-control and committing to investigating all avenues to extend the shifts of Security Officers to cope with additional requirements when sought by a Purchaser.
- 59 The SPC specifically excludes from its definition of 'Security Services' those services performed by Victoria Police and/or Protective Services Officers. A Service Provider may be requested to provide assistance as designated by the police or a designated PSO under the SPC (clause 1.2, Annexure B).
- 60 The procurement of specific security services under this SPC, follows the process set out in the SPC, involving the issuing of requests and proposals being submitted by prospective suppliers, with any final agreement to be recorded in a POC, the template for which is Annexure A to the SPC.
- 61 As part of entering into a POC, the parties can agree to vary the requirements and arrangements for one or more of the core operational or general categories of security services specified in Annexure B to the SPC or provide for additional security services. By way of example I note that in the POC that Wilson signed with the purchasing agency, the Department of Jobs Precincts and Regions (DJPR) [DTF.0001.0001.0675], the specific security services contracted for included various check in and check out functions. This is a detailed specification of the security services being acquired under the general category for static guarding and reception/visitor services as found in Annexure B of the SPC.
- 62 This process involves in summary:
- (a) the potential Purchaser provides a Service Provider with a written request for Security Services;
 - (b) the Service Provider is required to provide the Potential Purchaser with a Security Service Proposal; and

- (c) if the potential Purchaser accepts the Security Service Proposal, it will issue a POC to the Service Provider, which is required to be in the form of Annexure A to the Security Services SPC.
- 63 The service requirements agreed are to be provided in the Annexure 3 of a given POC which sets out any Technical Specifications and the more detailed description of services being procured which may be all or a combination of the general category of Security Services from the SPC and any additional services, where required by the Purchaser. Annexure 3 description of services in a given POC may also provide specific directions about the delivery or requirements of the security services being acquired. For example, I have seen that DJPR in the signed POCs for each of Wilson [DTF.0001.0001.0675] and MSS [DTF.0001.0001.2468] included directions to follow all reasonable directions of the Purchaser and ensure Personnel were wearing all necessary and compliant PPE.
- 16 Is there a different process that must be followed with respect to sourcing providers under the Security Services SPC? If so, please describe it.**
- 64 In my view subject to completing the specific details required of the particular SPC's forms and steps, the process for the Security Services SPC is largely the same as with other SPCs.
- 65 If a Mandated Agency or other organisation is looking to source services from one of the panel members provided under the Security Services SPC, then the prospective buyer (called a Purchasing Entity) is expected to use the Request for Quote (RFQ) template available from the Category Manager. Information regarding how to prepare a RFQ is outlined on Buying for Victoria Security Services webpage at <https://www.buyingfor.vic.gov.au/security-services>.
- 66 This RFQ process is not unique to the Security Services SPC but the specific details required may be unique to each relevant category.
- 67 Purchasing Entities are encouraged to seek quotes however they are not required to obtain quotes from all of the panel suppliers and the Security Services SPC does not mandate a minimum number of quotes.
- 68 Once the RFQ responses are received, the individual Purchasing Entities (not the lead department such as DTF) must evaluate the particular responses and make their own recommendation.
- 17 Is it mandatory for agencies to source suppliers from the Security Services SPC?**
- 69 Yes, for Mandated Agencies in accordance with the VGPB policies, if they want to procure security services they are required to source suppliers from the Security Services SPC unless

one of the circumstances exist that permit the agency to source services outside of the SPC as outlined in my answer to question 18.

18 Are there any circumstances in which an agency can source services otherwise than by an applicable State Purchase Contract? If so:

(a) What are those circumstances;

70 Any agency or organisation is permitted to source services other than through an applicable SPC in circumstances where it is not a Mandated Agency. There may also be some parts of or sections within a SPC that are not mandatory.

71 Otherwise a Mandated Agency is permitted to use alternative procurement processes to the SPC if:

(a) a Critical Incident arises. The criteria for a Critical Incident are identified in section 2 of the VGPB's Market Approach Policy. I have discussed this further in response to questions 19 to 24 below; or

(b) an exemption is otherwise approved in accordance with the process set out below.

18 (b) If an agency is required to seek an exemption to do so:

(a) what is the process for applying for an exemption (including when should it occur); and

(b) how and by whom is such an application determined? Please provide your answer by reference to any policies or factors that must be considered in determining whether to grant an exemption.

72 Exemptions from a SPC are possible as provided for in the section of the VGPB policy dealing with Aggregated Purchases.

73 An exemption may be open to a Mandated Agency if it can show it cannot obtain value for money under the SPC for a variety of reasons. For example, special circumstances may have arisen in relation to sourcing from the SPC. The factors that may justify granting an exemption could include:

(a) a supplier or suppliers on a SPC panel are no longer able to service an area or there are new regional suppliers that add the same or better value;

(b) there is a need for a one-off purchase where the Mandated Agency's procurement needs cannot be met by the SPC; and

- (c) there has been a change in government operations or machinery which changes the relevance of the SPC panel to that procurement.
- 74 Once the context for an exemption is identified by the relevant Mandated Agency wishing to procure the service, such an application must be approved by the relevant entity's CPO before being submitted to DTF. Exemptions may be sought in different contexts and the process for approval (following approval by the relevant entity's CPO) is slightly different as follows:
- (a) Where an exemption is requested by a Mandated Agency prior to the establishment of a new or refreshed SPC:
- (i) the agency must be able to demonstrate it cannot obtain value for money under the proposed SPC;
 - (ii) the exemption may be sought to encompass the entire agency or a business unit within the agency; and
 - (iii) the exemption requires approval by the Assistant Treasurer.
- (b) Where the exemption is requested by a Mandated Agency from having to comply with a mandated SPC:
- (i) the Mandated Agency must demonstrate that special circumstances have arisen in relation to sourcing from the SPC;
 - (ii) the exemption may be sought for the whole or part of the agency; the whole or part of the SPC supply agreement; or for a fixed period of the supply arrangement; and
 - (iii) the exemption must be approved by the Accountable Officer of the SPC Lead Agency (DTF for Security Services SPC)
- (c) Where an exemption is sought for a one-off purchase by a Mandated Agency or other participating party:
- (i) the participating party may seek an exemption from the SPC for a one-off purchase when its procurement needs cannot be met by the SPC; and
 - (ii) exemptions must be approved by the Lead Agency's (DTF) Category Manager.
- 75 Copies of all exemption requests in all three of the contexts listed above, are provided to DTF in its capacity as category manager/lead department, and DTF will:
- (a) notify the requesting agency of the outcome; and

- (b) enter the exemption on to a central record of SPC exemptions. Mandated Agencies are also required to maintain their own register of SPC exemptions.

Critical incident procurement

19 What is ‘critical incident procurement’?

76 Critical incident procurement is a procurement undertaken in accordance with an agency’s critical incident procurement process or policy. In the case of a Mandated Agency, it is a procurement undertaken in accordance with the critical incident protocols detailed in the VGPB’s Market Approach – goods and services policy.

(<https://www.buyingfor.vic.gov.au/market-approach-goods-and-services-policy>).

77 Critical incident protocols and processes are invoked when a relevant Minister, the Accountable Officer of a Mandated Agency or the CPO of a Mandated Agency declares a critical incident to exist in relation to the operation of procurement processes by reason of:

- (a) an emergency within the meaning of the *Emergency Management Act 1986* (Vic). For convenience I have copied the definition of emergency in my statement:

emergency means an emergency due to the actual or imminent occurrence of an event which in any way endangers or threatens to endanger the safety or health of any person in Victoria or which destroys or damages, or threatens to destroy or damage, any property in Victoria or endangers or threatens to endanger the environment or an element of the environment in Victoria including, without limiting the generality of the foregoing—
(a) an earthquake, flood, wind-storm or other natural event; and (b) a fire; and (c) an explosion; and (d) a road accident or any other accident; and (e) a plague or an epidemic or contamination; and (f) a warlike act or act of terrorism, whether directed at Victoria or a part of Victoria or at any other State or Territory of the Commonwealth; and (g) a hi-jack, siege or riot; and (h) a disruption to an essential service;

- (b) an incident that causes the relevant organisation’s business continuity plan to be activated;
- (c) an incident that represents a serious and urgent threat to the health, safety or security of any person or property; or
- (d) a situation that represents a serious or urgent disruption to services provided by the Mandated Agency.

78 During a critical incident, all other supply policies do not apply to the extent that the critical incident makes it impractical to apply them. A critical incident procurement enables an agency

to adopt a streamlined and flexible procurement process to facilitate an immediate response to an emergency, crisis or disaster.

79 Following the Premier's declaration of a State of Emergency for Victoria so as to combat COVID-19 I received a copy of an email that the VGPB sent to the procurement teams in the various departments and agencies regarding procurement under a State of Emergency, which I also forwarded to others in DTF's Strategic Sourcing group (see DTF.0001.0001.0638). In that email the VGPB reminded the procurement teams from departments and agencies that when normal procurement rules cannot be used they should follow the critical incidents protocols and processes. The VGPB also noted that where possible SPCs should continue to be used.

20 Under what conditions can an agency purchase services through critical incident procurement?

80 In the case of a Mandated Agency the conditions that allow them to purchase services through critical incident procurement are detailed in the VGPB's Market Approach – goods and services policy. The agency must still:

- (a) take into account value for money, accountability and probity to the extent that they can be applied given the severity and urgency of the incident;
- (b) adopt minimum record keeping processes; and
- (c) adhere to contract disclosure requirements.

81 During a critical incident, all other supply policies do not apply to the extent that the critical incident makes it impractical to apply them.

21 What should occur once the conditions justifying critical incident procurement for services have passed?

82 The Accountable Officer or CPO of the Mandated Agency is required to define a date at which procedures under critical incidents cease. Once conditions justifying critical incident procurement for services have passed, the Mandated Agency should resume to approaching its procurement needs using the standard documented procurement process and procedures, consistent with VGPB policy and if relevant the SPCs.

83 In accordance with the VGPB Market Approach – goods and services policy, the agency's annual report is to separately disclose the following information regarding procurement activity during a critical incident:

- (a) total value of goods purchased;

- (b) total value of services purchased; and
- (c) the nature of the critical incident to which the procurement values relate.

22 What kinds of goods or services may be procured through critical incident procurement?

84 Under the VGPB policy there is no limitation as to what goods or services may be procured through critical incident procurement. A Mandated Agency can purchase any goods or services required to support its objectives during a critical incident.

23 What is the process for making a critical incident procurement?

85 The Mandated Agency should assess the unique nature and circumstances of the critical incident and assess what is required to meet the needs in the context of the critical incident. To the extent that any of the normal procurement processes cannot be followed they are not required to be applied.

86 The Mandated Agency as set out in the Market Approach Policy must adopt a format for recording the following minimum information in relation to:

- (a) the goods/service being procured;
- (b) the purpose of the procurement activity;
- (c) the total value of the procurement (including GST);
- (d) the name and contact details of the supplier;
- (e) a short summary of the procurement process followed; and
- (f) contact details of the party managing the procurement.

24 What, if any, policies, directions or rules apply to agencies purchasing services through critical incident procurement?

87 As I have noted above, for Mandated Agencies the VGPB's critical incident protocols and processes to purchase services during critical incident procurement should be applied. These include the Market Approach policy and the associated guides and tools all of which are published on the Buying for Victoria website. Mandated Agencies may also have developed more detailed specific policies, directions or rules that they apply to their purchase of services through critical incident procurement.

Selecting a supplier

25 What, if any, factors must or should be considered when selecting a supplier? How, if at all, do these factors vary depending on whether a supplier was sourced via a State Purchase Contract or by critical incident procurement?

88 I have set out a summary of the process as to how prospective suppliers are considered and selected for a panel tender process in my answer to question 13 above.

89 In respect of an individual Mandated Agency making its own choices in terms of selecting a supplier to provide goods or services, the Mandated Agency needs to factor in the various requirements and considerations set out in the VGPB policies and its own rules. I also refer to my answer to question 7 above in this regard.

90 If the Mandated Agency is sourcing services from a supplier via a SPC, the factors will include the obligation to use one of the approved SPC providers and meet the other rules of the relevant SPC. If the rules of use of the SPC are to be deviated from, the Mandated Agency would have to request an exemption and satisfy the factors and requirements for that exemption process.

91 If the services are procured from a supplier sourced during a critical incident, the unique factors of those circumstances would need to be considered as part of the procurement decision. I refer to my answers at questions 19 to 24 above.

26 What reports or analyses are ordinarily created to document an agency's decision-making? How, if at all, do these vary depending on whether a supplier was sourced via a State Purchase Contract or by critical incident procurement?

92 The selection of suppliers as part of the SPC process involves various documents outlined in the tender process summarised above.

93 In terms of documentation created by a Mandated Agency for their own decision making in connection with a supplier, the documents they create will be governed by their own internal agency plans and processes. In addition, if it is a:

- (a) SPC procurement they must complete the documents required by the relevant SPC; and
- (b) procurement during a critical incident they must develop appropriate means to record the information I have summarised in my answer to question 23 above.

27 Is there any process that must be followed if a potential supplier's rates exceed the ceiling in the State Purchase Contract?

94 I have provided the following response in the context of the Security Services SPC. Each SPC has its own unique provisions for rates and fees.

95 The Rates and Fees contained in the Price Schedule (Schedule 2 of the Security Services SPC) are the maximum (ceiling) Rates and Fees that may be charged under a Security Service Proposal or any POC entered into by the supplier and purchasing agency.

96 Where a potential Service Provider's rates and fees offered exceed the Rates and Fees that may be charged under a Security Service Proposal or POC, the parties need to consider the relevant provisions of the SPC.

97 For example, in the case of the Security Services SPC, clause 10.1(3) requires the Service Provider to notify the Lead Department (which is DTF) in writing and propose updated ceiling Rates and Fees which they claim would allow the Service Provider to provide the Security Services profitably. This becomes the proposed Adjusted Price Schedule.

98 The Adjusted Price Schedule must:

- (a) be calculated using a methodology consistent with the methodology used by the Service Provider to produce the original Price Schedule; and
- (b) will have no legal effect unless and until the Lead Department approves the Adjusted Price Schedule in writing.

99 The Lead Department is entitled to request, and the Service Provider must provide any documentation relating to the proposed Adjusted Price Schedule, including without limitation documentation relating to:

- (a) calculation of the proposed Rates and Fees; and
- (b) the diminished profitability, increased costs or other costs associated with the extraordinary or unforeseeable circumstances or compliance with the No Less Favourable Mechanism, as applicable.

100 Any approved Adjusted Price Schedule will take effect from the date agreed to by the parties. In the absence of agreement, the dispute is to be resolved in accordance with clause 23 of the Security Services SPC.

Entering into a contract**28 What documents are prepared once a supplier has been selected, and by whom?**

101 I refer to my response to question 9 above.

29 Who approves entering into a contract with a supplier?

102 I refer to my response to question 8 above.

30 Who should ordinarily execute a particular contract on behalf of the State?

103 The general principle is that a contract can be executed under a specific statutory power, or, the exercise of an executive power. The execution of SPCs is the exercise of executive power.

104 The Assistant Treasurer may sign the head contracts (the SPCs for which DTF has oversight responsibility) on behalf of the State, or, will otherwise authorise an appropriate DTF office holder to do so. The Assistant Treasurer does not sign POCs as they are the responsibility of each agency as noted below.

105 Ordinarily, when an authorisation is given by the Assistant Treasurer to execute a SPC it will be given to the following DTF positions:

- (a) the Deputy Secretary of the Corporate and Government Services Division;
- (b) the Executive Director of the Strategic Sourcing group of Corporate and Government Services; and/or
- (c) anyone who occupies those offices temporarily or becomes responsible for their functions from time to time.

106 The execution of a POC, signed under a SPC, will be subject to the internal policies and procedures of the purchasing department or agency.

31 How are financial delegations for particular offices determined, and by whom?

107 Often referred to as 'financial delegations', financial authorisations are governed by the Standing Directions issued by the Assistant Treasurer under section 8 of the FMA.

108 Standing Direction 3.3 requires Responsible Ministers for government departments, and heads of non-departmental government agencies, to establish and maintain authorisations covering the creation of financial liabilities and obligations. Such authorisations must, among other things, have a financial limit; be appropriate for the efficient and effective conduct of the

business of the department or agency; and be assigned to a specific position that is appropriate to the amount being authorised.

109 The Responsible Minister can also authorise the Secretary of a department to establish financial authorisations for department employees, however, under the Standing Directions such authorisations must not exceed \$10 million.

32 If you wish to include any additional information in your witness statement, please set it out below.

20 August 2020