THE SATURDAY PAPER

NEWS
SEP 17, 2016

Transfield's $1.1b offshore processing contract farce

A blistering audit of the offshore detention program reveals a system defined by untendered contracts and preferential deals raises billions of dollars' worth of questions.

KAREN MIDDLETON

Asylum seekers held on Nauru. REMI CHAUVIN

YOU ARE READING

On Friday, August 24, 2012, the acting immigration department secretary, Martin Bowles, received an apparently unsolicited email. It came from industrial service provider Transfield Services. Breezy in tone, its purpose was business.

"It has been a while since we have spoken," its author wrote. "How is it going in the world of the Department of Immigration? I am sure it is very busy to say the least."

At the time, the department was scrambling to carry out an urgent instruction from Julia Gillard's government to reopen mothballed detention centres on Nauru and Papua New Guinea's Manus Island in an attempt to stop asylum seekers arriving by boat.

Transfield saw an opportunity.

"Reason for contact," the email said, "is to enquire how Transfield Services can support you in your task in Nauru."

All began work without having formal contracts in place. The extent and price of services to be provided were not agreed upfront.

The email is revealed in a blistering report from the Australian National Audit Office tabled in parliament this week, which details how the department broke procurement rules repeatedly in its tender processes for running offshore processing centres.

The report finds taxpayer costs increased while the department said it was saving money. It shows the department failed to perform due diligence or collect necessary conflict of interest declarations; that it set aside other companies' bids in favour of Transfield without explanation or a proper paper trail, in one case declining to renew an existing contract; and based its decisions on information that other departments showed later was untrue.

After a series of contracts involving four organisations and spanning three years and as many governments, the proposed extension in 2015 to Transfield's contract to manage the Nauru and Manus Island centres was cancelled suddenly on July 29, midway through the audit office investigation.

Unlike two previous tenders also investigated, this one had followed an open process. But concerns were raised that, after Transfield had been named preferred tenderer and other bidders dispatched, details were still being negotiated that led to the company upping its price without competition – by a billion dollars.

"During the course of negotiations, the department amended its requirements and accepted amendments and adjustments to services that flowed through to a $1.1 billion increase in Transfield's overall price," the audit report found.

Instead, and despite the company, now renamed as Broadspectrum, wishing to get out of the detention centre business, the department exercised its right to extend the existing contract until October 2017. By then, the department intends to test the market and start all over again.

Overall, the audit report identifies "serious and persistent deficiencies in the three phases of procurement activity undertaken since 2012 to: establish the centres; consolidate contracts; and achieve savings".

The contracts also involved another provider of what's known as "garrison services", G4S, plus the Salvation Army and Save the Children, with Transfield Services securing by far the biggest slice, worth $2.19 billion of the total $3.05 billion.

Serco Group, which ran detention centres onshore, had expressed interest in the offshore sites. But despite having provided indicative costings, Serco was sidelined early "without evidence of a value for money assessment … or the opportunity to negotiate".

The audit concluded that the initial departmental contract decisions appeared to have been based on the department's view of who could move fastest, rather than on best price.

Lack of transparency

The University of Melbourne's professor of public management, Janine O'Flynn, has been following the contracts issue.

"Some of the things coming to light now about tendering and political expediency have been a latent issue for some time," she told *The Saturday Paper*. "The lack of transparency, the fact that we still can't get a sense of what the true cost of [offshore detention] is – that lack of transparency is about, in the end, the expenditure of taxpayers' money."

The immigration department's contracting troubles for offshore detention began under the Labor government. After the three-member expert panel Gillard had appointed recommended a resumption of offshore processing in 2012, the then prime minister ordered the centres' urgent reopening – first Nauru and then Manus – putting the department under enormous pressure. Asylum seekers were being transferred to Nauru within three weeks.

The department relied on a provision within Commonwealth procurement rules that allowed it to bypass the normal open tender process and approach contractors directly, due to "urgent and unforeseen circumstances".

The auditors found this was acceptable, given the time pressure. But a condition of the shortcut was that the contracts had to be "value for money".

It said in some cases, they were not.

Transfield's first approach to the department in 2012 saw it engaged to deliver security and logistics on Nauru. The Salvation Army, which had also approached the government, was appointed to look after detainees' welfare.

Fellow providers G4S and Save the Children were engaged to do the same respectively on Manus Island.

All began work without having formal contracts in place. The contracts eventually took between 16 and 43 weeks to negotiate, meaning the extent and price of services to be provided were not agreed upfront.

The audit office found repeated examples of departmental records being non-existent or having disappeared. The paperwork for Transfield's Nauru contract showed the costing eventually agreed upon was based on rates derived from the company's involvement in a Defence panel on garrison services.

There is no evidence the immigration department checked the rates with Defence, which told the auditors that while Transfield held some individual contracts, no such panel existed. Transfield also insisted it had advised the department that its contracts were not panel arrangements.

After the Coalition won office in 2013, the departmental processes did not improve.

Transfield awarded Manus without proof of efficiencies

Having been appointed to run the Nauru centre, and having done so at below the cost of previous operations, Transfield approached the now permanently appointed secretary Martin Bowles again, proposing a new arrangement, which it said could offer savings.

It proposed taking over as "lead" agency on Nauru – which had been the Salvation Army's role, with a brief focused on detainees' welfare – and placing the emphasis on expanding the centre's capacity, processing detainees' applications faster and persuading them to return home voluntarily.

The same day, another provider, G4S, also approached Bowles. Already contracted to provide such services on Manus Island, it was proposing to deliver them on Nauru as well.

The audit found "no available record of the department having considered that proposal or having responded to G4S".

Rather, the department's attention turned to Transfield, which had been approached originally to tender for the Manus contract as well.

"The department's approval documentation reports that Transfield's bid was found to be four times more expensive than G4S," the audit report says.

A month after both emails arrived in the secretary's inbox, the department met with Transfield to discuss a consolidated contract. It then asked the finance department to approve another limited tender, relying on the same "urgent and unforeseen" provision to justify not extending the existing providers' contracts and instead sidestepping an open tender process to simply offer a contract to Transfield. The finance department said the circumstances were different but that a limited tender could apply if "poor performance of the existing provider" could be shown.

The department wrote that G4S and the Salvation Army were "underperforming". But the audit says the organisations were told the decision was "not based on their performance".

The then immigration minister, Scott Morrison, met with Transfield Services and, a week later, it lodged a proposal identifying annual estimated savings of $14.76 million in service delivery across the two detention centres.

But those savings were not achieved. Instead, costs went up.

Appearing before parliament's legal and constitutional affairs committee in February 2014, departmental secretary Martin Bowles was asked why the contracts had been consolidated.

"The work we have done in the department, trying to understand how we manage those two islands, led us to believe that the best way to do that was with a single contractor," he replied.

The audit found that "available documentation does not include any record of work performed by DIBP (the department) on potential improvements or efficiencies arising from one provider".

The audit has still been unable to quantify the total cost. But it found costs inflated because the consolidated contract built in a high estimated number of detainees when the success of Operation Sovereign Borders made that number much lower.

The auditor says while Transfield's original Nauru bid was below historical costs, its bid for Manus exceeded them "by between $200 million and $300 million".

The finance department revealed the structure of the contract meant when numbers fell, the annual cost of housing each detainee rose, from $201,000 before the contracts were consolidated to $573,111 afterwards.

The then prime minister, Tony Abbott, had specified the prime objective was to bring the per-detainee costs down. The department had declared savings, based on benchmarks set by audit firm KPMG, which it had hired in late 2013 to help oversee the process.

The audit found the benchmark KPMG set was "adjusted above historical costs by some $372 million". It said: "The department had no authority to increase the value of the contract above historic costs to cover service enhancements and was aware of this."

When the contract was signed in March 2014, Morrison was told the department had negotiated a 5.9 per cent saving overall, valued at $121 million, compared with the benchmark.

"The minister was not advised that the resulting contract… would require the Commonwealth to pay a significant premium over and above the historical costs of services," the audit says. "The minister was not advised that under the contract actual capacity levels (at the time) represented significant additional expense."

Conflicts of interest

But the appointment of KPMG as overseer raised the issue of potential conflicts of interest and their disclosure.

KPMG was also Transfield's external auditor – a fact it saw as no conflict and that it says it disclosed in multiple discussions with the department but which is not documented anywhere the audit office could find.

KPMG eventually lodged a disclosure form – after it began work.

No conflict declarations were found for any departmental officers involved in the tender process, despite being required.

The audit office also examined issues of conflict of interest relating to the former chairman of Transfield Services, Tony Shepherd.

The 2013 Transfield approach to Martin Bowles was made on October 14, while Tony Shepherd was still its chief.

Nine days later, he would resign to take up a government appointment as head of prime minister Tony Abbott's new "commission of audit".

As part of that role, he would preside over the examination of costs across government, including the cost of running offshore detention centres.

Shepherd had told the company's annual general meeting three years earlier when he intended to retire.

He told *The Saturday Paper* he was mindful of potential conflicts of interest. He said, as chairman, he wasn't involved in any bids.

In his new role, Shepherd and his secretariat met with Martin Bowles on November 28, 2013 – two days after Morrison had met with representatives of Shepherd's former company to discuss the proposed consolidated contract and the same day the department's procurement unit asked Finance for advice so it could proceed to engage Transfield.

The audit found there were no records, either from the department or the commission of audit, to indicate the Transfield contracts were discussed in the Shepherd–Bowles meeting. Both men told the audit the contracts were not discussed, which Shepherd confirmed to *The Saturday Paper* this week.

“We didn’t discuss specific contracts at all, or bids,” he said. “I was still conscious that I was ex, so I didn’t want to compromise anybody in that respect.”

Shepherd told the audit office that before accepting the appointment, he had advised the government in writing of “any potential conflicts of interest”, including his role with Transfield Services.

He said he had retired from that role and sold his shares when he took up the commission of audit position.

Shepherd said the commission decided to examine the offshore detention contracts because its focus was on bringing costs down. “We were concerned about the growing cost of onshore and offshore processing and recommended steps to contain and reduce these costs,” he told the audit office.

“The most damning ANAO report of a government department”

When new parent company Ferrovial took over the renamed Broadspectrum in April, it announced its plans to end involvement with offshore detention.

“In relation to the provision of services at the regional processing centres in Nauru and Manus province, these services were not a core part of the valuation and the acquisition rationale of the offer, and it is not a strategic activity in Ferrovial’s portfolio,” the statement said. “Ferrovial’s view is that this activity will not form part of its services offering in the future.”

A spokesman for Broadspectrum told *The Saturday Paper* the company was not the subject of the audit.

G4S, whose contract was not renewed on the basis of an alleged performance failure that was never reported to it, welcomed the audit.

“We are currently considering the report,” its media team said by email.

It is not clear whether any company or organisation will seek legal action as a result of the audit office findings.

Martin Bowles, who is now the secretary of the Health Department, declined to comment on the audit.

In parliament, the report’s tabling prompted a shouting match over who was to blame. Labor senator Alex Gallacher called it “the most damning Australian National Audit Office report of a government department” and “almost incomprehensible”.

The Greens’ immigration spokesman, Senator Nick McKim, said he was “genuinely flabbergasted” by the revelations. “This is a damning and scathing report of an agency which in some aspects of its operations has clearly gone rogue,” he said. He called for both the current minister Peter Dutton and the current secretary, Michael Pezzullo, to be sacked.

On the government’s behalf, Queensland LNP senator Ian Macdonald called that a “disgraceful and unworthy attack”. “There were tens of thousands of illegal arrivals ending up on Australia’s shores,” he told the senate. “The poor departmental officials had to try and process all of them under the time of the Labor government because they just kept coming.”

The immigration department has agreed to implement the audit report’s recommendations for an overhaul of practices. There is no recommendation for any other action or further investigation.

Immigration Minister Peter Dutton called the report “an independent exposé of the absolute chaos and dysfunction at the heart of the Rudd–Gillard Labor governments in their handling of border security”. He told ABC Radio: “The government of the day thrust the department into a very difficult position. … There is no doubt that the legacy created by Labor will continue for some period of time.”

But the real explosion in costs, and the further abandonment of process, happened under the government he served. It happened while his treasurer was the minister, and on Dutton's watch too.

TAGS:

Australian National Audit Office Transfield G4S Serco Manus Nauru offshore detention Martin Bowles Janine O'Flynn Scott Morrison KPMG Tony Shepherd Ferrovial Broadspectrum Peter Dutton Ian Macdonald

This article was first published in the print edition of The Saturday Paper on Sep 17, 2016 as "Transfield’s $1.1b contract farce". Subscribe here.

KAREN MIDDLETON

is *The Saturday Paper*’s chief political correspondent.