

Question on notice no. 4110

Senator the Hon Kristina Keneally: asked the Minister representing the Minister for Home Affairs on 10 September 2021—

With reference to Budget Estimates 2021-22 and the Department's response to Question on Notice No. BE21-182 (Regional Processing Contract - Evidence provided at previous Estimates) :

1. Noting that the Department has said in paragraph 14 of the response that “at no time did the GON inform the Department it would not approve the Request for Tender for an open procurement”, why did the Department believe that commencing an open market tender process would “unduly impact upon ongoing discussions with the GON”.
2. What was the Department doing between January 2017 and 10 March 2017 (noting that there is a gap in the Department's narrative, during which the Department does not appear to have been advancing this important procurement) .
3. With respect to the Financial Strength Assessment of Canstruct, which is referred to in paragraph 21 of the Department's response:
 - a. why did the Department obtain a Financial Strength Assessment of Canstruct after it had already decided – on 14 July 2017 – to pursue a sole tender arrangement with Canstruct;
 - b. is it standard practice for the Department to pursue sole tender arrangements with companies without first undertaking basic due diligence;
 - c. did the Department develop a contingency plan in the event that the Financial Strength Assessment of Canstruct did not find the company fit for purpose; if so, what was the plan and please provide a copy of that plan; if the Department did not develop a plan, why not; and
 - d. noting that the Department has said that the Financial Strength Assessment was “undertaken across all Canstruct company holdings”, please provide a list of all of the Canstruct entities captured by the Financial Strength Assessment.
4. With respect to the reference to a “performance security” by Canstruct as required under the contract in paragraph 21 of the Department's response:
 - a. is this a reference to the \$2 million financial security referred to in clause 12.5.1 of the contract;
 - b. on what date was the financial security referred to in clause 12.5.1 of the contract provided to the Department;
 - c. was this \$2 million financial security the only security provided or procured by a Canstruct entity to secure Canstruct International's performance of the Services; if not, what other security was provided;
 - d. if the only security provided to secure Canstruct International's performance of the Services was the \$2 million financial security referred to in clause 12.5.1, why is it relevant that the Financial Strength Assessment of Canstruct was “undertaken across all Canstruct company holdings” (noting that, unless security was provided by a Canstruct entity other than Canstruct International, the Commonwealth would have no recourse to the assets of

- other Canstruct entities and so the financial strength of those other entities is completely irrelevant) ;
- e. relatedly, what recourse – if any – would the Department have to assets owned by Canstruct entities other than Canstruct International Pty Ltd if Canstruct International Pty Ltd were to default on its contract with the Commonwealth;
 - f. is it standard practice for the Department to award \$300 million contracts to companies with no assets and which generate no revenue without the Department;
 - i. taking security over assets, including shares, owned by related entities; or
 - ii. obtaining a performance guarantee; if so, how does the Department justify such a practice;
 - g. why was a \$2 million financial security for the performance of a \$300 million contract regarded as adequate and who approved this, please provide names and position titles.

Answer —

Senator Cash – The Minister for Home Affairs has provided the following answer to the honourable senator’s question:

1. During January 2017 and March 2017, the Department was in ongoing discussions with the Government of Nauru regarding the future of regional processing arrangements in Nauru, including whether the delivery of some services would transition to the Government of Nauru. Any changes to regional processing service delivery arrangements stemming from these discussions may have impacted the scope of future service delivery requirements, affecting release of the Expression of Interest in its drafted form.
2. Refer answer 1.
3. The reference to paragraph 21 of the Department’s response to Question on Notice No. BE21-182 Budget Estimates 2021-22 (tabled 19 July 2021) requires clarification. At paragraph 21, the Department’s response stated that:
“On 15 August 2017, a Financial Strength Assessment of Canstruct found the company fit for purpose. This assessment was undertaken across all Canstruct company holdings, not only Canstruct International.”
The Financial Strength Assessment of Canstruct was undertaken for Canstruct Pty Ltd for the years ending 31 December 2014, 2015, and 2016 and not across all Canstruct company holdings, or Canstruct International. The Department will issue a correction for BE21-182.
 - a. the Financial Strength Assessment was conducted prior to the engagement of Canstruct International Pty Ltd, consistent with the *Public Governance, Performance and Accountability Act 2013*, the Commonwealth Procurement Rules and procurement guidelines issued by the Department of Finance, and internal departmental procurement guidelines.
 - b. the procurement was conducted in accordance with the *Public Governance, Performance and Accountability Act 2013*, the Commonwealth

Procurement Rules and procurement guidelines issued by the Department of Finance, and internal departmental procurement guidelines.

- c. a contingency plan was not developed. However, if the Department had found Canstruct unsuitable at any point during the procurement process, it would have reviewed its options.
 - d. the Financial Strength Assessment reviewed Canstruct Pty Ltd's audited financial statements for the years ending 31 December 2014, 2015, and 2016.
4. Refer answer 3.
- a. yes.
 - b. the financial security referred to in clause 12.5.1 of the Canstruct contract was provided to the Department on 31 October 2017.
 - c. yes.
 - d. undertaking financial strength assessments is part of the Department's due diligence processes when conducting procurements. Canstruct International Pty Ltd submitted a tender response to RFQ 1700684 on 27 July 2017, but did not commence trading until 1 October 2017. It was therefore not possible to undertake a financial strength assessment of Canstruct International Pty Ltd at that time. Accordingly, the financial strength assessment was an assessment of the financial strength of Canstruct Pty Ltd.
 - e. the Department would not have recourse against entities other than Canstruct International Pty Ltd.
 - f. there is no requirement to seek a performance guarantee. It is a matter for the Department to determine whether a financial security is applied to a contract and the value of that undertaking.
 - g. the Financial Strength Assessment found Canstruct Pty Ltd financially viable. The Department therefore elected to seek a financial security from Canstruct International Pty Ltd. The financial security was approved by First Assistant Secretary, Detention Services Division, Mr David Nockels.