



Accounting Officer Memorandum

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

It is normal practice for accounting officers to scrutinise significant policy proposals or plans to start or vary major projects, and then assess whether they measure up to the standards set out in *Managing Public Money*. From April 2017, the government has committed to make a summary of the key points from these assessments available to Parliament when an accounting officer has agreed an assessment of projects within the Government's Major Projects Portfolio.

Background and context

Department for which the Accounting Officer who made the assessment is responsible:
Her Majesty's Prison and Probation Service

Drugs Testing Service (Re-competition)
Outline Business Case (OBC) – approved by Accounting Officer in February 2023

Project outline

Drug testing of offenders is a longstanding practice within the criminal justice system in England and Wales. Testing identifies offenders who are misusing drugs and helps prevent harm to these individuals and to the public by managing the risk of reoffending. HMPPS' Drug Testing Services contract supports several testing programmes across custodial and community settings. Drug testing provides quantitative evidence of the prevalence of drug misuse. In support of other security focussed methods such as searching, drug testing helps reveal drug misuse and allow staff to take appropriate evidence-based action, including referral to substance misuse services and punitive action.

In custody, Mandatory Drug Testing (MDT) was introduced as part of the Criminal Justice and Public Order Act 1994. Prison establishments across England and Wales must carry out an agreed amount of random testing (rMDT) currently either 5% or 10% each month based on their prisoner population size. Since March 2020 rMDT has been disrupted by the COVID-19 pandemic and resourcing pressures that have followed. As of September 2022, testing is roughly at around 75% of pre-pandemic levels.

Voluntary Drug Testing (VDT) is used within prisons to manage risks within regimes and promote drug free living, including on Incentivised Substance Free Living (ISFL) units and Drug Recovery Wings



(DRWs). In return for living on an ISFL unit or DRW offenders are required to undertake frequent VDTs. Offenders sign a compact to remain drug free and testing is carried out to measure compliance with this. VDT results are used to develop support opportunities, generate risk reviews of individuals and to support decision-making.

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

The current drug testing agreement was put out to competition in 2010 and a contract was awarded to Abbott Toxicology (formerly known as Alere Toxicology and Concateno). There have been subsequent extensions since then. In 2017, following an unsuccessful procurement exercise, the contract was extended till May 2019 and subsequently to October 2021, to enable us to re-assess changing HMPPS requirements and allow for sufficient time to undertake a robust procurement exercise. Lastly, due to the adverse impact of Covid-19 on the country as a whole, and the drugs testing industry having no market capacity due to the focus on finding a vaccine, another contract extension of 18 months duration was approved.

A revised interim contract has subsequently been awarded to operate between April 2023 and May 2024 to allow time for a new competition to be run and maintain service continuity. The interim contract started in January 2023, enabling us to bring forward delivery of Drug Rehabilitation Requirement (DRR) testing and the Problem-Solving Courts (PSC) pilot into this financial year, whereas the original timeframe was May 2023.

Assessment against the accounting officer standards

Regularity

The Outline Business Case for the Drugs Testing Service Project is assessed as regular. The OBC is fully compliant with UK law and the legislative requirements are detailed below.

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

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

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

Individuals released from custody can be made subject to a licence condition and / or post-sentence supervision requirement for drug testing under section 64 of the Criminal Justice and Court Services Act 2000 (c. 43) as amended by section 11 of the Offender Rehabilitation Act 2014 (c. 11)) and under section 256D of the Criminal Justice Act 2003 (c. 44) as inserted by paragraph 2 of Schedule 1 to the Offender Rehabilitation Act 2014), respectively. The Criminal Justice (Specified Class A Drugs Order) 2001 and the Criminal Justice (Specified Class B Drugs Order) 2015 specify the Class A and B drugs for which individuals can be tested for under the aforementioned condition and / or requirement. For adding any other drugs not currently listed in those parts, legislation would be required.

The mandatory drug testing of offenders residing in approved premises is provided for by the Approved Premises (Substance Testing) Act 2022.

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

Propriety

Drugs Testing Service Project is assessed as proper. The Outline Business Case has passed through Project and Departmental Governance, including an internal Keyholder Review and IPA Gateway Review process. I am satisfied that the OBC has completed the relevant internal governance satisfactorily ahead of submission to HMT, and that the proposals in the OBC are in line with the standards set out in *Managing Public Money*.

Value for Money

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

Feasibility

The Drugs Testing Service Project is assessed as feasible. There are no significant concerns of the achievability of this project (including competition and mobilisation). The Infrastructure and Projects Authority (IPA) Gate 2 deemed the project viable with sufficient resources in place to deliver the programme.

A HMPPS Deputy Director from the Directorate of Security with subject matter expertise was appointed as SRO for DTSP, and as SRO, is directly accountable to the Permanent Secretary, Ministry of Justice, under the oversight of the HMPPS Chief Executive Officer.

Effective governance of the project has first line assurance from a dedicated Project Board, with representatives from key stakeholder groups. Issues incapable of being resolved at Project Board level are escalated to the MoJ Portfolio Committee. The Project also has a dotted line into the

HMPPS Change Portfolio Board. Second line assurance is provided by the MoJ Portfolio and Assurance Team.

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

The project's budget is managed through appropriate MoJ governance. Tolerances for this spend are set by InvestCo and reported through to MoJ Portfolio.

Conclusion


As the accounting officer for His Majesty's Prison and Probation Service I considered this assessment of The Drug Testing Services (Re-competition) and approved it on 31 March 2023.

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

I have prepared this summary to set out the key points which informed my decision. If any of these factors change materially during the lifetime of this project, I undertake to prepare a revised summary, setting out my assessment of them.

I have placed a copy in the Commons and a copy has also been provided to the Principal Accounting Officer for the Ministry of Justice, who has seen my assessment and endorsed my conclusion.

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



Amy Rees, Accounting Officer
Chief Executive, HM Prison and Probation Service
Prif Weithredwr, Gwasanaeth Carchardai a Phrawf EM

Assessment endorsed by:

Antonia Romeo, Principal Accounting Officer of Ministry of Justice: 31/03/2023