

# Cross Government Review of Major Contracts

Terms of Reference

FINAL

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# 1. Introduction

The Cabinet Office has commissioned a Cross Government Review of the management of major contracts held by G4S and Serco.

- 1.1 This document sets out the terms of reference for the Review, which will have three purposes:
  - I. To investigate the management of certain contracts held by Serco and G4S.
  - II. To gather information to form a wider perspective of the contract management of major contracts across government
  - III. To inform a programme of improvements to the management of these contracts.
- 1.2 The Review is prompted by the findings of an audit of contract management and billing practices within the Ministry of Justice (MoJ). These findings suggest that the charges invoiced to the contracting authority may not have been completely aligned to the contractual basis agreed for the services received. The Cross Government Review will proceed in parallel to the audit of supplier contracts in MoJ.
- 1.3 While the MoJ audit and the Cross Government Review are underway, in-flight procurements will continue as planned. However, any final contract awards may be deferred until results from the MoJ audit and the Cross Government Review are available.
- 1.4 The work is urgent to resolve uncertainty for both the suppliers and the contracting authorities. The Review will start on 22<sup>nd</sup> July 2013 and is anticipated to be completed this autumn.
- 1.5 The Review will:
  - (a) confirm that Charges paid by the contracting authorities for the Services provided by the suppliers accurately reflect the contractual basis for billings for the services provided.
  - (b) understand the way in which these contracts have been managed by the suppliers and the department.
  - (c) make recommendations to improve the management of these and similar contracts across Government and the controls that regulate payment.
- 1.6 Findings will be shared with the NAO as part of the NAO's statutory access and reporting rights and taking into account the need to ensure the Government's commercial position, including the confidentiality of its market-sensitive information, is sustained.

## 2. Governance

The governance of the Review will be undertaken by the Commercial Relationships Board (CRB) that was established in May 2011 to strengthen Government's commercial management.

- 2.1 The members of the CRB include senior Commercial Directors of large government departments and the Crown Representatives. These are experienced commercial managers from inside and outside government who are tasked with overseeing government's relationships with its largest suppliers.
- 2.2 The CRB will form a subgroup and co-opt a number of senior officials from across Government and Government Non-Executive Directors to provide direct oversight of the Review. This subgroup will act as an Oversight Group on behalf of the CRB. The Oversight Group will then report the Review's findings to the Minister for the Cabinet Office.
- 2.3 The Oversight Group will make an initial report in the autumn outlining progress, interim findings and early recommendations.
- 2.4 These terms of Reference may be varied by the Oversight Group in the light of interim findings of the Review or Ministerial instructions.

### 3. Scope

The Review will cover selected contracts from which Serco and G4S receive revenue and which are currently delivering services to Central Government.

- 3.1 The Review will focus on contracts held by Serco and G4S by Central Government departments, their Non Departmental Public Bodies (NDPBs) and Arms Length Bodies (ALBs) bodies, other than those held by MoJ and its NDPBs and ALBs. MoJ is conducting its own audit into contracts it holds with the suppliers.
- 3.2 The Review will also exclude contracts held by other bodies such as in health, the police, and LOCOG.
- 3.3 In scope of the Review will be all contracts held by Serco and G4S with Central Government departments, their NDPBs and ALBs, where the suppliers received revenue greater than or equal to £10m pa in 2012/13 and which are still in operation or have been re-let to the suppliers, excepting as stated above those contracts held by MoJ.
- 3.4 The scope includes contracts where the suppliers are prime contractors, significant subcontractors or members of a consortium operating through a Special Purpose Vehicle (SPV).
- 3.5 Specific contracts may be excluded by the Oversight Group at its discretion during the Review.

## 4. Deliverables

- 4.1 For each contract reviewed the Review team will deliver:
- a) Within 6 weeks an interim report with draft findings and recommendations and details of any further work required to verify findings or investigate further; and
  - b) Within 10 weeks a final report for consideration, unless further investigation has already been approved.
- 4.2 For each contract reviewed, the Review team shall investigate, determine and report as follows:
- a) Have the suppliers incorrectly charged the contracting authorities for the services or goods provided under the Contract;
  - b) Without limiting (a) above:
    - i. Have the suppliers charged the contracting authorities for events or chargeable activities which have not occurred;
    - ii. Have the suppliers charged the contracting authorities for the correct duration of chargeable activities or for periods after the cessation of the activities; and
    - iii. Have duplicate or multiple charges been levied for the same chargeable activity or event.
  - c) If the answer to (a) and (b) above is yes, the Review should seek to explain:
    - i. The period or periods during which the incorrect charging occurred;
    - ii. The total cost to the Authority of the overcharging, broken down by the types of charges to which the incorrect charging applies;
    - iii. How the incorrect charging occurred;
    - iv. Why the incorrect charging occurred;
    - v. Any other observations or findings that are judged relevant to questions (a) and (b) above including, without limitation, observations on the effectiveness of the systems and processes used by the contracting authorities and the suppliers to calculate and process payments under the Contract; and
    - vi. Any recommendations made by the Review.

- d) Additionally, the Review shall refer to the Checklist for Contract Management provided at Annex A to investigate and report on the appropriateness of processes and the capability and skills of staff, including with respect to:
    - i. The controls over payment authorisation;
    - ii. The contract management performance monitoring activities;
    - iii. The verification of chargeable events or activities;
    - iv. Reporting relationships and oversight of senior management; and
    - v. Response to challenges to and queries raised with suppliers.
  - e) When answering the above questions the Review should commence with a sample period of three years from 1 April 2010 to 31 March 2013.
- 4.3 The approach for deriving the sample size of invoices to be tested will be based on a risk assessment matrix that documents both financial management and contract management risks. A relevant sample percentage will be based on the risk assessment. This approach to sample size derivation is informed by a broader understanding of the overall arrangements; and so represents a risk based method to informing a reasonable opinion.
- 4.4 The reviewers will also deliver summary reports covering all the individual contract reviews that they have been asked to perform. This will include:
- a) an initial checkpoint report after 8 weeks with any early findings;
  - b) a full interim report after 12 weeks with consolidated findings and recommendations; and
  - c) a termination report at the end of all reviews, summarising all findings and recommendations .
- 4.5 Comments will be sought on the findings and draft reports from the relevant departments and suppliers.
- 4.6 Each report may be shared with the supplier of the contract being reviewed, Government Departments, and other teams involved with this Cross Government Review, as determined by the Chief Procurement Officer (CPO) or Cabinet Office officials delegated to do so by the CPO, subject to any existing commercial confidentiality constraints and the maintenance of confidentiality of market sensitive information.

## 5. Conduct of the Review

- 5.1 The Review will be conducted in accordance with the Auditors' professional standards. The reviewers will:
- a) Before commencing each investigation, agree the methodology with the CPO and/or his delegated officials that it is intended to apply to answer the questions above;
  - b) At all times during the course of the investigation, maintain an auditable record of the process that is followed to answer the questions above;
  - c) Provide full justification for the answers to the questions above, including reference to all supporting evidence;
  - d) Maintain a complete record of all information that is considered or created during the course of the investigation including, without limitation, interview notes and calculations;
  - e) Confirm before the reviews that there are no conflicts of interest. In the event that any real or perceived conflicts of interest arise during the Review, the reviewers will immediately notify Cabinet Office and assist with appropriate resolution.
  - f) Appear in court, parliamentary select committee hearing or other forum as required, to present and respond to questions regarding the Review and the findings, if required to do so;
  - g) Facilitate regular checkpoint meetings with Cabinet Office to discuss progress, including to consider whether it is necessary to stop all or a part of a contract review because, due to a lack of evidence or otherwise, it is not possible to answer the questions above; and
  - h) State clearly all assumptions.
  - i) Identify named partners who will take responsibility for the quality of review findings and reports.
- 5.2 The Departments and the Cabinet Office will endeavour to provide the reviewers with access to all people, data, records, materials and other information that are required to undertake the Review and to achieve the deliverables.
- 5.3 Whilst some of the data that will be required for the purposes of the Review will be accessed at the contracting authorities' premises, the Review may undertake such investigations as are necessary at the suppliers' premises and with respect to data held by the suppliers.



## 6. NAO involvement

- 6.1 The National Audit Office (NAO) will have a formal role in assessing the process for carrying out the review in order to provide assurance to stakeholders that it has been carried out in a thorough and robust manner. This will involve reviewing the terms of reference, the methodology and how that is applied, and the process for generating findings. In order to carry out this role the National Audit Office will need full and on-going access to the review team and its information.
- 6.2 Prior to the launch of this review the NAO was already carrying out work on aspects of government contracting. This work is partly to support two hearings of the Public Accounts Committee (PAC) in November. Where the NAO's planned fieldwork overlaps with that of the Cabinet Office review it is important to reduce the potential impact on business as usual for both departments and suppliers. The NAO and Cabinet Office teams will therefore share planned work programmes and join up their data requests and interviews, where appropriate.
- 6.3 The NAO will need to summarise the latest position on the Cabinet Office review in its reporting prior to the PAC Hearings in November.

# Annex A: Checklist for Contract Management

Source: NAO Good practice contract management framework, December 2008  
(<http://www.nao.org.uk/report/good-practice-contract-management-framework-2-2/>)

Revised for the purposes of this review

## PLANNING

### Area 1: Planning & Governance

1. Contract ownership, management processes and governance mechanisms are clear with defined roles and responsibilities. **There is a clear contract management plan** which involves appropriately senior people at each level.

### Area 2: People

2. Contract management is **adequately resourced in proportion to the importance of the contract** and the skills make-up of the team reflects the nature of the contract. The **team have the range of skills, capability and experience to effectively and efficiently discharge their roles and responsibilities** and are appropriately performance managed.

### Area 3: Administration

3. **An up to date (annotated with relevant agreed changes) hard copy contract is** stored, logged and **easily accessible** with an operating manual where appropriate. All relevant **correspondence in relation to contract changes is stored and easily accessible.**

## DELIVERY

### Area 4: Managing Relationships

4. The **relationship between both parties is clear and well defined**, responsibilities are documented, there are **structural and informal communication routes** that include other stakeholders outside the contract manager (users of the contract, technical experts etc).

### Area 5: Managing Performance

5. There is a **comprehensive performance management framework** in place with **meaningful metrics** and **suppliers receive regular and routine feedback** on their performance both formal and informal.
6. Clear **documented processes are in place for managing problems efficiently and effectively.** There is **clear documentation of any disputes and their resolution.**

### **Area 6: Payment & Incentives**

7. There are appropriate **defined mechanisms and processes to ensure that payments are made to the supplier in line with the contract** including validation such as spot checks on invoices.
8. There are **defined mechanisms and processes that are managed to ensure appropriate incentives relating clearly to outcomes**. Where **open-book** or similar financial/pricing mechanisms are used **open-book accounts can be mapped to real accounting events** and internal reports in the supplier organisation.

### **Area 7: Risk**

9. **There is a risk management policy and risks are subject to ongoing review and assessment** in line with organisational risk management processes. There is **clear understanding by both parties of who is best placed to manage risks**.

## **DEVELOPMENT**

### **Area 8: Contract Development**

10. Contract management **staff understand the contractual terms** including contract extension (services and duration), termination warranties, indemnities, insurance, security and confidentiality and dispute resolution.
11. Clear **documented processes and governance are in place to manage contract changes** and any changes are communicated and understood by both parties.