

# ENSURING ACCOUNTABILITY IN YOUR ALLIANCE CONTRACT - NATIONAL MUSEUM OF AUSTRALIA EXPERIENCE

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**Government Contracting 2000 Conference**

# The Presentation

**The presentation will cover:**

- **The ANAO, the NMA audit and its findings**
- **application of Commonwealth Procurement Guidelines to alliance partner selection**
- **Managing alliancing risks, maintaining accountability and commercial confidentiality provisions**
- **Contract management guidance**

# Contract Management is Important

- **Parliament sees contract management as important for public sector**
- **ANAO agrees and has conducted audits into Commonwealth procurement and contract management**
- **ANAO has also produced Better Practice Guides**

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# The ANAO

- **Headed by Auditor-General**
- **Mandate to conduct performance audits of Commonwealth bodies**
- **Performance audits**
  - evaluate the economy, efficiency and effectiveness of public sector management
  - provide assurance to Parliament and improve public administration

# The NMA audit

- **Arose due to PWC concerns, large \$ involved and public interest**
- **Objectives:**
  - **compliance with Commonwealth Procurement Guidelines (CPGs); and**
  - **effectiveness of project management to date**

# Audit findings

- **Appointment of commercial alliance partners substantially complied with CPGs**
- **Sound procedures and processes to monitor construction progress (ie. time, cost and quality) and other project risks**
- **Appropriate financial incentives to encourage ‘best for project’ behaviour from all parties**

# Commonwealth Procurement Guidelines

- **Designed to allow agencies flexibility in procurement while:**
  - maintaining accountability; and
  - providing guidance to ensure resources are used efficiently, effectively, and with probity

# Commonwealth Procurement Guidelines (cont.)

- **Six core principles:**
  - value for money
  - open and effective competition
  - ethics and fair dealing
  - accountability and reporting
  - national competitiveness and industry development
  - support for other Commonwealth policies



# Value for money in alliancing

- **Price is major determinant of VFM in traditional contracting**
- **But under alliancing, VFM determined by who will make the best use of funds available**
- **Tested by comparisons against other bidders, past bids and industry norms**

# VFM in NMA project

- One of the selection criteria considered proponent's ability to demonstrate VFM
- Evaluation guidelines allowed proponent's claims against criterion to be appropriately scored

# VFM in NMA project (cont.)

- **After preferred alliance consortia was identified:**
  - proposed profit margins reviewed against past major projects
  - Probity auditor provided independent confirmation
- **ANAO considers Probity Auditor provided valuable assurance**

# Procurement planning in project

- **Call for proposals document outlined:**
  - selection process to be followed
  - selection criteria
  - Commonwealth policies that the successful proponent (and sub-contractors) would have to apply
  - draft Alliance agreement terms and conditions

# Procurement planning in project (cont.)

- **Also considered early was:**
  - **evaluation guidelines to score proponents against the criteria**
  - **probity guidelines for Selection panel and advisers**
  - **engagement of probity adviser and probity auditor**
  - **industry briefing for potential proponents**

# Selection Process for project

- **Department maintained procedural fairness by:**
  - ensuring questions and answers were circulated to all proponents
  - assessing and reassessing proponents only against selection criteria
  - engaging its own consultants to verify proponent's claims

# Selection Process for project (cont.)

- **Department maintained procedural fairness by:**
  - the selection panel disclosing and considering members' potential conflicts of interest
  - ensuring proponents had same amount of time to prepare
  - following the published selection process

# Post-selection process for project

- **Unsuccessful proponents offered individual debriefings**
- **Debriefings provided valuable two-way feedback**
- **All unsuccessful proponents provided positive comments on project alliancing, selection process and Call for Proposals document**



## Post selection process for project (cont.)

- Adequately documenting the selection process, decisions and reasons for decisions is important
- Provides defence against accusations of bias and negative public perceptions
- NMA selection process was documented thoroughly by Department, Probity Adviser and Probity Auditor

# Managing alliancing risks

- **Project alliancing raises new and different risks that have to be managed**
- **One risk is reconciling underlying goals of both parties**
- **NMA project faced this problem. Careful management and judgement is required**
- **Whatever decisions are taken, reasons should be open, transparent and documented**

# Maintaining accountability

- **Public service accountability relies on decisions and their reasons to be available for scrutiny by the Parliament and its Officers including the Auditor-General**
- **Contracts therefore should facilitate full access to the Auditor-General**
- **ANAO spoke with and examined records of alliance partners - with full cooperation**

# Commercial confidentiality

- **Public accountability can be impaired through claims of commercial confidentiality**
- **Commercial confidentiality therefore subject to much parliamentary concern and comment**
- **Auditor-General contends that information should be made public unless there is a good reason for it not to be**

# Commercial confidentiality (cont.)

- In most cases, issues can be explored in audit reports without disclosure of precise commercial-in-confidence information
- Therefore Parliament can have confidence about the issues' impact on public administration
- ANAO is to conduct a performance audit on the use of confidential contract provisions

# Contract management guidance

- **ANAO published Better Practice Guide  
*‘Selecting Suppliers: Managing the Risk’*  
in October 1998**
- **ANAO soon to publish a better practice  
guide on contract management**

# Contract management guidance (cont.)

- **Contract management BPG:**
  - will provide information/assistance on transition in, ongoing management and succession planning
  - discusses the four common contract relationship types that exist on a continuum:

**Traditional - Cooperative - Partnering - Alliancing**

# Conclusion

- **Maintaining accountability when contracting is important to Parliament and its Officers**
- **Project alliancing offers potential benefits over traditional contracting - but raises new risks that have to be managed**
- **Project alliancing is worth consideration by agencies involved in major construction projects**