



Australian Government
Department of Home Affairs

Department of Home Affairs submission to the Inquiry into Commonwealth Procurement

Joint Committee of Public Accounts and Audit

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Department of Home Affairs Submission to the Inquiry into Commonwealth Procurement

Thank you for your invitation to make a submission to the Joint Committee of Public Accounts and Audit Inquiry into Commonwealth Procurement: Auditor-General Reports 6, 15, 30, 42 (2021-22) and 5 (2022-23) (the Inquiry).

The Department of Home Affairs (the Department) is committed to conducting procurement activity that is consistent with the Commonwealth Procurement Rules (CPRs). The Department, through the Chief Operating Officer Group (COO Group) is responsible for establishing procurement processes that are compliant with the CPRs and other legislative requirements and is the first point of contact for all procurement advice. The COO Group provides procurement and contract management support across the Department and Australian Border Force to ensure that procurement processes are an efficient, effective, economical and ethical use of resources that encourage competition and are non-discriminatory to facilitate accountable and transparent decision making that achieves a value for money outcome.

The Department welcomes the Inquiry.

Audit Findings

Auditor-General's Report No.6 (2021-22) – Management of the Civil Maritime Surveillance Services Contract

Background

Civil maritime surveillance has been identified by the Department as important to deterring, preventing, detecting and responding to civil maritime threats, including illegal maritime arrivals as part of Operation Sovereign Borders. Following a tender process, on 3 March 2006 a contract commenced between the Australian Government and Surveillance Australia Pty Ltd (Surveillance Australia) for the provision of a 'Detect-Classify Identify-Report' surveillance service to inform 'maritime zone awareness'.

The contract requires the provision of 10 fixed-wing Dash-8 aircraft (six Dash-8 202 and four Dash-8 315), modified with specialised surveillance information management system (SIM) equipment which links aerial surveillance assets to the Australian Border Operations Centre. The contractor is required to provide 15,000 flying hours per annum.

At the time it was entered into, the contract was to expire on 31 December 2019 and had a reported value of \$1,187 million. Since the contract was executed, there have been 40 contract change proposals approved and Home Affairs has identified that these have significantly reshaped the contract.

The Audit Report

The audit objective was to assess whether the Department is effectively managing the Civil Maritime Surveillance Services contract. To form a conclusion against the objective, the following high level criteria were adopted:

- Has the contract delivered against the planned cost, scope and delivery timeframe?
- Have the specified surveillance assets been provided?
- Have the specified surveillance services been provided?

At the time the audit commenced, there was a fourth criterion ('Has there been appropriate planning for the end of contract?') and the audit scope was to include the transitional arrangements in place for the period post the expiry of the contract on 31 December 2021. In September 2021, The Department extended the contract with Surveillance Australia until 31 December 2027 and the proposed fourth criterion was removed.

Response

The Department is currently undertaking work to prepare for a replacement aerial surveillance services contract to be in place when the current contract expires at the end of 2027. The ANAO recommendations are being used to inform the work to develop a future contract along with lessons learnt from other recent procurement activities. Noting the new arrangements will not take effect until 1 January 2028 planning for a new contract is at an early stage.

Recommendations:

1. In developing and managing the next surveillance services contract, the Department of Home Affairs adopt an approach that involves not paying charges for the bases and aircraft until they have been accepted into service and, once it has started paying charges, paying at a reduced rate until any remaining deficiencies are addressed.

The future aerial surveillance services contract will be guided by lessons learnt from the current arrangements. The Department will ensure that the conditions of contract and associated payment schedules contain sufficient provision of information to enable informed decisions on payments, with remuneration reflective of services rendered. Specific contractual remedies will be available for the Department that reflect performance outcomes.

2. In developing and managing the next surveillance services contract, where it sets requirements for the provision of aircrew the Department of Home Affairs adopt an approach which links the contractual requirements to the performance measurement system.

The Department, in preparing for a new arrangement, acknowledged the importance of aircrew in the delivery of aerial surveillance services. The Department is looking to use metrics related to the contractor's ability to meet mission requirements, such as aircrew availability, through the provision of lead indicator data within the contract. This type of metric within a suite of performance measures, based on the nature of the solution options proposed, can be used to inform and support the basis of invoice payments.

3. When developing and managing the next surveillance services contract, the Department of Home Affairs develop and use appropriate systems and processes that links data on operational activities with contractual performance requirements, including opportunities to apply technology solutions to increase automation thereby increasing transparency and reducing reliance on external processes. The Department should seek to leverage off the approach that the Australian Maritime Safety Authority developed to manage its search and rescue aircraft contract.

The future capability system is intended to interface with extant business processes where practical. The Department's existing performance management tool (GROC) is able to capture Key Performance Indicator and metrics that support payment considerations. Once the preferred solution is defined and understood, the performance management tool will be refined to collect and manage performance data. The Department has engaged with Australian Maritime Safety Authority to help inform work to develop the future contract for aerial surveillance services.

4. The Department of Home Affairs implement stronger assurance arrangements for monitoring of mission performance.

The Department acknowledges the benefits of implementing stronger assurance arrangements for monitoring aerial surveillance mission performance, and continues to apply a robust approach to performance scoring, taking into consideration operational and environmental challenges.

A range of measures are in place including 24/7 engagement and monitoring of all aerial surveillance missions by the Australian Border Force (ABF), and Maritime Border Command (MBC), increased night surveillance requirements, and implementation of quality assurance of mission and performance data in GROC. An additional Maritime Aviation Specialist Surveillance Officer (MASSO) was engaged in late August 2021 to monitor and report on the service provider's mission performance, and to conduct operational assessments on-board aircraft.

Other Recommendations

The Department supports a number of other recommendation outlined in the various reports. These include:

Auditor-General's Report No.15 (2021-22) – Department of Defence's Procurement of Six Evolved Cape Class Patrol Boats

Recommendation 1 - The Department of Defence develop and implement specific requirements for the management of probity when engaging with industry on unsolicited proposals including by identifying, assessing and managing probity risk at an early stage, when considering and assessing the feasibility of unsolicited proposals.

In the event the Department receives an unsolicited proposal, engagement with the Department's Legal Group occurs immediately to determine that the proposal meets criteria set out in the CPRs and to ensure that probity and legal risks are adequately addressed.

The Department is also aware of and has been engaged with the Department of Finance on the development of a whole of government guide on unsolicited proposals.

Auditor-General's Report No.30 (2021-22) – Procurement of the National Capital Authority

Recommendation 3 - The National Capital Authority improve its controls over the making of appropriate records of the justification for using limited tender procurement approaches and outlining how value for money was achieved.

The Department has implemented a range of controls through the Accountable Authority Instructions. Limited Tenders for the procurement of goods and services valued at or above the relevant threshold is only permissible with approval from the Chief Procurement Officer. The Chief Procurement Officer must approve that a Limited Tender condition set out in Part 10.3 of Division 2 of the CPRs applies. Procuring officials must prepare a Limited Tender Endorsement Request Minute for authorisation by the Chief Procurement Officer, which must include:

- the estimated value of the procurement
- which particular clause contained in Division 2 'Additional Rules' is to be relied upon
- the justification for conducting a limited tender
- how value for money will be achieved in the circumstances.

Recommendation 5 - The National Capital Authority strengthen its procurement controls to ensure that procurement request documentation includes a complete description of the evaluation criteria that will be applied.

The Department implemented a Procurement and Contract Management Account Management model in May 2021 where business areas are able to engage with procurement and contracts specialists to assist them with their procurement enquiries. This assistance includes providing guidance through the procurement process, document reviews and assistance with obtaining necessary delegate approvals under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). As part of the Request for Tender documentation, the Department provides potential tenderers with a copy of the evaluation criteria and the Tender Evaluation matrix outlining how the received responses will be evaluated to determine the preferred tenderer.

Recommendation 6 - Where a probity adviser has been appointed, the National Capital Authority actively engage and manage the adviser to ensure services are delivered as agreed and that probity has been maintained during the procurement process.

The Department agrees that external probity advisers must be properly managed to ensure agreed services are delivered and probity is maintained during the procurement process. To help facilitate this, the Department has a Procurement and Contracts Support Branch and a Commercial, Employment and Information Law Branch, that provides legal, procurement and probity support to business areas. Departmental staff are encouraged to engage with these areas when they are procuring goods or services. Where appropriate, staff are encouraged to engage a probity adviser at the planning stage of a procurement to help ensure that probity can be maintained during the whole procurement process.

Recommendation 7 - The National Capital Authority implement a monitoring and assurance framework over its compliance with the Commonwealth Procurement Rules, including AusTender reporting.

The Department has in place a Procurement and Contract Management Assurance Framework (the Assurance Framework). The purpose of the Assurance Framework is to implement second line assurance over procurement processes in the Department including the Australian Border Force (ABF). The Assurance Framework aims to provide confidence to the Chief Procurement Officer and Chief Operating Officer that the Department is achieving its procurement and contract management objectives effectively, efficiently, lawfully, and within an acceptable level of risk.

Recommendation 8 - The National Capital Authority place greater emphasis on timely and accurate reporting of its procurement activities, and making and retaining appropriate records of those activities.

The Department is committed to ensuring it meets obligations to publish contract information on AusTender within 42 days of entering into the arrangement. To support this, the Department's Accountable Authority Instructions include requirements on officers to enable the timely reporting on AusTender. The Department is also completing a procurement digitisation project which has streamlined and automated the manner in which contracts are reported. The Department also regularly promotes the requirements of contract reporting through regular intranet notices, targeted communication and through the established Procurement Community of Practice.

Auditor-General's Report No.42 (2021-22) – Procurement of Delivery Partners for the Entrepreneurs' Programme

Recommendation 2 - When evaluating tender responses, the Department of Industry, Science, Energy and Resources fully evaluate responses received consistent with the approach set out in the approach to the market, with the results of this work relied upon to select the successful candidate(s).

The Department has clear guidance for officials published on the intranet page advising that evaluations must be undertaken in accordance with the procedures and criteria outlined in the request documentation. When undertaking an evaluation departmental officials **must** ensure that:

- all respondents are dealt with fairly and equitably
- the request documentation evaluation criteria are followed fairly and meticulously
- the results of the evaluation are documented.

Recommendation 3 - The Department of Industry, Science, Energy and Resources improve its procurement framework to specifically address the engagement of probity advisers, including ensuring that advisers are independent and objective by not engaging the same probity advisers on an ongoing or serial basis.

The Department agrees that using a variety of probity advisers maximises independence and impartiality. Our probity advisers come from a mix of legal and non-legal panels, which encourages diversity and inclusion. In order to maintain best practice, we will engage internally to ensure that our staff are aware of the benefits of using a variety of probity advisers.

Recommendation 4 - The Department of Industry, Science, Energy and Resources improve its procurement framework to specifically address how it will manage the risk of any incumbency advantages when conducting procurement processes.

The Department has in place a robust procurement framework to address risk in procurement. For procurements deemed to be Complex or Strategic, the Risk Assessment completed is reviewed by the Department's Enterprise Risk Section to ensure that risks are appropriately captured and categorised and any required treatments are appropriate. For procurements where there is an incumbent provider likely to re-tender, additional risk mitigation strategies are put in place with specific focus on probity briefings and conflict of interest declarations during the procurement process.

Recommendation 5 - The Department of Industry, Science, Energy and Resources improve its procurement record keeping so that accurate and concise information exists on:

- a. the process that was followed;
- b. how value for money was considered and achieved;
- c. relevant approvals; and
- d. relevant decisions and basis of those decisions.

Under the Department's Accountable Authority Instructions, procuring officials must ensure there is sufficient documentation to justify the procurement, demonstrate the processes followed and record the relevant decision. In addition delegates entering into, varying or administering an arrangement must ensure sufficient documentation is retained to demonstrate processes and approvals were appropriate to the scope and scale of the procurement and stored in the Department's approved records management system.

The Department is currently completing a procurement digitisation project which will capture the entire suite of procurement documentation from commencement of the procurement through to the contract execution. These digital forms include:

- a. The Procurement Plan;
- b. Risk Assessment;
- c. Tender Evaluation Plan
- d. Probity Plan (if applicable)
- e. Value for Money Assessments
- f. Relevant PGPA Approvals

The Department also uses the ServiceNow digital platform for officers to submit requests for procurement advice. This system captures the request and any responses and is an accepted record management system.

Recommendation 7 - The Department of Industry, Science, Energy and Resources develop contract management plans for each of the delivery partner contracts.

The Department has in place a Contract Management Manual (CMM) which is aimed at providing Contract Managers with the Department's requirements to successfully manage their contracts. The CMM includes details about creating, managing and updating a Contract Management plan as well as detailed information on the Department's Contract Management Policy Framework. The Department's Procurement and Contract Management Account Management model also provides Contract Managers with a point of contact for complex contract management advice and support.

Recommendation 8 - The Department of Industry, Science, Energy and Resources adopt a proactive approach to managing delivery partner conflicts of interest by ensuring conflict of interest declarations are completed, updated regularly or their ongoing currency otherwise confirmed.

The Department's Procurement and Contract Management Account Management model includes providing advice to business areas on managing conflicts of interest and ensuring that these are captured through Conflict of Interest declarations during the procurement process. Should any conflicts of interest arise during the procurement, these are reviewed by the business area conducting the procurement in consultation with their Account Managers.

If the conflict is deemed to be perceived or real, then mitigation strategies are put in place to ensure the integrity of the process. Where a potential conflict is identified, the business area is required to notify the Chair of the Evaluation Committee, the Procurement Delegate and the Department's Integrity, Security and Assurance Division for their respective records.

Auditor-General's Report No.5 (2022-23) – Digital Transformation Agency's Procurement of ICT Related Services

Recommendation 1 - The Digital Transformation Agency implement a system of risk management that ensures procurement risks are being monitored, managed and escalated appropriately.

The Department has in place a robust procurement framework to address risk in procurement. For procurements deemed to be Complex or Strategic, the Risk Assessment completed is reviewed by the Department's Enterprise Risk team to ensure that risks are appropriately captured and categorised and any treatments are appropriate. For procurements where there is an incumbent provider likely to re-tender, additional risk mitigation strategies are put in place with specific focus on maintaining probity during the procurement process.

The Department's Spending Proposal template, which seeks delegate approval to proceed with a procurement, includes the Department's risk matrix. Procurement officers undertake a risk assessment to determine a risk profile for each procurement over \$10,000. Depending on the level of risk identified, a more detailed Risk Management Plan may need to be developed. Risk registers are treated as a living document and are reviewed regularly throughout the procurement process.

Recommendation 3 - The Digital Transformation Agency:

- a. establish an internal control to ensure that officials directly involved in procurements make activity-specific declarations of interest; and
- b. maintain a register of declared interests.

The Department's Procurement and Contract Management Account Management model includes providing advice to business areas on managing conflicts of interest and ensuring that these are captured through Conflict of Interest declarations during the procurement. These forms are saved in the Department's record keeping system. Should any conflicts of interest arise during the procurement these are reviewed by the business area conducting the procurement in consultation with their Account Managers.

If the conflict is deemed to be apparent perceived or real, then mitigation strategies are put in place to ensure the integrity of the process. Where a potential conflict is identified, the business area is required to notify the Chair of the Evaluation Committee, the Procurement Delegate and the Department's internal Integrity, Security and Assurance Division for their respective records.

Recommendation 4 - The Digital Transformation Agency align its approach to market processes with the Commonwealth Procurement Rules, with a focus on:

- a. estimating the expected value of a procurement before a decision on the procurement method is made;
- b. establishing processes to identify, analyse, allocate and treat risk; and
- c. maintaining a level of documentation commensurate with the scale, scope and risk of the procurement.

The Department provides procurement document templates that align to the requirements of the CPRs. Spending Proposals and Procurement Plans require an estimated value of the procurement to be included to allow the delegate to make an informed decision.

The Department's Spending Proposal template, which seeks delegate approval to proceed with a procurement, includes the Department's risk matrix. Procurement officers undertake a risk assessment to determine a risk profile for each procurement over \$10,000. Depending on the level of risk identified, a more detailed Risk Management Plan may need to be developed. Risk registers are treated as a living document and are reviewed regularly throughout the procurement process.

The Department's intranet has guidance documents on identifying and managing risk. Strategic and High Risk, High Value procurements require clearance through the relevant steering committee and the Chief or Deputy Chief Risk Officer.

The Department's Procurement and Contracts intranet site provides guidance on required documentation that is commensurate to the level of procurement value and risk. All procurement related documentation is stored in the Department's approved record keeping system under the Records Management Framework.

Recommendation 6 - The Digital Transformation Agency improve its tender evaluation processes to:

- a. align them with the Commonwealth Procurement Rules; and
- b. incorporate evaluation criteria to better enable the proper identification, assessment and comparison of submissions on a fair and transparent basis.

The Department's Procurement and Contracts intranet site provides guidance on tender evaluation processes and evaluation document templates in line with the requirements of the CPRs.

As part of the Request for Tender documentation, The Department provides potential tenderers with a copy of the evaluation criteria and the Tender Evaluation matrix outlining how the received responses will be reviewed and scored to determine the preferred tenderer.

Recommendation 7 - The Digital Transformation Agency improve its procurement processes to ensure decision-makers are provided complete advice, including information on risk and how value for money would be achieved.

The Department has in place a Procurement and Contract Management Account Management model where business areas are able to engage with procurement and contracts specialists to assist them with their procurement enquiries. This assistance includes providing guidance through the procurement process.

In addition, the Department's Procurement and Contracts intranet site provides detailed guidance on procurement processes and required templates (including guidance notes). Templates include a risk matrix or the requirement for a risk assessment (depending on the procurement value) and a value for money assessment.

Recommendation 9 - The Digital Transformation Agency strengthen its internal guidance and controls to ensure officials do not vary contracts to avoid competition or obligations and ethical requirements under the Commonwealth Procurement Rules.

The Department provides advice to business areas through its Procurement and Contract Account Management model regarding contract variations. The Sourcing and Vendor Management Branch, responsible for IT procurement and contracts, does not allow any business area to extend or change the scope of a contract if it is not in line with the CPRs.

The Chief Procurement Officer must approve all proposals to extend a contract by variation where there are no further extension options. A minute to the Chief Procurement Officer must be prepared through the Assistant Secretary of Procurement and Contracts Support Branch and include:

- reasons for the variation, including what procurement activity is being conducted
- details of original contract period and any previous variations
- the estimated value of the variation and subsequent total contract value
- how value for money will be achieved in the circumstances.