

Ensuring contract management capability in government - Department of Education

28 JUNE 2019



NEW SOUTH WALES AUDITOR-GENERAL'S REPORT

PERFORMANCE AUDIT

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GPO Box 12
Sydney NSW 2001

The Legislative Assembly
Parliament House
Sydney NSW 2000

The Legislative Council
Parliament House
Sydney NSW 2000

In accordance with section 38E of the *Public Finance and Audit Act 1983*, I present a report titled **'Ensuring contract management capability in government - Department of Education'**.

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

Margaret Crawford

Auditor-General
28 June 2019

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Section one

Ensuring contract
management capability in
government – Department
of Education



Executive summary

NSW government agencies are increasingly delivering services and projects through contracts with third parties. These contracts can be complex and governments face challenges in negotiating and implementing them effectively.

Contract management capability is a broad term, which can include aspects of individual staff capability as well as organisational capability (such as policies, frameworks and processes).

In 2017–18, the Department of Education (the Department) managed high-value (over \$250,000) goods and services contracts worth \$3.08 billion, with most of the contracts running over multiple years. The Department delivers, funds and regulates education services for NSW students from early childhood to secondary school.

This audit examined whether the Department has the required capability to effectively manage high-value goods and services contracts. We did not examine infrastructure, construction or information communication and technology contracts. We assessed the Department against the following criteria:

1. The Department's policies and procedures support effective contract management and are consistent with relevant frameworks, policies and guidelines.
2. The Department has capable personnel to effectively conduct the monitoring activities throughout the life of the contract.

The NSW Public Service Commission and the Department of Finance, Services and Innovation are included as auditees as they administer policies which directly affect contract management capability, including:

- NSW Procurement Board Directions and policies
- NSW Procurement Agency Accreditation Scheme
- NSW Public Sector Capability Framework.

The Department of Finance, Services and Innovation's responsibility for NSW Procurement will transfer to NSW Treasury on 1 July 2019 as part of changes to government administrative arrangements announced on 2 April 2019 and amended on 1 May 2019.



Conclusion

The Department of Education's procedures and policies for goods and services contract management are consistent with relevant guidance. It also has a systemic approach to defining the capability required for contract management roles. That said, there are gaps in how well the Department uses this capability to ensure its contracts are performing. We also found one program (comprising 645 contracts) that was not compliant with the Department's policies.

The Department has up-to-date policies and procedures that are consistent with relevant guidance. The Department also communicates changes to procurement related policies, monitors compliance with policies and conducts regular reviews aiming to identify non-compliance.

The Department uses the NSW Public Service Commission's capability framework to support its workforce management and development. The capability framework includes general contract management capability for all staff and occupation specific capabilities for contract managers. The Department also provides learning and development for staff who manage contracts to improve their capability.

The Department provides some guidance on different ways that contract managers can validate performance information provided by suppliers. However, the Department does not provide guidance to assist contract managers to choose the best validation strategy according to contract risk. This could lead to inconsistent practice and contracts not delivering what they are supposed to.

We found that none of the 645 contracts associated with the Assisted Schools Travel Program (estimated value of \$182 million in 2018–19) have contract management plans. This is contrary to the Department's policies and increases the risk that contract managers are not effectively reviewing performance and resolving disputes.



1. Key findings

The Department has up-to-date policies and procedures that are consistent with relevant guidance

The Department publishes all procurement policies and procedures for goods and services contracts on its intranet, which is up to date and available to all staff. The Department effectively communicates changes to procurement related policies and procedures. Our audit found that the Department's policies and procedures are largely consistent with NSW Procurement Board Directions and policies and the NSW Procurement Accreditation Program for Goods and Services Procurement.

One of the programs we reviewed does not meet the Department's contract management requirements

The Assisted School Travel Program (ASTP) has an estimated cost of \$182 million in 2018–19 and comprises 645 separate contracts with an average value of \$280,000 per contract. None of the 645 ASTP contracts have contract management plans. This is contrary to the Department's policies.

While the ASTP uses other documents to provide guidance to contract managers, it does not meet all of the requirements of the Department's contract management plan template. We found that the guidance provided to contract managers did not have:

- sufficient information on how to escalate issues and resolve disputes
- defined review periods for meetings with suppliers to review performance and discuss any issues.

This increases the risk that contract managers are not effectively reviewing performance and resolving disputes.

The Department could improve its guidance on how to validate performance information

It is important for contract managers to validate performance information provided by suppliers to ensure that government agencies are achieving value for money. The Department's Contract and Vendor Management Guide (the Guide) requires, at a minimum, that contract managers validate performance information by using data collected from operational or management reports.

The Guide describes a range of additional approaches (such as independent audits, sample tests and satisfaction surveys) that contract managers could use to validate supplier performance. The Department advised that, during the contract sourcing process, procurement staff use their expertise and experience to select performance validation strategies.

However, the Guide does not advise what would be appropriate validation methods for different situations or provide guidance on how contract managers should choose validation strategies to mitigate contract risk. The Department does not require contract managers to explain or justify their choice of validation method.

The Department coordinates how contract managers plan for end of contract

The Guide requires a review of contracts 12 to 18 months ahead of the contract end date in order to give enough time for a competitive tendering process if required. The Department's contract management system sends alerts to contract managers at key milestones, including when approaching contract expiry.

The Department has a strategic governance group, the Program Review Meeting (PRM), responsible for monitoring all contracts across the Department. The PRM regularly reviews contracts approaching expiry and determines the appropriate strategy. This may be to proceed with a market process or extend the contract depending on the circumstances.

Once the PRM determines the appropriate approach, it directs contract managers on how they should proceed.



2. Recommendations

By December 2019, the Department of Education should:

1. implement contract management plans for all contracts in the Assisted School Travel Program, consistent with the Department's policy
2. develop a risk-based framework for validating performance information to assist contract managers to select and justify appropriate validation methods for performance information.



3. Lessons from relevant previous performance audits

Making the Most of Government Purchasing Power – Telecommunications (2014 Performance Audit)

As part of our 2014 performance audit on state telecommunication procurement we identified strategies that agencies could implement to improve their contract management. These elements included:

- Agencies' contract management delegations are clear and consistent with general financial delegations.
- Appropriate reporting and oversight practices for contract management are in place.
- Agencies regularly review their Contract Management Framework for relevance.
- There is independent internal monitoring of individual contracts to check compliance.
- Roles and responsibilities are determined and assigned.
- The skills and experience required to manage each contract are assessed and sourced.
- Each contract has a risk-based contract management plan.

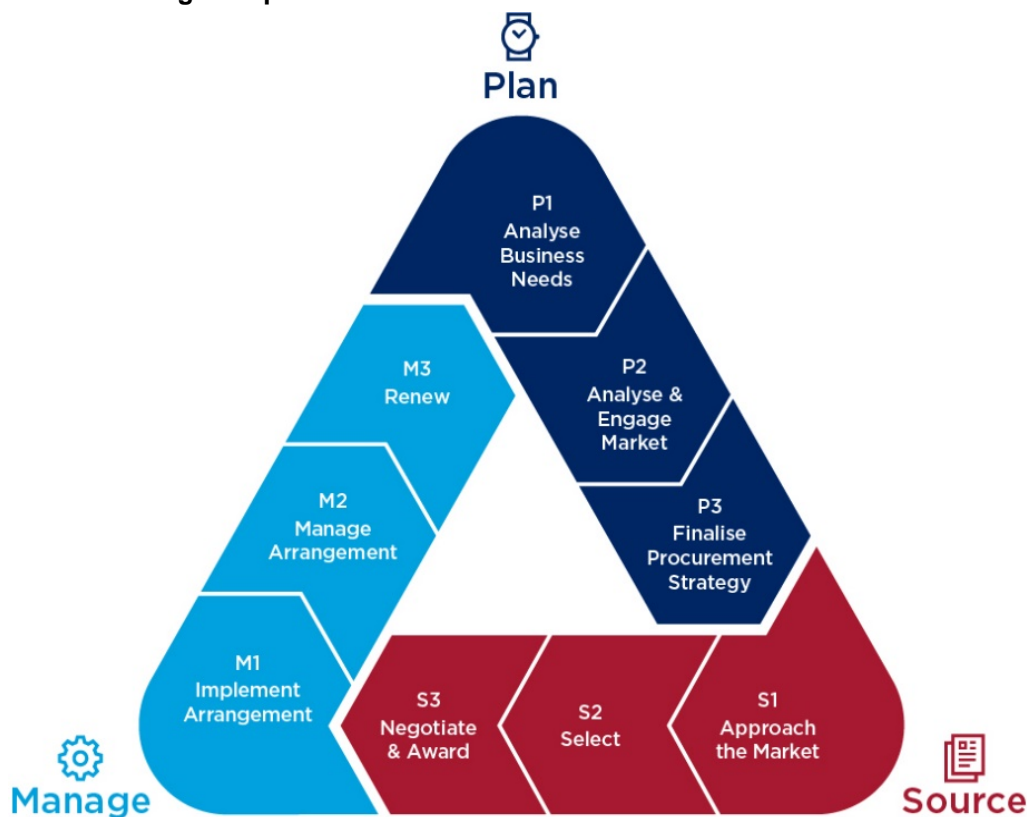


1. Introduction

1.1 NSW Government procurement of goods and services

The NSW Government procures goods and services from third parties to support the delivery of government services. In 2017–18, NSW government spent \$22.0 billion on payments for goods and services. For NSW Government agencies, procurement is a whole of contract life cycle process that includes working with the market, identifying business needs, tendering and negotiation, contract management and evaluation. Exhibit 1 describes how government procurement works.

Exhibit 1: Stages of procurement



Source: NSW Procurement.

The NSW Procurement Board (the Board) is responsible for overseeing the government's procurement system, setting policy and ensuring compliance. It has the statutory power to issue directions to agencies and monitor the progress of agency compliance. It accredits agencies to undertake their own procurement of goods and services. The Board has accredited the Department of Education.

Agency heads are responsible for managing their agency's procurement, and in some circumstances, procurement for other agencies. Agency heads typically delegate responsibility for all types of goods and services procurement to separate parts of their agency. Where this occurs, agency heads should ensure that they have appropriate governance mechanisms in place to manage all categories of goods and services procurement.

Critical to this governance is the appointment of a cluster or agency Chief Procurement Officer, effective procurement planning, robust internal purchasing systems, efficient approval processes, and the appropriate delegation of authority. Agencies are required to prepare procurement strategy and plans that reflect the procurement needs of the agency. These should be consistent with the Board's category management plans and relevant government policies.

Contract management capability

Contract management capability is a broad term, which can include aspects of individual staff capability as well as organisational capability (such as policies, frameworks and processes). The Australian National Audit Office described contract management capability as having several dimensions, including:

- the necessary level of senior management commitment and support
- the capacity to develop and maintain an up-to-date contracting policy and procedural framework
- staff who exercise procurement delegations with experience and knowledge commensurate with the size, nature and complexity of the contracting activities on which they make decisions
- sufficient time and resources to properly manage the contract, including access to specialist skills where needed
- individual contract managers with a level of knowledge, skills and experience commensurate with their contracting responsibilities.

NSW Government policies, frameworks and guidance which relate to contract management capability

NSW Procurement Policy Framework

In July 2015, the NSW Procurement Board (the Board) issued the NSW Procurement Policy Framework (the Framework). The objective of the Framework is to ensure that government procurement activities achieve best value for money in supporting the delivery of government services. NSW Government agencies must ensure their internal policies and controls are consistent with the mandatory requirements set out in the Framework. The mandatory requirements include financial management obligations and policies relating to fraud and corruption control.

The Framework does not provide detailed guidance for contract management. It refers to other specific guidelines and policies for different types of contracts, such as Building and Construction Procurement Guidelines; and Procurement Board Direction for Approved Procurement Arrangements for goods and services.

Accreditation Program for Goods and Services Procurement

In March 2018, the Board revised the goods and services procurement accreditation program (formerly known as the NSW Procurement Board Agency Accreditation Scheme for Procurement) to assess agencies' capability to undertake different levels and/or types of procurement. The minimum requirements for capabilities that relate to contract management include:

- **Procurement policy and procedures** – compliance with the NSW Procurement Policy Framework, NSW Procurement Board directions and policies.
- **Capability** – agencies continuously develop procurement capability to meet business needs.
- **Contract management** – agencies monitor and manage contract requirements to ensure they realise value and manage risk.

Under the program, agencies can attain one of two accreditation levels by demonstrating to NSW Procurement that they meet the capabilities described above. Once an agency is accredited, it is required to comply with annual self-reporting requirements. The accreditation level is held in perpetuity until a trigger event results in a review or remediation process.

NSW Public Sector Capability Framework

The NSW Public Service Commission has developed a capability framework for use across NSW Government agencies. The capability framework describes the capabilities and associated behaviours that are expected of all NSW public sector employees, at every level and in every organisation. It supports the full range of workforce management and development activities: role design and description; recruitment; performance management; learning and development and strategic workforce planning.

The Public Service Commission recommends that NSW Government agencies apply the Capability Framework, however use of the framework is not mandatory. The Capability Framework is applicable to all public-sector roles, both executive and non-executive. Under the Capability Framework, every role requires all the capabilities in the Capability Framework at an appropriate level. This includes the Procurement and Contract Management capability. Exhibit 2 outlines the five levels of capability for procurement and contract management.

Exhibit 2: Procurement and contract management capability framework

Foundational	Intermediate	Adept	Advanced	Highly Advanced
Comply with basic ordering, receipting and payment processes	Understand and comply with legal, policy and organisational guidelines and procedures in relation to procurement and contract management	Apply legal, policy and organisational guidelines and procedures in relation to procurement and contract management	Ensure that government and organisational policy in relation to procurement and contract management is implemented	Ensure that whole-of-government approaches to procurement and contract management are integrated into the organisation's policies and practices
Apply basic checking and quality control processes to activities which support procurement and contract management	Conduct delegated purchasing activities, complying with prescribed guidelines and procedures	Develop well written, well structured procurement documentation that clearly sets out the business requirements	Monitor procurement and contract management risks and ensure that this informs contract development, management and procurement decisions	Ensure that effective governance processes are in place for the organisation's provider, supplier and contractor management, tendering, procurement and contracting policies, processes and outcomes
	Work with providers, suppliers and contractors to ensure that outcomes are delivered in line with time and quality requirements	Monitor procurement and contract management processes to ensure they are open, transparent and competitive, and that contract performance is effective	Take responsibility for procurement and contract management activities and decisions by applying the guidelines and procedures	Monitor and evaluate both compliance and effectiveness of procurement and contract management within the organisation
		Be aware of procurement and contract management risks, and what actions are expected to mitigate these	Promote the principles of risk management as applied to procurement projects, to identify and mitigate risk	
		Evaluate tenders and select providers in an objective and rigorous way, in line with established guidelines and principles	Implement effective governance arrangements to monitor provider, supplier and contractor performance against contracted deliverables and outcomes	
		Escalate procurement and contract management issues where required	Represent the organisation in the resolution of complex/sensitive disputes with providers, suppliers and contractors	

Source: NSW Public Service Commission.

Procurement Professional Capability Set

The NSW Public Service Commission is coordinating the development of occupation-specific capability sets for roles that are common across the public sector. One of these, the Procurement Professionals Capability Set, defines additional knowledge, skills and abilities required for roles within the procurement profession. As with the Capability Framework, use of the Procurement Professionals Capability set is highly recommended by the Public Service Commission but is not mandatory. The Procurement Professionals Capability set includes dedicated Contract Management capability.

The Procurement Professional Capability set notes that the Procurement and Contract Management 'Business Enabler' capability applies at some level to every role within the NSW Public Sector. It then goes on to acknowledge that "additional capabilities from the Procurement Professionals Capability Set should only be used for roles that are substantially involved in delivering procurement services".

Many roles across the sector clearly sit within the procurement profession, and therefore require specific professional procurement capabilities for successful performance. These roles will reflect the necessary capabilities from the Capability Framework and additional, specialised capabilities from the Procurement Professionals Capability Set.

Exhibit 3 describes the five levels of the Contract Management capability described in the Procurement Professionals Capability set.

Exhibit 3: Procurement Professionals Capability set



Source: NSW Public Service Commission.

About the NSW Department of Education

The Department of Education (the Department) provides, funds and regulates education services for NSW students from early childhood to secondary school. In 2017–18, the Department managed high-value (over \$250,000) goods and services contracts worth \$3.08 billion, with most of the contracts running over multiple years.

The Department uses a centre-led procurement model to support contract management capability. Under this model, the Procurement Solutions Directorate (PSD) is responsible for establishing, monitoring and advising goods and services procurement policies and procedures for the Department. The PSD manages approximately 20 per cent of the total contract volume and 80 per cent of the total value of all Department contracts. There are three main types of contracts managed by PSD:

- Whole-of-government contracts e.g. office supplies. These are state-wide contracts, which are used by other agencies, such as Transport, Family and Community Services, Health and Justice. Agencies can purchase goods and services from suppliers using the terms established in the centrally managed state-wide contract. Agencies are responsible for managing the performance of the supplier.
- Department of Education contracts managed by PSD for the entire Department. These are contracts specific to the Department and are fully managed by PSD, e.g. multimedia solutions, contingent workforce service providers.
- Other contracts or programs that are specific for the Department and managed by different divisions/units of the Department, e.g. vocational education and training (VET), work placement, Assisted School Travel Program (ASTP). PSD is responsible for providing support and advice related to contract management policies and procedures as well as monitoring compliance with these policies.

In the Department, each contract has a contract manager whose responsibilities include:

- assisting in developing contract management plan
- managing supplier performance
- managing supplier relationship
- monitoring benefits realisation
- administering contract variations
- managing contract expiry, including extensions
- conducting post-contract reviews.

The contract manager is required to regularly meet with suppliers to discuss any issues. When a contract is managed outside of PSD, the contract manager can contact PSD for advice.

The Department also has four Shared Service Centres in NSW (Blacktown, Bathurst, Newcastle and Wollongong), known as EDConnect. EDConnect assists 2,200 NSW government schools by providing support and advice for a range of corporate functions, including procurement. There is an e-catalogue that contains pre-approved suppliers for common types of goods and services used by schools.

1.2 About the Audit

This audit examined whether the Department of Education has the required capability to effectively manage high-value goods and services contracts. The NSW Public Service Commission and Department of Finance, Services and Innovation are also included as auditees as they administer policies which directly affect contract management capability. The Department of Finance, Services and Innovation's responsibility for NSW Procurement will transfer to NSW Treasury on 1 July 2019 as part of changes to government administrative arrangements announced on 2 April 2019 and amended on 1 May 2019.

See Appendix four for further details about the audit.



2. Contract management capability

2.1 Organisational capability

The Department has up-to-date policies and procedures that are consistent with relevant guidance

Within the Department, the Procurement Services Directorate (PSD) is responsible for writing, publishing, reviewing and updating goods and services procurement related policies, this includes guidance specific for contract management. We found that the Department's policies and procedures were up to date. We reviewed the Department's policies and procedures against the guidance provided by:

- NSW Procurement Board Directions and policies
- NSW Procurement Accreditation Program for Goods and Services Procurement.

Our audit found that the Department's policies are largely consistent with the above frameworks. We identified an area for improvement, where the Department's policies do not include a requirement to identify the skills and experience required for staff tasked with managing the contract. The Department advised us that in practice it considers procurement management capability for staff in their position descriptions, in accordance with the Public Service Commission's capability framework.

Our 2014 performance audit, Making the Most of Government Purchasing Power – Telecommunications, identified that agencies should match each contract to staff with the appropriate level of contract management skills. This would support effective contract management and assist agencies in achieving value for money.

Department staff can access support and guidance

PSD publishes all procurement policies and procedures on the Department's intranet, which is available to all staff. The Department communicates changes to procurement related policies and procedures – after it publishes the updated guidance on its intranet, PSD emails its contract managers to inform them of updates. However, this guidance is only provided to contract managers within PSD and is not provided to contract managers elsewhere in the Department.

Contract managers access up-to-date departmental policies and procedures and seek support from PSD when required. All of the contract managers we interviewed reported they access departmental policies and procedures from the Department's intranet.

PSD provides procurement and contract management support for staff across the Department, which includes regular 'share and learn' sessions. The sessions are targeted at staff with a procurement focus, and recent sessions have included information on updates to contract management guidance. The Department publishes the presentations on its intranet, for all staff to access as required.

Staff responsible for procurement in NSW schools reported issues with support

School administration staff use Department of Education contracts to purchase goods and services for NSW Schools. As contract users, school administration staff have an important role in identifying and escalating issues with contracts.

The Finance in School Handbook includes guidance on the Department's procurement framework to school principals and School Administration Managers. It also refers schools to EDConnect for procurement related issues. However, some schools reported that EDConnect is not always effective as it can be slow or provide conflicting advice.

The Department does not always identify non-compliance with policies and procedures

We found non-compliance in the management of the Assisted School Travel Program (ASTP). It is not clear why the Department did not identify this non-compliance as part of its regular review processes.

The PSD maintains a non-compliance register, which records compliance issues with procurement policies and procedures by Departmental staff. PSD and the Department's internal audit unit identify compliance issues as part of their regular review and assurance activities. The register also includes details of self-reported non-compliance.

PSD submits a compliance report to the Department's Procurement Governance Committee every four months. The PSD also uses information on non-compliance to inform revision or development of policies and procedures.

The Assisted School Travel Program does not use contract management plans

The Assisted School Travel Program (ASTP) provides support for eligible students with identified disability to travel to and from school. It has an estimated value of \$182 million in 2018–19 and comprises 645 separate contracts with an average value of \$280,000 per contract. Ensuring student safety is essential in managing these contracts. See Exhibit 4 for more details about the ASTP.

None of the 645 ASTP contracts have contract management plans. The Department's policy requires that contract management plans contain information on key performance indicators (KPIs), supplier meeting and reporting requirements, risk assessment and risk management, and issue escalation processes.

We found that the guidance provided to contract managers did not have:

- sufficient information on how to escalate issues and resolve disputes
- defined review periods for meetings with suppliers to review performance and discuss any issues.

Contract management plans contain this information and are specific to each contract. These deficiencies increase the risk that contract managers are not proactively reviewing performance and resolving disputes on a timely basis.

Exhibit 4: Assisted School Travel Program – Audit case study

The state-wide Assisted School Travel Program (ASTP) for School Students with Disability commenced in 1996. The program provides support for eligible students with identified disability to travel to and from school. The service is provided at no cost to families for eligible students.

The estimated contract spend is \$182 million for 2018–19, and the program has been extended to June 2021. There are 645 contractors, with around 6,000 drivers, supplying services under the contract.

The ASTP unit has 60–70 people who are responsible for managing the program, including one contract manager (the Program Director) and six senior executive contract officers. The ASTP is listed on the contract management system as a single contract. However, we found that the ASTP is a program with 645 contracts, and the Department has not recorded any of these contracts in its Contract Management System.

The unit is responsible for the administrative operation of the ASTP, which includes the following key contract management obligations:

- Conducting a rolling program of contract compliance reviews to ensure that operators are complying with their contractual obligations to provide the best possible transport service for students with disability.
- Referring concerns about the safety or condition of transport vehicles used to provide transport services to the Roads and Maritime Services (RMS) to request an inspection.
- Processing payment claims in a timely manner with accuracy.

The Department has a process in place to receive and investigate complaints about the ASTP from parents, schools and the general public. While we did not review the complaints process the Department advised us that, in the six months to 31 December 2018, ASTP staff investigated 178 incidents leading to the termination of nine contracts and the referral of 28 incidents to the Department's Employee Performance and Conduct Directorate which manages concerns related to the alleged conduct of contractors.

Despite our finding that the ASTP program does not use contract management plans, as required by the Department's policies, the ASTP demonstrates other elements of good practice in contract management. These include:

- Clearly defined roles and responsibilities for all parties, including schools, parents, service providers and Department staff who administer the program. This includes the requirement for school staff to be present when service providers drop off or collect students from school grounds.
- Requirements for a rolling program of audits to validate supplier performance. The audit program also includes a contract performance audit tool, which acts as a methodology for external auditors to follow. The audit includes the requirement to consult with a sample of school staff and parents to measure satisfaction with the service and identify performance issues. Contract performance audits are intended to assist contractors with understanding the requirements under the Contract Agreement and supporting legislation. The role of the auditor is important for ensuring both compliance with the contract agreement and for building stronger relationships with contractors.
- Online payment claim and claim approval systems for drivers and school principals respectively. These two systems require drivers to submit claims for payment for services on a weekly basis, and principals to approve claims on at least a monthly basis. Monthly certification is sufficient for this service as school staff are responsible for ensuring that students use these services. This reduces the risk that service providers claim for travel services that they did not provide to students.
- Standard contract terms which include the requirement for all contracted travel providers to have provided evidence of a successful working with children check before the contract can begin.

Source: Audit Office research 2019.

2.2 Staff capability

The Department uses the NSW Public Service Commission's capability framework

The NSW Public Service Commission's (PSC) capability framework describes the capabilities and associated behaviours that are expected of all NSW public sector employees, at every level and in every organisation. Every role requires, at an appropriate level, all of the capabilities in the capability framework, including the Procurement and Contract Management capability.

As part of the audit, we examined the position descriptions for six contract managers who work across a range of high-value contracts in the Department. We found that five of the six contract managers' role descriptions are consistent with PSC's requirement for contract management related capabilities.

We found that the remaining contract manager's position description did not align with the capability framework. The Department advised us that the capability framework should be applied to all contract managers across the Department.

The Department has a professional development program for staff who manage contracts

The PSD also provides professional development through a program consistent with the capability framework. Procurement Pathways is an integrated program of capability assessment and development with training and development initiatives that build individual and group capability. It enables staff to gain the knowledge and skills that will help them improve their ability to source and manage contracts.

2.3 Contract monitoring

The Department provides guidance on how contract managers can validate performance information

The Department's Contract and Vendor Management Guide is the primary source of guidance for contract managers. The Guide requires, at a minimum, contract managers validating performance information using data collected from operational/management reporting. Where applicable, contract managers should initiate an independent audit or sample test supplier reports.

The Guide also recommends that contract managers should conduct surveys to gauge purchaser satisfaction where contracts involve delivery of goods or services to other parties.

The Department uses a range of approaches to validate performance data

In the contracts that we examined, contract managers used a range of methods to validate performance data. These included:

- For lower risk contracts, such as the supply of stationery to schools, contract managers relied on the recipient certifying that they received goods before suppliers are paid.
- For the HSC VET Panel, performance assessment is mostly based on suppliers self-assessing against the KPIs in the contract. The Department conducts limited validation by conducting an annual survey of a small sample of schools who used the program. The survey asks schools to rate the performance of, and their satisfaction with, the service provider. If there are any issues identified in the survey, the contract manager will discuss with the provider.
- For the Work Placement Coordination Program, which is a grant program administered as 15 contracts with service providers, the Department requires all contracted providers to undertake annual independent auditing of their expenditure of funding received from the Department.
- For the Assisted Student Travel Program, the Department's program managers are responsible for conducting a rolling program of contract compliance reviews to ensure that operators are complying with their contractual obligations to provide the best possible transport service for students with disability.

The Department's contract management planning process does not include a risk-based framework for validating performance information

It is important for contract managers to validate performance information provided by suppliers to ensure that government agencies are achieving value for money. While we note that the Department uses a range of approaches to validate performance information provided by suppliers it does not apply a structured approach, such as a methodology or framework, to align validation strategy with risk.

The Department advised that, during the contract sourcing process, procurement staff use their expertise and experience to select performance validation strategies. It also advised that, during the life of the contract, contract managers and contract owners can modify contract management plans to ensure that performance validation strategies are fit for purpose.

A risk-based framework would assist staff involved in procurement and contract management to develop effective and efficient validation strategies.

The Department does not have a proactive approach to identifying minor issues that might be systemic

Contract managers expect purchasers to manage minor issues directly with the supplier and rely on feedback provided by purchasers (such as schools) to identify systemic issues with the supply of goods. Some schools that we interviewed reported that they prefer to contact suppliers directly instead of escalating any issues to EDConnect. This introduces the risk that because schools are not escalating issues, contract managers may not be able to identify systemic problems.

Contract managers regularly monitor, review and report on contract performance

The Department's policies and procedures provide clear instruction on how and when contract managers should monitor and review contracts. These policies use a risk-based approach to define three categories of contract. The Department has included contract monitoring as a requirement in the appropriate templates, including contract management plan templates. The Department also provides templates for contract managers to document the outcomes of meetings with suppliers. We found that the contract managers included in our sample all met with suppliers to discuss performance in line with the Department's guidance.

The Department coordinates how contract managers plan for end of contract

The Department uses a contract management system to support effective contract management. The contract management system records key information including:

- the original contract
- contract management plan
- approval for any variations
- contract milestones
- expenditure to date
- estimated savings or benefits to date.

The Department's Contract and Vendor Management Guide requires contract managers to start a review of contracts 12 to 18 months ahead of the contract end date in order to give enough time for a competitive tendering process if required. Its contract management system sends alerts to contract managers at key milestones, including when approaching contract expiry.

The Department has a strategic governance group, the Program Review Meeting (PRM), responsible for monitoring all contracts across the Department. The PRM regularly reviews contracts approaching expiry and determines the appropriate strategy. This may be to proceed with a market process or extend the contract depending on the circumstances.

Once the PRM determines the appropriate approach, it directs contract managers on how they should proceed.

Section two

Appendices



Appendix one – Response from agencies

Response from the Department of Education



Mr Ian Goodwin
Acting Auditor-General of NSW
Audit Office of New South Wales
GPO Box 12
SYDNEY NSW 2001

DGL19/404

Dear Mr Goodwin

Thank you for your letter of 31 May 2019, providing the Department of Education with a copy of the final Performance Audit report on Ensuring contract management capability in government.

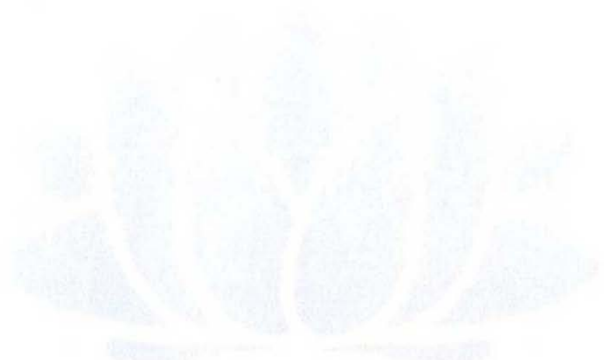
The Department has reviewed the report and has accepted all recommendations and will address these by the suggested due date of December 2019.

I would like to take this opportunity to thank the Audit Office of New South Wales for their work in compiling the report.

Yours sincerely

Mark Scott AO
SECRETARY
DEPARTMENT OF EDUCATION

19 June 2019



Response from the Public Service Commission



Public
Service
Commission

Ref: A4336202

Mr Ian Goodwin
Acting Auditor-General of NSW
Audit Office of NSW
Level 15, 1 Margaret Street
SYDNEY NSW 2000

Attention: Mr Michael Thistlethwaite, Acting Assistant Auditor-General

Dear Mr Goodwin

Thank you for the opportunity to comment on the Final Performance Audit Report on Ensuring contract management capability – Department of Education, dated 31 May 2019 (your ref PA6635/D1911545).

The introduction to the report references the NSW Public Sector Capability Framework and Procurement Professionals Capability Set under the heading *NSW Government policies, frameworks and guidance which relate to contract management capability* (Final report page 6).

It is important to note that the Capability Framework and Procurement Professionals Capability Set were developed for application to individuals in a sector of widely varying agency structures, functions and capability needs. The capabilities are generic in nature and built around indicators that are meant to be applied flexibly in the organisation context.

Application of these resources is highly recommended but not mandatory, allowing agencies to avoid duplication and confusion where roles are subject to other award or external professional or technical capability/competence requirements.

I am pleased to note that the Department of Education applies the capabilities in its role descriptions and provides a professional development program for staff who manage contracts that is consistent with the Capability Framework (Final report page 13), as well as broader organisational support and guidance in contract management (Final report page 10).

If you have any queries regarding the above, please contact Ms Margaret Heys, Senior Advisor on 9272 6030 or margaret.heids@psc.nsw.gov.au.

Yours sincerely


Emma Hogan
Public Service Commissioner

Integrity, Trust,
Service & Accountability

Level 4, 255 George Street,
Sydney NSW 2000
GPO Box 3988, Sydney NSW 2001

Phone: +61 2 9272 6000
contact-psc@psc.nsw.gov.au
www.psc.nsw.gov.au



Appendix two – About the audit

Audit objective

This audit assessed whether the Department of Education had the required capability to effectively manage contracts.

Audit criteria

We addressed the audit objective by assessing the agency against the following criteria:

1. The agency's policies and procedures support effective contract management and are consistent with relevant frameworks, policies and guidelines.
2. The agencies have capable personnel to effectively conduct the monitoring activities throughout the life of the contract.

Audit scope and focus

In assessing the criteria, we checked the following aspects:

1. The agencies' policies and procedures support effective contract management and are consistent with relevant frameworks, policies and guidelines, including but not limited to:
 - a) NSW Procurement Board Directions and policies, including the NSW Procurement Accreditation Program
 - b) NSW Public Sector Capability Framework
 - c) other good practice frameworks for contract management.
2. The agencies have capable personnel to effectively conduct the monitoring activities throughout the life of the contract by:
 - a) collecting and validating relevant performance information
 - b) regularly monitoring and rigorously reviewing contract performance
 - c) identifying and responding to contract performance issues in a timely and effective manner
 - d) providing regular reporting to the senior management.

This audit focused on high-value goods and services contracts.

Audit exclusions

The audit did not:

- examine construction or infrastructure related contracts
- examine information communication and technology contracts.

Audit approach

Our procedures included:

1. Interviewing key staff, and senior officers.
2. Examining relevant documentation, including:
 - a) contracts registers
 - b) risk assessment matrices
 - c) contract management plans
 - d) risk management plans
 - e) escalation procedures
 - f) collection and validation of contract performance data
 - g) regular reporting to senior management
 - h) ongoing assessment of contract performance against contract clauses and key performance indicators
 - i) adequate planning for contract renewal/termination.
3. Interview selected contract managers and review monitoring activities on the contracts they manage.
4. We also examined:
 - a) documentation from other stakeholders obtained throughout the audit such as research and
 - b) studies, and statistical data and analysis
 - c) information from other jurisdictions for comparison.

The audit approach was complemented by quality assurance processes within the Audit Office to ensure compliance with professional standards.

Audit methodology

Our performance audit methodology is designed to satisfy Australian Audit Standard ASAE 3500 Performance Engagements and other professional standards. The standards require the audit team to comply with relevant ethical requirements and plan and perform the audit to obtain reasonable assurance and draw a conclusion on the audit objective. Our processes have also been designed to comply with requirements specified in the *Public Finance and Audit Act 1983* and the *Local Government Act 1993*.

Acknowledgements

We gratefully acknowledge the co-operation and assistance provided by the Department of Education, the Public Service Commission and the Department of Finance, Services and Innovation.

Audit cost

The total cost of the audit is \$270,000.



Appendix three – Performance auditing

What are performance audits?

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

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

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

Why do we conduct performance audits?

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

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

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

How are performance audits selected?

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

What happens during the phases of a performance audit?

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

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

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

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

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

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

Who checks to see if recommendations have been implemented?

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

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

Who audits the auditors?

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

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

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

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

Who pays for performance audits?

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

Further information and copies of reports

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

OUR VISION

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

OUR PURPOSE

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

OUR VALUES

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

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

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

Level 19, Darling Park Tower 2
201 Sussex Street
Sydney NSW 2000 Australia

PHONE +61 2 9275 7100

FAX +61 2 9275 7200

mail@audit.nsw.gov.au

Office hours: 8.30am-5.00pm