

**Grwp yr Economi, Sgiliau a Chyfoeth Naturiol**  
**Economy, Skills and Natural Resources Group**

**Cyfarwyddwr Cyffredinol - Director General**



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**Llywodraeth Cymru**  
**Welsh Government**

Nick Ramsay MS  
Chair – Public Accounts Committee  
Welsh Parliament  
Cardiff Bay  
Cardiff  
CF99 1NA

23 March 2021

Dear Chair

**JOB SUPPORT WALES PROCUREMENT REVIEW**

During the evidence session I attended with Public Accounts Committee on 8 February, I confirmed that I would share the final report from the internal review of the Job Support Wales procurement. The internal audit process is now complete, and the review report is attached.

With best wishes.

Yours sincerely

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

**Andrew Slade**  
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# INDEPENDENT REVIEW INTO THE PROCUREMENT OF THE JOB SUPPORT WALES TENDER

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## 1. Introduction

- 1.1 On 27 January 2020 advice was submitted to Welsh Ministers to abandon the procurement exercise designed to award the contracts to deliver Job Support Wales (JSW) and develop a different means of delivering the policy outcomes. This was the second time that the procurement of this framework has had to be abandoned.
- 1.2 A review was commissioned by the Minister for Finance and Trefnydd to identify the issues with this procurement, and of the risk that they arise elsewhere in the Welsh Government.
- 1.3 The scope of the review includes:
- a) To ascertain the facts of why the first attempt to procure this framework was abandoned.
  - b) To obtain, review and check for implementation the lessons learned from this first process.
  - c) To ascertain and verify the facts of why the procurement for this framework was abandoned for a second time.
  - d) To produce a lessons learned report on what went wrong.
  - e) To provide a recommendation on whether further investigation is required across other tenders.
- 1.4 In order to complete the review meetings were held with senior policy officials, members of the Corporate Procurement Service and members of the evaluation panel. A file review was also completed of the second procurement exercise.

## 2 Summary of Findings

- 2.1 The JSW procurement was abandoned as a result of legal advice which suggested the quality of the information provided to support the final moderated scores was not strong enough to survive a legal challenge. QC (Counsel) advised that the abandonment of the procurement represented the “least worst option”. This review has confirmed that, whilst determining the suitable amount of narrative required to support a decision is subjective, the detail in the level of narrative to support the moderated scoring, particularly where those scores meant that the majority of evaluators would have changed their view in order to reach an agreement, was not sufficient.

- 2.2 The procurement was completed in line with CPS processes. Counsel determined that the standard Welsh Government procurement processes lacked sufficient

**NB – Working Wales was subsequently renamed Job Support Wales as the former name became used as the new employability advice service delivered by Careers Wales from April 2019.**

robustness to defend this type of challenge. Therefore, this issue may not be isolated to this exercise. CPS have evidenced improvements to ensure the risk of successful challenge is mitigated in the future but more needs to be done to enhance the processes, especially improved guidance on the level of narrative required to support moderated scores, within both procurement and policy teams across the WG.

- 2.3 There are issues around the adequacy of the QA process, with policy and CPS officials only checking moderated scores and not looking at the detail around the individual scoring. We also identified weaknesses around the sign off of procurements which could be improved with Commercial & Procurement Directorate SCS involvement in more complex procurements
- 2.4 This was a complex procurement, with bidders providing generally high quality responses to questions posed and the scoring being based on a highly subjective criteria. The panel was selected to ensure a fair match of policy owners and internal and external independent members. The panel discussed each bid at length but the subjectivity resulted in opinions being easily changed. Had these changes been adequately recorded, then it is likely that Counsel's would have suggested WG had a far better chance of success to the challenges made.
- 2.5 We have made eight recommendations during this review. A table detailing these recommendations can be found on page eight of this report.

### 3 Detailed Findings

#### **a) To ascertain the facts of why the first attempt to procure this framework was abandoned**

- 3.1 Working Wales was one programme with seven lots. It comprised one national lot for Working Wales Youth Engagement (for young people furthest from the labour market), three regional lots for Working Wales Youth Training (for other non-employed young people) and three regional lots for Working Wales Adults (primarily for non-employed persons aged 18+). Bidders could bid for Youth Training and Adult within the same region. The highest scoring bidder in each lot would be offered a commission. There was commonality with the questions across the lots.
- 3.2 The procurement was waived, under agreement with the Minister for Economy & Transport. Following the issuing of Intention to Award letters, Welsh Government received five written complaints, including confusion that many similar questions were scored quite differently between the various lots. Consequently, the standstill period was extended whilst legal and procurement advice was sought.
- 3.3 The evaluation was completed by two panels, with the first evaluating youth Lots and the other adult Lots. A decision was taken to set aside the initial scoring and, based on legal advice, to initiate an independent re-evaluation of tenders and if necessary to issue new Intention to Award letters. A new evaluation team was established made up of two external independent procurement specialists. The new team evaluated all

tenders and although a consensus was undertaken across all seven lots further issues were identified.

- 3.4 A bidder having been unsuccessful in the first evaluation was successful at the new evaluation. However, during the new evaluation, it came to light that the newly successful bidder had signed a confidentiality agreement and had committed to advise Welsh Government if it intended to bid. It did not do so. Although officials were confident that no advantage was given to the bidder, not taking action against them at the time it submitted its PQQ could have been considered a breach of transparency requirements.
- 3.5 Legal advice suggested waiving the procurement exercise as it was the option that presented the least amount of risk.

**b) To obtain, review and check for implementation the lessons learned from this first process.**

- 3.6 A lessons learned exercise was completed following the first procurement and a range of recommendations made to improve the second, JSW, exercise. These recommendations included elements specific to the waived exercise, such as maintaining records of meetings with potential suppliers and posting to the portal, holding market engagement events to allow input from stakeholders in an open and transparent manner and increasing the number of panel members to five rather than three.
- 3.7 Further, more general, recommendations were made to improve evaluator training and strengthen the award recommendation papers for more complex and high risk procurement activities. During the course of our review, procurement colleagues confirmed these recommendations were acted upon, including the strengthening of the award recommendation paper. Further improvements will also be required as a consequence of this review.

**c) To ascertain and verify the facts of why the procurement for this framework was abandoned for a second time.**

- 3.8 There were two phases of complaints, or legal challenges, made towards the end of this procurement exercise. The first complaint from the unsuccessful bidder from one Lot (out of 7) focused on the advantage the winning bid received from being unsuccessful at the previous procurement. Public Contract Regulations require the contracting authority to provide rationale for an unsuccessful bid and this was considered to have provided an unfair advantage enabling a better and successful bid during the second exercise.
- 3.9 On receipt of further information the complainant identified further issues with the moderated scoring and raised further challenges over the adequacy of the narrative to support the moderated score. This was then furthered by the successful bidder submitting a challenge against a different lot which they were unsuccessful at.

- 3.9 The JSW programme was designed in much the same way as the earlier exercise, with 7 Lots and bidders able to bid for Youth Training and Adult within the same region and the highest scoring bidder in each lot being awarded a contract. It was confirmed that the questions had altered slightly but there remained a commonality across the lots.
- 3.9 We performed a file review of the procurement, focusing primarily on the evaluation process while ensuring key documentation to support the process had been produced. We found the file to be comprehensive, with the whole range of expected documentation, including individual scoring sheets, consensus scoring sheets, legal advice, conflicts of interest forms, confirmation of panel members training and much more.
- 3.10 A Procurement Strategy Assessment was completed at the start of the procurement process. This determined the appropriate procurement route and was assessed as 'Strategic Critical' with the Policy team. The Policy team also completed a Risk Potential Assessment form as part of the OGC Gateway Process, assessing JSW as Medium Risk. These processes are not linked in anyway and as such some key factors in relation to the sector was not considered by CPS in their own assessment and throughout the procurement. Following discussions with officials there was a general view that this procurement could be perceived as high risk for the following reasons;
- Previous issues with Working Wales tender
  - Demanding Sector – suppliers were knowledgeable of the service and of the mechanisms for delivery having held contracts in this areas previously
  - One winner per Lot – differs from some other training contracts which have allocate contracts to all tenders that meet a defined requirement. This would result in suppliers failing to be awarded contracts even though they had demonstrated their ability to deliver effectively.
  - Potential for challenge should results from the first exercise change
  - Complexity of service provision
  - Subjectivity of the tender scoring

**Recommendation – risk assessments from CPS and Policy teams should be combined and the approach to the procurements should be applied proportionately to the level of risk identified.**

- 3.11 The first complaint from the unsuccessful bidder from Lot 6 focused on the advantage the winning bid received from being unsuccessful at the previous procurement. Public Contract Regulations require the contracting authority to provide rationale for an unsuccessful bid and this was considered to have provided an unfair advantage enabling a better and successful bid during the second exercise. On receipt of further information the complainant identified further issues with the moderated scoring and raised further challenges.
- 3.12 From discussions with officials we can confirm that a “less is more” approach to documenting individual scoring and moderation is driven by CPS, procurement best

practice and internal and external legal advisors. This was reiterated at all meetings and formed part of the initial training provided to panel members. This principle focuses on the need for officials to reduce the risk of legal challenge should comments be misinterpreted. Although “less is more” is understandable, a balanced approach is needed on all procurements that ensures they are being conducted in a transparent and fair way. We also noted an absence of dummy runs for the procurement, which would have ensured all panel members were properly briefed on the requirements for recording information and on the subject matter.

- 3.13 Ultimately, the procurement is deemed to have failed due to the lack of sufficient evidence to support panel members’ agreement of moderated scores in Lot 6. The complainant made a general allegation of a breach of the duty of transparency together with detailed criticisms of the scoring of four out of five questions the tender was evaluated against.
- 3.14 Counsel concluded that for each of these questions there were manifest weaknesses in the evidence to support moderated scores. From a review of individual panel members scoring, supporting documentation and the commentary included following the consensus meeting it is clear that there is insufficient justification of the moderated scores from each panel member.
- 3.15 Below is an extract from the moderated scoring spreadsheet for the complainants Lot 6 tender. It is clear that there were instances where the final moderated score differed from the average and that the commentary provided does not adequately justify the consensus score.

Question	Evaluator 1	Evaluator 2	Evaluator 3	Evaluator 4	Evaluator 5	Final Moderated	Score
1	10	8	10	8	10	8	Confidence
<b>Rationale</b>				<b>CPS Comments</b>			
Evidence is sufficient (in qualitative terms), convincing, and credible. The response includes early identification of poor performance and the implementation of a performance improvement plan. The proposed approach seems logical and is supported by examples to demonstrate effectiveness.				The panel agreed the score of confidence was appropriate, some areas of the response could have been expanded on with more detail.			
Question	Evaluator 1	Evaluator 2	Evaluator 3	Evaluator 4	Evaluator 5	Final Moderated	Score
2	10	6	10	8	10	8	Confidence
<b>Rationale</b>				<b>CPS Comments</b>			
Confidence in the response provided. The response outlines the quality control systems that would be used which seem to be well organised systems. Examples are provided to evidence this.				Following discussions the panel agreed the score, further information could have been included the quality framework and applying to subcontractors.			

Question	Evaluator 1	Evaluator 2	Evaluator 3	Evaluator 4	Evaluator 5	Final Moderated	Score
3	10	10	10	8	10	10	Absolute Confidence
<b>Rationale</b>				<b>CPS Comments</b>			
Absolute confidence with the response which is comprehensive and compelling. The response outlines a realistic and highly credible process, supported with examples. Details of the mechanisms that will minimise participant drop-out rates are included.				The panel agreed the score.			
Question	Evaluator 1	Evaluator 2	Evaluator 3	Evaluator 4	Evaluator 5	Final Moderated	Score
4	10	10	10	8	10	8	Confidence
<b>Rationale</b>				<b>CPS Comments</b>			
Evidence is sufficient (in qualitative terms), convincing, and credible. The response outlines the role of the Lead Worker and how the bidder will ensure that the Lead Worker would have the right skills and experience to carry out their role effectively. The proposed average caseload volumes appear reasonable.				Following discussions the panel agreed a score of confidence was appropriate. The bidder mentions the use of 'bank staff' to cover periods of high volume but does not explain where these will come from or how they will ensure that they would have the right skills.			
Question	Evaluator 1	Evaluator 2	Evaluator 3	Evaluator 4	Evaluator 5	Final Moderated	Score
5	10	8	8	6	10	8	Confidence
<b>Rationale</b>				<b>CPS Comments</b>			
Evidence is sufficient and credible and the response provides confidence. Details on employer engagement is included and identified access to an array of employers and the use of an employment agency to help participants find work.				The panel agreed the score.			
Question	Evaluator 1	Evaluator 2	Evaluator 3	Evaluator 4	Evaluator 5	Final Moderated	Score
6	10	10	10	8	10	10	Absolute Confidence
<b>Rationale</b>				<b>CPS Comments</b>			
The response provided evidence that was consistent, comprehensive, and directly relevant to the project. The proposed support to participants on leaving the programme is robust and clearly outlined. A transition plan is also proposed which would be and agreed by all parties which should aid sustainability.				The panel agreed the score.			

3.16 Although the narrative that supports each question appears fairly reasonable, Counsel provided advice that it was insufficient to support individual agreement for a consensus score. Counsel also noted that the commentary to support the consensus would be deemed irrelevant in some instances. For example, question 4, relating to the delivery of the role of lead worker, had four scores of 10 (absolute confidence). The basis of the lower, consensus, score was that one panel member's required a greater explanation in relation to the use of bank staff qualifications. It was Counsels

view that bank staff qualifications were essentially irrelevant to question 4 but were relevant to Question 3 where details were plainly provided by the complainant. As the narrative pointed to a peripheral consideration to the substance of question 4, the Court would likely find that a manifest error had been committed.

- 3.17 Panel members and CPS representatives were interviewed as part of this review and it was confirmed that an in-depth discussion took place during the consensus meeting and that each tender was analysed and all scores were subject to debate. It is surprising that issues were not identified at an earlier stage by the CPS lead or panel members. No minutes were taken of the meeting, as per standard WG practice, and panel members did not keep a record of the reasoning behind the moderated score, specifically where the moderated score differed from their own initial evaluation. CPS did ask panel members for confirmation of the moderated scores as soon as the challenges were made, but records were either unavailable or insufficient.
- 3.18 From an analysis of the scoring from each of the Lots from the JSW exercise we can confirm that there are similar issues across the whole procurement. This was alluded to by Counsel in conversations with senior officials and was included in the written advice - *“As the evidence stands, there is no good reason to believe that the questions regarding the scoring of lot 6 are confined to that lot.”*
- 3.19 We reviewed the Contract Award Recommendation Paper (CARP) that ensures all the pertinent decisions leading to the award recommendation are recorded both for provision of the audit trail and to enable the Head of CPS to approve the recommendation as part of their governance and accountability arrangements and ensuring demonstration of separation of duties. At no point in the document is it highlighted that there is a risk of challenge due to instances of majority scores being overturned. The document was signed off by both the Head of CPS and the lead policy official. Both confirmed that they had only checked the moderated scores, and not the individual scoring, as part of the QA process.

**Recommendation – All CPS leads to risk assess the procurement at various stages of the process, including after moderation.**

**Recommendation – All scores to be checked by CPS during the QA process in future exercises. Confirmation to be included in the declaration.**

**Recommendation – CPS to consider the re-introduction of a fully documented peer review exercise to ensure the risk analysis is appropriate, no immediate issues are identified from the scoring and that the narrative is adequate.**

- 3.20 It is clear that this procurement was high risk and complex and required involvement from CPS at every stage of the exercise. However, there should be consideration of the use of “bought in” procurement specialisms for such activities, where independence and the capacity and capability of policy and procurement teams will be assured. Specialist procurement resources are often utilised by WG, with Road



Teams, for example, using suitably qualified and experienced suppliers to deliver effective services of this nature.

- 3.21 CPS confirmed a preference for developing in-house capability by exposing their staff to complex procurements but this should be applied in agreement with Policy teams, on the basis of the initial risk assessment and based on the capacity of CPS teams at the time.

**Recommendation – CPS to consider and document the referral of high risk and / or complex procurements to external specialist providers.**

- 3.22 CPS QA and sign off is regularly completed by the Head of CPS. For the more high risk procurements we would expect this to be escalated to SCS grades in the Commercial & Procurement Directorate. This would add an additional level of accountability and ensure that the necessary checks are completed. Escalation to SCS grades was absent during this procurement.

**Recommendation – Where high risk and / or complex procurements are identified, sign off should be undertaken at SCS level.**

- 3.23 As the issues identified were consistent across all of the Lots, we extended our file review to include a further two procurements completed during 2019/20. We can confirm this method of recording moderated scores is a consistent approach undertaken by CPS and by panel members.
- 3.24 The risk of a challenge on other procurements is limited by the standstill process. In WG, standstill periods are for a period of ten calendar days following the notification of an award decision in a contract tendered via OJEU, before the contract is signed with the successful supplier(s). The WG also apply voluntary standstills for all mini competition procurements above £500k.
- 3.25 Although challenges can be made after standstill, it is considered more likely that a court will look less favorably on any complaint made outside of this period.
- 3.26 CPS have also confirmed that they have already implemented lessons learned from this procurement and have begun a process of including additional narrative around the moderation scoring. An email was sent to all CPS staff on 29<sup>th</sup> Jan explaining the need to expand on moderation narrative. Having reviewed the most recent moderation paper we would suggest this is improved further by implementing our earlier recommendation that individual comments are included that reference the agreement of a higher or lower moderated score. Advice should also be sought from Audit or Governance teams who will offer guidance on audit trails to support key decisions. Panel members should be provided with guidance on the issues relating to this procurement to ensure all are aware of the impact of not providing a balanced and transparent approach.

**Recommendation – Further improvements to narrative should be included in all moderation reports, to include as a minimum the specific reason why each evaluator**

**agreed on a different consensus score to their own. Advice on the minimum requirements should be sought from Governance, Audit and Legal colleagues.**

- 3.27 At this time there is only one procurement at standstill that would have concluded in advance of the lessons learned. That standstill ended on 20<sup>th</sup> Feb 2020 without any challenge. Therefore, we are satisfied that the risk of further challenge for the reasons identified in this review are minimal.
- 3.28 However, moderation will remain subjective in these more complex procurements, and there is an opportunity for the interpretation of tenders. In considering the extent of records to keep during this or any future procurement it is important that a proportionate approach is taken. Where moderated scores result in a clear change from an initial consensus view, evaluators should record the specific reasons why there has been a change in opinion.

**e) To provide a recommendation on whether further investigation is required across other tenders.**

- 3.29 It is recommended that an Internal Audit be completed on a sample of procurements completed across WG once the new process and suggested improvements have had chance to become embedded – no later than six months from the date of this review.

**Recommendation – Internal Audit to complete a WG wide review to ensure lessons learned have been adopted.**

## RECOMMENDATIONS

Para	Recommendation	Confirmed Action	Owner	Timescale
3.10	Risk assessments from CPS and Policy teams should be combined and the approach to the procurements could be applied proportionately to the level of risk identified.	CPS will review the Procurement Strategy Risk Assessment (PSRA) to build in lessons learned from this exercise. We will also discuss risks being combined at each PSRA meeting with policy divisions to ensure risks are identified, recorded and managed. A proportionate approach to each	Deputy Director, Commercial Procurement and Group Strategy	01/04/2020

		procurement is currently adopted which will reinforce lessons learned.		
<b>3.18</b>	All CPS leads to risk assess the procurement at various stages of the process, including after moderation.	Regular Risk assessment checkpoint process to be introduced. CPS will also amend the contract award recommendation paper to reflect this.	Deputy Director, Commercial Procurement and Group Strategy	01/04/2020
<b>3.18</b>	All scores to be checked during QA in future exercises. Confirmation to be included in the declaration sign by CPS and policy officials.	CPS will amend the checkpoint process and contract award recommendation paper to reflect this. Agreed by management to also include rationale and associated comments	Deputy Director, Commercial Procurement and Group Strategy	01/04/2020
<b>3.18</b>	CPS to consider the re-introduction of a peer review exercise to ensure the risk analysis is appropriate and that scoring looks appropriate and that the narrative is adequate.	CPS will seek to re-introduce peer reviews at Commercial Procurement SMT meetings at both strategy and award stages.	Deputy Director, Commercial Procurement and Group Strategy	01/05/2020
<b>3.19</b>	CPS to consider the referral of high risk and / or complex procurements to external specialist providers.	CPS will consider this at PSRA with the policy division. If necessary this will be escalated to SCS.	Deputy Director, Commercial Procurement and Group Strategy	01/04/2020
<b>3.21</b>	Where high risk and / or complex procurements are identified, sign off	Agreed. This process will be introduced at		

	should be undertaken at SCS level within CPS / Commercial & Procurement.	Commercial Procurement SMT which is SCS led.		
<b>3.26</b>	<p>Further improvements to narrative should be included in all moderation reports, to include as a minimum the specific reason why each evaluator agreed on a different consensus score to their own.</p> <p>Advice on the minimum requirements and audit trails should be sought from Governance, Audit and / or Legal colleagues.</p> <p>Panel members should also be provided with guidance on the issues relating to this procurement to ensure all are aware of the impact of not providing a balanced and transparent approach.</p>	<p>CPS have issued an email to all staff involved in the evaluation process outlining this (Jan 29<sup>th</sup> 2020) but will also discuss at the next CPS Team Meeting &amp; Procurement Best Group</p> <p>CPS will arrange to meet with colleagues to discuss seeking advice on audit trails further which will need to comply with PCR requirements.</p> <p>CPS will refresh its evaluation guidance to reflect this. CPS will look to develop an e-learning module specifically for evaluation (subject to funding)</p>	Head of Commercial & Procurement	<p>29/1/2020</p> <p>17/3/2020</p> <p>2/4/2020</p> <p>01/04/2020</p> <p>01/04/2020</p> <p>01/07/2020</p>
<b>3.29</b>	Internal Audit to complete a WG wide review to ensure lessons learned have been adopted.		IAS	01/02/2021