



Australian Government
Department of Immigration and Border Protection

Submission

For information

PDMS Ref. Number MS16-001775

To **Minister for Immigration and Border Protection**

Subject **Change in ownership of Broadspectrum and commitment to maintain contractual obligations in relation to services provided in Regional Processing Centres**

Timing *For information only.*

Recommendations

That you:

1. note the takeover of Broadspectrum by Ferrovial. noted / please discuss

Minister for Immigration and Border Protection

Signature.....

Date:...../...../2016

Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

1. Broadspectrum is the incumbent garrison and welfare service provider in the Regional Processing Centres in Papua New Guinea and Nauru.
2. Broadspectrum, was one of the two tenderers participating in a Request for Amended Tender (RFAT) procurement process for the provision of garrison and welfare services in Regional Processing Countries, and has been taken over by Ferrovial Services Australia Pty Ltd (Ferrovial).
3. On 27 May 2016, Broadspectrum advised the Department that it 'will no longer be participating in the RFAT process'.
4. In its letter, Broadspectrum advised that it remains 'strongly committed to fulfilling our obligations under our current contract with the Department until the end of its term (being currently the 28 February 2017, as well as any extensions that the Department may choose to exercise under the terms of our current contract)'.
5. Broadspectrum have also advised that they will not be making a public statement regarding their withdrawal from the RFAT process. However, they will be informing impacted staff of the decision.
6. The Department is exploring options around continuing with the RFAT procurement process.

Background

7. On 30 January 2015 the Department issued an open tender (RFT 28/14) for the provision of services in Regional Processing Countries. The request for tender sought responses in relation to two service categories: health services, and garrison and welfare services. Six bids were received for garrison and welfare services.

8. Broadspectrum was advised on 28 August 2015 that it was the preferred tenderer for the provision of garrison and welfare services in Nauru and Manus, Papua New Guinea.
9. Since the announcement of the preferred tenderer, there have been a number of developments in the operating environment, including but not limited to, the implementation of accelerated handdowns in Nauru, as well as infrastructure changes to the sites.
10. s. 47C(1) [REDACTED]
11. s. 47C(1) [REDACTED]
12. The two tenderers were issued the RFAT documentation on 15 April 2016. Tenders were due to be received by 15 July 2016.
13. On 29 April 2016, Ferrovia announced that it had received acceptance of its takeover offer for Broadspectrum. In its announcement, Ferrovia stated that '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 Ferrovia's portfolio. Ferrovia's view is that this activity will not form part of its services offering in the future'.
14. On 2 May 2016, the Department sought confirmation s. 47E(d) [REDACTED]
15. s. 47E(d) [REDACTED]
16. The Ferrovia takeover of Broadspectrum is almost completed. Ferrovia is currently in the process of compulsorily acquiring all Broadspectrum shares not acquired under the original takeover offer. The compulsory acquisition of the remaining Broadspectrum shares is expected to be completed by mid-July. However, Ferrovia, does now have representation on the Broadspectrum board.
17. On 23 May 2016, the Department again sought confirmation from Broadspectrum that it would continue to participate in the RFAT process. s. 47E(d) [REDACTED]

18. The Department is finalising a strategy to ensure that the RFAT process is completed in accordance with the Commonwealth Procurement Rules and results in a value for money outcome for the Commonwealth.

Consultation – internal/external

19. The Department has consulted with the procurement's probity adviser, Maddocks, in relation to discussions with Ferrovial. The Department of Finance is being consulted on the procurement process.

Consultation – Secretary/Commissioner

20. The Secretary was consulted on the approach in the submission.

Client service implications

21. Broadspectrum have confirmed that it intends to honour its existing contract for the provision of garrison and welfare services in Regional Processing Countries.

Sensitivities

22. The procurement process is ongoing, and is subject to the Commonwealth Procurement Rules, including confidentiality of tender submissions.

Financial/systems/legislation/deregulation implications

23. Any financial impact will be considered through the RFAT process.

Authorising Officer
Cleared by:
David Nockels First Assistant Secretary Detention Services Division
Date: 16 June 2016 Ph: s. 22(1)(a)(ii)

Contact Officer Lee-anne Monterosso, A/g Assistant Secretary, Services Procurement Taskforce, Ph: s. 22(1)(a)(ii)

Through Cindy Briscoe, Deputy Commissioner Support

CC Secretary
Commissioner
Deputy Secretary Policy
FAS International Division
FAS CCSSD
Commander South Pacific



Australian Government

Department of Immigration and Border Protection

Submission

For information

PDMS Ref. Number MS16-002370

To Minister for Immigration and Border Protection

Subject RFT 28/14 - Provision of Services in Regional Processing Countries - Update on Garrison and Welfare Category

Timing For information only.

Recommendations

That you:

1. **note** that the RFT 28/14 and subsequent Request for Amended Tender process has been cancelled; (noted) / please discuss
2. **note** that a confidential market sounding exercise has commenced to progress the procurement of Garrison and Welfare Services; and (noted) / please discuss
3. **note** that a further briefing will be provided following the outcomes of the market sounding exercise. (noted) / please discuss

Minister for Immigration and Border Protection

Signature 


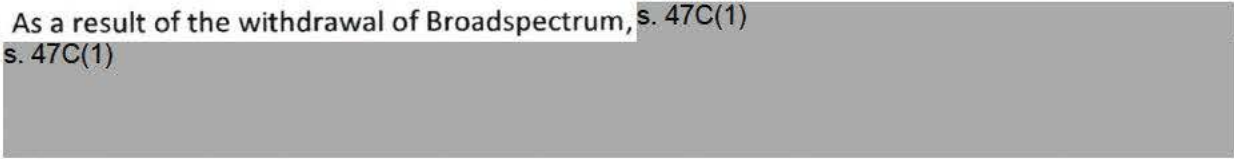




Date: 24/08/2016

Minister's Comments														
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Key Issues

1. As previously advised (**Attachment A**) the Department has been conducting a Request for Amended Tender (RFAT) procurement process for the provision of Garrison and Welfare Services in Regional Processing Countries. The two tenderers invited to participate in the RFAT process were Broadspectrum (the incumbent service provider and initial preferred tenderer) and Serco (the initial reserve tenderer).
2. On 27 May 2016, Broadspectrum confirmed that it would not continue to participate in the RFAT process as a result of its takeover by Ferrovial S.A. The Department subsequently continued the RFAT process with the remaining tenderer, Serco.
3. On 21 July 2016, Serco advised the Department of its withdrawal from the RFAT process.
4. On 25 July 2016, the Delegate agreed to cancel RFT 28/14 and the subsequent RFAT process, following endorsement from the Offshore Immigration Services Steering Committee (OIS Steering Committee) and the procurement's external probity and commercial and financial advisers.
5. On 25 July 2016, the Delegate also approved the commencement of a confidential market sounding exercise, the results of which will be presented to the OIS Steering Committee to inform the next steps of the procurement process.
6. Broadspectrum's current contract (as the incumbent) is being extended from the current end date of 28 February 2017 to 31 October 2017, utilising the two, eight month extension options available in the current contract.
7. Correspondence has been sent to the Governments of Nauru and Papua New Guinea to inform them of the current status of the procurement process.
8. Further briefings will also be provided to you as matters progress.

Background

9. On 30 January 2015, the Department issued an open tender for the provision of services in Regional Processing Countries (RFT 28/14). Through an evaluation of bids for the Garrison and Welfare Services component of the tender a preferred tenderer (Broadspectrum) and a reserve tenderer (Serco) were identified.
10. On 28 August 2015, the Department notified Broadspectrum that they were the preferred tenderer and a negotiation process between the Department and Broadspectrum commenced.s. 47E(d)
s. 47E(d)

11. As a result, on 22 January 2016, the Department commenced the RFAT process, as a continuation of the procurement process for RFT28/14. Both Broadspectrum and Serco were invited and agreed to participate in the RFAT process, with tender documentation released to both tenderers on 15 April 2016.
12. On 27 May 2016, Broadspectrum confirmed that it would not continue to participate in the RFAT process as a result of its takeover by Ferrovial S.A. Both Ferrovial S.A and Broadspectrum confirmed that the current contract and the extension provisions would be honoured. The current contract expires on 28 February 2017, with two extension periods of up to 4 months each.
13. As a result of the withdrawal of Broadspectrum, s. 47C(1)
s. 47C(1)

14. s. 47E(d), s. 47G(1)(a)

15. s. 47G(1)(a), s. 47C(1)

16. s. 47E(d), s. 47G(1)(a)

17. s. 47E(d), s. 47G(1)(a)


s. 47E(d), s. 47G(1)(a)

18. s. 47E(d)

s. 47E(d) In this circumstance, the OIS Steering Committee also agreed for the Services Procurement Taskforce to undertake a confidential market sounding exercise, the results of which are to be presented to the OIS Steering Committee to inform the next steps of the procurement process.

Consultation – internal/external

19. The approach has been endorsed by the OIS Steering Committee, and the procurement's external probity adviser (Maddocks) and commercial and financial adviser (KPMG).
20. The Department's internal Commercial and Employment Law Branch and Procurement and Contracts Branch have also been consulted.

Consultation – Secretary/Commissioner

21. The Secretary and Commissioner have been advised of the issues and the proposed approach outlined in this submission.

Client service implications

22. The Department remains committed to ensuring continuity of service delivery in the Regional Processing Countries and has already commenced action to extend the current contract with Broadspectrum until 31 October 2017.
23. Talking points are being prepared in conjunction with Regional Processing and Settlement Branch.

Sensitivities

24. The cancellation of the RFT 28/14 procurement process is expected to generate significant media interest. The Services Procurement Taskforce in consultation with Communications and Media Branch has developed a communications plan, including talking points.

Financial/systems/legislation/deregulation implications

25. Approvals for funding for any new procurement process will need to be reassessed. No systems, legislation or deregulation implications have been identified.

Attachments

Attachment A MS15-029838

Authorising Officer

Cleared by:

David Nockels
First Assistant Secretary
Detention Services Division

Date: 01 August 2016

Ph: s. 22(1)(a)(ii)

Contact Officer Lee-anne Monterosso, A/g Assistant Secretary, Services Procurement Taskforce, Ph: s. 22(1)(a)(ii)

Through Cindy Briscoe, Deputy Commissioner Support (cleared)

CC Secretary
Commissioner
Deputy Secretaries / Deputy Commissioner Operations
Chief Finance Officer
Assistant Secretary, Communications and Media Branch



Australian Government
Department of Immigration and Border Protection

Submission

For information

PDMS Ref. Number MS15-029838

To Minister for Immigration and Border Protection

Subject Update on Garrison and Welfare Category - RFT 28/14 - Provision of Services in Regional Processing Centres

Timing The Department will formally invite Broadspectrum and Serco to participate in a Request for Amended Tender process on 5 February 2016.

Recommendations

That you:

1. **note** that the Department will be seeking an amended tender from Broadspectrum and Serco for RFT28/14 – Provision of Services in Regional Processing Countries for Garrison and Welfare Services (noted / please discuss)
2. **note** that the Department will formally invite Broadspectrum and Serco to participate in the Request for Amended Tender process on 5 February 2016 (noted / please discuss)

Minister for Immigration and Border Protection

3. Signature 

Date: 23/02/2016

Received

- 8 FEB 2016

Minister for Immigration
and Border Protection

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Minister's Comments				

Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

1. The Department and Broadspectrum (formerly Transfield Services Australia Pty Ltd) have progressed negotiations for the provision of garrison and welfare services in the Regional Processing Countries (PNG – Manus Island and the Republic of Nauru).
2. Since the receipt of tender bids in April 2015, there have been a number of significant changes in the operating environments on Nauru and Manus that impact on Garrison and Welfare Services, including:

s. 33(a)(iii)



3. These changes have impacted the negotiations in two critical ways by:
 - a. prolonging the negotiation process beyond what was originally anticipated as the majority of changes were not confirmed or announced when the RFT was prepared and were only introduced gradually during the negotiation process; and
 - b. s. 33(a)(iii)



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4. s. 47G(1)(a)

5.

6.

7. s. 47E(d), s. 47C(1), s. 47G(1)(a)

8. s. 47E(d), s. 47C(1)

9. The estimated timeframe to complete this option is August 2016. This timeframe is required to ensure a fair and equitable process is applied to both tenderers and to minimise the risk of challenge due to inadequate time being available for both tenderers (particularly Serco) to prepare an amended tender.

10. s. 33(a)(iii)

11. Work has commenced on preparing the documentation required to extend the current contract with Broadspectrum to ensure continuity of service until a new contract is signed. This extension, and associated terms, will require agreement by both parties.

Consultation – internal/external

12. In conjunction with the Department's internal legal and procurement areas, the external specialist advisers Maddocks (Probity) and KPMG (Commercial and Financial) have been closely engaged in making this decision. The Chief Finance Officer, through his membership on the Steering Committee, is aware of the Request for Amended Tender Process.

13. The Communication and Media Branch have also been consulted in regards to potential media interest in this issue.

Consultation – Secretary/Commissioner

14. A brief has been provided to the Secretary and Commissioner on this matter.

Client service implications

15. Talking points are being prepared in conjunction with Regional Processing and Settlement Branch.

Sensitivities

16. Broadspectrum is expected to make a public announcement to the Australian Stock Exchange following formal notification. Any announcement is expected to generate significant media interest. The Services Procurement Task Force will work with Communications and Media Branch to develop a communications plan, including talking points. It is not anticipated at this time that Serco will need to make a similar announcement.
17. This procurement process will be subject to the current Australian National Audit Office (ANAO) audit titled 'Procurement and Contract Management of Garrison Support and Welfare Services at Offshore Processing Centres in Nauru and Manus.'

Financial/systems/legislation/deregulation implications

18. External Budgets have been consulted in relation to approvals for funding for commitments beyond the current financial year, however these will need to be reassessed. No systems, legislation or deregulation implications have been identified.

Authorising Officer
Cleared by:
Ben Wright Acting First Assistant Secretary Detention Services Division
Date: 5 February 2016 Ph: s. 22(1)(a)(ii)

Contact Officer Lee-anne Monterosso, Task Force Lead, Services Procurement Task Force, s. 22(1)(a)(ii)

Through Deputy Commissioner, Support Group

CC Assistant Minister for Immigration and Border Protection
Secretary
Commissioner
Deputy Secretaries / Deputy Commissioner Operations
Chief Finance Officer
Assistant Secretary, Communication and Media Branch

QUESTION TAKEN ON NOTICE**SUPPLEMENTARY BUDGET ESTIMATES HEARING : 17 October 2016****IMMIGRATION AND BORDER PROTECTION PORTFOLIO****(SE16/012) - PII - Garrison and welfare services - Programme 1.5: IMA Offshore Management**

Senator McKim, Nick (L&CA 60) asked:

Senator McKIM: I go back to my previous question on the garrison and welfare services. I think evidence was given earlier that a number of companies have expressed interest in the provision of garrison and welfare services. Can I ask which companies have expressed interest?

Mr Pezzullo: I am not sure that Mr Nockels can elaborate much more than he indicated before the break, in terms of—I think you called it the market sounding process.

Senator McKIM: Well, I think he can.

Mr Pezzullo: Senator, I will decide the extent to which we potentially—

Senator McKIM: The Senate will decide ultimately, Secretary.

Mr Pezzullo: Well, you will decide whether you are comfortable with my answers, and whether you seek to give me counsel and advice—and I am sure you will. In terms of respecting their commercial position, I am not sure that we can add a lot. But I will see what Mr Nockels is willing and able to render.

Mr Nockels: I do not think we can talk about specific companies. It is a commercial-in-confidence process. The Commonwealth is not at a point where it is ready to announce anything in terms of contracts negotiated and signed.

Senator McKIM: Well, in fact, that is because you have not got any contracts negotiated and signed for garrison and welfare to take us past the period of the current contract holder. Again, I should check whether you are claiming public interest immunity here, because commercial-in-confidence of itself is not a satisfactory reason to refuse to answer this question.

Mr Pezzullo: I understand that, and thank you for that prompt. We would claim, through the minister, that such information would be detrimental to Mr Nockels's ability to engage in the work that he needs to do on an appropriate basis in terms of the commercial confidentiality that he owes to the relevant companies. I make that claim through the minister, and I do not know if the minister wishes to add anything, but that is certainly the claim that I make.

Senator McKIM: Are you making that claim, minister?

Senator Cash: My understanding is that there is certainly a ground for claim as 'damage to commercial interests' and that is obviously what the secretary has articulated. On that basis, my preference is to take it on notice and see if there is any further information that can be provided whilst also canvassing, with the minister, the particular claim for PII.

Answer: