

2.32 The Future Frigate TEP set out roles, responsibilities, and the process to be followed for the evaluation of tenders (including tender registration, managing late tenders, conducting an initial screening process, and rules regarding access to tenders). Regarding the assessment of value for money of the tenders received, the TEP stated that:

The TEP does not require the Tender Evaluation Organisation (TEO) to conduct a comparative evaluation of tenders and to determine a ranking of tenders based on a value for money assessment of the tenders. Rather the TEO is to provide Government with its assessment of the acceptability to the Commonwealth of the tenders against each of the evaluation criterion. Using the acceptability assessment it is proposed that Government will consider the value for money of the tenders.

2.33 AGS provided a formal sign-off for the TEP, stating that it had identified ‘no probity or legal process issues with the contents of the Evaluation Plan’. Previously, AGS had provided input on the lack of a process for assessing value for money in the draft TEP (dated 2 March 2017).

We understand that the TEP [Tender Evaluation Plan] does not require the TEO to make a value for money assessment. As this is a procurement process, a VFM [value for money] decision will need to be made at some level of government – in our view this process should be outlined in the TEP. We suggest that the intended process to be undertaken be explained in the TEP. If there is a more detailed process to be conducted within government for the selection of the preferred tenderer then we suggest that it be detailed in the TEP.

2.34 The TEP did not document how the evaluation process would address the core rule of the Commonwealth Procurement Rules (CPRs) — achieving value for money — other than to say that ‘it is proposed that Government will consider the value for money of the tenders’. Paragraph 4.4 of the March 2017 CPRs, which applied at the time, provided that: ‘Achieving value for money is the core rule of the CPRs. *Officials* responsible for a *procurement* must be satisfied, after reasonable enquires, that the *procurement* achieves a value for money outcome [emphasis in original].’ Further, the ‘Defence Procurement Policy Manual 2016’, which applied at the time, reiterated the CPR requirements and highlighted the requirement for comparative analysis of costs and benefits in assessing value for money:

The CPRs provide that Value for Money is the core principle underpinning Australian Government Procurement and the application of this principle requires a comparative analysis of all relevant costs and benefits of each proposal throughout the whole procurement cycle (whole-of-life costing).

Value for Money is not limited to a consideration of capability versus price, or ‘cheapest price wins.’ Value for money requires consideration of Australian Government policy, specifically values such as open competition, efficiency, ethics and accountability. The CPRs outline these policies in further detail. Officials conducting procurement should be aware that the overall goal of the procurement process is to provide a value for money recommendation to the delegate. [emphasis in original]

2.35 Defence did not document the rationale for the Future Frigate TEP not requiring a value for money assessment, comparative evaluation of the tenders, or ranking of tenders.⁵³ This was a

53 An earlier draft TEP (dated 10 February 2017) did include the conduct of a value for money assessment as a responsibility of the Tender Evaluation Board. The draft stated that:

The TEB [Tender Evaluation Board] Chair, with the assistance of the TEB members will produce a Value for Money assessment and provide an overall ranking of tenders.