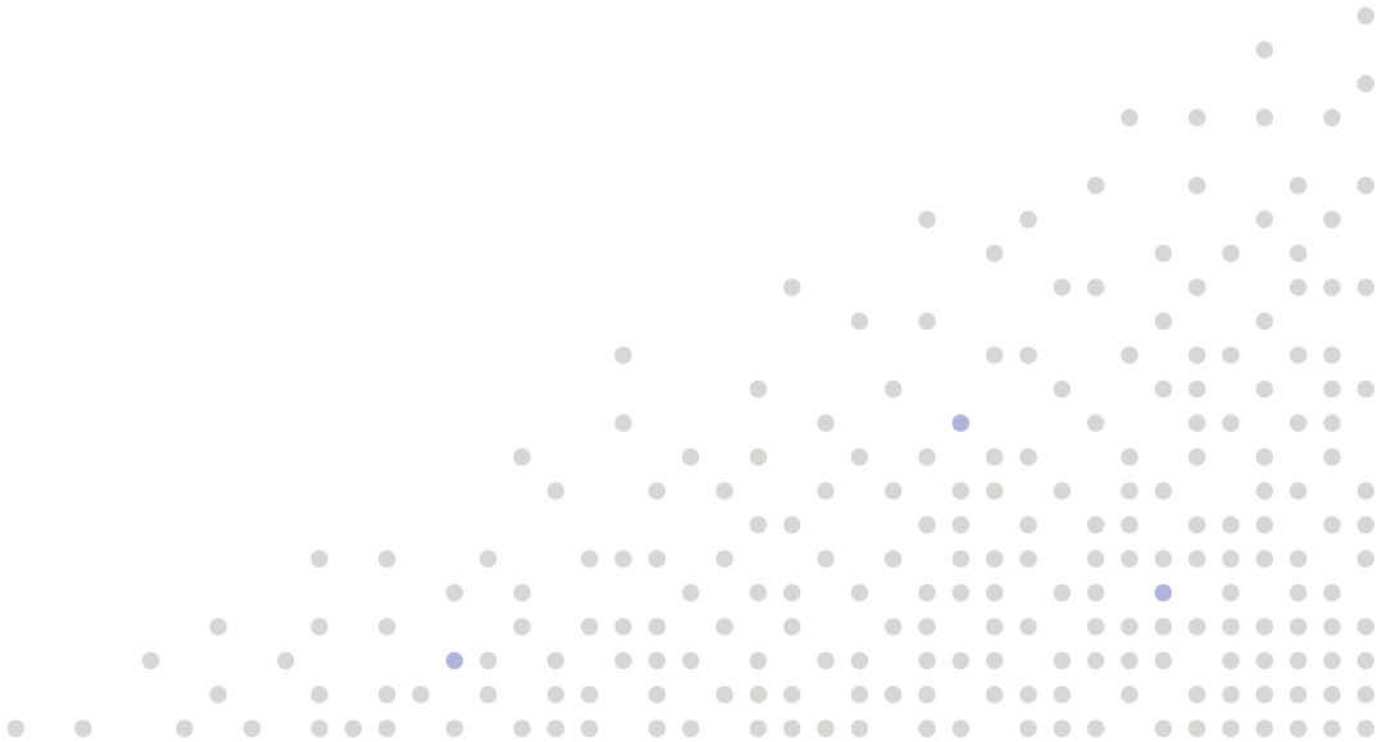




Australian Government
Department of Finance



Department of Finance

Submission to the
Joint Committee of Public Accounts and Audit

Part A

February 2018

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Introduction

This submission responds to Part (a) of the Joint Committee of Public Accounts and Audit's (the Committee's) request for information from the Department of Finance (Finance) in relation to the Australian National Audit Office's (ANAO's) Report *Australian Government Procurement Contract Reporting* (the Report).

This response focusses on Finance's Whole of Government responsibilities in relation to the procurement policy framework. A second Part (b) response, which responds to specific questions about procurements undertaken by Finance and annualised expenditure, is being prepared and will be submitted by 16 February 2018 as requested.

In its letter of 14 December 2017 to the Finance Secretary (Attachment A), the Committee asked Finance to comment directly on specific parts of the Report. This request is addressed in Section 2 of this Submission.

In addition, Section 1 of this Submission provides:

- background information that is critical for understanding any analysis of Commonwealth procurement and the data that is reported on AusTender;
- an overview of the Commonwealth's devolved Resource Management Framework and highlights that procurement is not an end in itself, but rather one of a number of means through which entities can use public resources to deliver outcomes;
- an analysis of total departmental expenditure, which includes actual procurement expenditure. This analysis demonstrates that the aggregate impact of resourcing decisions by entities, including the effective use of procurement, is continuing to drive improved efficiency in the delivery of Government services;
- an overview of key elements of the Commonwealth Procurement Framework and details about the role of AusTender, its purpose and the resulting limitations of the AusTender data. In analysing this data, an awareness of these limitations is essential to avoid misinterpretation. It is particularly important to understand that the contract notices reported on AusTender do not equate to actual expenditure because:
 - contract notices on AusTender reflect the total potential value of a contract and the actual expenditure under the contract may be less than the reported value;
 - the total value of a contract over its life is reported at the time the contract notice is published, even if the contract notice is for a multi-year contract or the contract was entered into in a different reporting year; and
 - contract notices are managed by individual entities and are subject to amendments, variations, and in some instances, republishing; and
- details of work Finance is undertaking to improve procurement practice and reporting by entities, including additional work that will be undertaken in response to the Report.

Section 1 – Context and Background

Commonwealth Resource Management Framework

Figure 1, which is reproduced from the Commonwealth Procurement Rules (CPRs), sets out how the Procurement Framework sits within the broader Commonwealth Government Resource Management Framework.

Within this framework, Section 15 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) requires the accountable authority of a Commonwealth entity to govern the entity in a way that promotes the efficient, effective, economical and ethical use of public resources to achieve the entity's purposes.

Key points to keep in mind are that:

- The Resource Management Framework is devolved, with the accountable authority of each entity responsible for ensuring the proper use of the public resources that they control; and
- Procurement is not an end in itself, but one of a number of tools to achieve outcomes within the context of efficiently managing public resources to achieve specific purposes.

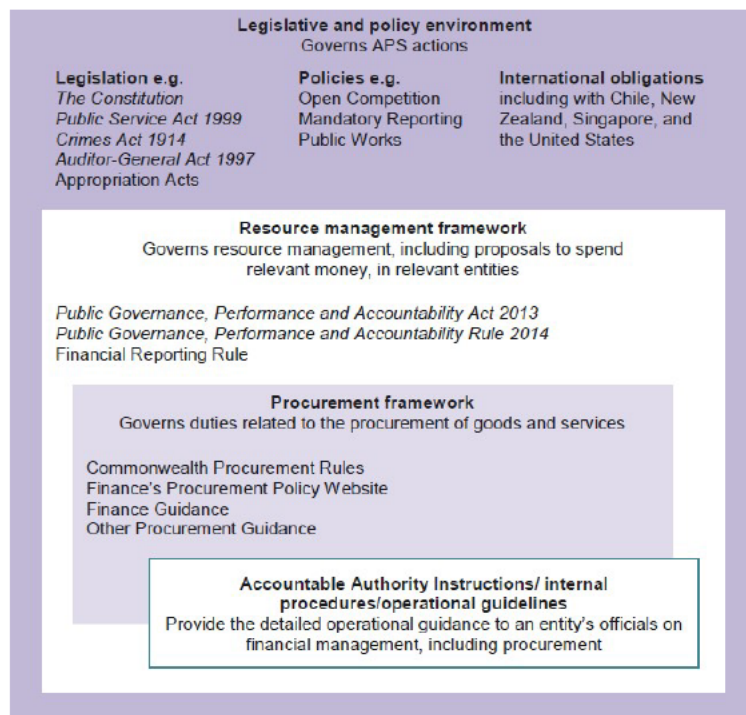


Figure 1 Legislation and policy framework

While the number and value of procurements in any category may vary from year to year, these variations reflect, amongst other things, changing priorities as determined by the relevant accountable authority.

Departmental Expenses

Total departmental expenditure reflects the aggregate impact of all of the resourcing decisions made by entities, including both the cost of the public service and the cost of purchased goods and services. Chart 1, which is taken from page 5 of the *2017-18 Budget Paper 4*, shows that departmental expenses (excluding Defence and the

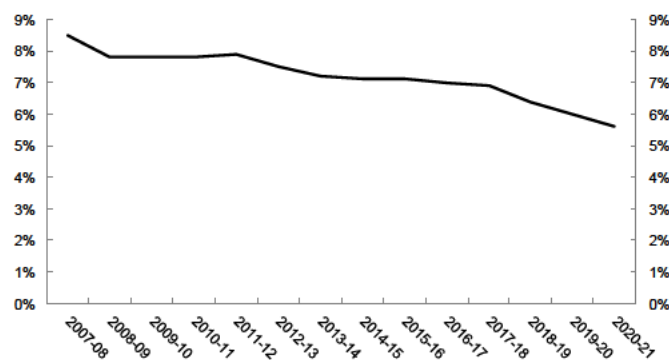


Chart 1 Departmental expenses as a proportion of total Government expenses

National Disability Insurance Agency¹) decreased from 8.5 per cent of total General Government Sector expenses in 2007-08 to 7.1 per cent in 2015-16, and are expected to continue to decrease to 5.6 per cent in 2020-21.

\$ million	Departmental expenses*	Total GGS expenses	Proportion Departmental
2007-08	23,775	280,471	8.5%
2008-09	25,304	324,414	7.8%
2009-10	26,391	339,139	7.8%
2010-11	27,796	356,467	7.8%
2011-12	29,975	377,642	7.9%
2012-13	28,892	382,988	7.5%
2013-14	29,998	414,455	7.2%
2014-15	29,532	417,895	7.1%
2015-16	30,278	428,688	7.1%
2016-17	31,771	450,757	7.0%
2017-18	32,227	464,262	6.9%
2018-19	31,160	486,863	6.4%
2019-20	30,185	503,198	6.0%
2020-21	29,354	522,907	5.6%

* Excludes Defence operations and the NDIS.

Table 1 Departmental Expenses as a percentage of total Government Expenses

Table 1, which contains the data underpinning Chart 1, shows that the nominal value of total departmental expenses has remained relatively stable since 2013-14, while total expenses have continued to rise. This demonstrates that the net impact of entity resourcing decisions, including the appropriate use of procurement, is continuing to improve the efficiency of government service delivery.

The devolved resource management framework is key to driving efficient service delivery as it enables managers in entities to make decisions at the local level about the most efficient means to deliver outcomes, including the circumstances in which it is most efficient to engage a consultant or contractor.

contract notices by value, has remained relatively stable at approximately one per cent since 2011-12, having fallen from a peak of around 1.6 per cent in 2008-09.

AusTender does not report expenditure on consultancies, only the value of contract notices flagged as consultancies, as highlighted under the heading *AusTender* below. Actual expenditure on consultancies is reported in entities' Annual Reports.

Promoting Efficiency

Initiatives such as the Smaller Government Agenda, Contestability, Operation Tetris, and the Efficiency Dividends have contributed to driving efficiency in the use of public resources.

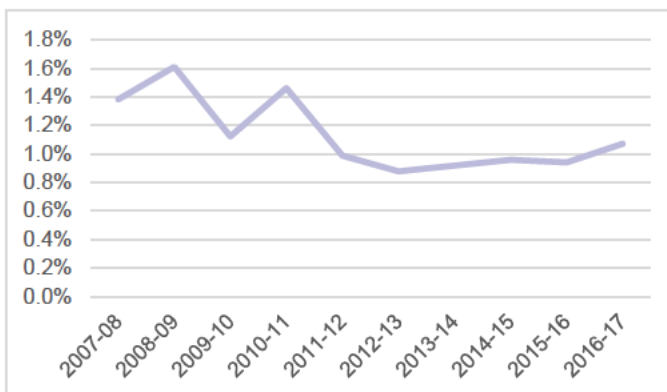


Chart 2 Consultancy contracts as a proportion of total contract notices by value

¹ NDIA is a corporate Commonwealth entity and as such is not required to report expenses separately as administered or departmental, however many of the NDIA's expenses are considered to be more administered than departmental in nature. The majority of Defence expenditure is classified as departmental. Given its size and the fact that it covers defence operations, Defence departmental expenditure is excluded from the cost of Government administration.

The 2017-18 Budget included a number of measures that will further improve public sector productivity, including specific initiatives to allocate the \$500 million Modernisation Fund to reforms that will reduce costs. These initiatives are intended to improve policy, programs and service delivery through better using government data; streamlining and improving access to government services; investing in more efficient corporate services; and strengthening the Australian Public Service's workforce capability.

Commonwealth Procurement Framework

As a subset of the broader Resource Management Framework, the Commonwealth Procurement Framework is devolved, with each entity responsible for its own procurement processes and decisions. As explained above, these decisions are made within the broader context of managing resources efficiently to meet the entity's business needs.

Finance is responsible for establishing and promulgating the Procurement Framework, which applies to all non-corporate Commonwealth entities and those corporate Commonwealth entities that are listed in Section 30 of the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule).

Commonwealth Procurement Rules

The CPRs, which are issued by the Minister for Finance under Section 105B of the PGPA Act, are the core of the Procurement Framework. The Procurement Framework also includes:

- Web based guidance, which is developed by Finance to assist entities to implement the Framework; and
- Resource Management Guides, which advise entities of significant elements of the Framework and key changes and developments.

The CPRs incorporate the Government's procurement commitments from Australia's Free Trade Agreements (FTAs), which provide access for Australian suppliers to the government procurement markets of other countries, while also placing obligations on the Australian Government to open up access to its procurement market.

Achieving value for money is the core rule of the CPRs and requires consideration of the relevant financial and non-financial costs and benefits associated with procurement.

The CPRs require the expected value of a procurement to be estimated before a decision on the procurement method is made. Where the estimated value exceeds the procurement thresholds set out in the CPRs, an open approach to market is generally required. The thresholds, which are determined by Australia's FTA commitments, are \$80,000² for general procurements and \$7.5 million for construction services.

The CPRs do not target specific categories of goods or services, nor specific industries.

² \$400,000 for prescribed corporate Commonwealth entities listed in section 30 of the PGPA Rule.

AusTender

The CPRs mandate that entities use AusTender to publish a range of information, including planned procurements, open requests for tender, and details of contracts that have been awarded with a value of \$10,000³ or more. Under the devolved procurement framework, individual entities are responsible for accurately reporting their procurements on AusTender.

The core purpose of AusTender is to notify the market of planned and actual procurement processes so that market participants have an opportunity to participate. Associated with this function, the contract notices section of AusTender is used to publish the outcome of procurement processes. This functionality, which is essentially a contemporary implementation of the longstanding process of gazetting contracts, provides the participants in a procurement process and the broader public with transparency regarding the outcome of a procurement.

When publishing contracts on AusTender, entities are required to flag contracts that relate to consultancy services. Finance provides guidance to assist entities to determine whether a procurement is for consultancy services⁴.

The values reported in contract notices on AusTender do not equate to the actual value of procurement in any year. This is because:

- the value of a contract notice reflects the total estimated maximum value of the contract at the time that it was awarded, and may not reflect the actual expenditure that occurs under the contract;
- a contract notice reflects the total potential value over the life of the contract, meaning that the potential value of a multi-year contract⁵ will be reported in the year that it is awarded;
- while a contract notice is reported at a point in time, it can be updated if contract variations or amendments occur; and
- in certain instances, a series of contract notices over a number of years are bundled together and republished under a new single contract notice. While this improves transparency regarding a contract with multiple variations and amendments, the total value of the new notice will reflect the combined value of all of the individual notices in the year that the new notice is published.

Given these considerations, AusTender data cannot be characterised as actual expenditure in a financial year.

Improving Procurement Practices and Reporting

Finance regularly engages with entities on procurement matters through a variety of mechanisms, including regular procurement forums, the Senior Procurement Officials Reference Group, the AusTender Help Desk and working groups, the procurement outreach program and a monthly procurement bulletin. In response to the ANAO's Report, Finance

³ Prescribed corporate Commonwealth entities listed in section 30 of the PGPA Rule are required to report contracts at or above \$400,000 for general procurement contracts and \$7.5 million for procurement contracts for construction services.

⁴ *Additional Reporting on Consultancies* - <https://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/reporting-requirements/consultancies-reporting/principles.html>

⁵ For the period 1 July 2012 – 30 June 2017, 80 percent of contracts by value reported on AusTender were for a length greater than 12 months.

intends to reiterate the importance of accurately reporting contracts through these forums over the first half of 2018.

Finance is in the process of developing a comprehensive Resource Management Guide (RMG) on the reporting of contract notices. This guide, which is provisionally titled *Procurement Publishing and Reporting Obligations*, will assist procuring entities and officials to understand their obligations for procurement and contract reporting, and will summarise the various reporting obligations in the CPRs and other government policies into one document.

In light of this inquiry and the recent ANAO Report, Finance will take into account relevant observations by the ANAO or recommendations of the Committee in drafting the new RMG, which we intend to release in the first half of 2018. In addition, Finance will continue to work proactively with Commonwealth entities to improve the accuracy and timeliness of procurement contract reporting.

Finance updates the AusTender system over time to maintain compliance with the Commonwealth Procurement Framework and to increase transparency. Currently, we are working to increase the functionality of AusTender, including exploring new reports and formats for contract notice reporting.

We are also working with entities to make iterative improvements to AusTender reporting practices, including through a current cross-entity project focused on improving data entry and reporting systems used by entities to report to AusTender.

Additionally, AusTender has been updated in relation to limited tender reporting. From 1 July 2018, all procuring entities will be required to indicate the justification for using a limited tender (not open tender) above the relevant procurement threshold when reporting a contract notice.

Broader transparency measures

For the reasons outlined above, the contract notices on AusTender do not, and are not intended to, record actual expenditure over time. However, expenditure is captured through other transparency mechanisms.

Aggregate actual expenditure for the year is reported in the audited financial statements of an entity's Annual Report. The Annual Reporting requirements also require key details of expenditure on consultants to be reported.

As part of a project to develop digitally published Annual Reports, the Government is prototyping a *Transparency Portal* to provide better access to future Annual Report data. The *Transparency Portal* will be piloted by 15 entities during 2018, with a view to rolling it out to all remaining entities in 2019. The portal will include tools to allow easy extraction of reports on Annual Report data.

In addition, the current Independent Review of the PGPA Act, which was commissioned by the Minister for Finance, is examining the reporting of contracts and consultancies in annual reports.

Section 2 - Response to Specific Parts of the Report as Requested by the Committee

Procurement Categorisation by Entity – Figure 3.2

Figure 3.2 presents information relating to contracts that have been reported by entities against the United Nations Standard Product Services Code (UNSPSC) code-set.

When the Australian Government committed to implement a whole of government electronic tendering system (AusTender), the UNSPSC code-set was adopted as a means of categorising goods and services in the system. Subsequently, a subset of the UNSPSC was developed in 2008 to better meet entity needs and simplify contract categorisation. The implementation of this subset resulted in:

- a reduction in the incidence of incorrect categorisation;
- improved sectoral information by flattening the hierarchical structure of the UNSPSC; and
- greater transparency through standardised categorisation at a whole-of-government level.

Finance reviews the UNSPSC code-set annually to ensure it continues to meet the Commonwealth's needs. The code-set has remained relatively stable, with the largest change taking place in 2014 to include three categories to accommodate evolving information technology services, such as Cloud Service offerings.

Use of the UNSPSC code-set allows for sectoral reporting and policy development and analysis, such as analysing the participation of Small and Medium Enterprises and Indigenous businesses by sector.

It is important to note that, while an individual contract may include a broad range of services, the UNSPSC will only reflect the largest or most significant service that will be provided under the contract.

Consultancy Contract Reporting – Paragraphs 5.4 to 5.7 and Figures 5.1 and 5.2

AusTender requires entities to select the consultancy flag when the primary or main purpose of a contract is to provide services that meet the definition of a consultancy. As highlighted in the Report, Finance provides guidance to assist entities to determine whether a contract should be reported as a consultancy or not. For the purposes of AusTender, the consultancy flag should be used when a contract:

- involves the development of an intellectual output that assists with decision making;
- the intellectual output represents the independent view of the service provider; and
- the output is the sole or majority element of the contract in terms of relative value or importance.

Importantly, the contract needs to meet all three of these conditions for it to be identified as a consultancy contract. Where some of these conditions are met but not all, the contract would not be reported as a consultancy.

Entities may engage consultants for a number of reasons, including a need for independent research or assessment, a need for specialised or professional skills, or because the required skills are currently unavailable within the entity.

The appropriate use of consultants can help to keep government administration flexible, for example a consultant may efficiently address the need for specialist skills or additional temporary or project specific support, while avoiding the ongoing costs which would result from recruiting additional permanent public servants.

Figure 5.1 in the ANAO Report suggests that the value of reported consultancies has trended upwards in recent years. However, using the same data set, but at the most recent extraction date (3 January 2018⁶), the total value of contract notices that used the consultancy flag in 2016-17 is lower than the value in 2015-16. Chart 3 below provides a revised version of the ANAO's figure 5.1 based on the current data.

The difference is most likely due to timing. Entities consistently revise their AusTender data, particularly during the period immediately after the end of the financial year when CFO areas in entities are reconciling internal systems and cleaning up data in preparation for end of year reporting. Finance has advised the ANAO of the revised chart.

Paragraphs 5.4 to 5.7 of the Report analyse the six UNSPSCs with the largest number of contract notices that are flagged as consultancies. The six codes identified align with expectations, with high levels of consultancies reported against:

- management advisory services;
- strategic planning consultation services;
- information technology consultation services;
- research programs;
- business intelligence consulting services; and
- economic or financial evaluation of projects.

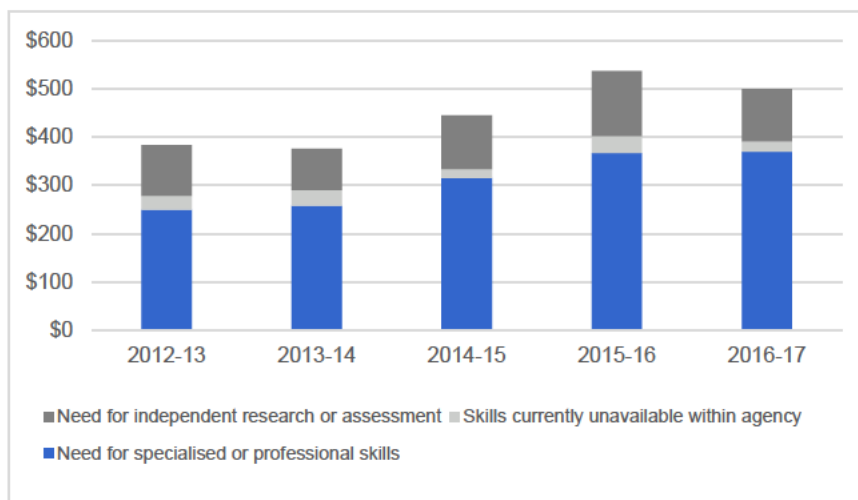


Chart 3 Consultancy contracts by reason (\$ million) – revised version of Figure 5.1 in the ANAO Report using data current at 3 January 2018

The ANAO analysis identifies that:

- almost 85 per cent by value of the contract notices reported against these UNSPSCs are not flagged as consultancies, with the vast majority of these being in the 'management advisory services' and 'information technology consultation services' categories; and
- many of the suppliers of the contracts which have been reported against the six identified UNSPSCs, but which are not flagged as consultancies, "publically report consultancy as a substantial component of their business"⁷.

⁶ This data is available at: <https://data.gov.au/dataset/historical-australian-government-contract-data/resource/9996a9a8-0476-4dd1-a2f5-e6f0a74dcef7>

⁷ Australian National Audit Office, Report No. 19 12017-18 Australian Government Contract Reporting, paragraph 5.7, p.25

While Finance agrees that “analysis of individual contracts with respective entities would be required to determine the extent to which consultancy contracts are being accurately reported in AusTender”⁸, we consider that the following observations are relevant:

- The ‘management advisory services’ and ‘information technology consultation services’ categories cover a broad range of services, many of which would not meet the definition of consultancies. For example, a contract to map business processes in an existing Government IT system may be recorded under ‘information technology consultation services’, but it may not meet the definition of a consultancy.
- Many companies that position themselves in the market as consultancy companies deliver a range of services which would not be flagged as consultancies. An internet search shows that the companies identified in Table 5.2 provide a broad range of services in addition to consulting, including assurance, audit, accounting, human resources management, financial analysis, project management, risk management, legal and tax.

As outlined under the heading *AusTender* in Section 1 above, contract reporting does not equate to actual expenditure in a particular period. Consequently, the reporting of consultancy contracts on AusTender does not, and is not intended to, reflect the Australian Government’s annual spending on consultancies.

However, section 17AG(7)(a) of the PGPA Rule requires that Annual Reports include a summary detailing:

- the number of new contracts engaging consultants that were entered into during the period and the total actual expenditure during the period on all such contracts (inclusive of GST); and
- the number of ongoing contracts engaging consultants that were entered into in previous reporting years and the total actual expenditure during the period on those contracts (inclusive of GST).

Resource Management Guide 135 - *Annual reports for non-corporate Commonwealth entities* provides additional guidance and advice to help entities to meet these requirements.

In response to the Report, Finance will remind agencies of their reporting requirements with regard to consultancies through existing forums and will further provide specific guidance in the new Resource Management Guide on *Procurement Publishing and Reporting Obligations*, which is discussed under the heading *Improving Procurement Practices and Reporting* above.

Financial Year Contracting Trends – Paragraphs 6.3 to 6.5 and Figure 6.3

While the number and value of contracts reported on AusTender peaks in July each year, paragraphs 6.3 to 6.5 of the Report note that the number and value of contracts with a duration of under 31 days peaks in June.

⁸ Ibid, paragraph 5.8, p.25.

Finance notes that there may be a number of reasons for an increase in the number of short-term contracts in June, including:

- reporting of contracts stemming from procurements commenced early in the new year, for example, an open procurement process commenced in February could take until June to commence and be reported on AusTender;
- the procurement of goods and services to prepare for a project commencing in the new financial year, following budget allocation and confirmation in May; and
- prudent fiscal management, with line managers waiting to ensure that they have sufficient funding available before committing to relatively minor, but necessary, expenditure.

Procurement Thresholds – Paragraphs 7.3 to 7.5, Tables 7.1 and 7.2 and Figure 7.3

Paragraph 9.2 of the CPRs requires procuring officials to estimate the expected value of a procurement before a decision on the procurement method is made. The expected value is the maximum value (including GST) of the proposed contract, including options, extensions, renewals or other mechanisms that may be executed over the life of the contract.

Paragraph 9.3 of the CPRs requires the estimated value to include the maximum value of all contracts when a procurement is being conducted in multiple parts, over a period of time, or with multiple suppliers.

Paragraphs 7.3 to 7.5 of the Report analyse 2,457 pairs of contracts (4,914 contracts in total) from the period 2012-13 to 2016-17 where both contracts:

- were between the same entity and the same supplier;
- had a start-date within the same quarter; and
- the combined value of the two contracts was above \$80,000 but each of the reported contract values was below \$80,000.

Table 7.2 identifies that in 950 of these contract pairs (1,900 contracts in total), at least one of the procurements was an open tender. As an agency would not split a procurement to avoid the requirement to conduct an open tender, and then conduct an open tender anyway, it is likely that there are alternative valid reasons for these 950 apparently related contract pairs.

With regard to the remaining 1,507 potentially related contract pairs identified by the ANAO, Finance notes that:

- the 3,014 contracts represent just 0.9 per cent of the 337,567 contract notices that were published on AusTender between 2012-13 and 2016-17⁹;
- overall, the majority of contract notices published on AusTender are below \$80,000 (for example, 65.5 per cent of contracts in 2016-17); and
- as evidenced in the previous paragraph, there are legitimate reasons for engaging the same supplier, within a short period of time, for different (or indeed similar) pieces of work.

⁹ *Statistics on Australian Government Procurement Contracts* - <https://www.finance.gov.au/procurement/statistics-on-commonwealth-purchasing-contracts/>

While Finance is unable to comment on individual contracts, the above analysis suggests that the incidence of entities splitting procurements to avoid the requirements that occur over the \$80,000 threshold may be limited.

Accuracy and Timeliness of Contract Notice Publication – Chapter 8

Chapter 8 assesses the potential that there are duplicate entries in AusTender and analyses the performance of entities against the requirement to report contracts and amendments within 42 days of entering into or amending a contract that is valued at or above the \$10,000¹⁰ reporting threshold.

The ANAO considers that contract notices may be potentially inadvertently duplicated when more than one contract for an entity had the following characteristics:

- the same supplier ABN (or supplier name where there was no ABN);
- the same start date; and
- the identical contract value.

Applying this analysis, Table 8.1 of the Report identifies 6,358 potentially duplicated contracts over the period from 2012-13 to 2016-17. While this represents around 1.9 per cent of the total contract notices reported on AusTender over the same period, this appears to represent the upper bound of potential duplicate entries.

The analysis indicates that two UNSPSCs make up a disproportional value of these potential duplicate entries. Paragraph 8.6 states that “While contracts classified as ‘Temporary Personnel Services’ and ‘Computer Services’ account for only 2.35 per cent of total contract value, they account for 29.9 per cent of the total value of contracts identified as potential duplicate entries. ANAO’s understanding is that these categories of contracts may be less likely to reflect duplicate entries as entities may enter into multiple contracts with supplier firms for staff contracted for the same period of time at the same rate.”

This suggests that the incidence of entities inadvertently entering duplicate contracts may be well below the 1.9 per cent theoretical maximum.

In regard to the timeliness of contract notice reporting, figure 8.2 on page 37 of the Report shows that nearly 90 percent of contracts were reported within the 42 day timeframe in 2016-17, an increase from under 80 percent in 2012-13.

Questions on the accuracy of individual contract notices entered into AusTender by entities should be directed to relevant entities.

In light of this inquiry and the ANAO Report, Finance will engage with Commonwealth entities on their obligations to report contract notices in accordance with the requirements of the CPRs, including reference to timeliness and accuracy, in an attempt to increase compliance and reduce duplication.

¹⁰ Prescribed corporate Commonwealth entities listed in section 30 of the PGPA Rule are required to report contracts at or above \$400,000 for general procurement contracts and \$7.5 million for procurement contracts for construction services.