



# Accounting Officer Memorandum

## Drugs Testing Service (Re-competition) – Outline Business Case

Accounting Officers have a standing responsibility to scrutinise policy proposals, projects or programmes and ensure the actions of the public organisation they lead meet the four Accounting Officer standards of *regularity, propriety, value for money, and feasibility* – as set out in Managing Public Money.

From April 2017, the government committed to making a summary of the key points from assessments available to Parliament when an Accounting Officer has conducted an assessment of a project or programme within the Government's Major Projects Portfolio (GMPP).

### Background and Context

Drug testing is at the heart of any good drugs strategy and is well established in custody and community. Testing provides quantitative, rather than anecdotal evidence of the prevalence of drug misuse. In support of other security focussed methods such as searching, drug testing helps reveal drug misuse and allow staff to take appropriate evidence-based action.

In custody, Mandatory Drug Testing (MDT) was introduced as part of the Criminal Justice and Public Order Act 1994. Prison establishments across England and Wales must carry out an agreed amount of random testing (rMDT) currently either 5% or 10% each month based on their prisoner population size. Voluntary Drug Testing (VDT) is also used in custody. It involves a prisoner / offender making a commitment to remain drug free and signing a compact to that effect. The level of proof provided by VDT is based on the "balance of probabilities" and confirmatory testing is not required.

In the community, provisions in the Offender Rehabilitation Act (ORA) 2014 allow for the drug testing of individuals under statutory supervision.

The current drug testing agreement was put out to competition in 2010 and a contract was awarded to Abbott Toxicology (formerly known as Alere Toxicology and Concateno). There have been subsequent extensions since then. In 2017, following an unsuccessful procurement exercise, the contract was extended till May 2019 and subsequently to October 2021, to enable us to re-assess changing HMPPS requirements and allow for sufficient time to undertake a robust procurement exercise.

This assessment has been made at Project Outline Business Case (OBC) stage.



## Regularity

There are a number of Prison Service Instructions/Orders/Probation Service Instructions (PSOs/PSIs/PIs) that apply to the service(s) in scope of the project. The policy leads will revise the various Drug Testing PSOs/PSIs/PIs (PSO 3601, PSI 31/2009, PI 32/2014) to ensure alignment with the new drug testing strategy / methodology, where applicable.

Section 16A of The Prison Act 1952 sets out the existing power which allows a prison officer to require a prisoner to provide a urine sample to ascertain whether he or she has any 'drug' in his or her body. This is the statutory basis for MDT testing. Under existing legislation 'drug' is defined as meaning any substance controlled by the Misuse of Drugs Act 1971, the Psychoactive Substances Act 2016 and the Prisons (Substance Testing) Act 2021.

In relation to the Prison Rules 1999, Rule 2 sets out the definition of 'specified drug' which includes several listed chemical compounds. Rule 50 sets out the arrangements that apply to compulsory drug testing, including the information that prison officers are obliged to provide prisoners and the arrangements to prevent adulteration or falsification of samples. Rule 51(9) sets out that it is a disciplinary offence for a prisoner to be found with a substance in his or her urine which demonstrates that a controlled drug or specified drug has been administered.

Individuals released from custody can be made subject to a licence condition and / or post-sentence supervision requirement for drug testing under section 64 of the Criminal Justice and Court Services Act 2000 (c. 43) as amended by section 11 of the Offender Rehabilitation Act 2014 (c. 11)) and under section 256D of the Criminal Justice Act 2003 (c. 44) as inserted by paragraph 2 of Schedule 1 to the Offender Rehabilitation Act 2014), respectively. The Criminal Justice (Specified Class A Drugs Order) 2001 and the Criminal Justice (Specified Class B Drugs Order) 2015 specify the Class A and B drugs for which individuals can be tested for under the aforementioned condition and / or requirement.

Where drug testing is not a licence condition or a post-sentence supervision requirement and the offender is residing in an approved premise there is currently no legislative basis to test for any drugs, including those listed in the Schedule. Currently, we would argue the power to test is found where offender is supposed to comply with the Approved Premises Rules 2011, which is not based in legislation, but is a governance position for appropriate management of the APs.

Under section 209 (1) (b) of the Criminal Justice Act 2003 (CJA 2003), individuals subject to a Drug Rehabilitation Requirement (DRR) of a community order or suspended sentence order may be required by the responsible officer or treatment provider to submit to testing for any controlled drug as defined by Schedule 2 of the Misuse of Drugs Act 1971. The function of making a determination as to the provision of samples included in a community order or suspended sentence order under section 209(1)(b) is to be exercised in accordance with guidance given from time to time by the Secretary of State, by virtue of section 209(5) of the CJA 2003. .

## Propriety

- The proposal for the re-competition and its implementation aligns with managing public money standards and obligations.
- The re-competition will be conducted fairly, and all suppliers will be treated equally.
- The re-competition will be administered to a standard that meets public expectations.
- The risks associated with the re-competition are known, manageable and acceptable.

- The proposals are sustainable, and sufficient public resources are available and are likely to continue to be available to support the re-competition and the new contract.

### **Value for Money**

The Drugs Testing Service (DTS) Recompete project will meet business and business user needs while also offering value for money to the taxpayer and ensuring affordability for the MoJ. Value for money has been assessed throughout the Outline Business Case, in the options appraisal and will be regularly assessed throughout the procurement. It will be further assessed and confirmed in the Full Business Case at the end of the procurement exercise.

### **Feasibility**

An experienced HMPPS Deputy Director from Prison Reform Directorate was appointed as SRO for DTSP, and as SRO, is directly accountable to the Permanent Secretary, Ministry of Justice, under the oversight of the HMPPS Chief Executive Officer.

Effective governance of the project is assured by a dedicated Project Board with representatives from all key stakeholder groups. Issues incapable of being resolved at Project Board level are escalated to the HMPPS Change Portfolio and from there to HMPPS Agency Board.

A dedicated Project team led by a Senior Project Manager has been established to oversee the day to day management of the project and reports progress and escalates issues regularly to the Project Board. The SRO and the Project Team have the necessary skills and capability to manage the project

The project has a dedicated ring-fenced project budget, spend against budget is regularly tracked, and requires prior approval for any Project Budget increases.

Proceeding to live procurement will be subject to the approval of HM Treasury and the Cabinet Office. Furthermore, the project will be in the Governments' Major Projects Portfolio (from January 2022) and is subject to independent Gateway Reviews at key stages of the project lifecycle. The September 2021 Gateway 2 review (of Delivery Strategy) gave an overall delivery confidence assessment of Amber.

### **Conclusion for the Accounting Officer**

My conclusion is that the Drugs Testing Service Project is ready to proceed to seek Cabinet Office and HM Treasury external approval of the Project Outline Case, required to commence the live procurement process.

As the principal accounting officer for the Ministry of Justice I considered this assessment of the DTS Project and approved it on **9 November 2021**.

I have prepared this summary to set out the key points which informed my decision. If any of these factors change materially during the remaining lifetime of this project, I will ensure a revised summary is prepared, setting out my assessment of the changes.

This summary will be published on GOV.UK. Copies will be deposited in the Library of the House of Commons and sent to the Comptroller and Auditor General and Treasury Officer of Accounts.

Dr Jo Farrar

Second Permanent Secretary, MoJ and CEO, HMPPS

**Clearance**

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