

s47F

From: John Lawler [REDACTED] s47F
Sent: Thursday, 26 September 2019 6:44 AM
To: 'Reece Kershaw' [REDACTED] s47F
Subject: Potential review of the AFP's offshore sensitive investigation area

In Confidence

Dear Reece,

Further to your telephone call and text message of 24 September 2019, I thought it might be helpful to articulate some elements of your proposed review of the "AFP's offshore sensitive investigation area".

Subject to firming up on the arrangements, I would be prepared to undertake the review in support of your Commissioner's of the AFP.

There are a number of elements that will need to be refined, as we both need to be very clear on the boundaries of any such review. For example, when is something onshore or offshore? To that end I would need to have clear agreed terms of reference, a formal contract of engagement, reporting timelines and any other conditions you may wish to place on the review.

Given the sensitive nature of the review issues, security clearances or waivers, as the case may be, will need to be considered. [REDACTED] s47F

[REDACTED] s47F

I fully understand that it will not be possible to advance the review until at least you commence in your new role as Commissioner, on 2 October 2019, and I suspect given the number of issues you will confront, sometime after that will be the reality. Whenever you choose to commence the review would be fine with me, but I need to advise that I will not be available from 15 October 2019 until 4 November 2019. That said, whilst I might not be available in person, that would not mean the review process could not commence, as there will be significant documentary material that would need to be gathered in preparation for analysis.

I would propose a three-phase review:

Phase 1 would include setting up of the small review team, speaking with you, identifying, collating and review of current process documents, including any instructions, memos, advice, referral, assessment and investigative protocols to name a few. Much of this work would be undertaken remotely.

Phase 2 would involve analysis of the process map and linked documents, interviews with key staff and potentially some external stakeholders including understanding the dimensions of any current inquiries that may impact the review outcomes, and then develop a future state.

Phase 3 would involve the writing and presentation of the review report.

Consideration will need to be given now as to whether the report will be publicly available or classified, as this will impact how the review is conducted.

I understood from our conversation that this review would need to align with some broader restructuring work likely to be commissioned with Ernst and Young. Both reviews, I understand are part of your 100-day plan and as such the "AFP's offshore sensitive investigation area" review would need to be finalised by the end of year at the latest.

You may consider who you select to assist me and use it as an opportunity to develop an up and coming officer. A matter for you. You have also raised with me the issue of senior legal counsel support. I can't envisage that being necessary at this stage but as the review develops, we could consider this further. Clearly the use of senior counsel in assessment and referral processes is something that the review must examine. If there are other reasons for engaging senior counsel in the review, that I am not aware of, then please advise.

Finally, I trade as John A Lawler AM APM Consulting and operate from my home address in [redacted] s47G [redacted] with a postal address of [redacted] s47G [redacted] I have current indemnity insurance to meet the Commonwealth's requirements. I have an hourly rate(or part thereof) of [redacted] s47G [redacted] or a daily rate (8 hours) of [redacted] s47G [redacted] This rate is consistent with most other short-term consultancies I have undertaken including the one you are familiar with in the Northern Territory. [redacted] s47G [redacted]

s47G

I think that is probably enough for now. Let me know how you would like to progress the issues raised.

Regards

John Lawler

In Confidence

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s22(1)(a)(ii)

From: s22(1)(a)(ii)
Sent: Monday, 14 October 2019 4:33 PM
To: s22(1)(a)(ii)
Subject: Hi s22(1)(a)(ii) can you please let me know COS' usual cost centre and IO - I'm doing the procurement paperwork for John Lawler's consultancy services. Thank you s22(1)(a)(ii)
[DLM=For-Official-Use-Only]

For-Official-Use-Only

s22(1)(a)(ii)

COORDINATOR - EXECUTIVE SECRETARIAT & COMMUNICATIONS
ENTERPRISE GOVERNANCE

Tel - s22(1)(a)(ii)
www.afp.gov.au



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For-Official-Use-Only

Absolutely, its CC 300250 and IO is XCOS.

s22(1)(a)(ii)
EXECUTIVE ASSISTANT TO DEPUTY COMMISSIONER NATIONAL SECURITY
CHIEF OF STAFF
Tel + s22(1)(a)(ii)
www.afp.gov.au



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s22(1)(a)(ii)

From: s22(1)(a)(ii)
Sent: Monday, 14 October 2019 5:25 PM
To: s22(1)(a)(ii)
Subject: RE: s22(1)(a)(ii) you please let me know COS' usual cost centre and IO - I'm doing the procurement paperwork for John Lawler's consultancy services. Thank you s22(1)(a)(ii) [DLM=For-Official-Use-Only]

For-Official-Use-Only

Thank you v much!

s22(1)(a)(ii)

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s22(1)(a)(ii)

From: s22(1)(a)(ii)
Sent: Monday, 14 October 2019 6:32 PM
To: s22(1)(a)(ii)
Cc: Black, Christopher; Ryan, Nigel; s22(1)(a)(ii)
Subject: High Value Spending Proposal - John Lawler Consulting [DLM=For-Official-Use-Only]
Attachments: High Value Spending Proposal - John Lawler Consulting.docx
Importance: High

For-Official-Use-Only

H s22(1)(a)(ii)

Please find attached a draft HVSP. I am still completing the RATP and will forward that through asap tomorrow.

Could you please give me a ring tomorrow morning (my mobile s22(1)(a)(ii) is probably best) to discuss the HVSP?

The Commissioner wishes to bring former Deputy Commissioner John Lawler on-board as a consultant until 21 January 2020, with an option to extend to 21 March 2020. The intention is for Mr Lawler to be given an AFP laptop and access to ICT systems as early as Friday this week, so we obviously need to progress this as quickly as possible.

I'm happy to assist however I can; please let me know whatever else you need from me. I have had initial discussions with a/Chief Counsel regarding the procurement and the required contract. I will forward the draft HVSP to Legal now - a/Chief Counsel has indicated that they will be able to provide a contract asap this week (subject of course to NPC's approval for the procurement to progress etc).

Please note that the nature of this consultancy is to be closely held for now, hence my direct approach to you.

Please let me know if you require any further information.

Thank you.

Kind regards,

s22(1)(a)(ii)

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High Value Spending Proposal (PART A)

Approval to approach the market

Version Control: v.2.9 16/08/19

Consultancy Services – Review of Sensitive Investigations

AFP Procurement ID ⓘ	Click or tap here to enter text.
Exempt from AusTender Reporting ⓘ	No
Public Interest Certificate Issued ⓘ	No
CPRs s.2.6 Applying Measures ⓘ	Not applicable
Will this procurement involve consultancy services? ⓘ	Yes this procurement involves consultancy services

Delegate: Chris Black
Chief of Staff

PURPOSE

This High Value Spending Proposal (Part A) is to:

- Specify the background, requirement/s and risks associated with the proposed procurement activity;
- Describe the procurement methodology to be undertaken; and
- Obtain [PGPA Delegate approval](#), in accordance with the [Public Governance, Performance and Accountability \(PGPA\) Act 2013](#) and the [Commonwealth Procurement Rules \(CPRs\)](#), to progress with the procurement activity to an Approach to Market (ATM) with the intent to commit and enter into a contractual arrangement with a supplier that represents Value for Money (VFM).

INDIGENOUS PROCUREMENT POLICY

This procurement:

- does not** fall within the [Indigenous Procurement Policy](#) (Mandatory Set Aside Policy) for the following reason: the procurement meets rule s.10.3 conditions for limited tender applies
- does** fall within the [Indigenous Procurement Policy](#) (Mandatory Set Aside Policy) as its estimated total contract value is between \$80,000 and \$200,000.

In stimulating Indigenous entrepreneurship and business development the procuring business area has undertaken the following:

No action taken to identify potential Indigenous suppliers



High Value Spending Proposal (PART A)

Approval to approach the market

Version Control: v 2.9 16/03/19

BACKGROUND

Commissioner Kershaw has requested a process review into the handling of sensitive investigations. The review will ensure that all aspects of such investigations are as efficient and effective as possible, and will determine whether the existing investigative policy and guidelines are fit for purpose.

THE REQUIREMENT

The final report is required to be completed by no later than 20 January 2020. Commissioner Kershaw may request interim reports as required prior to the completion of the final report. An annexure is also to be produced that is capable of being publically released at the Commissioner's discretion.

The review team will comprise an external consultant and a small team of internal AFP appointees. There will be a need for the consultant to access AFP premises, have access to an AFP laptop and ICT systems and to access AFP information including case material concerning current and former sensitive investigations.

The review team will engage with internal and external stakeholders and will have reference to the work being undertaken by Ernst and Young regarding the AFP's future operating model.

Has a detailed 'Statement of Requirements (SOR)' been completed? Yes No

CONTRACT VALUE

The below table is the maximum estimated values for the contract initial term and any applicable options.

The PGPA Delegate approval will cover the Contract Initial Term value only. Prior to executing any contract variations/extensions new PGPA Delegate approval will need to be obtained.

Initial Term	AUD\$ s47G (GST inclusive) per day
Option(s)	AUD s47G (GST inclusive) per day for all options
Total Maximum Contract Value	AUD s47G (GST inclusive) – a maximum of 50 days

Cost Centre	300250	Internal Order	XCOS
Does this procurement involve the purchase of assets?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Does this procurement relate to gifting?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		



High Value Spending Proposal (PART A)

Approval to approach the market

Version Control: v.2.9 16/08/19

Type of contract to be executed:	AFP Contract (prepared by AFP Legal)
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CONTRACT TERM

Initial Term	14 October 2019 to 21 January 2020
Option(s)	1 x 2 month option to extend, to 21 March 2020
Total Maximum Contract Term	5 months

RISK ASSESSMENT

A [Risk Assessment and Treatment Plan \(RATP\)](#) has been undertaken in accordance with the [AFP National Guideline on risk management](#) and the [National Guideline on procurement and contracting](#). The RATP considers all operational, business and procurement-related risks; and is attached at Appendix A.

The overall risk of this procurement activity is Choose an item..

METHOD OF PROCUREMENT

The procuring business area has undertaken a risk assessment and has identified the most appropriate and compliant approach to market to be: *(select one and delete all others)*

- a) A **Limited Tender** utilising the following Division 2 Conditions for limited tender of the [CPRs](#): 10.3 d) when the goods and services can be supplied only by a particular business and there is no reasonable alternative or substitute for one of the following reasons; iii. due to an absence of competition for technical reasons.

The use of Limited Tender is justified for the following reasons:

Mr Lawler AM APM is a former Deputy Commissioner of the AFP, with extensive experience in relation to the AFP's operational activities and specific experience in relation to sensitive investigations. Mr Lawler has also undertaken numerous critical reviews for other Australian Government and State/Territory Government agencies. Mr Lawler holds strong professional



High Value Spending Proposal (PART A)

Approval to approach the market

Version Control: v 2.9 15/08/19

relationships with relevant internal and external stakeholders which will facilitate the completion of the review within the Commissioner's required timeframes. Mr Lawler's corporate knowledge of the AFP, combined with his extensive investigations and review skillsets and experience, mean that he is unparalleled in the provision of these particular consultancy services within the required timeframe.

This approach will be to the following supplier/s:

John A Lawler AM APM Consulting (ABN: 55 285 009 566)

Note: In accordance with the [Commissioner's Financial Instructions \(CFIs\) Annexure A Schedule of Delegations and Authorisations](#), only the following members may approve the use of applying measures:

- a Deputy Commissioner (DC) and Chief Financial Officer (CFO) or
- the Chief Operating Officer (COO) and the CFO

VALUE FOR MONEY

Every AFP procurement must achieve value for money (VFM) ([CPRs section 4 'Value for money'](#)).

Price must not be the sole factor in assessing value for money. AFP Officials must consider the relevant financial and non-financial costs and benefits of their procurement activity i.e. quality, fitness-for-purpose, experience, past performance, flexibility of the proposed solution, environmental sustainability, physical and information security, destruction and disposal, and whole-of-life costs.

Elements to Value for Money

The procuring business area confirms this procurement will achieve VFM for the AFP as it: (select all that apply):

- Encourages competition and is non-discriminatory (approaching multiple suppliers)
- Uses public resources in an efficient, effective, economical and ethical manner
- Facilitates accountable and transparent decision making
- Encourages appropriate engagement with risk
- Is commensurate with the scale and scope of the business requirement

Where all of the above elements to VFM cannot be met provide additional justification: As noted above, a limited approach has been undertaken for defensible reasons and in a manner that still provides best VFM for the AFP.



High Value Spending Proposal (PART A)

Approval to approach the market

Version Control: v.2.9 16/08/19

PROCUREMENT PROCESS

The procurement process will be conducted in accordance with the [CPRs](#) and the [AFP National Guideline on procurement and contracting](#). The procurement method detailed above will ensure that value for money will be achieved.

ESTIMATED PROCUREMENT TIMETABLE

A procurement timetable has been developed for this procurement activity and can be found at Appendix B.

PROCUREMENT STAKEHOLDERS

In accordance with the [National Guideline on procurement and contracting](#), the following stakeholders have been consulted in preparing this Spending Proposal (PART A) (select all that apply):

- AFP Legal Insert LEX ref #
- National Armoury
- Security
- ICT Assets Team
- Technology & Innovation (T&I)* Insert DAF TA ref #
- Portfolio Financial Representative
- National Assets Team
- [list other]

Note: *Where the procurement activity relates to ICT-related goods and/or services T&I must be consulted. If supported by T&I, a Design Authority Forum (DAF) Technology Acquisition (TA) reference number will be issued. This number must entered in the field above.

In addition to the above the following stakeholders will be involved in the progression of this procurement activity.

Stakeholder name and title	Role or responsibility in procurement activity
Chief of Staff	Client Business Area/End User
s22(1)(a)(ii)	Project Manager (where applicable)
Chief of Staff	Contract Owner <i>The AFP official accountable for outcomes enabled by the contract. Has the necessary authority to make decisions in relation to the contract and takes the actions required to manage the AFP obligations and optimise ongoing value for money.</i>
s22(1)(a)(ii)	(Contract Manager) <i>The AFP official who is responsible for completing the activities and tasks required to manage the terms, conditions, outputs and AFP obligations under the contract.</i>



High Value Spending Proposal (PART A)

Approval to approach the market

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Stakeholder name and title	Role or responsibility in procurement activity
s22(1)(a)(ii)	<p>Contract Administrator</p> <p><i>The AFP official who performs the activities and tasks necessary to administer the contract, and is directed and instructed by the Contract Manager and guided by the relevant contract management plan.</i></p>
Not applicable	<p>Evaluation Committee (<i>recommend three members</i>)</p> <p>(Chair + Panel Members)</p> <p><i>The AFP officials who will evaluate all responses (i.e. tenders or quotations) in response to the ATM against the below evaluation criteria to identify the preferred supplier that represents Value for Money (VFM).</i></p>

CONFLICT OF INTEREST

All stakeholders who may have influence over this procurement activity are required to complete a Conflict of Interest Declaration in accordance with the Department of Finances guidance on [Ethics and Probity in Procurement](#).

Stakeholders required to complete Declarations include:

- (a) the PGPA Delegate;
- (b) AFP Appointees (substantive and contracted);
- (c) SMEs and advisers; and
- (d) Evaluation Committee members.

All stakeholders who may have influence over this procurement activity have completed a Conflict of Interest Declaration and:

- no perceived or actual conflicts have been identified; or
- the following perceived or actual conflicts have been identified:

NPC COMPLIANCE REVIEW

National Procurement and Contracts (NPC) has conducted a compliance review of this spending proposal.



High Value Spending Proposal (PART A)

Approval to approach the market

Version Control: v.2.9 16/08/19

Based on the information provided by the procuring business area NPC has reviewed this spending proposal as:

- compliant** with the relevant Government procurement framework
- non-compliant** with the relevant Government procurement framework

NPC make the following additional comments/recommendations:
Click or tap here to enter text.

AFP Legal consultation required: Yes No

Name	Signature
Title and AFP No.	Select date here Date reviewed

RECOMMENDATION

I, as the Recommending Officer, have considered NPC's compliance review and comments and:

- recommend** this procurement activity be progressed; or
- do not recommend** this procurement activity be progressed (as it is non-compliant).

Recommending Officer's comments:
Click or tap here to enter text.

Name	Signature
Title and AFP No.	Select date here Date reviewed

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PGPA DELEGATE APPROVAL

Procurement Title	Review of Sensitive Investigations
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High Value Spending Proposal (PART A)

Approval to approach the market

Version Control: v.2.9 18/03/19

AFP Procurement ID	
Contract Initial Value	Maximum of AUD s47G (GST Inclusive)
Contract Initial Term	5 months

I, as the relevant PGPA Delegate, am satisfied that:

- this procurement activity is compliant with the required Australian Government procurement policies and legislative requirements set out in the [Public Governance Performance and Accountability Act 2013](#), the [Commonwealth Procurement Rules \(CPRs\)](#), the [Commissioner's Financial Instructions](#), and the [AFP National Guideline on procurement and contracting](#).
- I hold the appropriate PGPA delegation and have sufficient funds within my area of delegation to cover any resulting commitment.
- Conflicts of Interest Declarations have been declared, documented and appropriately managed.
- this procurement activity will provide an efficient, effective, economical and ethical use of Government money.

PGPA Delegate approval:

Approved to Approach to Market (ATM) **Not approved** to Approach to Market (ATM)

_____ Delegate Name	_____ Delegate Signature
_____ Delegate Title and AFP ID	_____ Select date here Approval Date

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High Value Spending Proposal

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RISK ASSESSMENT AND TREATMENT PLAN

The Risk Assessment and Treatment Plan (RATP) template can be accessed [here](#).

For further assistance in completing this RATP refer to the [AFP Risk Management Framework](#) which should be read in conjunction with the [National Guideline on Risk Management](#).

Further advice can be obtained by contacting the [Strategic Risk Team](#).

Appendix A

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Appendix B

ESTIMATED PROCUREMENT TIMETABLE

Step	Key activities	Estimated completion date
1. Plan the procurement	<ul style="list-style-type: none"> - Consult with stakeholders, consider alternatives to procuring and understand the objective or issue the procurement activity is intended to achieve/correct. - Scope the requirement (in-scope/out-of-scope). - Consider how you will conduct the evaluation and identify value for money. - Conduct market research. - Estimate the procurement whole-of-life value. - Check for Whole-of-Government arrangements or AFP contracts/panel arrangements. - Check Supply Nation for suitable Indigenous suppliers. - Consider risk, probity and conflicts of interest. 	Estimated completion date: 14 October 2019
2. Obtain approval to approach the market	<ul style="list-style-type: none"> - Depending on the scale, complexity and value of the procurement activity complete a detailed Scope of Works (SoW)/Statement of Requirement (SoR). - Complete the relevant Spending Proposal (PART A) – Approval to approach the market template and relevant risk assessment document/s. - Forward completed Spending Proposal (PART A) and completed risk assessment document/s to NPC for compliance review where the value is at or above \$80,000 (GST inclusive) or involves consultancy services. - Completed Spending Proposal (Part A) and risk assessment document/s to be submitted to PGPA Delegate for consideration and approval. <p>Note: This is where you formally document the decisions and justifications from Step 1; while informing the PGPA Delegate of the procurement activity and ensuring there is sufficient funding available before approaching the market.</p>	Estimated completion date: 15 October 2019

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<p>3. Evaluate and identify the preferred supplier</p>	<p>Limited approach to market.</p>	<p>Estimated completion date: 15 October 2019</p> <p>(Allow 2+ weeks)</p>
<p>4. Execute the contract (place the order)</p>	<ul style="list-style-type: none"> - Complete the appropriate form of contract as approved in the Spending Proposal (PART A). - PGPA Delegate reviews the completed Spending Proposal (PART B) along with the prepared contract; and if supportive signs both documents. - Contract is sent onto the preferred supplier for signature. Once signed the contract is now considered 'executed'. <p>Note: The use of the Commonwealth Contracting Suite (CCS) is mandatory for procurements valued up to \$200,000 (GST inclusive) with the exception to those under panel arrangements, ICT-related procurements or those with international suppliers.</p>	<p>Estimated completion date: 18 October 2019</p>
<p>5. Register the contract (and raise the purchase order)</p>	<ul style="list-style-type: none"> - Register the executed contract on <i>Insight!</i> within 7 business days from the execution date. Ensure you attach all relevant documentation to the procurement activity including Spending Proposal (PART A), Spending Proposal (PART B), any risk assessment document/s, and the executed contract (including the contract's attachments and appendices). - Other relevant documents to be attached may include the SoW/SoR, CoI declarations, TEP, Exemptions from AusTender Reporting form, and Public Interest Certificate (PIC). - Raise a Shopping Cart under the registered Contract ID in <i>Insight!</i> in order to generate the Purchase Order (PO) number. - Once the PO number has been generated; email the PO number to supplier and request they quote this number on all relevant tax invoices. Remind the supplier that all invoices are to be submitted to the AFP electronically via email to [redacted] s47E(d) <p>[redacted] s47E(d)</p> <p>Note:</p>	<p>Estimated completion date: 25 October 2019</p>

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	<p>The above guidance is provided where a contract is executed. Some steps may not apply where a separate contract has not been executed.</p> <p>Where the contract is valued \$10,000 (GST inclusive) or higher, and an Exemption from AusTender Reporting form has not been approved, the contract will be publically reported on AusTender.</p> <p>Where the procurement involves the purchase of assets ensure consultation occurs with AFP Assets.</p>	
<p>6. Manage the contract and receive the goods and/or services</p>	<ul style="list-style-type: none"> - Depending on the scale, complexity and value of the procurement activity complete a Contract Management Plan and/or Contractor Performance Agreement. - Actively manage the supplier's performance against the statement of requirements/scope of works contained within the executed contract. - Maintain appropriate AFP records and manage stakeholder expectations. - Conduct witness testing, handovers and/or AFP acceptance of goods/services in accordance with the contract's terms and conditions, and manage any relevant defects liability periods, warranty periods, maintenance and support periods. - Conduct Contract Management/Contractor Performance Review Reports as required. - Consider any transition-out or end of contract activities that need to be planned/actioned. 	<p>Estimated completion date: No later than 21 March 2020</p>
<p>7. Payment of invoice/s</p>	<ul style="list-style-type: none"> - Review the invoice is correct and all goods and/or services have been received to a standard acceptable to the AFP (as per the contract's terms and conditions where applicable). - Complete a 'Confirmation' in <i>Insight!</i> and email the confirmation number to <u>Accounts and Client Services</u>. <p>Note: All correctly rendered invoices valued under \$1M must be paid within 20 calendar days from receipt or late payment fees will apply.</p>	<p>Within 20 calendar days of receipt of invoice.</p> <p>(Allow 1 day)</p>

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(COMMONWEALTH)
BY THE AUSTRALIAN FEDERAL POLICE