

Audit Report No.31 2011–12

Establishment and Use of Procurement Panels

Introduction

- 3.1 In the 2010–11 financial year, Australian Government agencies entered into more than 79 000 contracts for property and services valued at more than \$32.6 billion, ranging from simple short-term procurement to more complex and longer-term purchases. Agencies purchased a wide variety of property and services including buildings, information and communications technology, and services such as recruitment assistance and legal advice.¹

Procurement Panels

- 3.2 Where agencies need to make regular purchases of property and services, procurement panels are one approach used to achieve efficiencies in procurement practice. A procurement panel is an arrangement whereby specific suppliers, usually selected through a single procurement process, may supply property or services to an agency.
- 3.3 To establish a procurement panel, an agency enters into contracts or deeds of standing offer (known as panel arrangements) with each supplier,

1 ANAO Audit Report No.31 2011–12, p. 33.

setting out the type of property or services a supplier will provide, a set or indicative price for the property or services, and the manner in which the agency will obtain the property or services from the supplier, including any process of competition between panel members where appropriate.

- 3.4 Services obtained via the use of procurement panels include legal, accountancy, human resources, information technology, building and maintenance, publishing, library, and graphic design.²

The legislative and policy framework

- 3.5 At the time of the audit, the Department of Finance and Deregulation (Finance) published the Commonwealth Procurement Guidelines (CPGs), which contained the majority of guidance available to agencies concerning procurement, including the use of procurement panels. Under the Financial Management and Accountability Regulations 1997 (FMA Regulations), agencies are required to act in accordance with the CPGs when undertaking procurement activities.³
- 3.6 On 1 July 2012, revised guidance, now titled Commonwealth Procurement Rules, came into force. The Rules did not include any major policy changes, but 'repositioned and streamlined' the guidelines, clarified terminology, and redefined procurement methods.⁴ This report makes reference to both the old guidelines and the new rules, but as the audit took place while the guidelines were still in effect, refers more frequently to the CPGs.
- 3.7 The CPGs stated that a value for money assessment involves a comparative analysis of all relevant costs and benefits throughout the procurement cycle, including:
- Fitness for purpose;
 - The performance history of each prospective supplier;
 - The relative risk of each proposal;
 - Flexibility to adapt to possible change over the lifecycle of the purchase;
 - Financial considerations; and
 - The evaluation of contract options.⁵

2 ANAO Audit Report No.31 2011-12, pp. 33-34.

3 FMA Regulation 7

4 Finance, *Quick guide to the Commonwealth Procurement Rules*, 2012.

5 ANAO Audit Report No.31 2011-12, p. 36.

- 3.8 Panel procurements require consideration of value for money at two stages: firstly, when selecting suppliers as part of the initial panel establishment process; and secondly, every time an individual panel supplier is chosen to undertake work under the panel arrangement.⁶

The ANAO Audit

Audit objective and scope⁷

- 3.9 The objective of the audit was to assess the extent to which *Financial Management and Accountability Act 1997* (FMA Act) agencies' establishment and use of procurement panels supported value for money, efficiency and effectiveness in procurement.
- 3.10 Three high level criteria were used to assess the performance of agencies' panel procurement. The criteria examined whether selected agencies had:
- established a sound procurement framework that supported panel procurement, including by communicating the existence of panels and providing guidance on procuring from them;
 - adhered to the requirements of relevant FMA Regulations (including application of the CPGs) and applied sound practices when establishing and procuring using a panel; and
 - established effective procurement monitoring and review arrangements to inform panel procurement.
- 3.11 The ANAO also considered the current impetus towards greater use of coordinated and cooperative procurement, and the implications for Finance and agencies of this trend.
- 3.12 Three FMA Act agencies were selected for the audit as, based on available data, they were identified as large users of panels (both in terms of number of procurements using panels and panel procurements as a proportion of their total contracts). The agencies selected were:
- Australian Securities and Investments Commission (ASIC);
 - Department of Broadband, Communications and the Digital Economy (DBCDE); and

6 ANAO Audit Report No.31 2011-12, p. 36.

7 ANAO Audit Report No.31 2011-12, p. 18.

- Department of Foreign Affairs and Trade (DFAT).

- 3.13 The audit involved analysis of a selection of the audited agencies' procurement processes and supporting records. The ANAO examined procurement processes used to establish 13 panels and to access three panels of other agencies, and then examined processes for a sample of procurements made using each of the selected panels. A total of 139 procurements under the panels were selected for examination across the three agencies.
- 3.14 ANAO also consulted representatives of panel suppliers to obtain their feedback on the operation of Australian Government procurement panels. This included a number of representatives of SMEs.

Overall audit conclusion

- 3.15 The ANAO concluded that while the audited agencies had generally established panels through sound open tender processes, once they moved to select preferred suppliers to undertake work, there was a lack of competitive arrangements and agencies did not adequately demonstrate value for money in their selection processes in a way consistent with the CPGs.⁸
- 3.16 It found that agencies should have more often sought multiple quotes when selecting a supplier, especially for procurements over \$100 000 in value. The audit found that for procurements over this value, two of the agencies (ASIC and DFAT) only sought multiple quotes in around one third of procurements in the audit sample.⁹
- 3.17 Agencies also needed to improve their evaluation activities once panels were established. The audit found that none of the audited agencies evaluated the efficiency, effectiveness or value for money provided by their panel arrangements.¹⁰
- 3.18 Finally, the ANAO noted that while the increase in coordinated and cooperative procurement arrangements across agencies had benefits in terms of finding efficiencies, there was the potential for small and medium enterprises (SMEs) to become sidelined through the procurement panel process. The audit suggested there would be benefit in Finance monitoring

8 ANAO Audit Report No.31 2011-12, p. 20.

9 ANAO Audit Report No.31 2011-12, p. 21.

10 ANAO Audit Report No.31 2011-12, p. 21.

developments to ensure SMEs have appropriate opportunities to compete with larger companies.¹¹

ANAO recommendations

3.19 The ANAO made three recommendations to the audited agencies. A portion of one recommendation related to Finance's reporting requirements.

Table 3.1 ANAO recommendations, Audit Report No.31 2011–12

1.	To provide for accountability and transparency in procurement decision-making when utilising a procurement panel, the ANAO recommends agencies succinctly document the basis for selecting a particular supplier to evidence value for money in the circumstances. Agencies' responses: <i>Agreed.</i>
2.	To improve the transparency of Australian Government procurement and enable analysis of the supply of property and services under panel arrangements, the ANAO recommends: • Finance require agencies to make references on AusTender to the relevant standing offer when reporting contracts resulting from a panel arrangement; and • agencies review their guidance and practices to document the relevant standing offer for these contracts. Agencies' responses: <i>Agreed.</i>
3.	To assess whether procurement panels are providing the anticipated business benefits and to inform prospective procurement arrangements, the ANAO recommends agencies evaluate the use and effectiveness of panels at an appropriate time during their lifecycle. Agencies' responses: <i>Agreed.</i>

The Committee's review

3.20 The Committee held public hearings on 20 and 27 June 2012 with the following witnesses:

- Australian National Audit Office
- Australian Securities and Investments Commission
- Department of Broadband, Communications and the Digital Economy
- Department of Finance and Deregulation
- Department of Foreign Affairs and Trade

3.21 The Committee took evidence on the following issues:

11 ANAO Audit Report No.31 2011–12, p. 22.

- Guidance by the Department of Finance and Deregulation
- Documentation of value for money considerations
- Internal audit findings
- Central Procurement Units
- Approvals under Regulation 9 of the FMA Act
- Small and medium enterprises (SMEs)
- Multi-agency access to panels
- Reporting on AusTender
- Evaluation of procurement panel effectiveness

Guidance by the Department of Finance and Deregulation

- 3.22 Finance updated the Committee on improvements to the guidance and training on procurement that it provides to agencies.
- 3.23 Finance noted that procurement generally took place infrequently and in a devolved environment, and advised there were regular opportunities for training or discussion of procurement across agencies, including:
- Introductory courses to procurement conducted four times a year;
 - Meetings of the Procurement Discussion Forum every six weeks to inform procurers about current issues; and
 - Convening a Senior Procurement Officers Reference Group to encourage collaboration.¹²
- 3.24 Finance also advised that it had developed standard contract templates, had improved the CPGs and retitled them the Commonwealth Procurement Rules, and was also working on further guidance surrounding procurement panels.¹³ Further, Finance indicated that it would take the findings of the audit and incorporate them into guidance material provided to agencies.¹⁴
- 3.25 Finance reported that it had reviewed some of these mechanisms and had been working over time to improve them, noting of the Procurement Discussion Forum:

12 Mr John Grant, First Assistant Secretary, Procurement Division, Finance, *Committee Hansard*, Canberra, 20 June 2012, p. 5.

13 Mr Grant, *Committee Hansard*, Canberra, 20 June 2012, p. 5.

14 Department of Finance and Deregulation, *Submission 4*, Answers to Questions on Notice, p. 5.

Four or five years ago we were lucky to get 20 or 30 people to turn up to it, so about four years ago we sat back and we said 'How do we actually improve the information flow?' We really wanted to consult on what are the areas that agencies find most difficult. So it is really over the last four years, and we have been slowly ramping it up, because you need to engage and bring people with you.¹⁵

- 3.26 The Committee was informed that this process had been successful, evidenced by a larger turnout of around 200 participants for each meeting of the Procurement Discussion Forum.¹⁶
- 3.27 In answers to questions on notice, Finance advised that it had developed Model Chief Executive Instructions (CEIs) on Procurement which had taken into account the recommendations of the audit report, and that 65 of 69 agencies that had responded to Finance had advised they would use the Model CEIs. Finance anticipated the Model CEIs would be issued in August 2012.¹⁷

Documentation of value for money considerations

- 3.28 As noted earlier, panel procurements are required to assess value for money at two stages – the first when selecting suppliers as part of the initial establishment of the panel, and then when an individual panel supplier is chosen to undertake work under the panel arrangements.¹⁸
- 3.29 One of the guiding principles of procurement is considering value for money, and one of the guiding principles of reporting on procurement activities is the documentation of that consideration. The audit report found deficiencies in all audited agencies documenting that value for money considerations had been made during the procurement process. As the ANAO noted, such documentation does not need to be onerous, and only needs to briefly address factors such as a supplier's fitness for purpose, their performance history, and their ability to deliver services in accordance with deadlines.¹⁹
- 3.30 The ANAO indicated at the hearing that the lack of documentation of value for money assessments when selecting procurement panel members was the central issue of the audit report.²⁰

15 Mr Grant, *Committee Hansard*, Canberra, 20 June 2012, p. 5.

16 Mr Grant, *Committee Hansard*, Canberra, 20 June 2012, p. 5.

17 Finance, *Submission 4*, Answers to Questions on Notice, pp. 3–4.

18 ANAO Audit Report No.31 2011–12, p. 36.

19 ANAO Audit Report No.31 2011–12, pp. 82–83.

20 Mr McPhee, *Committee Hansard*, Canberra, 20 June 2012, p. 2.

- 3.31 The Committee asked why ASIC sought multiple quotations before selection in only one third of procurements in excess of \$100 000, and why the ANAO found that ASIC did not sufficiently document consideration of value for money in 41 per cent of cases.
- 3.32 ASIC replied that, in circumstances where services were very clear, and prices had little variation, some procurers did not seek multiple quotes because the value for money was evident, or the supplier had already been engaged before, using intellectual property or proprietary software that would again be used. Further, ASIC stated that it did not make sense to seek multiple quotes in the legal services panel to engage a different firm to work on an existing case that had been extended.²¹
- 3.33 When asked a similar question, DFAT replied that it had taken the audit finding on board, and had sent a circular to staff, reinforced its training program by developing e-learning programs, and begun to develop key performance indicators to monitor compliance.²²
- 3.34 The ANAO noted that when multiple quotes were not sought for high value procurements that it reinforced the need to document the rationale for selecting a particular supplier.²³
- 3.35 ASIC indicated that the primary problem was not that procurers were not considering value for money, it was that they were not documenting the reason for selecting a specific supplier:
- When you have these audit findings, you go and challenge people and you ask them, 'Was this value for money? What did you do?' They will explain it to you, and they will give you all the reasons why this represented value for money and why this was the right decision. But the fact is that they did not document it.²⁴
- 3.36 DFAT reported that there were various ways for people to document decisions, with 'formal paperwork' required for more complex and high risk procurement. DFAT identified education and understanding of process to be important in improving documentation of consideration of value for money.²⁵

21 Mr Iglesias, *Committee Hansard*, Canberra, 20 June 2012, p. 3.

22 Ms Thorpe, *Committee Hansard*, Canberra, 27 June 2012, p. 1.

23 Mr Turnbull, *Committee Hansard*, Canberra, 20 June 2012, p. 4.

24 Mr Iglesias, *Committee Hansard*, Canberra, 20 June 2012, p. 4.

25 Ms Thorpe, *Committee Hansard*, Canberra, 27 June 2012, p. 2.

Internal audit findings

- 3.37 The ANAO found the following internal agency audits had made findings generally consistent with those made in the ANAO Audit Report, in:
- at least one internal audit between 2007 and 2009 conducted by DBCDE;
 - at least one internal audit between 2007 and 2009 conducted by DFAT; and
 - eight internal ASIC audits on procurement conducted between 2007 and 2008 and one quality review on procurement in 2009.
- 3.38 These internal audits made recommendations to improve transparency and accountability by improving documentation of procurement processes; demonstrating consideration of risk management and conflict of interest; and timely reporting on AusTender.²⁶
- 3.39 The Committee asked the ANAO for further comment, with the ANAO reporting:
- We did see some instances where they had adjusted their guidance, but we had not seen holistic changes as a result of those internal audits. Our earlier audit on direct source procurement also made a similar finding in that what we were finding, internal audit areas were also finding. So I think we pointed out there that it just highlights the importance of the work undertaken by internal audit, and of the agency being responsive to that work. It does highlight that a lot of these issues are identified; but yes, it is a question of how they are responded to.²⁷
- 3.40 The Auditor-General noted the reason organisations had internal audit mechanisms was to provide organisations with a mechanism to conduct their own review processes and to report the findings of those reviews back.²⁸
- 3.41 ASIC advised that it believed it had taken on board the findings of its internal audits, which had taken place shortly after it had moved from working under the *Commonwealth Authorities and Companies Act 1997* to the FMA Act, and that it was substantially more compliant with the CPGs than in 2007, explaining:

26 ANAO Audit Report No.31 2011–12, p. 97.

27 Mr Turnbull, *Committee Hansard*, Canberra, 20 June 2012, p. 2.

28 Mr McPhee, *Committee Hansard*, Canberra, 20 June 2012, p. 3.

The reason we had eight internal audits over the period of 24 months was that we wanted to make sure that the organisation understood how to procure properly in accordance with the Commonwealth Procurement Guidelines. We also established a Central Procurement Unit. Through those audits and also through a quality review of our function, we looked not only at culture, but also controls.²⁹

- 3.42 ASIC reported that there had been a reduction in breaches of the FMA Act over the course of the last few years as reported through the Certificate of Compliance process, which ASIC attributed to working to improve processes.³⁰

Central Procurement Units

- 3.43 Central Procurement Units (CPUs) are located within government agencies, and provide specialist advice and support when procurement responsibilities are devolved within the agency. As procurement is potentially complex, and as delegates and staff may not engage in procurement activities on a regular basis, support through CPUs can be vital. In the audit report, the ANAO also indicated that the formal involvement of a CPU in higher value, more complex or higher risk procurements may be of assistance.³¹
- 3.44 The Auditor-General noted the importance of CPUs in assisting in compliance with the CPGs and supporting staff engaged in procurement:
- ... we find that agencies that have Central Procurement Units, who can inform other procurement areas in the department, tend to do better than those agencies where procurement is just a devolved process and there is no central policy area to guide procurement in the agency. So to the extent that agencies can support people who undertake procurement, that is a very positive thing, because in many organisations where procurement is devolved some people only procure items every few months, so they are not au fait necessarily with the detailed requirements. So agencies have got a role to make sure their people who have procurement responsibilities get the appropriate support and training.³²

29 Mr Iglesias, *Committee Hansard*, Canberra, 20 June 2012, p. 4.

30 Mr Iglesias, *Committee Hansard*, Canberra, 20 June 2012, p. 4.

31 ANAO Audit Report No.31 2011-12, pp. 47-48.

32 Mr McPhee, *Committee Hansard*, Canberra, 20 June 2012, p. 3.

- 3.45 DBCDE reported to the Committee that it had found it beneficial to actively encourage officers entering into high value procurements to seek advice and engagement from its CPU:

We almost give them one-on-one training as they go through that process. We have found that it is much easier to centralise it. Therefore we can get a consistency of practice across the organisation.³³

- 3.46 DBCDE reported it was working to put into place a 'procurement to payment process' which would guide procurers through the entire process via an internal workflow system designed to simplify the procurement process.³⁴

- 3.47 Looking at DFAT's CPU, the ANAO also found that as at September 2011 the DFAT Procurement Manual had not been updated for more than four years, and, as a result, the manual was based on obsolete CPGs. Further, the audit found that information on procurement was difficult to find on the DFAT intranet, and that DFAT had not clearly articulated the roles and responsibilities of staff involved in procurement, including its Central Procurement Unit.³⁵

- 3.48 Further, the ANAO reported DFAT had no specific planning requirements for procurement panels, and that there was comparable planning documentation for fewer than half of its higher value procurements.³⁶

- 3.49 In the audit report, the ANAO reported:

DFAT's CPU considered it had taken steps towards a more strategic approach to managing procurement, by better supporting delegates and staff to undertake procurement independently. DFAT's CPU envisaged it would consequently be able to apply more time to high level oversight of procurement (including data analysis), influencing strategic procurement directions, and promoting good procurement practice.³⁷

- 3.50 How this perspective fits with the audit report findings is considered further with the Committee's comments.

33 Mr Ash, *Committee Hansard*, Canberra, 27 June 2012, p. 3.

34 Mr Ash, *Committee Hansard*, Canberra, 27 June 2012, p. 3.

35 ANAO Audit Report No.31 2011-12, p. 46.

36 ANAO Audit Report No.31 2011-12, p. 78.

37 ANAO Audit Report No.31 2011-12, p. 49.

Approvals under Regulation 9 of the FMA Act

- 3.51 As per standard process, once agreement was reached on suppliers for each of the procurement panels examined in the audit, the agencies sought to enter into deeds of standing offer with the suppliers. This enables suppliers to provide their services in accordance with agreed terms and conditions.
- 3.52 Such an agreement requires an approval under Regulation 9 of the FMA Act before it is entered into.
- 3.53 For the thirteen panels examined in the audit report, the ANAO found only seven had approvals specifically referring to FMA Regulation 9; three had other evidence of approval that did not meet Regulation 9 requirements; one had an approval that referred to Section 44 of the FMA Act (the incorrect section of the Act); and DFAT was unable to provide an approval for two of the four panels examined by the ANAO.³⁸
- 3.54 The audit report noted there was variation amongst agencies with some performing better than others, and that the ANAO identified DFAT's Legal Services panel as an area responsible for approximately half of DFAT's identified 30 per cent non-compliance rate. The ANAO found:
- This panel had operated for some time on the basis that Regulation 9 approval was obtained at the time it was established and was therefore not required for each procurement under the panel. This was despite CPU guidance stating that Regulation 9 approval is required each time a work order is placed under a standing offer.³⁹
- 3.55 The ANAO reported that procurers were unsure as to whether Regulation 9 approval was required prior to entering into deeds of standing offer, despite guidance from Finance indicating this requirement clearly.⁴⁰
- 3.56 Finance guidance makes it clear approval must be obtained prior to entering into an arrangement with suppliers under which public money is, or may become, payable.⁴¹ This is because these agreements usually provide no opportunity for future decision makers to alter an agreement's terms and conditions.⁴²

38 ANAO Audit Report No.31 2011-12, pp. 68-69.

39 ANAO Audit Report No.31 2011-12, p. 85.

40 ANAO Audit Report No.31 2011-12, pp. 69-70.

41 Department of Finance and Deregulation, *Submission 4*, Answers to Questions on Notice, p. 6.

42 ANAO Audit Report No.31 2011-12, pp. 69-70.

- 3.57 DFAT reported that there was insufficient evidence made available to decision makers regarding Regulation 9 approvals:

People do not understand the process. It is a very process oriented approach, for good reason. People do not realise that they need to document everything. We have had quite a strong campaign to get that message out about the need to document everything and to get formal sign offs on reg 9s and 10s et cetera. I have noticed a marked improvement. People do not realise that there is a next step to take to formalise what they have done. I do not think that it is deliberate. We just need to get that message out and constantly repeat it. That is where the challenge is.⁴³

Small and medium enterprises (SMEs)

- 3.58 The Committee asked about the presence of small and medium enterprises (SMEs) on procurement panels, asking whether Finance was able to report on the percentage of SMEs represented on panels. Finance advised that while it analysed SME participation in Government procurement annually through the Australian Bureau of Statistics, information about SME participation on panels was not currently collated. Finance indicated it would investigate whether it was possible to collect this information.⁴⁴
- 3.59 In its appearance before the Committee, Finance noted that the CPGs were non-discriminatory, and required SMEs to be given due consideration. Further, it was noted that procurement panels were normally conducted through an open tender process, and that SMEs would need to satisfy the standard set of criteria.⁴⁵
- 3.60 DFAT advised the Committee that they did not specifically monitor what percentage of procurements were made from SMEs on panels, but that overall 49 per cent of DFAT procurement came from SMEs – well above the Australian Public Service average of 33.5 per cent, and the overall target of 10 per cent.⁴⁶
- 3.61 DBCDE indicated that it also did not monitor panel procurements, but that the number of SMEs engaged depended on what services the panel had been convened to procure. It reported that in panels convened to procure specialised services larger businesses tended to dominate.⁴⁷

43 Ms Thorpe, *Committee Hansard*, Canberra, 27 June 2012, p. 2.

44 Department of Finance and Deregulation, *Submission 4*, Answers to Questions on Notice, p. 3.

45 Mr Grant, *Committee Hansard*, Canberra, 20 June 2012, p. 1.

46 Ms Thorpe, *Committee Hansard*, Canberra, 27 June 2012, p. 1.

47 Mr Ash, *Committee Hansard*, Canberra, 27 June 2012, p. 2.

Multi-agency access to panels

- 3.62 Aside from an agency convening its own procurement panels, agencies are able to cooperatively procure through the panels of other agencies. This is formally known as Multi Agency Access, but is colloquially known as 'clustering' when agencies work together to establish panels, and 'piggybacking' when an agency uses another agency's panel.⁴⁸ Agencies engaging in clustering or piggybacking are still required to consider value for money and should still apply all risk management procedures relevant to procurement practices.
- 3.63 Piggybacking and clustering processes are increasing in popularity, and can present significant cost savings to agencies. However, they can also increase the administrative burden on agencies,⁴⁹ and may reduce opportunities for SMEs to secure government contacts.⁵⁰
- 3.64 DBCDE reported that it had been using its CPU to oversee agency access to panels created by other departments,⁵¹ but noted piggybacking on panels from larger agencies had ramifications for smaller agencies:
- ... departments that are big purchasers create panels and departments that are small or occasional purchasers try to piggyback on them. The big department that sets up the panel is not being asked to worry about the interests of the smaller departments—it is not their role.⁵²
- 3.65 The Committee was advised that while clustered and whole of government panels had value, these panels could also be inflexible, making it difficult for a participating agency to secure specialist advice. This also had the potential to upset suppliers selected to be on a panel but who were not selected to do business as they were not able to meet the specialist needs of the procurer.⁵³
- 3.66 DBCDE also noted:
- The more homogenous the goods or services are, the higher the likelihood of a central contract or a central panel working. I sat on a committee that was looking at trying to create a whole-of-government financial services panel. The more that we looked into

48 ANAO Audit Report No.31 2011–12, pp. 34–35.

49 ANAO Audit Report No.31 2011–12, p. 59.

50 ANAO Audit Report No.31 2011–12, p. 62.

51 Mr Ash, *Committee Hansard*, Canberra, 27 June 2012, p. 4.

52 Mr Harris, *Committee Hansard*, Canberra, 27 June 2012, p. 5.

53 Mr Harris, *Committee Hansard*, Canberra, 27 June 2012, p. 4.

it, the more we found that, while at certain levels you can get a homogenous product being delivered, each individual department was looking for either some specialised skills or skills in a specific geographic area. That is where those panels start having difficulties. The more specialised the need is, the less likelihood there is that a whole-of-government panel is going to work.⁵⁴

Reporting on AusTender

- 3.67 In its report, the ANAO noted the importance of publishing contract details on AusTender to promote accountability and transparency, noting Finance only encouraged, and did not mandate reporting of standing offers when procurement was made under a panel arrangement.
- 3.68 The ANAO believed there would be greater transparency of panel procurement if agencies reported the relevant standing offer when reporting contracts made under panel arrangements on AusTender. This would enable analysis by Finance and support understanding of supply changes, including implications for SMEs.
- 3.69 As a result, the ANAO recommended mandating reporting on relevant standing offers on AusTender when a contract was agreed through a panel arrangement.⁵⁵
- 3.70 Finance agreed to the ANAO's recommendation, and advised that this requirement would be incorporated into updated advice provided to agencies, and also in broader AusTender operational guidance.⁵⁶

Evaluation of procurement panel effectiveness

- 3.71 Recommendation 3 of the audit report related to measuring the effectiveness of procurement panels, requesting that agencies evaluate the use and effectiveness of procurement panels at an appropriate time in the panel's lifecycle.
- 3.72 The Committee asked about progress against this recommendation, with DBCDE advising it had begun to evaluate the effectiveness of procurement panels approximately a year before their expiry. As a small agency, DBCDE's evaluations examine whether it is economical to

54 Mr Ash, *Committee Hansard*, Canberra, 27 June 2012, p. 4.

55 ANAO Audit Report No.31 2011-12, pp. 94-95.

56 Department of Finance and Deregulation, *Submission 4*, Answers to Questions on Notice, p. 6.

reconstitute the panel or to find other suitable Commonwealth panels to piggyback on.⁵⁷

Committee comment

- 3.73 The conclusions of the ANAO audit suggest that there is still work to be done by all agencies to build on the recommendations of previous ANAO and JCPAA inquiries into procurement practices, especially in how advice is provided to areas responsible for procurement.
- 3.74 Also, given the Audit Report was only tabled in May of 2012, and the Committee held its inquiry into the Audit Report in June of 2012, the Committee understands that all audited departments will find it difficult to demonstrate changes in such a short period.

The role of the Department of Finance and Deregulation

- 3.75 The Committee is pleased to see Finance taking a proactive role in improving procurement practices through the updating of the Commonwealth Procurement Guidelines into the Commonwealth Procurement Rules, development of model Chief Executive Instructions and other associated training and information provision mechanisms. These were necessary and much needed initiatives, and the Committee hopes that over time they will result in better practice across the APS and consequently a reduction in adverse audit report findings.
- 3.76 The Committee notes that advice provided by Finance to agencies has evolved over time, and Finance has conducted reviews of its own mechanisms for information dissemination and training. The Committee was pleased to hear that improvements made to the Procurement Discussion Forum had led to a significant increase in participation from agencies.
- 3.77 Agencies now have an opportunity to consider the new rules – together with the findings of the various procurement related audits and committee inquiries – to conduct a comprehensive review of their procurement practices. Training opportunities and discussion forums provided by Finance will also be key in assisting agencies to improve their compliance with the rules.

57 Mr Ash, *Committee Hansard*, Canberra, 27 June 2012, p. 3.

- 3.78 The Committee was surprised to hear that no agency was able to report on the percentage of SMEs on procurement panels. The Committee believes this is a statistic that may be of use to both Finance and other agencies, notes the commitment of Finance to obtain these statistics, and looks forward to seeing these figures reported.

Documentation of value for money

- 3.79 The evidence reviewed by the Committee seems to suggest that decision makers do consider value for money in the vast majority of procurements, however, there are clear deficiencies in the recording of that consideration.
- 3.80 The Committee agrees with the ANAO that this was the central issue of the audit report.
- 3.81 Providing documentation of the decision making process is vitally important from the perspective of accountability and transparency. There should be a clear paper trail of how decisions were made to enable an outside observer to see how a decision was reached. The Committee, and the ANAO, emphasises that this documentation does not have to be onerous, but does have to be sufficient to demonstrate value for money was explicitly considered and the elements of that consideration.
- 3.82 It is clear to the Committee that cultural change in some agencies is required. To assist in such change, Finance appears to provide ample opportunities for agencies to consult if its written advice is unclear.
- 3.83 Agencies must integrate the findings of the ANAO audit into their own internal procurement processes. The Committee is cautiously optimistic, on the basis of the evidence given at public hearings that the audited agencies are seeking to review their own internal practices and to ensure that documentation and reporting meets the appropriate standards.

Evaluation of procurement panel effectiveness

- 3.84 ANAO Recommendation 3 requests that agencies evaluate the use and effectiveness of procurement panels at an appropriate time during the panel's lifecycle.
- 3.85 Notwithstanding the short time agencies have had to consider the audit report, the Committee still notes the importance of implementing this recommendation.
- 3.86 The Committee does not make any judgement as to the appropriate time for an agency to review a procurement panel, as appropriate times will

vary across agencies. However, agencies should consider this recommendation as quickly as possible, as new procurement panels will be established using the new rules, and evaluation is an important element of good public administration.

Recommendation 1

That the Department of Foreign Affairs and Trade, the Department of Broadband, Communications and the Digital Economy, and the Australian Securities and Investments Commission determine and report to the Committee how they are implementing ANAO Recommendation 3, including the timelines for procurement panel evaluations.

Internal audit findings

- 3.87 The Committee was concerned to hear that the ANAO had made findings that were consistent with findings of internal agency audits conducted between 2007 and 2009. That the ANAO made similar findings to these internal audits suggests to the Committee that agencies did not adequately follow up on the findings of their own internal audit processes, contributing to systemic problems.
- 3.88 Internal audits are a vital part of agency governance and review processes, and their findings should be taken seriously, investigated further if required, and acted upon. To see the ANAO making similar findings to those identified internally five years earlier is of great concern to the Committee.
- 3.89 Some agencies explained these findings better than others. ASIC explained that while it had conducted a large number of internal audits, it was seeking to measure improvements with compliance over time.⁵⁸ Further, the Committee notes that ASIC transitioned from operation under the *Commonwealth Authorities and Companies Act 1997* to operation under the *FMA Act* during the period examined by the ANAO, changing the way agency finances were managed and required to be reported.
- 3.90 Nonetheless, agencies should pay more attention to the findings of their own internal audit bodies, and to either act on their findings or document and be able to clearly explain why action has not been taken.

58 Mr Iglesias, *Committee Hansard*, Canberra, 20 June 2012, p. 4.

- 3.91 The Committee hopes the Auditor-General will monitor and report on this issue in future audits where relevant.

Regulation 9 approvals and the role of Central Procurement Units

- 3.92 The ANAO audit identified what the Committee considers to be significant instances of non-compliance with the CPGs. The ANAO found instances across all agencies of failure to obtain appropriate approval under Regulation 9 of the FMA Act.⁵⁹ Failure to obtain appropriate approval under Regulation 9 of the FMA Act constitutes a fundamental failure of simple public administration.
- 3.93 The audit's finding relating to Regulation 9 approvals in DFAT is of particular concern to the Committee, and raises broader questions about the specific roles played by CPUs across agencies. An area of DFAT failed to properly obtain approval for expenditure, contrary to advice provided by the agency's CPU,⁶⁰ and the CPU either did not notice this significant noncompliance, or failed to act upon it.
- 3.94 The findings in relation to procurement in DFAT lead the Committee to the conclusion that DFAT's CPU should be working closer with procurers to ensure they are compliant with the rules. Further, DFAT's CPU should be monitoring the compliance of procurers to prevent significant instances of noncompliance such as those identified by the ANAO in looking at DFAT's Legal Services panel, and that all material produced by the CPU is kept up to date and made readily available to procurers. This is doubly important given the recent release of the Commonwealth Procurement Rules.
- 3.95 In describing recent improvements to improve compliance with the Commonwealth Procurement Rules, DFAT reported:

We sent a special circular to all staff during their retention to the effect that they do need to get the quotes and everything else. We have also now reinforced our training program so that that message is very clearly stated. We are also now developing some e-learning which should reinforce that message as well. So we have taken it very seriously and we have put a whole lot of steps in place. We are also developing some key performance indicators

59 ANAO Audit Report No.31 2011-12, p. 85.

60 ANAO Audit Report No.31 2011-12, p. 85.

so that we can monitor to make sure that people are actually complying.⁶¹

- 3.96 Looking at CPUs more broadly, the Committee identified a large variation in the roles played by CPUs across agencies. As noted above, DFAT's CPU appeared to be less proactive in monitoring the actions and compliance of procurers, whereas DBCDE reported it had actually started to have its CPU work more closely with procurers to assist in ensuring compliance.
- 3.97 CPUs clearly have an important role in creating a positive compliance culture. They can serve as the link between Finance and agencies, and should take a proactive role in assisting procurers. They can play an important role in assisting inexperienced officers and officers conducting high value or high risk procurements, and should have close contact with officers in these situations. Further, they should be monitoring procurement activities across their departments to identify any noncompliance with the Commonwealth Procurement Rules and to ensure compliance as a matter of priority.
- 3.98 Noting the role CPUs play in ensuring compliance, and considering the deficiencies in DFAT's performance, the Committee believes that DFAT needs to consider a change in strategy to a more active and engaged posture, perhaps considering DBCDE's 'procure-to-pay' approach. CPUs need to work closely with procurers and to actively monitor and evaluate procurement across the department.

Recommendation 2

That the Department of Foreign Affairs and Trade report to the Committee no later than six months after the tabling of this report on the specific role its Central Procurement Unit plays in procurement across the agency, and how the Central Procurement Unit is interacting with departmental officers who engage in procurement to improve compliance and procurement outcomes.

Multi-agency access and whole of government procurement

- 3.99 The Committee notes that there is clear value in similar agencies working together to source goods and services through clustering. Agencies seeking to cluster should work very closely together to identify their

61 Ms Thorpe, *Committee Hansard*, Canberra, 27 June 2012, p. 1.

individual needs, to find commonalities, and to convene panels that address those commonalities, but also to be prepared to not go ahead with convening a clustered panel if it does not meet an agency's specialist needs.

- 3.100 The Committee believes that piggybacking on larger agencies' panels is useful for smaller agencies and can provide clear value for money, but that agencies should ensure they maintain the balance between the cost effectiveness of piggybacking and securing services that are actually appropriate for agency needs, especially when they relate to specialist needs.
- 3.101 Further, agencies seeking to cluster or piggyback should consider the perspective of suppliers, as there is an expectation that being selected to be on a panel will result in offers to provide quotations for services.
- 3.102 Finally, both the ANAO and Finance agree that there should be mandated reporting of relevant standing offers on AusTender when a contract has been agreed through a panel arrangement. The Committee supports this initiative and looks forward to its full implementation.

Rob Oakeshott MP
Chair
August 2012

