

Joint Committee of Public Accounts and Audit

Inquiry into Commonwealth Procurement

Department of Finance

Response to Question on Notice

Hearing of 2 February 2023

Question on Notice 1 (Proof Hansard page 15)

CHAIR: Just going back to what Dr Mulino was talking about before on capability, I think you say in your submission that entities self-evaluate their procurement and contract management capability maturity through the Commonwealth procurement self-assessment survey. My understanding is that this survey is voluntary. What reliance can you place on the survey, given these two issues: (1) it's voluntary, so people don't have to do it, and (2) they're self-evaluating? I think what we know from cyber audits, consistently, is that entities significantly overestimate their compliance or level of preparedness. I think every time when we go in and look at it—let's be polite and call it an optimism bias. So what level of reliance can you actually put on it, and why wouldn't that survey at least be compulsory, to force a self-reflection, if nothing else, and a better data flow to you?

Ms King: I don't think I can answer right now why it isn't compulsory. I would have to go and look at when it was set up a few years ago. We've just done the third year, and we are analysing the results. What we do is get the results and then go back to the entity and say: 'Here's what you've said. Here are areas of improvement.' I guess it's just one part of the toolkit for agencies to have a look at where they might be tracking and where they're going, but we can put that together with the ANAO audit reports and have that as a 'checks and balances' as well about where they're going. We might have to come back with a little more detail on the survey, if that's okay with you.

CHAIR: Okay. You can take that on notice...

Response

The Commonwealth Procurement Capability Self-Assessment Survey (the Survey) was first established in 2020 and is run on an annual basis by the Department of Finance. The initial Survey sought to establish a capability baseline, with subsequent Surveys enhancing visibility and understanding of the maturity of procurement and contract management capability across the Commonwealth. All prescribed corporate and non-corporate Commonwealth entities are eligible to complete the Survey and are encouraged to do so through their representatives on the Senior Procurement Officials Reference Group, their Chief Financial Officers and articles in the Procurement Bulletin.

The Survey is completed on a voluntary basis and is one of a number of tools Finance provides to entities to help them undertake procurements and lift their capability. Finance does not have the authority to compel entities to complete the Survey.

The Survey enables entities to gain an insight into their current procurement and contract management capability maturity and is a useful tool in identifying areas where internal capability can be improved. The voluntary nature and non-public disclosure of individual entity results of the survey encourages frank introspection and allows entities to determine areas of opportunity to uplift their capability. It is not intended to be a compliance monitoring tool and the Survey questionnaire reflects this.

Finance actively invites and works with entities through direct engagement to better understand their results. Finance meets with entities to go through their results and assist entities to make connections with comparable entities where relevant capability initiatives and programs have been successful in improving their procurement capabilities. The Centre of Procurement Excellence uses the collective results of the Survey to inform the development of APS-wide procurement capability uplift initiatives targeted at supporting entities in building their procurement capabilities.

Finance actively engages with Commonwealth procuring officials to encourage responses, and consistently achieves around a 70-75 per cent response rate, helping to build an accurate whole-of-government picture. Finance collects feedback on entities' experiences completing the Survey to improve the Survey year on year and ensure the process is clear, thereby reducing any inaccuracies in responses over time.

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Response to Question on Notice

Hearing of 2 February 2023

Question on Notice 2 (Proof Hansard page 15)

CHAIR: If sole-source panel procurements are excluded from open tender procurement rates, what will be the proportion of open procurement versus closed or limited procurement?

Mr Jaggers: We'll have to take it on notice.

CHAIR: It's probably not available if you don't collect the data. Is that a reasonable guess of an answer?

Mr Jaggers: I'll have to take it on notice.

CHAIR: Right. I might put a couple of other related things on notice there...

Response

This data is not currently available at a whole-of-government level.

Finance is investigating ways to further increase the transparency of panel procurements, including collecting the number of suppliers invited to submit quotes for a procurement.

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Department of Finance

Response to Question on Notice

Hearing of 2 February 2023

Question on Notice 3 (Proof Hansard page 17)

CHAIR: Does Finance have a view on supplier security clearance requirements during the procurement process? One of the submitters put a proposal that the tendering agency should sponsor the security clearance once the supplier meets the participation requirement. This is an issue that comes up in many inquiries with security clearance—it's a bit like you employing staff in parts of your areas; it's a club. Once you've got one your market value goes up. In the case of procurement, if you don't have them you effectively get excluded from so many procurements because the agency just says 'can't get security clearance in time to deliver work', so they don't actually get scored or ever get the work. It's like a chicken-and-the-egg problem.

Mr Jaggers: I understand. I don't think we've got a view on this. I can take that on notice and we can have a look into it.

CHAIR: Can you have a look at the submission as well? I'm sure the last thing the Department of Defence would want is to load on us more security clearances, but it's a fairly compelling point and not the first time we've heard it.

Mr Jaggers: Yes.

Response

Security clearances are not a prerequisite to win Government contracts. Under the devolved Commonwealth Procurement Framework it is at the discretion of an entity to determine the appropriate requirements of a procurement, including security risks and appropriate mitigations. The Commonwealth Procurement Framework provides flexibility for procuring officials to conduct procurements which are fit for purpose for their individual entity's needs and in an efficient, effective, economical and ethical manner.

It is common practice for approach to market documentation to include a requirement to obtain and maintain a security clearance, where a security clearance is deemed necessary to undertake the work outlined in the procurement. Unless specifically identified in the tender documentation, potential suppliers do not need to hold a security clearance to bid for Government tenders and all potential suppliers to Government must be treated equitably based on their commercial, legal, technical and financial abilities.

Joint Committee of Public Accounts and Audit

Inquiry into Commonwealth Procurement

Department of Finance

Response to Question on Notice

Hearing of 2 February 2023

Written Question on Notice 1 (Mr Hill)

Finance has an important role in providing guidance to entities on how to implement the Commonwealth Procurement Rules (CPRs). One of the audits examined in the inquiry noted that some of the guidance that Finance had put out at a whole-of-government level regarding unsolicited proposals to Defence were out of date.

- a. How does Finance keep track of important guidance materials and ensure that they are kept up to date?
- b. When was the last comprehensive review of Finance's guidance material?

Response

- a) The Department of Finance (Finance) makes guidance publicly available on its website (www.finance.gov.au/government/procurement).

The review and update of Commonwealth procurement guidance is an ongoing process that is generally triggered by changes in the legislative and policy environment in which Commonwealth entities and officials operate. For example, changes to the Commonwealth Procurement Rules and the introduction of new legislation or policies will result in updates to guidance material (including the issuing of new guidance material).

Guidance is also updated to reflect learnings from audits undertaken by the Australian National Audit Office, the monitoring of questions received by Finance in relation to the Commonwealth Procurement Framework and feedback and suggestions from engagement with senior procurement officials across Commonwealth entities.

- b) The last comprehensive review of the procurement guidance was undertaken in 2020. Another full review of the guidance material is currently underway. Entities have been contributing to that review since June 2022. This review is in addition to updates made to specific guidance as required, in view of such triggers as those identified above.

Joint Committee of Public Accounts and Audit

Inquiry into Commonwealth Procurement

Department of Finance

Response to Question on Notice

Hearing of 2 February 2023

Written Question on Notice 2 (Mr Hill)

There are a number of services or products that are commonly in use across the APS — for example, certain IT systems or software. What is Finance's view on how procurement of similar products or services by multiple agencies can be made more efficient?

Response

When procuring commonly used goods and services, entities can make use of a number of processes that ensure their procurements are undertaken efficiently:

- coordinated Whole of Australian Government (WoAG) procurement arrangements;
- non-mandatory panel arrangements; and
- cooperative approaches to market.

Coordinated arrangements are established for the procurement of goods or services that are commonly used across the Commonwealth. Coordinated arrangements are mandatory for non-corporate Commonwealth entities. Non-mandatory panel arrangements are also an efficient way to procure goods and services regularly acquired by entities. Panels may be established for use by one or more entities and are optional for use.

Panels and WoAG arrangements offer many benefits, including:

- reducing red tape through streamlined administration and tendering costs and standardised terms and conditions;
- leveraging purchasing power to deliver consistent, lower pricing; and
- better management of commercial risks, contract management and improved quality of goods and services.

The Department of Finance (Finance) regularly assesses the range of non-ICT goods and services procured across the Commonwealth and, where appropriate, seeks to establish coordinated WoAG arrangements. The Management Advisory Services Panel and People Panel are recent examples of Finance having introduced efficiencies where common services across the Commonwealth have been identified.

Cooperative procurements involve more than one relevant entity as the procurer. Entities can procure cooperatively by approaching the market together or by joining an existing contract of another entity. Advantages of cooperative procurements include a reduced number of approaches to market and price savings through volume discounts.

Cooperative procurements may be particularly relevant to smaller entities that are less likely to be able to generate price savings through an individual approach to market, or have available the specialist knowledge or skills necessary to undertake the procurement.

Finance is also undertaking a review of the operation and effectiveness of panel arrangements across the Commonwealth to determine whether greater efficiencies for both government and industry can be realised. The review will identify opportunities for best practice, better consistency and improved value for money outcomes when utilising panel arrangements. The review will also investigate the number of panels with similar categories of goods and services, and include consultation with entities to determine whether particular panels can be consolidated.

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Inquiry into Commonwealth Procurement

Department of Finance

Response to Question on Notice

Hearing of 2 February 2023

Written Question on Notice 3 (Mr Hill)

Finance's submission to the inquiry notes that 'State and Territory governments have their own procurement frameworks separate to the Commonwealth' (Finance submission, p. 6).

a. How does the Commonwealth framework compare to state and territory counterparts? Are there any lessons or best practice examples we can draw from state or territory procurement frameworks?

Response

There are broad similarities between state and territory procurement frameworks and the Commonwealth Government's procurement framework. This is in part due to Australia's international obligations on government procurement that apply to state and territory governments and the Commonwealth Government, and include specific requirements for open tender processes to encourage competition. The similarities also reflect the application of best practice principles on government procurement, including transparency, accountability and ethical procurement, as well as achieving value when spending public money.

The Department of Finance regularly engages with state and territory governments to discuss procurement best practice and emerging areas of shared interest. This engagement includes bilateral meetings, as well as participation in forums with all jurisdictions, such as those facilitated by the Australasian Procurement and Construction Council. At these meetings sub-groups focus on areas of interest and development, including sustainability in procurement, Indigenous procurement and the capability development and professionalisation of procurement officials.

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Inquiry into Commonwealth Procurement

Department of Finance

Response to Question on Notice

Hearing of 2 February 2023

Written Question on Notice 4 (Mr Hill)

Finance's submission to the inquiry mentions that 'the Future Made in Australia Office' has been established within Finance to coordinate the delivery of the Buy Australian Plan (Finance submission, p. 8).

- a. Can Finance elaborate on what the Buy Australian Plan is, and the role of the Future Made in Australia Office?
- b. How does the Future Made in Australia Office fit into Finance's role as the policy steward for Commonwealth procurement?
- c. How will Finance assess the implementation of the Buy Australia Plan? What monitoring or reporting systems will be in place to do so?

Response

a. Can Finance elaborate on what the Buy Australian Plan is, and the role of the Future Made in Australia Office?

The Buy Australian Plan (the Plan) is a significant procurement reform program which aims to make it easier to do business with the Australian Government, by breaking down barriers, increasing the capability of businesses to submit competitive tenders, and for the Australian Public Service to better engage with industry. The Plan will leverage Commonwealth procurement to improve economic, social and environmental outcomes for Australia.

The Buy Australian Plan commits to:

1. Establish a Future Made in Australia Office, backed up by laws that will lock in key elements of Commonwealth Procurement Rules (CPRs) to actively support local industry in taking advantage of government purchasing opportunities.
2. Maximise opportunities for Australian businesses in major infrastructure projects.
3. Open the door to more government work for more small and medium businesses by decoding and simplifying procurement processes.

4. Establish a Secure Australian Jobs Code to prioritise secure work in government contracts and ensure that government purchasing power is being used to support businesses that engage in fair, equitable, ethical and sustainable practices.
5. Provide more opportunities for First Nations businesses with a view to maximise skills transfer so that we can get more First Nations workers into long-term skilled work.
6. Level the playing field by bringing in a Fair Go Procurement Framework requiring those that gain government contracts to pay their fair share of tax.
7. Supporting industry sectors through the government's purchasing power.
8. Use government spending power to take action on climate change and support energy projects.
9. Strengthen Defence industries and capability.
10. Make National Partnerships work to maximise the use of local workers and businesses.

The Future Made in Australia Office (the Office) has been established in the Department of Finance. The Office is working closely with industry and across government to implement the Plan. The Office is also working closely with a Ministerial Roundtable on Procurement, comprised of representatives from peak business and industry bodies, unions, and academia. The Roundtable will ensure the reform program reflects the needs of businesses and industry sectors, reduces regulatory burden, and provides pathways for new market entrants, emerging sectors and business growth.

The Office supports the uplift of procurement and contracting capability across the Australian Public Service to provide government buyers with the skills, tools and resources they need, and strengthen relationships with business, industries, and communities by delivering targeted learning events to raise awareness on how to do business with the Australian Government.

b. How does the Future Made in Australia Office fit into Finance's role as the policy steward for Commonwealth procurement?

The Plan established the Office in the Department of Finance in recognition of Finance's existing role as steward for Commonwealth procurement. The Office works in close proximity with, but independent of, the whole-of-government domestic procurement and international trade policy functions, to ensure key policy enablers are able to independently consider and develop proposed policy reforms.

The Centre of Procurement Excellence (CoPE), which already existed in Finance, has moved into the Office and aligned its work to the Plan. Through CoPE, the Office leads and coordinates initiatives to build public sector procurement capability, strengthens partnerships with the business community and encourages innovation and best practice processes to drive value for money outcomes.

c. How will Finance assess the implementation of the Buy Australia Plan? What monitoring or reporting systems will be in place to do so?

The Office is currently coordinating the development of an Action Plan with key stakeholders. The Action Plan will outline a roadmap for reform with timelines and priorities that will be agreed by the Minister for Finance in consultation with Ministers responsible for delivering the Buy Australian Plan's commitments.

Implementation of the Buy Australian Plan will be assessed against this action plan once it has been finalised and agreed.

Progress on delivery of the Buy Australian Plan will be reported on the Department of Finance's webpage www.finance.gov.au/buyaustrianplan.

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Inquiry into Commonwealth Procurement

Department of Finance

Response to Question on Notice

Hearing of 2 February 2023

Written Question on Notice 5 (Mr Hill)

ANAO submission notes that 'Four of the five audits subject to this inquiry contained adverse findings relating to ethical behaviour and probity risks' as outlined in paragraph 6.6 of the CPRs (ANAO submission, para 45, p. 9).

a. What is Finance's view on these findings? Is there a systemic or cultural issue with unethical procurement in the APS?

Response

Based on the sample provided in the ANAO audits (representing less than 0.1 per cent of procurements by volume entered into between 2019-20 and 2020-21) Finance has not drawn any conclusions relating to systemic or broader cultural issue across the Australian Public Service.

The Centre of Procurement Excellence, within the Future Made in Australia Office at the Department of Finance, is focussed on further developing the capability of procurers in the Australian Public Service (APS). This includes, for example, increasing training available to procurers of all levels, such as delegates, frequent procurers and APS officials who undertake procurement infrequently or incidentally to their core roles.

Joint Committee of Public Accounts and Audit

Inquiry into Commonwealth Procurement

Department of Finance

Response to Question on Notice

Hearing of 2 February 2023

Written Question on Notice 6 (Mr Hill)

A recurring finding in the audit reports relates to the entities' use of probity advisers.

- a. Can Finance outline what the role of a probity adviser involves?
- b. When entities are looking to engage a probity adviser, what should they be looking for? For example, are there qualifications or standards for probity advisers?
- c. What guidance is available from Finance for entities on engaging a probity adviser during procurement?

Response

a. A probity adviser would typically advise on probity issues as they arise during a tender process, in accordance with the probity plan developed by the procuring entity. (The probity plan provides guidance on how probity is to be addressed during the procurement.) A probity adviser may be involved in providing advice on the structure of the tender process, including the establishment of the probity plan.

A probity adviser may be used for the audit of a procurement process. A probity auditor seeks to report an objective opinion on probity issues, generally after the process has been completed. A probity auditor should not be called in during a process to try and remedy problems, but could provide sign-off after a problem has occurred to ensure the probity issues have been addressed and it is appropriate to continue with the process.

b. External probity specialists should be appointed only where the scale, scope and complexity of the procurement warrants it. The decision on whether to engage an external probity specialist should weigh the benefits of receiving advice independent of the process against the additional cost involved, and include consideration of whether or not skills exist within the entity to fulfil the role.

Probity experts should be independent, free from conflicts of interest and have a sound knowledge of all relevant government policies and procedures. These persons should also have an ongoing obligation to disclose any conflicts that may arise during the entire procurement process.

c. Finance supports entities through the publication of procurement guidance material on ethics and probity in procurement, including the underpinning principles of ethics and probity in Australian Government Procurement.

This guidance is publicly available on the Department of Finance website (<https://www.finance.gov.au/government/procurement/buying-australian-government/ethics-and-probity-procurement>).

Joint Committee of Public Accounts and Audit

Inquiry into Commonwealth Procurement

Department of Finance

Response to Question on Notice

Hearing of 2 February 2023

Written Question on Notice 7 (Mr Hill)

Finance's submission to the inquiry states that 'Finance is investigating ways to further increase the transparency of panel procurements, including collecting the number of suppliers invited to submit quotes for a procurement' (Finance submission, p. 11).

- a. Can Finance provide an update on the progress of this work?
- b. Noting that generating competition through open tender is intended to be the default approach to help achieve value for money, does Finance have an indicative target or expectation regarding the proportion of open tenders vs. limited tenders?
- c. In the audit of the National Capital Authority, the NCA approached all members of a panel that was established by open tender, but then extended the approach to two non-panel suppliers chosen by the entity (NCA audit, paras 2.48–2.49, p. 28). How would a scenario like this be handled by the proposed revised reporting requirements? Would it be reported as open tender, even if the approach was not open, fair and non-discriminatory?

Response

- a. Changes to AusTender reporting requirements are being considered as part of broader policy development which gives due consideration to the ANAO audit findings, including the audit of the National Capital Authority, and the *Australian Government Procurement Contract Reporting – 2022 Update* published by the ANAO as recently as the 2 February 2023.

b. The Department of Finance does not have targets regarding the proportion of open tenders vs. limited tenders.

Achieving value for money and encouraging competition are key elements of the Government's procurement framework and the Commonwealth Procurement Rules (CPRs). In line with the CPRs, the procurement method is determined by the estimated value of a procurement and should be appropriate for the activity given the scale, scope and risk of the procurement. For procurements at or above the relevant procurement threshold, a Limited tender can only be conducted in accordance with the exemption provisions outlined in the CPRs.

c. Where a contract has been awarded through an approach to a Standing Offer panel arrangement, the procurement method reported on AusTender is the procurement method used to establish that arrangement, usually an open tender.

Contracts awarded outside a Standing Offer panel arrangement must reflect the procurement method used to approach the market, either open tender or limited tender. For limited tender procurements valued at or above the relevant procurement threshold, entities are required to include in their reporting the limited tender condition or exemption used.

Joint Committee of Public Accounts and Audit

Inquiry into Commonwealth Procurement

Department of Finance

Response to Question on Notice

Hearing of 2 February 2023

Written Question on Notice 8 (Mr Hill)

One of the recurring issues noted in the audit reports is late and/or inaccurate reporting of contracts to AusTender in accordance with the CPRs. For example, the NCA audit found that only 10 per cent of contracts examined by the ANAO were accurately reported within the required timeframe (NCA audit, para 3.31, p. 47).

- a. To what extent is Finance monitoring the accuracy or timeliness of information on AusTender?
- b. How can the accuracy and timeliness of AusTender reporting be improved?

Response

Since 2019, Finance has been coordinating cross-entity projects aimed at improving data quality and streamlining the management of AusTender data. Finance has worked with entities to upgrade their reporting solutions to introduce a range of enhancements, including:

- improved contract amendment reporting;
- automatic data checks; and
- improved assurance processes to improve data accuracy and timeliness of reporting.

In addition, Finance has developed and released an entity information site which provides live analytical reporting to entities on various topics, including:

- current planned procurements;
- entity business opportunities;
- Contract Notice reporting, including the estimated number of contracts reported on time;
- standing offer panel arrangements; and
- limited tender usage.

These reports show that, in 2019-20, an estimated 84 per cent of contracts were reported within 42 days, increasing to 87 per cent in 2020-21. Finance continues to work with relevant entities highlighting where improvements can be made to internal processes to increase timeliness of reporting on AusTender.

Finance is utilising commonly used Commonwealth data sets to provide entities accurate, curated and easy to access procurement information. For example, Finance is leveraging the Australian Business Register to improve the quality and consistency of supplier information. This has allowed Finance to introduce supplier analytics through AusTender.

Finance also provides entities with significant support, advice and guidance through a range of mechanisms including regular and dedicated outreach sessions with central procurement teams across the Commonwealth, web guidance and the provision of helpdesk support services. Through the outreach sessions, Finance provides entities with AusTender data and reports specific to their entity for data quality review purposes.

Joint Committee of Public Accounts and Audit

Inquiry into Commonwealth Procurement

Department of Finance

Response to Question on Notice

Hearing of 2 February 2023

Written Question on Notice 9 (Mr Hill)

A number of submissions to the inquiry noted difficulties in navigating AusTender to draw out useful data — for example, there are around 13,000 active codes for UNSPSC, and entries are self-coded by people who enter it.

- a. How does Finance engage with Commonwealth entities or industry regarding useability of AusTender? Does Finance collect feedback, and if so, how is it used?
- b. What changes or enhancements can be made to AusTender functionalities to improve transparency and make it more user-friendly?

Response

The AusTender Helpdesk monitors queries received and progressively releases and updates public reports incorporating feedback from Commonwealth entities and industry. The reports, available at <https://help.tenders.gov.au/getting-started-with-austender/information-made-easy/>, provide greater transparency of the Australian Government's procurement activities by providing data and insights into a range of topics, including:

- [Contracts and Amendments](#)
- [Contracts by Entities](#)
- [What the Government Buys](#)
- [How the Government Buys](#)
- [Procurement of Consultancies](#)
- [Contracts by Value Threshold](#).

AusTender also contains online feedback functionality which is analysed on a regular basis to incorporate and continuously improve and provide guidance to users AusTender improving usability of AusTender.

As part of the scoping and design of future changes to AusTender, Finance considers user feedback and relevant findings from ANAO audits. For example, Finance is investigating ways to further increase the transparency of panel procurements, including collecting the number of suppliers invited to submit quotes for a procurement.

Finance is also utilising commonly used Commonwealth data sets to provide entities accurate, curated and easy to access procurement information. For example, Finance is leveraging the Australian Business Register to improve the quality and consistency of supplier information. This has allowed Finance to introduce supplier analytics through AusTender.

Joint Committee of Public Accounts and Audit

Inquiry into Commonwealth Procurement

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Response to Question on Notice

Hearing of 2 February 2023

Written Question on Notice 10 (Mr Hill)

ANAO's submission noted that 'AusTender requires entities to report the reason for amendments to the contract, which is recorded as a free-text field description; as a result, the transparency provided by this field is only as good as the information the reporting officer chooses to input' (ANAO submission, para 59, p. 12).

a. Noting the significant audit findings in relation to contract amendments and variations, does Finance have any suggestions for reducing inappropriate 'leveraging' of contracts and improving transparency of amended or varied contracts?

Response

Finance provides entities with detailed AusTender data on a real-time basis. This includes standardised reports which enable entities to interrogate their data to identify contracts which have had a significant increase in the value of the contract, or the number of times an amendment has occurred.

Entities can use these reports to investigate the appropriateness of these activities and, where required, provide advice to procuring officials.

Finance is also exploring options for replacing certain free text fields in AusTender with standardised responses to increase the transparency of AusTender data, including amendment reasons.