

The Auditor-General
Audit Report No.31 2011–12
Performance Audit

Establishment and Use of Procurement Panels

Australian Securities and Investments Commission
**Department of Broadband, Communications and the Digital
Economy**
Department of Foreign Affairs and Trade

Australian National Audit Office

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Canberra ACT
1 May 2012

Dear Mr President
Dear Madam Speaker

The Australian National Audit Office has undertaken an independent performance audit in the Australian Securities and Investments Commission, the Department of Broadband, Communications and the Digital Economy and the Department of Foreign Affairs and Trade in accordance with the authority contained in the *Auditor-General Act 1997*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit, and the accompanying brochure, to the Parliament. The report is titled *Establishment and Use of Procurement Panels*.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's Homepage—<http://www.anao.gov.au>.

Yours sincerely



Ian McPhee
Auditor-General

The Honourable the President of the Senate
The Acting Speaker of the House of Representatives
Parliament House
Canberra ACT

AUDITING FOR AUSTRALIA

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Abbreviations

ANAO	Australian National Audit Office
ASIC	Australian Securities and Investments Commission
ATM	Approach to the market
CAC Act	<i>Commonwealth Authorities and Companies Act 1997</i>
CEIs	Chief Executive's Instructions
CPGs	Commonwealth Procurement Guidelines
CPU	Central procurement unit
DBCDE	Department of Broadband, Communications and the Digital Economy
DFAT	Department of Foreign Affairs and Trade
DoSO	Deed of standing offer
Finance	Department of Finance and Deregulation
FMA Act	<i>Financial Management and Accountability Act 1997</i>
FMA Regulations	<i>Financial Management and Accountability Regulations 2007</i>
FMG No.13	Financial Management Guidance No.13, <i>Guidance on the Mandatory Procurement Procedures</i> , January 2005
FMG No.14	Financial Management Guidance No.14, <i>Guidance on Ethics and Probity in Government Procurement</i> , January 2005
FMG No.15	Financial Management Guidance No.15, <i>Guidance on Procurement Publishing Obligations</i> , July 2007

MPPs	Mandatory Procurement Procedures (Division 2 of the CPGs)
SMEs	Small and medium enterprises

Glossary

Annual procurement plan	Agencies are required to publish an annual procurement plan on AusTender. An annual procurement plan is a statement of an agency's planned procurements for the forthcoming financial year. It consists of a short strategic procurement outlook for the agency, supported by details on planned strategic and major procurements.
Approach to the market (ATM)	Any notice inviting potential suppliers to participate in a procurement including a request for tender, request for expression of interest or request for application for inclusion on a multi-use list.
Approver (delegate)	An approver is the person or decision-making body that decides whether or not to spend public money. The FMA Regulations define an approver to mean: a Minister; a Chief Executive of an FMA Act agency or a person authorised by or under an Act to exercise a function of approving proposals to spend public money. The Minister or Chief Executive may delegate powers to an official.
AusTender	The Australian Government's web-based procurement information system. AusTender provides centralised publication of Australian Government business opportunities, annual procurement plans, multi-use lists and contracts awarded.
Commonwealth Procurement Guidelines (CPGs)	The CPGs establish the core procurement policy framework and articulate Government expectations for procurement for all departments and agencies subject to the <i>Financial Management and Accountability Act 1997</i> (FMA Act). The CPGs also apply to certain <i>Commonwealth Authorities and Companies Act 1997</i> (CAC Act) entities.

Cooperative procurement	The use of a procurement contract by more than one agency. This can be achieved through either a joint approach to the market (known as clustering) and/or where an agency/agencies establish a contract or standing offer arrangement that allows other agencies access (often referred to as piggybacking).
Coordinated procurement	An Australian Government initiative to establish whole-of-government arrangements for property and services in common use to maximise market benefits and deliver efficiencies and savings. Use of coordinated procurement arrangements is mandatory for agencies subject to the FMA Act for certain property and services.
Covered procurement	<p>A term used in the CPGs to describe a procurement that exceeds the procurement thresholds and is not exempt under Appendix A of the CPGs.</p> <p>Generally for FMA Act agencies, procurements that have a maximum anticipated value of more than \$80 000 are covered procurements. The exception to this rule is procurement of construction services, where a value of more than \$9 million applies.</p>
Deed of standing offer (DoSO)	An arrangement setting out the terms and conditions, including indicative pricing, under which a supplier agrees to supply specified property or services to an agency for a specified period.
Mandatory Procurement Procedures (MPPs)	The MPPs are a set of rules and procedures, outlined in the CPGs, which must be followed when conducting a covered procurement.
Multi-use list	A list, intended for use in more than one procurement process, of pre-qualified suppliers who have satisfied the conditions for participation for inclusion on the list.

Open approach to market	An approach to all potential suppliers, usually in the form of an advertisement, seeking submissions as to suppliers' ability to provide certain property or services.
Open tender	A procurement procedure in which a request for tender is published inviting all suppliers that satisfy the conditions for participation to submit tenders.
Panel	A panel is defined as an arrangement under which a number of potential suppliers, usually selected through a single procurement process, may each supply property or services to an agency as specified in the panel arrangements. A panel may be established by an agency by entering into contracts or deeds of standing offer (panel arrangements) for the provision of identified property or services.
Procurement value	The maximum anticipated value of a contract, including options, extensions, renewals or other mechanisms that may be executed over the life of a contract. This value is used to determine whether a particular procurement is a covered procurement.
Request documentation	Documentation provided to potential suppliers to enable them to understand and assess the requirements of the procuring agency and to prepare appropriate and responsive submissions. This general term includes documentation for expressions of interest, multi-use lists, open and select tender processes, and direct sourcing.
Select tender	A procurement procedure in which the procuring agency selects potential suppliers who are then invited to submit tenders.
Small and medium enterprises (SMEs)	The CPGs define a SME as an Australian or New Zealand firm with fewer than 200 full time equivalent employees.

Value for
money

Value for money is a core principle of the Government's procurement policy framework. The CPGs explain that value for money in procurement requires a comparative analysis of all relevant costs and benefits of each proposal throughout the whole procurement cycle (whole-of-life costing). Value for money is enhanced in government procurement by: encouraging competition; promoting the efficient, effective and ethical use of resources; and making decisions in an accountable and transparent manner.

Summary and Recommendations

Summary

Introduction

1. In 2010–11, Australian Government agencies entered into over 79 000 contracts for property and services valued in excess of \$32.6 billion, ranging from relatively straightforward or short-term procurement, through to more complex and longer term acquisitions.¹ Agencies purchased a wide variety of property and services, including enabling assets such as buildings and information and communications technology; and services such as legal and consultancy advice.

2. Given the large number of procurements undertaken by many agencies and the centrality of purchased property and services to the operation of government and program delivery, agencies' procurement practices are expected to be efficient, effective, and suited to the size and complexity of the property or services sought. Where an agency needs to make regular purchases of property and services, procurement panels are one approach used to achieve efficiencies in procurement practice.

3. A procurement panel is an arrangement whereby specific suppliers, usually selected through a single procurement process, may supply property or services to an agency (or agencies where it is intended that a number of agencies will access the panel). To establish a panel an agency enters into contracts or deeds of standing offer (DoSOs), (known as panel arrangements) with each supplier on the panel, setting out:

- the type of property or services the supplier will provide;
- the set/indicative price for the property or services; and

¹ Department of Finance and Deregulation (Finance), *Statistics on Australian Government Contracts*, [Internet], Finance, available from <<http://www.finance.gov.au/publications/statistics-on-commonwealth-purchasing-contracts/index.html>> [accessed March 2012]. Data includes: contracts and standing offers valued at more than \$10 000 for agencies subject to the *Financial Management and Accountability Act 1997* (FMA Act); and certain contracts and standing offers of *Commonwealth Authorities and Companies Act 1997* (CAC Act) entities subject to the *Finance Minister's (CAC Act Procurement) Directions*.

- the manner in which in the agency will obtain the property or services from the supplier, including any process for competition between panel members, where appropriate.²
4. There is no complete data on the level and value of procurement through panels across government. However, at 31 December 2011, there were 602 standing offer arrangements involving more than one supplier recorded on the Australian Government's web-based procurement information system (AusTender).³
5. In recent years, Australian Government procurement policy has pursued greater use of coordinated (whole-of-government) and cooperative (use of a procurement contract by more than one agency) procurement arrangements. To undertake cooperative procurement agencies can either approach the market together (known as clustering) or utilise the contractual or standing offer arrangement of another agency (known as piggybacking).⁴ Through these arrangements the Government seeks to reduce duplication between agencies, improve the efficiency of procurement processes, and support the achievement of value for money through economies of scale and aggregation of government demand.

Legislative and policy framework

6. Chief Executives of departments and agencies subject to the *Financial Management and Accountability Act 1997* (FMA Act) must promote the proper use of Commonwealth resources.⁵ Under the *Financial Management and Accountability Regulations 1997* (FMA Regulations⁶), the Finance Minister issues Commonwealth Procurement Guidelines (CPGs) for officials to follow when

² Finance, *Commonwealth Procurement Guidelines* (CPGs), p. 32, paragraphs 8.35 and 8.36; and, Finance, Procurement Policy and Guidance, *Buying for Government* [Internet]. Finance, available from <<http://www.finance.gov.au/procurement/procurement-policy-and-guidance/index.asp>> [accessed March 2012].

³ Based on AusTender standing offer data provided by Finance. Standing offers with more than one supplier are representative of panel arrangements.

⁴ A standing offer arrangement can have one or more participating agencies. The agency that establishes and manages the standing offer arrangement is known as the lead agency. Other agencies that access the standing offer arrangement are known as participant agencies.

⁵ Proper use of Commonwealth resources means efficient, effective, economical and ethical use that is not inconsistent with the policies of the Commonwealth. FMA Act, section 44(3).

⁶ FMA Regulation 7 requires officials to act in accordance with the CPGs.

performing duties in relation to procurement.⁷ It is also a key requirement under FMA Regulation 9 that approvers of spending proposals must be satisfied, after undertaking reasonable inquiries, that the spending proposal provides for the proper use of Commonwealth resources.

7. The CPGs promote the procurement principles to be applied in all procurement processes. Value for money is the core principle while other key principles—encouraging competition, efficient, effective and ethical use of resources, and accountability and transparency in decision-making—enhance and complement the concept of value for money. Panel procurements are subject to the procurement principles and there is a requirement that value for money is assessed at two stages. Firstly, when selecting suppliers as part of the initial establishment of the panel arrangement; and secondly, each time an individual panel supplier is chosen to undertake specific work under the panel arrangement.

8. Under the CPGs, agencies also need to ensure that small and medium enterprises (SMEs) have appropriate opportunities to compete for business, and are not unfairly discriminated against by agencies' procurement processes. In this respect, the Australian Government has committed to sourcing at least 10 per cent of the purchases of FMA Act agencies by value, in aggregate across agencies, from SMEs.⁸

9. The CPGs are supported by guidance material prepared by the Department of Finance and Deregulation (Finance) to assist agencies undertake procurement.⁹ FMA Act agencies determine their own procurement practices, consistent with the CPGs, through Chief Executive's Instructions (CEIs) and, if appropriate, supporting operational guidelines. The CPGs

⁷ The CPGs may also apply, following a direction by the Minister for Finance, to Commonwealth entities subject to the CAC Act listed in Schedule 1 of the *Commonwealth Authorities and Companies Regulations 1997* as being subject to Section 47A of the CAC Act. The audit did not include an examination of entities subject to the CAC Act.

⁸ Finance, CPGs, 2008, p. 11, paragraphs, 5.3–5.6, [Internet]. Finance, 2008, available from <<http://www.finance.gov.au/procurement/procurement-policy-and-guidance/CPG/docs/CPGs-2008.pdf>> [accessed March 2012]. In aggregate for 2010–11, Australian Government agencies purchased almost \$11 billion in property and services from SMEs (33.5 per cent of the value of all procurement). See Finance, *Statistics on Australian Government Contracts* [Internet]. Finance, available from <<http://www.finance.gov.au/publications/statistics-on-commonwealth-purchasing-contracts/index.html>> [accessed March 2012]. Data includes: contracts and standing offers valued at more than \$10 000 for agencies subject to the FMA Act; and certain contracts and standing offers of CAC Act entities subject to the *Finance Minister's (CAC Act Procurement) Directions*.

⁹ All guidance material can be found on the Finance website available from <<http://www.finance.gov.au/procurement/procurement-policy-and-guidance/index.html>>.

encourage agencies to adopt processes that are commensurate with the scale and risk profile of each procurement.

Audit objective, criteria and scope

10. The objective of the audit was to assess the extent to which FMA Act agencies' establishment and use of procurement panels supported value for money, efficiency and effectiveness in procurement.

11. 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.

12. ANAO also considered the current impetus towards greater use of coordinated and cooperative procurement, and the implications for Finance and agencies of this trend.

13. 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 the:

- Australian Securities and Investments Commission (ASIC);
- Department of Broadband, Communications and the Digital Economy (DBCDE); and the
- Department of Foreign Affairs and Trade (DFAT).

14. The audit involved analysis of a selection of the audited agencies' procurement processes and supporting records. ANAO examined procurement processes used to establish 13 panels and access three panels of

other agencies,¹⁰ and then examined processes for a sample of procurements made using each of the selected panels. A total of 139 procurements¹¹ under the panels were selected for examination across the three agencies.¹²

15. 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. Where appropriate, feedback from the suppliers is included throughout the report.

Overall conclusion

16. Procurement of property and services is central to the delivery of programs by Australian Government agencies. In undertaking procurement, agencies are required to adhere to the CPGs, including principles to be applied to all procurement processes. The core principle of value for money is enhanced and complemented by the other procurement principles—encouraging competition, efficient, effective and ethical use of resources, and accountability and transparency in decision-making. Panel arrangements are one of the fundamental management approaches used by agencies for procurement and provide agencies with ready access to a suitable group of suppliers for relevant property and services. Panels are most useful where there are recurrent needs for property or services, and, if used effectively, can benefit both agencies and suppliers, through shared understanding, lower cost and consistent procurement practices.

17. Available data from AusTender indicates that procurement using panels accounts for a substantial proportion of some agencies' total procurement, in terms of both the number of procurements and their value. However, AusTender data on procurement from panels is incomplete. Agencies must report on AusTender all Commonwealth contracts (including

¹⁰ Thirteen of the panels were established by the audited agencies. Three were established by other agencies. DBCDE utilised two of the panels established by other agencies and DFAT utilised the other panel.

¹¹ ANAO initially selected a sample of 180 contracts (60 from each agency) for examination. However, approximately 23 per cent of the audit sample involved reporting errors and anomalies. This included incorrect reporting of contract and purchase order variations as separate contracts; duplication of contract entries; and reporting of contracts against the wrong panel.

¹² ANAO selected procurements under panel arrangements from contract notices published on AusTender that included a Standing Offer Notice Identification Number (SONID). In determining which procurements to include in the sample ANAO had regard to ensuring: a mix of higher and lower value procurements; a spread of suppliers within a panel; and some coverage of coordinated and cooperative procurement.

from panels) which meet the contract reporting criteria.¹³ Nevertheless, under Finance's current guidance, it is not mandatory for agencies to report on AusTender whether the procurement was made under a particular standing offer, which would identify it as a panel procurement. As a consequence, there is a lack of information on the actual use of standing offers by Australian Government agencies.

18. Overall, the audited agencies generally established panels through sound open tender processes, providing for efficient procurement from the panels in order meet their business needs for property and services. However, in selecting preferred suppliers to undertake work under panel arrangements, there was considerable scope for the agencies to employ more competitive arrangements and better demonstrate value for money in their selection processes, consistent with the requirements of the CPGs. The agencies also did not evaluate the effectiveness of panels in meeting procurement requirements and to assist in informing the design of prospective procurement arrangements.

19. When forming panels, the audited agencies issued appropriate documentation to potential suppliers, known as request documentation¹⁴, including evaluation criteria that provided a basis for assessing value for money. Additionally, the agencies were able to provide evidence of a soundly based value for money assessment for selecting suppliers for 12 of the 13 agency panels examined. Nevertheless, there were opportunities for the agencies in their procurement planning to further explore the nature of the market¹⁵ for the relevant property or services and the suitability of alternate procurement arrangements.

¹³ The contract reporting criteria are that: the instrument to be reported is a Commonwealth contract, agency agreement or standing offer arrangement or amendment and, the instrument meets the relevant contract reporting value. For FMA Act agencies the reporting value is \$10 000 or above. Refer to Finance, CPGs, December 2008, p. 21, paragraph 7.25, available from <<http://www.finance.gov.au/procurement/procurement-policy-and-guidance/CPG/docs/CPGs-2008.pdf>> [accessed March 2012].

¹⁴ Request documentation is documentation provided to potential suppliers to enable them to understand and assess the requirements of the procuring agency and to prepare appropriate and responsive submissions. The CPGs include a number of mandatory requirements for request documentation for certain higher value procurements. This includes a complete description of the procurement, any requirements to be fulfilled, conditions for participation, and all evaluation criteria to be considered in assessing submissions. Finance, CPGs, 2008, pp. 34 and 35, paragraphs 8.42 and 8.44.

¹⁵ This includes the size of the market, the likely suppliers and their customers, where the suppliers are located and whether the market is undergoing change.

20. A purchase made under a panel arrangement is a procurement activity subject to the procurement policy framework and accordingly must, in itself, achieve value for money.¹⁶ Obtaining multiple quotes is one way in which competition can be used to promote value for money when procuring from a panel. In this respect, the agencies should have more often sought multiple quotes when selecting a supplier to support the achievement of value for money, particularly for higher value procurements. For procurements over \$100 000 two of the agencies only sought multiple quotes in around one-third of their procurements included in the audit sample. Further, the three agencies did not sufficiently document how individual procurements represented value for money for between 41 per cent and 71 per cent of the procurements examined. These results highlight the need for greater emphasis to be given by agencies to clearly demonstrating the basis for supplier selection when procurements are made under a panel arrangement. In this context, the Joint Committee of Public Accounts and Audit recently reinforced the need to document value for money considerations for individual procurements.¹⁷

21. As panels are established to enable agencies to better meet their procurement needs, it is important for agencies to evaluate whether this outcome has been achieved. Such evaluation activity could consider the volume, nature and relative cost of procurements under the panel arrangement; the spread of panel work between suppliers; the performance of suppliers; and whether the agency was realising the anticipated efficiencies identified when planning the establishment of the panel. In this regard, none of the audited agencies evaluated the efficiency, effectiveness or value for money provided by their panel arrangements.

22. In response to the substantial amount of separate but related procurement activity undertaken by agencies, the Australian Government has in recent years pursued greater use of coordinated and cooperative procurement arrangements in order to improve efficiency and support the

¹⁶ Finance, Good Procurement Practice No.4 *Establishing and Using Panels* [Internet], Finance, 2007. This guidance was archived during the audit but was applicable at the time the majority of panels examined were created. Current Finance guidance is available at <http://www.finance.gov.au/procurement/index.html>.

¹⁷ Joint Committee of Public Accounts and Audit, *Report 423: Review of Auditor-General's Reports Nos 39 2009-10 to 15 2010-11*, Chapter 4, paragraph 4.99, which stated in relation to documenting value for money for individual procurements: *'the Committee considers that undocumented processes should be viewed with high levels of suspicion. In these circumstances, the Committee is of the opinion that the default assumption should be that 'if it's not documented, it's not done', hence value for money is unlikely to have been achieved'*.

achievement of value for money. This approach is gaining momentum through whole-of-government procurement panels and increasing awareness by agencies of cooperative procurement opportunities (in particular, piggybacking). With these developments there are, however, associated risks; particularly the potential for the pool of suppliers to government to be reduced and in the ability of SMEs to compete with larger organisations when panels are formed. In light of these risks, there would be benefit in Finance monitoring developments to help ensure SMEs have appropriate opportunities to compete given the prospect of a smaller number of panels servicing many agencies. Additionally, Finance and agencies should work towards capturing more complete panel procurement data on AusTender. This would enable ongoing monitoring of procurement trends, including the situation in respect of SMEs.

23. ANAO has made two recommendations aimed at strengthening the accountability and transparency of panel procurement. A third recommendation is directed towards improving the design and effectiveness of panel arrangements.

Key findings

Procurement management and support

24. The audited agencies' procurement policies and available guidance broadly addressed key legislative and policy requirements pertaining to procurement. To assist staff and delegates, agencies could strengthen procurement practice by issuing succinct internal guidance to better address the need for, and how to, obtain value for money, and the importance of documenting procurement decisions. There is also scope for Finance to strengthen its advice on these matters in the guidance material provided for agencies.

25. ANAO has previously acknowledged the benefits of agencies maintaining a central procurement unit (CPU) to provide specialist advice and support when procurement responsibilities are devolved within the agency.¹⁸ All three of the audited agencies maintained such a CPU and approvers in the agencies provided positive feedback on the quality of CPU assistance when

¹⁸ For example, in ANAO Audit Report No.11 2010–11, *Direct Source Procurement*, ANAO found greater levels of compliance with the CPGs where an agency required CPU involvement in decisions to direct source higher value procurements, pp. 121–122.

required or sought. CPUs are also generally well placed to identify and pursue more efficient purchasing arrangements and support procurement practices that encourage competition and enhance value for money.

26. In addition to maintaining a CPU, each audited agency had a procurement Intranet-site which described available panels and provided some procedural guidance on their use. This was a sound approach to communicating the existence of panels and supporting efficient agency-wide procurement practices.

Establishing and participating in panels

27. Procurement panels are generally established to operate for several years and may involve substantial expenditure. As a consequence, agencies should thoughtfully develop the design and operation of panels to achieve value and maximise benefits. The planning approaches of the agencies for procurement panels varied. ASIC prepared a business case prior to forming each panel, whereas planning by DBCDE and DFAT was more limited. For all three agencies, planning documentation generally did not include explicit consideration of: the nature of the market for the property or services; other procurement options, including cooperative procurement opportunities; and administrative implications of establishing and managing the panel, including where piggybacking is allowed.

28. The agencies conducted open tender processes to form all the panels that were included in the ANAO's sample. This approach reflected the expectation that spending utilising the panels would exceed the covered procurement threshold of \$80 000.¹⁹ Request documentation for the sample of panels complied with relevant mandatory requirements of the CPGs for covered procurements, including publication on AusTender.²⁰ With the exception of one panel²¹ included in ANAO's sample, the agencies evidenced a

¹⁹ Covered procurement is a term used in the CPGs to describe a procurement that exceeds certain procurement thresholds and is not exempt under Appendix A of the CPGs. Generally for FMA Act agencies, procurements that have a maximum anticipated value of more than \$80 000 are covered procurements. The exception to this rule is procurement of construction services, where a value of more than \$9 million applies. Division 2 of the CPGs establishes the Mandatory Procurement Procedures (MPPs) and emphasises that higher value procurement opportunities be offered to the full market, known as an open approach, except in certain circumstances.

²⁰ Other mandatory requirements include: the nature, scope and, where known, the quantity of the property or services to be procured; and all evaluation criteria to be considered in assessing submissions.

²¹ DFAT did not evidence a soundly based value for money assessment for one of the panels examined by ANAO. Refer paragraph 3.39.

soundly based value for money assessment indicating that tenders had been assessed against the evaluation criteria outlined in the request documentation.²²

29. Under the FMA Regulations, standing offer arrangements must not be entered into with panel suppliers unless a spending proposal has been approved under FMA Regulation 9. It is important to obtain this approval prior to entering into an arrangement with the suppliers, as there is usually no subsequent opportunity for future decision makers to alter the terms and conditions relating to individual purchases made under the standing offer arrangement. In this regard, for seven of the 13 agency panels examined by ANAO, there was an approval which specifically referred to FMA Regulation 9 prior to entry into standing offer arrangements.²³ Given the level of non-compliance with this requirement, ANAO considers there would be merit in Finance reinforcing and further clarifying the requirement for agencies to approve a spending proposal prior to entering into a standing offer. Additionally, agencies would benefit from reviewing their own guidance and practices, including the most appropriate time in the business process to seek approval under Regulation 9.²⁴

30. An agency wishing to access another agency's panel needs to make their own assessment as to whether the property or services available under the panel, and the terms and conditions in place, sufficiently meet their needs and provide for a value for money outcome. In this respect, for three panels utilised by DBCDE or DFAT, there was scope to adopt more robust approaches to assessing the value for money provided by those panels prior to becoming a participant agency.

²² The agencies' evaluation criteria were generally phrased in terms of compliance, capability, capacity, price and risk.

²³ Of the remaining six panels: one had approval that referred to Section 44 of the FMA Act, three had other evidence of approval that did not meet Regulation 9 requirements and DFAT was unable to provide an approval for two of its four panels examined by ANAO. Refer Paragraph 3.46 for details.

²⁴ Approval of a spending proposal can be done at any stage prior to entering the DoSO. For example, agencies may obtain FMA Regulation 9 approval in the planning phase of the procurement, prior to the RFT being issued, or at the completion of the evaluation stage. Obtaining Regulation 9 approval at the commencement of the procurement process will often result in a very broad approval addressing issues such as the scope and purpose of the standing offer arrangement. Obtaining approval later in the process, for example, after the development of a draft DoSO or after the evaluation stage, allows the delegate to consider the specific terms and conditions that will apply under the standing offer arrangement.

Procurement from panels

31. Finance guidance advises agencies that one of the ways to enhance value for money in government procurement is by using competitive procurement processes. Seeking more than one quote or allowing for the quoting of firm prices for work segments can allow for competitive tension, and should be allowed under panel arrangements²⁵ where appropriate.²⁶ However, for around two-thirds of the audit sample of procurements in each agency, the agency either did not seek any quotes, or sought only one quote, when procuring property or services from the panels.²⁷ Of particular note, ASIC and DFAT only sought multiple quotes for around one-third of procurements valued in excess of \$100 000.²⁸ Having regard to the types of property and services provided under the panels, there was considerable scope for the agencies to employ more competitive arrangements when procuring from panels through quotation practices, particularly for higher value procurements.

32. Documentation of value for money considerations for each procurement provides for accountability and transparency in procurement decision-making. For the sample of procurements from panels, ASIC, DBCDE and DFAT did not sufficiently document how individual purchases represented value for money, for 41 per cent, 64 per cent and 71 per cent of procurements, respectively. Issues included documentation not adequately outlining why the particular supplier was selected, demonstrating

²⁵ Finance, Buying for the Australian Government; [Internet]. Finance, available from <<http://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/procurement-practice/panel-and-mul/traps.html>> [accessed March 2012].

²⁶ Under the Commonwealth's *Legal Services Directions 2005* an agency may seek a competitive quote from a legal services provider that is a party to a DoSO only if the agency considers that: the value of the services to be provided is likely to exceed \$80 000; or the expertise of the panel should be tested for a new area of work. The Directions are binding rules issued by the Attorney-General to cover the performance of legal work for the Commonwealth. The Chief Executive of an FMA Act agency is responsible for ensuring that their agency adopts appropriate management strategies and practices so as to achieve compliance with the Directions. The Attorney-General maintains standard documentation for use by all Commonwealth agencies when approaching the market for legal services. Deed of standing offer guidance for the provision of legal services is available on the Attorney-General's website <at <http://www.ag.gov.au/LegalservicestoGovernment/Pages/CommonFormTenderPackage.aspx>> [accessed March 2012].

²⁷ The results of sample testing have been adjusted in order to not misrepresent instances where quotations were not sought in accordance with these requirements.

²⁸ ANAO recognises there are some standing offer arrangements where the property or services are clearly defined at a set rate and there may be less scope to alter prices.

consideration of the supplier's experience or performance history, or providing details of any comparative analysis of suppliers.

33. In addition to obtaining FMA Regulation 9 approval prior to entering into a standing offer, approval is also required for each procurement made under the panel. DBCDE was able to provide evidence of FMA Regulation 9 approval for 93 per cent of its procurements from panels in the audit sample. For ASIC and DFAT the percentage of documented spending proposal approvals was lower at 76 per cent and 70 per cent respectively.

34. As an official order under a panel arrangement constitutes a formal contract with the supplier, it is important that it contain all the requisite details of the purchase. The agencies were able to provide evidence of an official order or contract for 76 per cent (DBCDE), 80 per cent (ASIC) and 86 per cent (DFAT) of the sample respectively. While most of the official orders clearly documented the details of the procurement, where there was an absence of an order that clearly articulated the property or services to be provided it was not possible to determine whether the procurement was within the scope of the standing offer. For many of the procurements it was also difficult to ascertain whether pricing was at or below rates assessed as providing value for money when the panel was formed. In some cases this situation reflected missing, poorly maintained or incomplete documentation, therefore providing insufficient evidence that the criterion had been met. In other cases the official order simply mirrored the value and format provided in a quote, with the rates quoted not aligning with the rates in standing offer.

Procurement strategy, monitoring and review

35. The use of coordinated and cooperative procurement arrangements is growing, particularly through use of mandatory whole-of-government procurement arrangements for provision of certain property and services, and as agencies increasingly utilise other agencies' panels (piggyback). A number of factors have contributed to the take-up of piggybacking opportunities by agencies, including promotion by Finance of cooperative procurement arrangements, availability of AusTender data on other agencies' standing offer arrangements allowing multi-agency access, and the drive for administrative efficiencies. Nonetheless, there remain a large number of agency panels providing similar property and services, and further purchasing efficiencies may be possible. In particular, suppliers commented on the large number of similar panels they were on, and the potential for agencies to approach the market together (cluster) when forming new panels.

36. As previously mentioned, the Australian Government is committed to providing SMEs appropriate opportunities to compete for business. There are, however, tensions between the ability of SMEs to compete for work and the prospect of fewer panels servicing many agencies. In response to these tensions, there is merit in Finance monitoring developments to ensure a balance between competition in the marketplace and the benefits of more efficient panel arrangements.

37. The publication of contract details on AusTender provides for accountability and transparency of Australian Government procurement. However, current AusTender data does not provide a complete picture of the extent of procurement undertaken under panel arrangements, including use of other agencies' panels. This partly reflects Finance's guidance encouraging, but not mandating, reporting of the relevant standing offer for each procurement made under a panel arrangement. Greater transparency of panel procurement would assist Finance and agencies to improve their oversight of changing supply patterns and respond to any implications.

38. Effective monitoring and review of procurement activity at the agency level helps agencies to comply with the CPGs, and to increase the efficiency and effectiveness of their procurement processes. In this respect, the agencies' CPUs did not undertake routine monitoring of agency-wide procurement activity, and none of the agencies produced any regular or periodic procurement-related internal management reports.

39. Evaluation activity at an appropriate time during the lifecycle of a panel enables agencies to understand the extent to which the initial business rationale for establishing the panel is being met. Evaluation also helps shape the design of any future panel or alternate procurement arrangement. For example, analysis of the utilisation of suppliers under the panel arrangement may result in the agency selecting fewer suppliers for any subsequent panels with a focus on building stronger relationships to enhance value for money and efficiency. As mentioned in paragraph 21 above, none of the audited agencies evaluated the efficiency, effectiveness and value for money provided by their panel arrangements.

Summary of agencies' responses

40. The audited agencies' and Finance's summary responses to the audit report are provided below. The agencies responses to the recommendations are contained in the body of the report following the relevant

recommendation. ASIC also provided other formal comments and these are provided at Appendix 1: Additional Formal Comments from ASIC.

Australian Securities and Investments Commission

41. Overall ASIC accepts the ANAO's findings and agrees with the key recommendations contained in the report. ASIC notes that the panels and many of the sampled panel procurements that were subject to the audit were completed prior to the development of ASIC's current procurement policies, processes and delivery of procurement training in 2010 and is pleased to advise that we believe a number of the issues identified by the ANAO have already been addressed through our procurement reforms. Notwithstanding this, the audit has identified a number of areas in our guidance that can be improved and ASIC will continue working to address these issues.

42. ASIC agrees that seeking multiple quotes from panels can assist in promoting value for money and currently recommends the use of multiple or competitive quotes for high value procurements from panels. However, ASIC is of the view that there are some circumstances where competitive quotes may not be appropriate or practical regardless of the value.

43. ASIC agrees that explicit market and needs analysis should be conducted to better inform decisions and strategies when establishing panels particularly where the industries are not well known to the agency. ASIC supports the use of cooperative procurement arrangements as an alternative strategy to developing its own panels. Most new panels developed by ASIC (where no other cooperative arrangements exist) are made available for use by other agencies.

44. ASIC agrees there is scope to provide better guidance on documenting procurement decisions and value for money and agrees there is a need to monitor whether panels deliver the expected efficiency, effectiveness and value for money.

Department of Broadband, Communications and the Digital Economy

45. The Department of Broadband, Communications and the Digital Economy acknowledges the findings of the audit and supports the recommendations in the report. The Department found this audit process to be a valuable exercise and considers the report to be a fair representation of its experience with panel procurements. It is pleasing to note that the Department was recognised as having quality practices in many areas covered by the audit.

46. The Department recognises the effectiveness of using panel arrangements in procurement and has already implemented a number of changes to internal procurement procedures, including enhancing processes to assist with the accurate monitoring of panel performance and updating intranet guidance appropriately. The Department will continuously review its procurement policies and practices to further improve its performance in the areas identified by the ANAO.

Department of Foreign Affairs and Trade

47. DFAT considers that this report is well targeted and contains sound recommendations which the Department supports.

48. As indicated in the report, DFAT already had in train a number of initiatives, including an updated procurement framework, which addresses issues raised in the audit. The audit was undertaken at a time when DFAT was in the process of updating its financial management and procurement policies and procedures to better comply with the Commonwealth Procurement Guidelines. The findings in relation to DFAT, while they will be instrumental in ongoing review and improvements, reflect past practices rather than the new framework which is now being bedded down.

Department of Finance and Deregulation

49. Panels form an important part of agency procurement practices and where used appropriately, improve the value for money achieved by agencies and reduce the cost to business when engaging with the Australian Government. Transparent, accurate and timely information is critical in understanding and improving the value for money achieved. AusTender plays an important role in this and, as the Australian Government's key procurement information system, agencies are expected to continually improve the accuracy and timeliness of their procurement information on AusTender.

50. Small and Medium Enterprises (SMEs) also play a significant role in agency procurements. In 2010–11, SMEs represented 33.5 per cent (almost \$11 billion) of the \$32.6 billion worth of procurement contracts reported on AusTender. Enabling the access to the Australian Government marketplace for competitive SMEs is important. In establishing and sourcing from panels, agencies should consider as part of their value for money considerations, the benefits of doing business with competitive SMEs.

Recommendations

The recommendations are based on findings from fieldwork at the audited agencies and are likely to be relevant to other Australian Government agencies. Therefore, all Australian Government agencies are encouraged to assess the benefits of implementing these recommendations in light of their own circumstances, including the extent to which each recommendation, or part thereof, is addressed by practices already in place.

Recommendation No.1

Paragraph 4.28

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: Agreed

Recommendation No.2

Paragraph 5.15

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 reference 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: Agreed

Recommendation No.3

Paragraph 5.34

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: Agreed

Audit Findings

1. Introduction

This chapter introduces procurement panels and the legislative and policy framework applicable to Commonwealth procurement. The chapter also outlines the audit approach.

Background

1.1 In 2010–11, Australian Government agencies entered into over 79 000 contracts for property and services valued in excess of \$32.6 billion, ranging from relatively straightforward or short-term procurement, through to more complex and longer term acquisitions.²⁹ Agencies purchased a wide variety of property and services, including enabling assets such as buildings and information and communications technology; and services such as legal and consultancy advice.

1.2 Given the large number of procurements undertaken by many agencies and the centrality of purchased property and services to the operation of government and program delivery, agencies' procurement practices are expected to be efficient, effective, and suited to the size and complexity of the property or services sought. Where an agency needs to make regular purchases of property and services, procurement panels are one approach used by agencies to achieve efficiencies in procurement practice.

Procurement panels

1.3 A procurement panel is an arrangement whereby specific suppliers, usually selected through a single procurement process, may supply property or services to an agency (or agencies where it is intended that a number of agencies will access the panel). To establish a panel an agency enters into contracts or deeds of standing offer (DoSOs), (known as panel arrangements) with each supplier on the panel, setting out:

- the type of property or services the supplier will provide;
- the set/indicative price for the property or services; and

²⁹ Department of Finance and Deregulation (Finance), *Statistics on Australian Government Contracts*. [Internet]; available from <<http://www.finance.gov.au/publications/statistics-on-commonwealth-purchasing-contracts/index.html>> [accessed March 2012]. Data includes: contracts and standing offers valued at more than \$10 000 for agencies subject to the *Financial Management and Accountability Act 1997* (FMA Act); and certain contracts and standing offers of *Commonwealth Authorities and Companies Act 1997* (CAC Act) entities subject to the *Finance Minister's (CAC Act Procurement) Directions*.

- the manner in which in the agency will obtain the property or services from the supplier, including any process for competition between panel members, where appropriate.³⁰

1.4 Each time an agency purchases property or services through a panel arrangement, a contract is formed under the relevant standing offer. There is no complete data on the level and value of procurement through panels across government. However, at 31 December 2011, there were 602 standing offer arrangements involving more than one supplier recorded on the Australian Government's web-based procurement information system (AusTender).³¹ Typical recurrent services provided through panels include legal, accountancy, human resources, information technology, building and maintenance, publishing, library and graphic design.

Coordinated and cooperative procurement

1.5 In recent years, Australian Government procurement policy has pursued greater use of coordinated (whole-of-government) and cooperative (use of a procurement contract by more than one agency) procurement arrangements. Through these arrangements the Government seeks to reduce duplication between agencies, improve the efficiency of procurement processes, and support the achievement of value for money through economies of scale and aggregation of government demand.

1.6 Coordinated procurement refers to whole-of-government procurement arrangements for property and services in common use. Use of these arrangements is mandatory for FMA Act agencies for certain property and services.³² Cooperative agency procurement refers to procurement involving more than one agency as the buyer. To undertake cooperative procurement agencies can either approach the market together (known as clustering) or utilise the contractual arrangement or standing offer arrangement of another

³⁰ Finance, CPGs, 2008, p. 32, paragraphs 8.35 and 8.36; and, Finance, Procurement Policy and Guidance, *Buying for Government* [Internet]. Finance, 2011, available from <<http://www.finance.gov.au/procurement/procurement-policy-and-guidance/index.asp>> [accessed March 2012].

³¹ Based on AusTender standing offer data provided by Finance. Standing offers with more than one supplier are representative of panel arrangements.

³² Examples of mandatory whole of government procurement contracts include telecommunications, and air travel and travel management services.

agency (known as piggybacking).³³ Cooperative procurement is often undertaken by one agency accessing and using another agency's procurement panel.

1.7 The ability of agencies to access contractual arrangements of other agencies depends on the original documentation issued by the agency holding the contract to potential suppliers when establishing the arrangement (known as request documentation).³⁴ It also depends on the terms and conditions of the contract itself. Potential use by other agencies needs to have been specified in both cases.³⁵

Legislative and policy framework applicable to panel procurement

1.8 Chief Executives of departments and agencies subject to the *Financial Management and Accountability Act 1997* (FMA Act) must promote the proper use of Commonwealth resources.³⁶ Under the *Financial Management and Accountability Regulations 1997* (FMA Regulations³⁷), the Finance Minister issues Commonwealth Procurement Guidelines (CPGs) for officials to follow when performing duties in relation to procurement.³⁸ It is also a key requirement under FMA Regulation 9 that approvers of spending proposals must be satisfied, after undertaking reasonable inquiries, that the spending proposal provides for the proper use of Commonwealth resources.

1.9 The CPGs establish the Australian Government's procurement policy framework and articulate Government requirements for all agencies that are

³³ A standing offer arrangement can have one or more participating agencies. The agency that establishes and manages the standing offer arrangement is known as the lead agency. Other agencies that access the standing offer arrangement are known as participant agencies.

³⁴ Request documentation is documentation provided to potential suppliers to enable them to understand and assess the requirements of the procuring agency and to prepare appropriate and responsive submissions. The CPGs include a number of mandatory requirements for request documentation for certain higher value procurements. This includes a complete description of the procurement, any requirements to be fulfilled, conditions for participation, and all evaluation criteria to be considered in assessing submissions. Finance, CPGs, 2008, pp. 34 and 35, paragraphs 8.42 and 8.44.

³⁵ Finance, CPGs, 2008, p. 39, paragraphs 8.39 and 8.40.

³⁶ Proper use of Commonwealth resources means efficient, effective, economical and ethical use that is not inconsistent with the policies of the Commonwealth. FMA Act, section 44(3).

³⁷ FMA Regulation 7 requires officials to act in accordance with the CPGs.

³⁸ The CPGs may also apply, following a direction by the Minister for Finance, to Commonwealth entities subject to the CAC Act listed in Schedule 1 of the *Commonwealth Authorities and Companies Regulations 1997* as being subject to Section 47A of the CAC Act. The audit did not include an examination of entities subject to the CAC Act.

subject to the FMA Act. The CPGs are supported by guidance material prepared by the Department of Finance and Deregulation (Finance) to assist agencies undertake procurement.³⁹ FMA Act agencies determine their own procurement practices, consistent with the CPGs, through Chief Executive's Instructions (CEIs) and, if appropriate, supporting operational guidelines.

Commonwealth procurement principles

1.10 Division 1 of the CPGs establishes the procurement principles to be applied in all procurement processes, and promotes value for money as the core principle. Value for money is enhanced and complemented by other key principles—encouraging competition; efficient, effective and ethical use of resources; and accountability and transparency in decision-making. Applying these procurement principles is a requirement of the CPGs, and necessitates that agencies take a considered approach when establishing arrangements for individual procurements.⁴⁰

1.11 The CPGs state that a value for money assessment involves a comparative analysis of all relevant costs and benefits throughout the whole procurement cycle (whole-of-life costing). This includes consideration of factors such as: fitness for purpose; the performance history of each prospective supplier; the relative risk of each proposal; the flexibility to adapt to possible change over the lifecycle of the property or service; financial considerations; and the evaluation of contract options. In seeking to achieve value for money, the CPGs advise agencies to keep in mind that procurement processes impose costs on agencies and potential suppliers, and should therefore be commensurate with the scale, scope and relative risk of the proposed procurement.⁴¹

1.12 Panel procurements are subject to the procurement principles and there is a requirement that value for money is assessed at two stages. Firstly, when selecting suppliers as part of the initial establishment of the panel arrangement; and secondly, each time an individual panel supplier is chosen to undertake specific work under the panel arrangement.

³⁹ All guidance material can be found on the Finance website available from <<http://www.finance.gov.au/procurement/procurement-policy-and-guidance/index.html>> [accessed March 2012].

⁴⁰ Finance, CPGs, 2008, pp. 10-24.

⁴¹ Ibid, p.10 and p.14, paragraphs 4.1, 4.4 and 5.7.

Covered procurements and application of the Mandatory Procurement Procedures

1.13 Division 2 of the CPGs establishes the Mandatory Procurement Procedures (MPPs) and emphasises that higher value procurement opportunities be offered to the full market, known as an open approach, except in certain circumstances. The MPPs apply to what are known as covered procurements. A procurement is a covered procurement if:

- its total estimated value exceeds the procurement thresholds; and
- it is not exempt under Appendix A of the CPGs.

1.14 Generally, for FMA Act agencies, the procurement threshold is \$80 000.⁴² For these covered procurements, the MPPs specify the limited circumstances and exemptions under which approaches to the market other than an open approach may be undertaken.

1.15 If a panel was established through an open approach to market in accordance with the MPPs, purchases of property and services through the panel are deemed to be in accordance with the MPPs and a further open approach to market is not required, irrespective of the value of the procurement. The establishment of a panel thus enables more streamlined procurement processes for higher value procurements.

Procurement documentation

1.16 In relation to procurement documentation, the CPGs state that the appropriate mix and level of documentation depends on the nature and risk profile of procurement being undertaken. Agencies are required to ensure there is sufficient documentation to provide an understanding of the reasons for the procurement, the process that was followed and all relevant decisions, including approvals and authorisations, and the basis of those decisions.⁴³

Potential benefits and risks of panel arrangements

1.17 Table 1.1 below summarises potential benefits and risks of panel arrangements, for agencies and suppliers, respectively.

⁴² However, if the procurement is for construction services the MPPs do not apply until the estimated value of the procurement exceeds \$9 million.

⁴³ Finance, CPGs, 2008, p. 18, paragraph 7.9.

Table 1.1

Potential benefits and risks of panel arrangements

Agencies	
Benefits	Risks
<ul style="list-style-type: none"> - An open tender process only needs to be carried out once. - Aggregated demand may increase competition among suppliers and contribute to improved pricing, terms and conditions. - Familiarity with the terms and conditions of supply, pricing and rate structures, and in terms of quality and performance. - Ability to readily access suppliers to meet business needs, including where there may be a conflict of interest or volume of work in excess of a supplier's capability. - Ability to build effective working relationships with suppliers who are familiar with the agency's needs and preferences. 	<ul style="list-style-type: none"> - There may be situations where the market for property or services covered by a panel arrangement is rapidly developing, and better value for money options, including new suppliers, cannot be pursued (or readily accessed) until the panel arrangement is exhausted. - If the process to establish the panel is not sufficiently robust, value for money may not be achieved. For example, potential suppliers may not submit tenders due to onerous conditions; and narrow definitions or commercial specifications may result in insufficient responses. - If the scope of the panel is defined too broadly or narrowly, this may affect suppliers' pricing and the capacity to use the panel to meet business needs. - The cost of managing the panel may not be well understood—as a general principle, the greater the number of suppliers the greater the work in managing the panel. Allowing other agencies to access the panel may also increase costs.

Suppliers	
Benefits	Risks
<ul style="list-style-type: none"> - Access to a potentially lucrative market for property or services for a set period of time. - Increased probability of future work (although work is not guaranteed), which assists forward planning. - Familiarity with common process, terms, conditions and performance criteria for multiple requests for property or services which can lead to lower costs. - Being a panel supplier may enhance the supplier's reputation in the market. - There is a lower risk of non-payment for property or services which meet stipulated terms and conditions when purchased by government. 	<ul style="list-style-type: none"> - Where unsuccessful in applying to be on a panel, there may be limited opportunity to undertake work for the agency for the period of the panel arrangement. If a panel then becomes used by other agencies suppliers can have limited opportunities to work at several agencies. - Selection for a panel may unduly raise supplier expectations regarding work opportunities, as participation does not guarantee or provide for a minimum amount of work. - Small and medium enterprises may be disadvantaged by overstatement of procurement needs or onerous selection processes when agencies form panels. - Suppliers are bound by agreed terms and conditions for the period of the standing offer regardless of external impacts such as higher costs. - Further additional submissions or quotations may be required for specific work under the panel. - Tendering for and participation in a panel imposes administrative costs on suppliers which they need to take into account. Some suppliers are on many different panels that supply similar property or services but involve different procedural requirements.

Source: ANAO analysis

Previous audits

1.18 ANAO has conducted three audits in the last six years that specifically examined Commonwealth procurement across agencies.⁴⁴ The most recent of these audits, ANAO Audit Report No.11 2010–11 *Direct Source Procurement*, examined direct source procurement processes in four agencies. That audit identified shortcomings with respect to agencies' application of the CPGs for a significant proportion of direct source procurements examined.

⁴⁴ ANAO, Audit Report No.11, 2010–11, *Direct Source Procurement*, September 2010; ANAO, Audit Report No.14 2009–10, *Agencies' Contract Management*; and ANAO, Audit Report No.21, 2006–07, *Implementation of the revised Commonwealth Procurement Guidelines*, January 2007.

These shortcomings included inadequate documentation of value for money considerations.

Audit approach

Audit objective, criteria and scope

1.19 The objective of the audit was to assess the extent to which FMA Act agencies' establishment and use of procurement panels supported value for money, efficiency and effectiveness in procurement.

1.20 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.

1.21 ANAO also considered the current impetus towards greater use of coordinated and cooperative procurement, and the implications for Finance and agencies of this trend.

1.22 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 entered into). The agencies selected were the:

- Australian Securities and Investments Commission (ASIC);
- Department of Broadband, Communications and the Digital Economy (DBCDE); and the
- Department of Foreign Affairs and Trade (DFAT).

1.23 The audit involved analysis of a selection of the audited agencies' procurement processes and supporting records. ANAO examined

procurement processes used to establish 13 panels and access three panels of other agencies⁴⁵, and then examined processes for a sample of procurements made using each of the selected panels. A total of 139 procurements⁴⁶ under the panels were selected for examination across the three agencies.⁴⁷

1.24 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 small and medium enterprises (SMEs). Where appropriate, feedback from the suppliers is included throughout the report.

1.25 The audit was undertaken in accordance with the ANAO's Auditing Standards at a cost of approximately \$562 000.

⁴⁵ A standing offer arrangement can have one or more participating agencies. The agency that establishes and manages the standing offer arrangement is known as the lead agency. Other agencies that access the standing offer arrangement are known as participant agencies. Thirteen of the 16 panels examined were established by the audited agencies. The other three were established by other agencies. DBCDE utilised two of the panels established by other agencies and DFAT utilised the other.

⁴⁶ ANAO initially selected a sample of 180 contracts (60 from each agency) for examination. However, approximately 23 per cent of the audit sample involved reporting errors and anomalies. This included incorrect reporting of contract and purchase order variations as separate contracts; duplication of contract entries; and reporting of contracts against the wrong panel.

⁴⁷ ANAO selected procurements under panel arrangements from contract notices published on AusTender that included a Standing Offer Notice Identification Number (SONID). In determining which procurements to include in the sample ANAO had regard to ensuring: a mix of higher and lower value procurements; a spread of suppliers within a panel; and some coverage of coordinated and cooperative procurement.

Report structure

1.26 In addition to this introductory chapter there are four other chapters in this report:

Chapter	Chapter overview
2. Procurement Management and Support	Examines for each audited agency: procurement policy and guidance; the role of the central procurement unit; specific management and support arrangements in relation to panel procurement; and procurement training.
3. Establishing and Participating in Panels	Examines the audited agencies' procurement processes and decisions in relation to the establishment of a selection of panels, and whether they met the requirements of relevant FMA Regulations (including application of the CPGs). It also examines the approaches taken by the agencies to access other agencies' panels.
4. Procurement from Panels	Examines the audited agencies' processes and decisions when procuring from panels, and whether they met the requirements of relevant FMA Regulations (including application of the CPGs).
5. Procurement Strategy, Monitoring and Review	Examines the current impetus towards coordinated and cooperative procurement, and the implications for Finance and agencies. It also examines the audited agencies' procurement monitoring and review activities, including for established panels.

2. Procurement Management and Support

This chapter examines for each audited agency: procurement policy and guidance; the role of the central procurement unit; specific management and support arrangements in relation to panel procurement; and procurement training.

Introduction

2.1 In most procurement processes, staff from the relevant business area in the agency undertaking the procurement are given responsibility for the conduct of the procurement process. Delegates have responsibility for ensuring that their approval of a spending proposal to procure property or services complies with legislative and policy requirements. This includes applying the core procurement principle articulated in the CPGs—value for money.

2.2 Chief Executive's Instructions (CEIs) and operational guidance are normally issued by agencies to assist delegates and staff involved in procurement processes. These agency materials articulate and build on the legislative and policy framework applicable to procurement by focusing on implementing government procurement requirements and having reference to the agency's particular procurement needs.

2.3 Agency central procurement units (CPUs) are internal structures used by agencies to further assist staff and delegates undertake appropriate procurement processes and make sound decisions. This support includes the provision of procurement advice and training to relevant staff.

2.4 For each audited agency, the ANAO examined:

- procurement policy and guidance;
- the role of the CPU, including the provision of specialist procurement advice and their involvement in procurement processes;
- management and support arrangements in place for panel procurement; and
- the provision of procurement training to delegates and staff.

Procurement policy and guidance

2.5 Complete, informative and up-to-date policy and guidance is important to foster a good understanding of an agency's procurement responsibilities,

and to facilitate the consistent application of sound practices throughout the agency. Delegates and staff must ensure they conduct procurements in accordance with their agency's CEIs and relevant operational guidelines, which in turn must accord with the CPGs.⁴⁸

Chief Executive's Instructions

2.6 The Chief Executive of an agency is authorised to give CEIs to officials in that agency on any matter necessary or convenient for carrying out or giving effect to the FMA Act or the FMA Regulations.⁴⁹ CEIs should be accessible to agency staff and provide clear instructions on the key requirements that apply to resource management within the particular agency. CEIs should also be supported by complementary operational guidance that details specific agency processes and procedures.⁵⁰

2.7 All three audited agencies' had CEIs in place which addressed the high level requirements of the FMA Act and FMA Regulations pertaining to the use of Commonwealth resources. Beyond this, the level of detail provided in the CEIs on procurement was variable:

- ASIC's CEIs outlined procurement requirements arising from legislation and policy; covered application of the procurement principles, including the core principle of value for money; and included a range of instructions to help ensure staff meet these requirements;
- DBCDE's CEIs indicated officials must act in accordance with the CPGs and keep adequate records and supporting documentation showing the basis of procurement decisions made; and
- DFAT's CEIs stated that managers shall manage their areas of responsibility in a manner that promotes the efficient, effective and ethical use of the department's resources; and staff must follow the *Financial Management Manual* issued by the Chief Finance Officer,

⁴⁸ Finance, Procurement Policy and Guidance, *Buying for Government*, [Internet]. Finance, available from <<http://www.finance.gov.au/procurement/procurement-policy-and-guidance/index.asp>> [accessed March 2012].

⁴⁹ FMA Regulation 6: *Chief Executive's Instructions*.

⁵⁰ Finance Circular 2011/05 *Chief Executive's Instructions*, July 2011, pp. 12 and 14, paragraphs 22 and 31.

which outlines responsibilities for the proper use of departmental resources.

2.8 In this context, Finance is leading efforts to improve consistency in CEIs across agencies, while also helping ensure CEIs support understanding of financial management requirements. In response to a recommendation from the *Ahead of the Game: Blueprint for Reform of Australian Government Administration* report (Ahead of the Game)⁵¹, Finance has developed ‘model CEIs’ in consultation with FMA Act agencies. The model CEIs summarise key financial management requirements, and include 11 core topics, one of which (yet to be released) is procurement.⁵² The forthcoming release of model CEIs procurement guidance presents an opportunity for agencies to review the coverage of their own CEIs in relation to procurement, and the interrelationships between their CEIs and supporting operational guidance.

Coverage, accessibility and currency of procurement policy and guidance

2.9 In addition to examining the audited agencies’ CEIs, ANAO considered the coverage, accessibility and currency of the agencies’ broader procurement policy and guidance.

2.10 As at September 2011 during audit fieldwork, the agencies’ procurement policy and guidance was presented in a range of formats:

- ASIC’s policy and guidance material included a CEI on committing and spending public money, a procurement policy document and procurement guidelines. ASIC also maintained a procurement Intranet-site from which staff could access policy and guidance;
- DBCDE’s CEIs provided high level instructions which were complemented by a practical guide on procurement, and a range of ‘Quick Guides’ covering selected aspects of procurement. DBCDE also has a procurement Intranet-site from which guidance could be accessed; and

⁵¹ Recommendation 8.3 of *Ahead of the Game* was to streamline administrative and legislative compliance in areas such as corporate, financial and human resources management. [Internet] available from <http://www.dpmc.gov.au/publications/aga_reform/aga_reform_blueprint/index.cfm> [accessed March 2012].

⁵² The procurement section of the model CEIs has not yet been released, pending an update to the CPGs—the revised CPGs are due to be issued by Finance in 2012.

- DFAT's high level CEIs were underpinned by its *Financial Management Manual* and *Procurement Manual*.

2.11 Overall, the audited agencies' policy and guidance material broadly addressed key legislative and policy requirements (Table 2.1).

Table 2.1

Assessment of audited agencies' procurement policy and guidance

Policy/guidance issue	ASIC	DBCDE	DFAT
Addressed relevant requirements under the FMA Act and FMA Regulations	✓✓	✓✓	✓✓
Addressed requirements of the CPGs	✓	✓	✓
Clearly articulated agency procurement roles and responsibilities	✓✓	✓✓	✗
Was readily accessible	✓✓	✓✓	✓
Was up-to-date	✓✓	✓✓	✗

Legend: ✗: not adequate; ✓: generally satisfactory, with scope to improve; ✓✓: satisfactory

Source: ANAO analysis of audited agencies' procurement policy and guidance material

2.12 ASIC's and DBCDE's policy and guidance did not refer to the MPPs or that covered procurements are subject to minimum requirements (which would typically need to be followed when establishing a panel). These agencies primarily relied on involvement of their CPU in covered procurement processes, and references to government policy, to help ensure compliance with the MPPs. In this regard, ASIC advised it had decided to only duplicate government policy and guidance in its own materials to the extent necessary for business units to appropriately manage their procurement responsibilities.

2.13 As at September 2011 during audit fieldwork, DFAT's *Procurement Manual* had not been updated in over four years. As a consequence, the *Procurement Manual* was not based on the current CPGs. DFAT's procurement policy and guidance were also not readily accessible via the Intranet. Further, DFAT had not articulated the roles and responsibilities of staff involved in procurement, including for the CPU. These were contributing factors towards some shortcomings in DFAT's procurement practices discussed in Chapters 3 and 4.

2.14 Having identified the need to update its policy and guidance material, and improve their accessibility, DFAT launched its new procurement

Intranet-site and issued its revised *Procurement Manual* in November 2011, following audit fieldwork. The Intranet-site included a range of procurement guides and templates addressing procurement risks and issues, a checklist for delegates and an interactive procurement decision tree or flowchart.

2.15 As procurement activities are carried out across different areas in agencies, relevant accessible guidance is important. To assist staff and delegates, agencies could strengthen procurement practice by issuing succinct internal guidance to better address: the need and how to obtain value for money, and documentation of procurement decisions, when procuring from a panel.⁵³ As discussed further in Chapter 4, examination of a sample of procurements made under panel arrangements demonstrated considerable scope for the agencies to further encourage competition and better document key decisions and actions, including value for money considerations. There is also scope for Finance to revisit and reinforce its centrally available guidance on panel procurement in these areas. Of particular note Finance's Buying for Government guidance provides only brief advice on encouraging competition and obtaining value for money when undertaking procurement using a panel.

2.16 Most delegates interviewed by the ANAO⁵⁴ were aware of, and had access to, the agency's policy documents and guidance material for procurement. A number of delegates commented that procurement was a small component of their responsibilities, or that they conducted procurement infrequently. As a result, they may be unfamiliar with the required procurement processes. This highlighted the importance of delegates having ready access to clear and concise agency policy and guidance, as well as agency procurement specialists.

Role of central procurement units

2.17 ANAO has previously acknowledged the benefits of agencies maintaining a central procurement unit (CPU) to provide specialist advice and support when procurement responsibilities are devolved within the agency.⁵⁵

⁵³ One of DBCDE's Quick Guides related to recordkeeping.

⁵⁴ ANAO interviewed eight delegates in each of the agencies to assess if they understood their obligations and responsibilities under the FMA Act and FMA Regulations, the CPGs, and agency procurement policy and guidance.

⁵⁵ For example, in ANAO Audit Report No.11 2010–11, *Direct Source Procurement*, ANAO found greater levels of compliance with the CPGs where an agency required CPU involvement in decisions to direct source higher value procurements, pp. 121–122.

As indicated above, the importance of CPUs' advice and support is underscored by the infrequent involvement in procurement of many agency delegates and staff, and potential complexity in applying legislative, policy and agency requirements in a procurement process. CPUs are also generally well placed to identify and pursue more efficient purchasing arrangements and support procurement practices that encourage competition and enhance value for money.

2.18 The specific responsibilities given to CPUs vary according to the extent of devolution of procurement responsibilities to line areas within an agency.⁵⁶ For greater value, more complex and/or higher risk procurements, an agency may consider it necessary for the CPU to be formally involved in the procurement process.

2.19 All three of the audited agencies had a CPU. The role of the CPU generally covered the:

- provision of procurement advice and support, including advice on government and agency procurement policies;
- development and maintenance of agency procurement policy and guidance;
- development and delivery of procurement training; and
- management of the agency's contract register and reporting.

2.20 ASIC and DFAT's procurement guidelines outlined the role of the CPU with respect to different procurements. ASIC and DBCDE required CPU involvement for high value procurements and based on assessed risks. DFAT's guidance did not involve mandatory CPU involvement in any procurement processes. Table 2.2 describes CPU involvement in procurement processes for the respective agencies.

⁵⁶ CPUs' responsibilities may include: strategic procurement planning; oversight or management of procurement processes; provision of procurement advice and support; development and maintenance of procurement policy and guidance; provision of procurement training; monitoring of agency procurement activity; and management of contract data and reporting.

Table 2.2**CPU involvement in procurement processes**

Agency	CPU role
ASIC	<p>Business units undertake complex procurement in partnership with the CPU or, for complex procurements that are low in value, after receiving advice from the CPU on managing risks.</p> <p>ASIC defines a complex procurement as one where:</p> <ul style="list-style-type: none"> the estimated value of the procurement is above \$80 000 (or \$1 million or above for procurements from a panel); and regardless of value, where a risk assessment conducted using the 'Procurement Risk Assessment Tool' has directed the business unit to seek CPU advice.
DBCDE	<p>The CPU must be consulted for advice before commencing procurement:</p> <ul style="list-style-type: none"> with an estimated value of \$80 000 or more; and for all procurement rated medium or high risk.
DFAT	<p>Line areas are responsible for all procurement-related decision making and undertaking their own procurements.</p>

Source: Audited agencies' procurement policy and guidance

2.21 Given the complexity of many procurement processes, it is important that CPU staff have relevant expertise to enable them to carry out their role efficiently and effectively, and in compliance with government and agency requirements. Most CPU staff in all of the agencies had a procurement qualification or extensive procurement experience.

2.22 Interviews with a selection of delegates of the agencies indicated that the quality of CPU assistance, where sought, was good, and that delegates were aware of the need to involve their CPU in some procurement activities. Delegates reported a variety of reasons for, or circumstances when, they would seek guidance from the CPU.

2.23 DFAT had undertaken steps to change the role its CPU at the time of audit fieldwork in September 2011. DFAT's CPU staff advised they had been called upon regularly in recent years by line areas to provide broad ranging procurement advice. In developing and updating policy and guidance materials, 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. DFAT identified the need to document the respective roles and responsibilities of CPU and

non-CPU staff in procurement processes as part of transitional arrangements towards this approach.⁵⁷

Management and support arrangements for panel procurement

2.24 In addition to general procurement management and support arrangements, agencies may also establish specific arrangements to support panel procurement, particularly in cases where panel procurement is significant in terms of an agency's overall procurement activity.

2.25 ANAO considered how each of the audited agencies specifically supported panel procurement by examining:

- responsibilities for panel establishment and management, including the role of the CPU; and
- communications and procedural guidance for agency panels.

Responsibilities for panel establishment and management

2.26 The way that the audited agencies' allocated responsibilities for panel establishment between line areas and the relevant CPU varied as indicated in Table 2.2. In practice, ASIC's line areas are required to work in partnership with the CPU to establish a panel; DBCDE's line areas are advised to consult the CPU for advice when establishing a panel; and DFAT's line areas may seek advice from the CPU when establishing a panel.

2.27 ASIC had documented the responsibilities its CPU held in relation to panels. These included identifying strategic procurement opportunities, developing agency-wide panel arrangements for the procurement of key property and services, and developing supplier arrangements where this would increase value for money. A similar approach of involving the respective CPUs was not taken by DBCDE and DFAT, however, these agencies may find it beneficial if CPU staff had a role in identifying agency procurement needs (and potential panels) and helping to ensure consistency in panel procedures.

2.28 Once a panel was established, the agencies all nominated a panel manager to act as the contact point for internal enquiries about the panel.

⁵⁷ DFAT, *Strategic Plan 2010-11 to 2012-13 Procurement, Contracts Governance and Insurance*, June 2011.

DBCDE and DFAT allocated this responsibility to line areas. In ASIC, some panels were managed by line areas and some by the CPU depending on the focus of the panel. ASIC also advised its CPU was assuming a greater contract management role for panels as they are renewed.

2.29 Whether the role of panel manager is allocated centrally to a CPU or to a line area, it is important that the allocation is well understood in the agency and that the panel manager has sufficient authority to fulfil their responsibilities. In this context, suppliers consulted during the audit emphasised the mutual benefits that can be derived from strong ongoing relationships with key panel contacts in agencies, in terms of shared understanding, responsiveness and value adding work.

Communications and guidance

2.30 Communication within agencies about the availability and scope of panels can support efficiency in agency procurement. Such communication helps to avoid agency staff undertaking additional or overly complex procurement processes for property and services which may already be accessible through an existing panel. Effective internal communication approaches are also important in assisting staff to use panels efficiently and effectively, and to assist in achieving consistency with requirements.

2.31 ASIC and DBDCE promoted the use of agency panels through their procurement policy or guidance material. These two agencies also had useful Intranet-sites for panel procurement that included procedures for using agency panels, listed available panels and outlined their scope, and provided contact details for further information on each panel.

2.32 As mentioned in paragraph 2.14, during the audit DFAT revised its *Procurement Manual*, which now includes a chapter on establishing and using panels. DFAT's new procurement Intranet-site lists available panels, stipulates the number and type of quotations to be obtained for procurements from panels based on value, and provides staff with other relevant guidance on specific procurement procedures.

Procurement training

2.33 Effectively planning and managing a procurement process requires a range of skills, and an understanding of legislative, policy and agency procurement requirements. Individual procurement training needs depend on past experience and training, and the extent to which staff are provided with specialist procurement advice and support.

2.34 The ANAO considered recent procurement training offered by the three audited agencies to their delegates and staff (Table 2.3).

Table 2.3

Audited agencies' procurement training

Agency	Procurement training
ASIC	<p>In 2010, ASIC conducted procurement reform information sessions, which were available to all staff. The information sessions covered the legal and policy framework applicable to procurement, agency procurement arrangements and associated reforms.</p> <p>New ASIC staff are required to attend induction training. As part of the training, the CPU makes a short presentation which covers delegations, procurement requirements and the role of the CPU.</p> <p>ASIC's CPU provides training to business units as required, and has an online interactive training package that covers FMA Act, FMA Regulation and procurement requirements.</p>
DBCDE	<p>In mid-2010, DBCDE's CPU conducted two staff training sessions which covered procurement (no record of attendance was kept).</p> <p>DBCDE's Human Resource Management area arranged an Australian Public Service Commission contract management training course in August 2010, which was attended by a small number of Canberra staff. The training covered the legal and policy framework applying to procurement.</p>
DFAT	<p>DFAT delivers a monthly financial management training course which is available to all staff and includes a procurement component. 258 DFAT staff attended this training between July 2009 and December 2010. The training covers key elements of the CPGs, probity and scrutiny, contract reporting and the role of the CPU.</p> <p>DFAT has a procurement specialist network that meets on a monthly basis.</p> <p>DFAT publicises opportunities for staff to attend procurement and contracts training seminars that are conducted by Finance. Information regarding these sessions is promulgated via email and also included in a bulletin on DFAT's Intranet.</p>

Source: Audited agencies' training documentation and audit interviews

2.35 The extent that agency staff are involved in procurement varies from regular to infrequent depending on the position they are in and the nature of the agency's work. This poses a challenge for agencies in providing procurement training that is well-timed and suited to staff responsibilities and capabilities. DFAT had made some progress in this regard through its general financial management training, and separate establishment of a network to facilitate interaction between procurement specialists. DFAT also recorded staff attendance at its financial management training which assists to identify staff who have received training. Additionally, at ASIC, the online interactive training package provided flexibility in terms of the timing of training. Otherwise, consistent with the findings of ANAO Audit Report No.11 2010–11 *Direct Source Procurement*, there remained scope for the agencies to better

identify staff requiring procurement training and the type of training that would be most helpful. As noted in that report:

There would be benefit in agencies undertaking additional analysis of procurement training needs (particularly for delegates) to help ensure that officials involved in procurement processes are sufficiently aware of requirements and expectations, and how to satisfy them when undertaking a procurement process. This may include maintaining records of attendance at procurement training and seeking course evaluations from participants, where they are not already being captured, and analysing this information (taking account of staff involvement in procurement). Records of attendance and course evaluations can be used to identify groups of staff that are not attending training and for considering whether course availability, duration or content may be limiting their attendance. It would also involve embedding procurement training in the broader training programs of the agency.⁵⁸

2.36 Options available to agencies to improve procurement training include e-learning (already in place in ASIC)—which may be completed on an as needed basis; and development of training content to address specific problem areas, such as appropriate documentation of procurement decisions and actions, and other matters that may be consistently identified through compliance monitoring and audit. Such an approach to training is consistent with the Certificate of Compliance process, which requires agencies to implement specific education and remediation actions in response to identified non-compliance with financial management requirements.

Conclusion

2.37 The audited agencies' procurement policies and available guidance broadly addressed key legislative and policy requirements pertaining to procurement. All three audited agencies also now have in place a procurement Intranet-site which provides information on available panels and procedural guidance on their use. This is a sound approach to communicating the existence of panels and supporting efficient agency-wide procurement practices.

⁵⁸ ANAO Audit Report No. 11 2010–11 *Direct Source Procurement*, p. 65.

2.38 To assist staff and delegates, agencies could strengthen procurement practice by issuing succinct internal guidance to better address the need for, and how to, obtain value for money, and the importance of documenting procurement decisions. There is also scope for Finance to strengthen its advice on these matters in the guidance material provided for agencies.

3. Establishing and Participating in Panels

This chapter examines the audited agencies' procurement processes and decisions in relation to the establishment of a selection of panels, and whether they met the requirements of relevant FMA Regulations (including application of the CPGs). It also examines the approaches taken by the agencies to access other agencies' panels.

Introduction

3.1 Panels are usually established for, and work best, when used to address a recurring need for property or services, as they allow agencies to enter into contracts with panel members without a further tender process. The costs of establishing a panel can therefore be offset by the efficiencies of being able to order from the panel.⁵⁹

3.2 Good planning for panel establishment involves consideration of factors pertinent to the operations of the panel, such as the scope of property or services to be procured and what an appropriate number of suppliers would be. Agencies generally conduct an open tender process to select panel suppliers. In undertaking procurement to form a panel agencies should adhere to relevant FMA Regulations (including application of the CPGs). This involves evaluating supplier proposals using sound criteria and selecting the best value for money proposals.

3.3 Another option available to agencies to meet their needs for property and services is to cooperatively procure through other agencies' panels. The decision to become a participant agency in another agency's panel should be based on the value for money provided by the panel arrangement for the participant agency.

3.4 This chapter assesses the audited agencies' establishment of panels. In presenting this assessment, the chapter discusses the audited agencies':

- planning for the establishment of panels;
- conduct of procurements to establish panels;

⁵⁹ Finance, Procurement Policy and Guidance, *Buying for Government* [Internet]. Finance, 2011, available from <<http://www.finance.gov.au/procurement/procurement-policy-and-guidance/index.asp>> [accessed march 2012].

- approval and public reporting of panel arrangements; and
- approaches to becoming participants in other agencies' panels.

Planning for the establishment of panels

3.5 Procurement panels are generally established to operate for several years and may involve substantial expenditure. As a consequence, agencies should thoughtfully develop the design and operation of panels to achieve value and maximise benefits. Planning is important to meet the requirement of the CPGs to identify proposed procurement in published annual procurement plans, and also to prepare robust business cases in support of the establishment of panels. ANAO selected a sample of 13 of the audited agencies' panels to assess⁶⁰:

- coverage of the panels in the agencies' annual procurement plans; and
- panel specific planning.

Annual procurement plans

3.6 The CPGs require agencies to publish an annual procurement plan on AusTender by 1 July of each financial year. The purpose of an annual procurement plan is to draw suppliers' attention to potential procurement opportunities. The plan should contain a short strategic outlook for the agency supported by details of any planned procurement.⁶¹ This planning process is an opportunity for agencies to review their overall procurement requirements and identify opportunities to achieve better value for money through the way they approach procurement.

3.7 ANAO examined the annual procurement plans for each agency to identify whether details of the panels selected by ANAO had been included. ASIC and DFAT had included details of their panels in their relevant annual procurement plan. With the exception of one panel (Governance Services), DBCDE did not mention any of its prospective panels in the relevant agency annual procurement plan.

⁶⁰ ANAO used AusTender standing offer notice data to select the sample of panels. The 13 panels comprised four ASIC panels, five DBCDE panels and four DFAT panels.

⁶¹ Finance, CPGs, 2008, p. 20, paragraphs 7.15 and 7.16.

Panel specific planning

3.8 As the scale and risk profile of procurement increases, more formal planning assists agencies address efficiency and effectiveness requirements of the CPGs, and facilitate a better procurement outcome. Key planning considerations when establishing a panel include:

- the categories of property or services needed and the expected demand across the agency;
- the nature of the market for the property or services⁶²;
- the range of options to secure the required property or services and⁶³;
- the size and duration of the panel arrangement; and whether other agencies will be able to access the panel arrangement.

3.9 The agencies' planning requirements depended on the value of procurement and the level of risk. ASIC required a business case or equivalent documentation for all procurements. DFAT required a business case for all procurements with an estimated value above \$50 000, while DBCDE had no requirement for a business case. Additionally, ASIC required completion of a simple risk assessment for all procurements, and a more involved risk assessment for complex procurements. DBCDE's and DFAT's guidance indicated risk management should be integrated into all procurement processes. Finally, as indicated in Chapter 2, Table 2.2, ASIC required its CPU to be involved and DBCDE required its CPU to be consulted, for procurements with an estimated value above \$80 000 with a view to managing procurement risks.

3.10 Table 3.1 outlines actual planning documentation for the sample of panels established by the agencies.

⁶² This includes the size of the market, the likely suppliers and their customers, where the suppliers are located, and whether the market is undergoing change.

⁶³ For example, via contractual arrangements with a single supplier or through cooperative procurement.

Table 3.1

Planning documentation for the sample of panels established by the agencies

Agency	Comment
ASIC 4 panels	<ul style="list-style-type: none"> - Consistent with agency requirements, a business case was prepared for each panel examined. The business cases outlined the existing spend for the relevant property or services, procurement patterns, the likely total spend over the life of the panel and the purpose and benefits of the panel arrangement. - The purpose and benefits were generally reflected as some combination of: reducing expenditure on the relevant property or service by concentrating the spend with a limited number of providers; simplifying the process for dealing with external providers; and the ability to procure property or services as required in an efficient and effective manner that complies with FMA Act requirements by reducing the workload in relation to tendering to meet an ongoing need. - A risk assessment was also prepared for one of the panels examined.
DBCDE 5 panels	<ul style="list-style-type: none"> - Planning documentation was generally limited to approval to approach the market (shortly before the request for tender (RFT) was published). The approval minutes documented the type of services and in some cases that an existing panel arrangement was expiring. - In a few instances the approvals also outlined benefits relating to: ensuring compliance with the provisions of Commonwealth procurement policy and related purchasing procedures; and providing flexibility and standardised processes for purchasing the relevant services. - A risk assessment was also prepared for one of the panels examined.
DFAT 4 panels	<ul style="list-style-type: none"> - Despite agency requirements, a business case was only prepared for one panel. The business case included options for procuring the required services; and economic, qualitative and risk analysis for some of those options. This analysis drew on prior years' demand for the services and considered likely costs, risks, and compliance. - Planning documentation for two panels was limited to a note on expiration of the current panel that sought approval for an approach to market given the continuing need for a panel arrangement. - Planning documentation for the remaining panel also sought approval to approach the market, while noting the potential benefits of the panel arrangement such as keeping prices competitive, enabling DFAT to select quality suppliers in a timely fashion, and complying with DFAT procurement guidelines.

Source: ANAO analysis of agency planning documents

3.11 The agencies' planning documentation generally did not include consideration of:

- the nature of the market for the property or services;
- other procurement options, including cooperative procurement opportunities;

- the scope, duration and size of the panel; and
- administrative implications of establishing and managing the panel, including where piggybacking is allowed.

3.12 Agencies should consider the suitability of their approach when planning for panels. Given that panels generally run for three to five years in duration, planning for a panel, including a replacement panel, provides a valuable opportunity to assess procurement needs, take advantage of changing market conditions over time and the new opportunities they present to achieve value for money.

3.13 Agencies also need to carefully consider administrative arrangements and associated costs involved in allowing other agencies to utilise their panel arrangements. Subject to the design of panel management arrangements, having a large number of agencies utilise a panel can impose significant costs on the lead agency in terms of administrative support. For example, administrative costs may be incurred in developing and agreeing memoranda of understanding (MOU) with other agencies in relation to panel use, and in providing information about the panel and its suppliers in response to requests from other agencies.⁶⁴

Conduct of procurements to establish panels

3.14 Establishing a panel is a procurement and therefore needs to be undertaken in accordance with the requirements of the CPGs, including the MPPs. The agencies conducted open tender processes to form all of the panels that were included in ANAO's sample. This approach reflected the expectation that spending utilising the panels would exceed the covered procurement threshold of \$80 000. ANAO examined the following key aspects of the agencies' open tender processes:

- comprehensiveness of request documentation;

⁶⁴ Some agencies impose a charge on other agencies accessing their panel arrangement. For example, the Australian Public Service Commission's (APSC's) Australian Public Service Leadership, Learning and Development in the Australian Public Service panel operates on a cost recovery basis, imposing an access fee based on the size of agency and a transaction fee based on the value of contracted services. As at 7 February 2012, there were over 200 suppliers on the panel and 56 agencies able to access the panel. At the same date, DBCDE's Governance Services panel had 34 suppliers with 52 agencies able to access the panel, and DBCDE did not charge a fee. As a result, DBCDE incurs a cost in administering the panel, for example, in responding to a large number of requests for information about the panel and its suppliers.

- evaluation of tenders, including value for money assessments; and
- consideration of conflicts of interest as part of the tender evaluation process.

Request documentation

3.15 As referred to in paragraph 1.7, request documentation is documentation provided to potential suppliers to enable them to understand and assess the requirements of the procuring agency and to prepare appropriate and responsive submissions. Table 3.2 outlines mandatory requirements of the CPGs for request documentation for covered procurements. It also outlines other sound practices for request documentation to assist suppliers understand the proposed procurement (based on Finance's Good Procurement Practice No. 4, *Establishing and Using Panels*⁶⁵).

⁶⁵ This guidance was archived during the audit but was applicable at the time the majority of panels examined were created. Finance advised it again plans to issue some more detailed guidance on panels. Current Finance guidance is available at <http://www.finance.gov.au/procurement/index.html>.

Table 3.2**Mandatory requirements and sound practices for request documentation**

Mandatory CPG requirements	Other sound practices
<p>Request documentation must include a complete description of:</p> <ul style="list-style-type: none"> - the procurement, including the nature, scope and, where known, the quantity of the property or services to be procured and any requirements to be fulfilled, including any technical specifications, conformity certification, plans, drawings, or instructional materials; - any conditions for participation, including any financial guarantees, information and documents that potential suppliers are required to submit; - any minimum content and format requirements for tenders; - all evaluation criteria to be considered in assessing submissions; and - any other terms or conditions relevant to the evaluation of submissions. <p>Where practicable, request documentation for an open or select approach to the market must be distributed through AusTender.</p>	<p>Request documentation describes:</p> <ul style="list-style-type: none"> - the process of selecting suppliers from the panel; - how the panel will operate; - whether purchases will be made exclusively from the panel; - that there is no guarantee of work; - the duration of the panel, including any extension options; - the intended size of the panel; - whether there will be cooperative procurement with other agencies; and - a requirement for indicative or set prices or rates, including a pricing schedule or outline of the pricing format required from tenders.

Source: Finance, CPGs, 2008, pp. 34 and 35, paragraphs 8.42 and 8.44; and, Finance, Good Procurement Practice No. 4, *Establishing and Using Panels*, 2007, pp. 7–10.

3.16 The agencies prepared request documentation in the form of a request for tender (RFT) for all of the panels examined. All the request documents complied with relevant mandatory requirements of the CPGs, including publication on AusTender. With the exception of the intended size of panel, the tender request documents generally also met sound practices. The agencies' treatment of a number of these mandatory requirements and sound practices is described below.

Nature and scope of the panel

3.17 For the panels examined, all of the agencies clearly outlined the nature and scope of property or services they required. Panel requirements were usually phrased in terms of categories of services.⁶⁶ For some panels there was

⁶⁶ For example, request documentation outlined a need for categories of individuals such as business and financial analysts, accountants, lawyers, program managers, software developers, application support technicians, and people with expertise in particular fields such as telecommunications, economics and modelling and socio-economic analysis.

a 'catch all' phrase such as undertake reviews or provide services as required. As a result, the relevant agency had more flexibility to use the panel for irregular, unexpected or urgent tasks not envisaged as mainstream work under the panel. A broad panel scope can, however, potentially make it difficult for suppliers to present a pricing structure that is meaningful and accommodates such a diverse range of requirements. Better value for money may also be achieved by approaching the market, rather than using the panel, for specialised work that was not at the forefront of considerations when panel suppliers were selected.

3.18 Under the CPGs, agencies need to ensure that small and medium enterprises (SMEs) have appropriate opportunities to compete for business, and are not unfairly discriminated against by agencies' procurement processes. The Australian Government is also committed to FMA Act agencies sourcing at least 10 per cent of their purchases, by value, in aggregate across agencies, from SMEs.⁶⁷ The RFT for most of the panels made it clear that suppliers were able to tender for part of the property or services being sought. This was a useful way of providing SMEs opportunities to become panellists without the need to have expertise or capability to deliver in all areas. Within this context, suppliers consulted during the audit indicated that approaches to market which stipulate a very narrow panel scope make it difficult for niche providers to compete.

Evaluation criteria

3.19 For each of the panels examined, request documentation specified that tenders would be assessed against identified evaluation criteria. On the basis of this assessment, the procuring agency would determine which tenders represented best value for money.

3.20 The agencies' evaluation criteria were generally phrased in terms of compliance, capability, capacity, price and risk. Other evaluation criteria used included an understanding of the environment, the proposed corporate structure of the supplier and the corporate viability of the supplier to fulfil contractual obligations. Referee comments were often used to inform assessments against the evaluation criteria.

3.21 There was scope in some instances to better tailor criteria to meet specific needs of particular panels. For example, for panels used to

⁶⁷ Finance, CPGs, 2008, p. 11, paragraphs, 5.3–5.6.

expeditiously access multiple individuals for narrowly defined tasks, more specific criteria that focus on ability to quickly provide individuals who meet prequalification requirements may have been warranted. Such criteria could also be re-used when evaluating panel effectiveness.

The process of selecting suppliers from the panel and how the panel will operate

3.22 For most of the panels, the RFT outlined that the agency may seek quotes from one or more panel suppliers to procure from the panel. In some cases quotes, if required, were to be submitted in accordance with a template.

3.23 Request documentation also indicated that to purchase from the panels the agency would issue a work order to the supplier chosen for the particular work. For some panels, work orders were required to be in accordance with a specified template, whereas orders for other panels could simply be given in writing by outlining key requirements.

3.24 The use of predetermined templates to support panel operations can make arrangements simpler for both agencies and suppliers, and can also provide useful records to meet accountability requirements. However, the benefits of templates will only be derived if there is close attention by agency staff and suppliers to their proper use.

Exclusivity of the panel and no guarantee of work

3.25 Request documentation for all of the panels made it clear that the panel would be non-exclusive and the agency had the discretion to source the property or services elsewhere. This increased the flexibility available to the agencies when procuring the property or services. Request documentation also made clear that there would be no guarantee of work under each of the panels established.

Duration of the panel, including any extension options

3.26 All request documentation for the panels examined specified the panel duration and extension options. Panel duration ranged from three to five years, including extensions. The use of extension options provided a timely opportunity to reassess the efficiencies derived from the panel arrangement in light of potential changes in the marketplace, and the likelihood of achieving better value for money by reapproaching the market earlier.

3.27 The agencies did not explicitly use market analysis to inform panel duration. Nevertheless, the majority of the panels were for property or services that had been subject to a previous panel arrangement. As a result, the

agencies would have had some knowledge of the market, and the appropriateness of panel duration for the prior panels.

Cooperative procurement with other agencies

3.28 For seven of the 13 panels established by the agencies, request documentation stated that piggybacking would be allowed, either across agencies, within the relevant portfolio or with a particular agency.⁶⁸ For three of DBCDE's panels the request documentation advised prospective suppliers 'when preparing tenders price their tenders on the basis that in future they could potentially be providing services to multiple agencies'.

Pricing details

3.29 For all of the panels in the audit sample, request documentation set out requirements for provision of pricing details in tenders. Some RFTs sought broad pricing details, while for others requested information was specific and often very detailed.⁶⁹

3.30 A potential benefit of specific and detailed pricing structures is that they can be used to differentiate between potential suppliers when choosing a supplier to conduct work under the panel. However, as outlined in paragraph 4.43, these types of pricing structures were not always applied in practice, with suppliers' actual quotes for completion of a piece of work often only being provided as an overall total. As a result, it was difficult to ascertain for procurement from some panels if prices quoted were consistent with the DoSO.

Summary—request documentation

3.31 In addressing mandatory and better practices through request documentation, the agencies appropriately signalled potential suppliers about the procurements. When developing request documentation for future panels, the agencies could give further consideration to the breadth of scope of the panel, and the rationale for panel duration, based on a sound understanding of procurement needs and the nature of the market.

⁶⁸ In another instance, DFAT issued an addendum to the RFT advising that Austrade was clustering with DFAT and the two agencies were jointly approaching the market.

⁶⁹ The design of pricing requirements generally reflected the nature of services to be provided. For example: pricing for a legal panel required suppliers to provide prices in the form of daily rates for particular classifications of people (based on qualifications and experience); and pricing for a publications panel required details such as printing and editing costs.

Evaluating tenders and assessing value for money

3.32 The tender evaluation process is central to selection of the best value for money proposals when establishing a panel. To meet accountability and transparency requirements of the CPGs, it is important that agencies select the best value for money proposals, and that they document the reasons and the process by which they arrived at their decision.

3.33 The tender evaluation process was largely consistent across the agencies and generally involved:

- preparation of a tender evaluation plan;
- an assessment of value for money provided by suppliers' proposals; and
- preparation of an evaluation report outlining the evaluation process and results, and making recommendations to the delegate on potential suppliers.

3.34 A tender evaluation plan can set out for the evaluation team a systematic approach to analysing and comparing the information provided by suppliers, and assist in ensuring the panel does not skip important steps in the evaluation process. A tender evaluation plan is particularly useful for large or complex procurements.

3.35 With the exception of one DFAT panel, the agencies were able to provide copies of evaluation plans, although some were draft, unsigned or incomplete. The plans examined generally covered background to the procurement, tender handling requirements, composition of the evaluation team, the proposed evaluation process, methodology and criteria.

3.36 An evaluation report for a tender process is an important accountability and transparency mechanism. An evaluation report provides assurance to the delegate on the evaluation process undertaken, providing a basis for the delegate to make an informed procurement decision.

3.37 Following evaluation of tenders, each of the agencies provided generally sound evaluation reports to the delegate outlining the evaluation process and results. ANAO used these reports to examine the agencies' approach to assessing value for money for suppliers' proposals.

3.38 As mentioned in paragraph 1.11, the CPGs state that a value for money assessment involves a comparative analysis of all relevant costs and benefits throughout the whole procurement cycle (whole-of-life costing). This includes

consideration of factors such as: fitness for purpose; the performance history of each prospective supplier; the relative risk of each proposal; the flexibility to adapt to possible change over the lifecycle of the property or service; financial considerations; and the evaluation of contract options.⁷⁰

3.39 With the exception of one DFAT panel included in ANAO's sample, the agencies evidenced a soundly based value for money assessment indicating that tenders had been assessed against the criteria outlined in the request documentation. DFAT was unable to provide a signed version of its evaluation report for its Australian Passport Office Staffing panel. An unsigned version of the report recommended inviting 13 suppliers to enter into DoSOs. However, one of the 13 suppliers recommended had been identified as failing to meet the mandatory requirements for participation in the tender process and had been excluded from further participation in the process. ANAO noted this supplier was not listed as a supplier on AusTender, and DFAT advised no DoSO had been entered into with the supplier. Assessment details for another potential supplier were omitted from the report yet this supplier is listed as a panellist on AusTender. The DoSO with this supplier was not reported on AusTender until approximately one year after other DoSOs had been reported.

Consideration of conflicts of interest

3.40 Another important aspect of tender evaluation and selection of suppliers is management of conflicts of interest. The CPGs require agencies to ensure that officials involved in procurement, particularly those dealing directly with suppliers and potential suppliers, recognise and deal with any conflicts of interest, including perceived conflicts of interest.⁷¹

3.41 Table 3.3 outlines each agency's approach to dealing with staff conflicts of interest, focusing on procurement. The table also outlines documented conflict of interest considerations for the sample of panels.

⁷⁰ Finance, CPGs, 2008, p. 10, paragraph 4.1 and 4.4.

⁷¹ Finance, CPGs, 2008, p. 16, paragraph 6.19.

Table 3.3**Agencies' approaches to conflicts of interest in procurement**

Agency	Approach to conflicts of interest	Considerations for the panels
ASIC	<p>ASIC required staff to disclose their interests with respect to their day-to-day activities on a regular basis.</p> <p>More specifically in relation to procurement, ASIC's tender evaluation plan template outlines that each member of a tender evaluation team is required to sign a declaration that no conflict of interest arises with respect to the procurement.</p>	<p>ASIC evidenced consideration of potential conflicts of interest for each of the four panels examined—this included conflict of interest declarations signed by some or all members of the tender evaluation team.</p>
DBCDE	<p>DBCDE required that staff disclose, and take steps to avoid, any conflict of interest in connection with their APS employment. When officers possess an interest which conflicts with their public duty they should disclose that interest in writing to their immediate supervisor.</p> <p>Conflict of interest considerations were not specifically addressed in DBCDE's panel workflow document, Intranet guidelines or included in DBCDE's non-mandatory procurement business case template.</p>	<p>DBCDE did not evidence⁷² consideration of conflicts of interest for the panels examined, although did ask all staff to be diligent when dealing with potential suppliers for the Governance Services panel during the procurement process.</p> <p>This result reflected the approach adopted by DBCDE's policy and guidance to not specifically require declarations as part of procurement processes.</p>
DFAT	<p>DFAT's Procurement Manual states that staff involved in procurement should recognise and deal with any conflicts of interests, and gives strategies to address this issue. One of the strategies is to obtain conflict of interest declarations for staff involved in procurement processes.</p>	<p>For two of DFAT's panels the tender evaluation report indicated evaluation team members were briefed on the need to advise of conflicts on interest. For one of these panels ANAO was provided with signed conflict of interest declarations for two of the three evaluation team members.</p> <p>For a third panel, staff involved in the RFT were required to declare any existing or potential conflicts of interest.</p> <p>There was no evidence of conflict of interest considerations for the remaining panel.</p>

Source: ANAO analysis of agency documents

⁷² For one panel (Research Services), approval documentation indicated members of the evaluation team had signed a statement indicating they had no conflicts of interest. However, these statements were not provided to ANAO.

3.42 There is merit in agencies considering whether their approaches for dealing with staff conflicts of interest adequately mitigate associated risks. Agencies may decide to require declarations of staff conflicts of interest, including perceived conflicts, for certain high value, complex or high risk procurements. This would strengthen management of ethical matters and associated reputational risks.

Approval and public reporting of panel arrangements

3.43 Agencies' approval of panel arrangements following evaluation of supplier proposals should accord with legislative requirements and be transparently reported. For the sample of panels, ANAO assessed:

- whether approval was given in accordance with requirements of the FMA Regulations; and
- reporting of standing offer arrangements on AusTender.

Approval of a spending proposal prior to entering standing offers

3.44 Once agreement was reached on suppliers for each of the panels, the agencies sought to enter into deeds of standing offers (DoSOs) with them, for the provision of the panel property or services in accordance with agreed terms and conditions. Under the FMA Regulations a standing offer is an arrangement⁷³, and a person must not enter into an arrangement unless a spending proposal has been approved under FMA Regulation 9 and, if required, agreed under FMA Regulation 10⁷⁴:

A standing offer is an arrangement for the purposes of Finance Regulation 8. Therefore, a Deed of Standing Offer must be approved under Regulation 9 before it is entered into.⁷⁵

⁷³ Part 1 section 3 of the FMA Regulations states that an arrangement includes 'a contract or agreement under which public money is payable or may become payable, other than (a) an arrangement for: (i) the engagement of an employee; or (ii) the appointment of a person to a statutory office; or (iii) the acquisition of particular property or services under a general arrangement with the supplier of those property or services, for the purposes of providing a statutory or employment entitlement; or (b) an international agreement governed by international law. Available at <http://www.comlaw.gov.au/Details/F2012C00016/Html/Text#_Toc312071623> [accessed March 2012].

⁷⁴ FMA Regulation 8 *Entering into an arrangement*.

⁷⁵ Finance, Finance Circular 2011/01 *Commitments to spend public money (FMA Regulations 7–12)*, p.50. [Internet]. Finance, 2011, available from <<http://www.finance.gov.au/publications/finance-circulars/2011/01.html>> [accessed March 2012]. ANAO notes that Finance Circular 2009/05 also stated that DoSOs must be approved under FMA Regulation 9 before being entered into.

3.45 FMA Regulation 9 requires that:

An approver must not approve a spending proposal unless the approver is satisfied, after making reasonable inquiries, that giving effect to the spending proposal would be a proper use of Commonwealth resources.⁷⁶

3.46 For each of the 13 agency panels, ANAO sought evidence of FMA Regulation 9 approval. FMA Regulation 9 approvals were provided at various stages of the procurement process, including during planning, at the time of release of the RFT and following evaluation of tenders.⁷⁷ For the 13 panels examined:

- seven had approval that specifically referred to FMA Regulation 9;
- one had an approval that referred to Section 44 of the FMA Act⁷⁸;
- three had other evidence of approval which did not meet Regulation 9 requirements (this included approval of the list of preferred suppliers, approval to negotiate with the preferred suppliers, or approval to enter into DoSOs with the preferred suppliers; and
- DFAT was unable to provide an approval for two of its four panels.

3.47 There was some confusion across the agencies as to whether FMA Regulation 9 approval is required before entering DoSOs even though this requirement is clearly indicated by Finance guidance. In some cases, agency staff considered that entering into a DoSO did not require approval because the arrangement did not commit the agency to spending public money. That is, the DoSO did not contain any spending commitment, for example, any minimum spend clauses or early termination fees or other

⁷⁶ Under the FMA Act section 44(3), proper use of Commonwealth resources means efficient, effective, economical and ethical use that is not inconsistent with the policies of the Commonwealth.

⁷⁷ Where approval is given prior to the finalisation of contract negotiations, delegates may wish to give conditional approval available under FMA Regulation 9. For example, approval could be obtained on the basis of a draft DoSO. In such instances, there is an expectation the final arrangements will be entered into consistent with the terms of that approval. Should negotiations with individual suppliers result in significant changes to the terms and conditions, a new approval will be required. Delegates should clearly document when approval is subject to conditions.

⁷⁸ Approval was sought under Section 44 of the FMA Act. The tests to satisfy FMA Regulation 9 and Section 44 of the FMA Act are similar. Section 44 of the FMA Act states that: '(1) A Chief Executive must manage the affairs of the Agency in a way that promotes proper use of the Commonwealth resources for which the Chief Executive is responsible. Proper use means efficient, effective, economical and ethical use that is not inconsistent with the policies of the Commonwealth'. FMA Regulation 9 requires the making of reasonable inquiries to be satisfied that giving effect to the spending proposal will be proper use. Given the tests are similar the approval under Section 44 substantively met the requirements of Regulation 9 in this circumstance.

guarantees. There were also instances of delegates being asked to approve the agency entering into DoSOs without being provided a copy of the relevant deed, and therefore the actual terms and conditions that they approved.

3.48 Finance guidance emphasises that irrespective of any spending commitments, it is a requirement to obtain Regulation 9 approval prior to entering into an arrangement with suppliers under which public money is or may become payable. This is because there is usually no opportunity for future decision makers to alter the terms and conditions relating to individual purchases made under the standing offer arrangement, once the DoSO has been entered into.⁷⁹ This restriction applies for the whole life of the panel which is usually for several years.

3.49 Given the level on non-compliance, ANAO considers there would be merit in Finance reinforcing and further clarifying the requirement for agencies to approve a spending proposal prior to entering into a DoSO. This could include through guidance, training and/or presentations at various procurement and other fora.

3.50 Additionally, agencies would benefit from reviewing their own guidance and practices to assist staff better understand and implement the requirement correctly. For example, agencies could develop a template for approval of spending proposals in relation to standing offer arrangements.

3.51 As part of any review, agencies could consider the most appropriate stage of the business process for seeking approval under FMA Regulation 9. Approval of a spending proposal can be done at any stage prior to entering the DoSO. For example, agencies may obtain FMA Regulation 9 approval in the planning phase of the procurement, prior to the RFT being issued, or at the completion of the evaluation stage. Obtaining Regulation 9 approval at the commencement of the procurement process will often result in a very broad approval addressing issues such as the scope and purpose of the standing offer arrangement. Obtaining approval later in the process, for example, after the

⁷⁹ In this context, FMA Regulation 10 *Arrangements beyond available appropriation* agreement is generally not necessary for a DoSO, where it does not commit the agency to expenditure and the agency has full control of the orders placed under the deed. Regulation 10 agreement may however be required before approving a DoSO that contains spending commitments, such as contingent liabilities or minimum spend clauses for which there is no appropriation. Regulation 10A may also be relevant if the DoSO contains contingent liabilities. See Finance, Finance Circular 2011/01 *Commitments to spend public money (FMA Regulations 7–12* [Internet]. Finance, available from <<http://www.finance.gov.au/publications/finance-circulars/2011/01.html>> [accessed 2012]. ANAO focused its audit testing of FMA Regulation 9 approvals.

development of a draft DoSO or after the evaluation stage, allows the delegate to consider the specific terms and conditions that will apply under the standing offer arrangement. This enables the delegate to make a more informed decision as to whether the proposed arrangement would be a proper use of Commonwealth resources.

3.52 In this context, the agencies also expressed confusion regarding Regulation 9 approval requirements relating to extensions of DoSOs. The need to obtain FMA Regulation 9 approval for extensions will depend upon the nature of the original approval. For example, if there was no financial amount included when Regulation 9 approval was originally given for the terms and conditions of the panel, and it was clear that the extension options were included in those terms and conditions, there may be no requirement to obtain further Regulation 9 approval.⁸⁰ Alternatively, if the original approval included an estimate for the spending for the initial contract term only, then a new Regulation 9 approval would be required to cover additional expenditure anticipated over the life of the extension period.

Reporting of Standing Offer Notices on AusTender

3.53 Standing offers are required to be reported on AusTender within 42 calendar days of entering into the arrangement. Extensions to the standing offer period must also be published on AusTender as an amendment.⁸¹

3.54 Table 3.4 shows that for eight of the 13 agency panels standing offers were reported on AusTender within the required timeframe.

⁸⁰ Finance indicates that, where known or able to be accurately estimated, it is better practice to include a financial amount when obtaining FMA Regulation 9 approval.

⁸¹ Agencies must report standing offer arrangements and amendments to these arrangements which meet the contract reporting criteria. For FMA agencies, the threshold, other than for construction, is \$10 000.

Table 3.4**Number of days between commencement of the standing offer period and publication on AusTender**

Agency	Panel	Days
ASIC	Learning and Development Technical Skills	61
	IT Contractors	158
	Legal Services	14
	Accounting Services	13
DBCDE	Graphic Design and Related Services	15
	Contact Centre Services	20
	Governance Services	21
	Research Services	26
	Non-ongoing and Temporary Recruitment and Related Recruitment Services	19
DFAT	Publication Services	31
	Contracted Personnel	97
	Legal Services	*
	Australian Passport Office Staffing	*

Source: ANAO analysis of AusTender data

* On 3 September 2007, the Gazette Publishing System (GaPS) was replaced as a contract reporting tool by AusTender. The new AusTender reporting system automatically brought over current contracts but not standing offers. Standing offers were all required to be re-entered manually into AusTender. The commencement dates for DFAT's panels were 1 June 2006 (Legal Services) and 1 April 2006 (Australian Passport Office Staffing). Details of these standing offers are shown as being reported on AusTender 698 and 752 days respectively after the commencement of the standing offer. However, due to the archiving of GaPS records ANAO was unable to ascertain when these two standing offers were published on GaPS.

3.55 DBCDE's reporting of standing offer arrangements on AusTender was timely with all five panels reported within 42 days. ASIC advised that delays in reporting on AusTender were due to protracted negotiations on some DoSOs that delayed the formal execution of those DoSOs. ASIC waited until all DoSOs under a standing offer had been executed before publishing the standing offer on AusTender. DFAT reported one of two relevant panels within the required timeframe.

3.56 As there can be considerable time lapses in finalising DoSOs with all the preferred suppliers, agencies need to ensure that they report details of the standing offer arrangement on AusTender within 42 days of entering the first DoSO. Additional suppliers should be reflected on AusTender when other DoSOs are finalised.

Participating in other agencies' panels

3.57 Among the range of options available to agencies to meet procurement needs is the use of other agencies' panels through cooperative procurement arrangements.⁸² An agency wishing to access another agency's panel needs to make their own assessment as to whether the property or services available under the panel, and the terms and conditions in place, sufficiently meet their needs and provide for a value for money outcome. Such an assessment should be informed by the agency's consideration of whether:

- it is confident that the lead agency's process was in accordance with the CPGs;
- the DoSO allows for potential access by other agencies;
- the agency's needs (particularly any specific requirements such as security requirements or necessity to provide services in particular geographical locations) match those of the existing arrangement;
- the agency's requirements are likely to exceed the scope of the DoSO;
- the price is competitive, and together with the terms and conditions, represents value for money; and
- the market has changed substantially since the existing arrangement was put in place.⁸³

3.58 In particular, it is important for agencies to be cognisant that when suppliers were selected for inclusion on a panel, it was because the establishing agency had determined those suppliers to offer the best value for money, on the basis of an assessment against specific evaluation criteria. In some cases agency evaluation criteria include a component related to the value-add a supplier can provide to the agency, with suppliers tailoring their proposals accordingly. In such cases a supplier may represent value for money for the establishing agency, but not for others.

⁸² A standing offer arrangement can have one or more participating agencies. The agency that establishes and manages the standing offer arrangement is known as the lead agency. Other agencies that access the standing offer arrangement are known as participant agencies.

⁸³ Finance, Good Procurement Practice No. 3, *Cooperative Agency Procurement* [Internet], Finance, 2007, p. 5. This guidance was archived during the audit but was applicable at the time the majority of panels examined were created. Current Finance guidance is available at <http://www.finance.gov.au/procurement/index.html>.

3.59 ANAO selected a sample of three panels⁸⁴ piggybacked by either DBCDE or DFAT, and considered their approaches to accessing the panel, including value for money assessments. DBCDE did not document reasons for accessing its two 'piggybacked' panels in the ANAO sample, although, for one of the panels DBCDE did have a signed Memorandum of Understanding (MOU) with the lead agency.⁸⁵ The MOU set out the services available under the panel, the terms and conditions and access arrangements.

3.60 For the panel accessed by DFAT, the department provided email evidence outlining the desire to take advantage of a Department of Defence (Defence) standing offer⁸⁶, pending a review of clauses deemed essential or desirable by DFAT that were not included in the Defence DoSO. DFAT compared the Defence DoSO clauses with the contract clauses in its existing contract that was due to expire. DFAT also provided documentation comparing some suppliers' rates on DFAT's expiring contract with their rates under the Defence panel. Further, DFAT had a signed MOU in place with Defence concerning the use of the standing offer. The MOU included details of the responsibilities of both Defence and Australian Government agencies accessing the standing offer. It also provided a guide to using the standing offer and details of the suppliers, core outcomes and skill sets available.

3.61 DBCDE and DFAT did not document internal agreement at an appropriately senior level to access any of the piggybacked panels, on the basis of a value for money assessment. As the use of piggybacking is increasing, agencies need to establish appropriate processes for accessing other agencies' panels, which involve a value for money assessment.

Conclusion

3.62 The agencies conducted open tender processes to form all the panels that were included in ANAO's sample. As part of the tenders, the agencies developed sound request documentation which complied with mandatory requirements of the CPGs, including publication on AusTender. With the exception of one panel included in the audit sample the agencies evidenced a

⁸⁴ ANAO used AusTender standing offer notice and contract notice data to select the sample of panels. The three panels comprised two panels piggybacked by DBCDE and one panel piggybacked by DFAT.

⁸⁵ For APSC's Australian Public Service Leadership, Learning and Development in the Australian Public Service panel.

⁸⁶ Defence's Provision of Library and Information Services Contract Personnel panel.

soundly based value for money assessment to select suppliers for each of the panels.

3.63 In establishing panels, there are several areas which warrant further consideration by the audited agencies. The agencies could strengthen planning for panel establishment, including in light of the nature of the market and other procurement options. The agencies' approach to panel establishment would also be improved by considering the administrative implications of allowing piggybacking by other agencies when forming a panel.

3.64 When undertaking cooperative procurement (piggybacking) an agency needs to make its own assessment as to whether the property or services available under the panel, and the terms and conditions in place, sufficiently meet its needs and provide for a value for money outcome. In this respect, for three panels piggybacked by either DBCDE or DFAT, there was scope to adopt more robust approaches to assessing the value for money provided prior to becoming a participant agency.

4. Procurement from Panels

This chapter examines the audited agencies' processes and decisions when procuring from panels, and whether they met the requirements of relevant FMA Regulations (including application of the CPGs).

Introduction

4.1 A key advantage of establishing a panel of suppliers is that the standing offer arrangements allow agencies to enter into contracts with the suppliers for the stipulated property and services, without the need for a new or additional approach to the market. Notwithstanding this flexibility, the procurement of property or services through a panel should still be undertaken in accordance with the requirements of FMA Regulations, including the principles defined in Division 1 of the CPGs. Additionally, a panel cannot be used to purchase property or services that fall outside the scope of the arrangement.⁸⁷

4.2 Of particular relevance, the procurement principles of the CPGs require that for each procurement from a panel:

- agencies apply the core principle of value for money in procurement decision-making;
- the procurement is an efficient, effective and ethical use of Commonwealth resources; and
- the procurement process is undertaken in an accountable and transparent way.

4.3 In order to demonstrate legislative and policy requirements have been met when procuring from a panel, agencies need to maintain sufficient documentation to provide an understanding of the reasons for the procurement, the process that was followed and all relevant decisions, including approvals and authorisations, and the basis of these decisions.⁸⁸

⁸⁷ Finance, *Buying for the Australian Government* [Internet]. Finance, available at <<http://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/procurement-practice/panel-and-mul/practice.html>> [accessed March 2012].

⁸⁸ Finance, CPGs, 2008, p. 18, paragraph 7.9.

4.4 In this chapter the ANAO assesses the audited agencies' procurement from panels. In presenting this assessment, the chapter discusses application of legislative and policy requirements for a sample of procurements using panels. Where relevant, the chapter also considers agency-specific procedures for procurements using panels, and whether these procedures have been applied in practice.

Application of legislative and policy requirements

4.5 To assess the audited agencies' procurement from panels, ANAO first selected a sample of the agencies' procurements from established panels (from those panels examined in Chapter 3). ANAO then applied a series of tests for each of the procurements using procurement documentation supplied by the agencies. The tests examined:

- consideration of efficiency and effectiveness through procurement planning;
- encouragement of competition through quotation practices;
- application of the core procurement principle of value for money;
- application of the FMA Regulations in procurement approval;
- consistency of official orders under panels with the relevant DoSO; and
- the timeliness of contract reporting.

Sample of procurements from panels

4.6 The CPGs require agencies to report on AusTender all Commonwealth contracts which meet the contract reporting criteria. Under the criteria, FMA Act agencies are required to publish details of all of their contracts valued at or above \$10 000. This includes all procurements using panels which meet the reporting threshold.

4.7 ANAO selected a sample of 139 contracts⁸⁹ (41 from ASIC, 42 from DBCDE and 56 from DFAT) using contract notice data published on AusTender with a contract commencement date between July 2008 and September 2010. The sample was selected from contracts that were reported as

⁸⁹ ANAO initially selected a sample of 180 contracts (60 from each agency) for examination. However, approximately 23 per cent of the audit sample was made up of reporting errors and anomalies. This included incorrect reporting of contract and purchase order variations as separate contracts; duplication of contract entries; and reporting of contracts against the wrong panel.

having being formed under the panels examined in Chapter 3. Eighty-one of the 139 procurements (58 per cent) were valued at in excess of \$100 000.

Consideration of efficiency and effectiveness through procurement planning

4.8 The CPGs establish efficiency and effectiveness as procurement principles that apply to all procurements. Efficiency in procurement includes the selection of a procurement process that is the most appropriate in the circumstances. Effectiveness in procurement can be achieved by ensuring that the property or service being sought will make the maximum possible contribution to the relevant outcome. Procurement planning is fundamental to achieving efficiency and effectiveness requirements.

4.9 In the case of procurement from panels, much of the formal planning for acquisition of the property or services occurs as part of the open tender process used to establish the panel. As one of the aims of establishing a panel is to make the process by which suppliers are engaged more efficient, development of lengthy planning documentation subsequent to the formation of the panel may be inconsistent with this aim. Simple procurements under a panel would not generally require detailed planning. However, as the scale and risk profile of the procurement increases more formal procurement planning may assist agency staff achieve a better procurement outcome.

4.10 Key planning considerations when procuring from a panel include identifying the procurement need, ensuring the panel can meet the need, and determining the process to be used to choose a particular supplier from the panel, including whether to seek multiple quotes. The estimated value of the procurement, potential risks and any agency procedural requirements should shape the approach taken to select a supplier.

4.11 ASIC and DBCDE required documentation of the procurement need and completion of a risk assessment when planning to procure from a panel. In practice, for many procurements in the sample these requirements were not met at the planning stage. For DFAT there were no specific planning requirements for procurement from panels.

4.12 ANAO examined planning documentation for the 81 procurements in the sample in excess of \$100 000. ASIC had planning documentation which clearly articulated the purchasing requirement and a rationale for using the panel for around three-quarters of its higher value procurements. For DBCDE and DFAT, there was comparable planning documentation for less than half of their higher value procurements.

4.13 For the majority of sampled high value procurements, agencies did, however, clearly document the procurement need and process when approaching the delegate to approve the procurement. For the sample of procurements valued in excess of \$100 000, there was documentation of the procurement need and process at this latter stage in 83 per cent of cases in ASIC, 91 per cent in DBCDE and 73 per cent in DFAT.

4.14 In this context, Finance guidance advises officials to 'ensure the delegate is aware of the intended approach to market and, depending on the nature, complexity and risk of the procurement, is involved in the planning stages of the procurement'.⁹⁰ Adoption of this advice by staff involved in procurement would assist delegates to suitably influence the manner in which suppliers are approached for work under a panel.

Encouraging competition

4.15 Finance guidance advises agencies that one of the ways to enhance value for money is using competitive procurement processes. Finance recently provided additional guidance to agencies on encouraging competition when using panels:

Always seeking a single quote for a panel may not represent value for money. Seeking more than one quote or allowing for the quoting of firm prices for work segments can allow for competitive tension, and should be allowed under the relevant panel arrangement.⁹¹

4.16 In many instances when procuring from panels, particularly for low value and low risk procurement, selecting a supplier may simply involve considering factors such as panel suppliers' performance history, specified personnel, availability to do the work in the required timeframe and pricing. This may, for example, involve consideration of information maintained by the agency on the suppliers, examination of DoSOs for the panel, and informal discussions with previous panel users and potential suppliers. The best value for money option could then be pursued.

4.17 As the scale and risk profile of procurement increases, a more formal process for seeking refined offers or quotes from selected panel suppliers to

⁹⁰ Finance, *Buying for the Australian Government* [Internet]. Finance, available from <<http://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/procurement-practice/panel-and-mul/practice.html>> [accessed March 2012].

⁹¹ Ibid.

determine the best value for money option generally becomes prudent. To this end, an agency's operational guidelines for procurement from panels may provide information on thresholds for seeking refined offers or quotes.

4.18 Of the 16 panels examined by ANAO, only two specified the need to seek one or more quotes from the panellists under the relevant DoSOs. These were two of the three panels 'piggybacked' by the audited agencies. As indicated in paragraph 3.22, for most of the panels established by the agencies, request documentation outlined that the agency may seek quotes from one or more panel suppliers to procure from the panel, but did not mandate quotes or relate the number of quotes to the scale or risk profile of procurement.

4.19 Different arrangements apply to engaging a legal services provider from a panel. Under the Commonwealth's Legal Services Directions 2005:

A Commonwealth agency may seek a quote from a legal services provider that is a party to a Deed of Standing Offer only if the agency considers that:

- (a) the value of the services to be provided is likely to exceed \$80 000; or
- (b) the expertise of the panel should be tested for a new area of work.⁹²

4.20 ANAO excluded sample procurements affected by these requirements when assessing the agencies' quotation practices. Table 4.1 indicates the extent to which agencies sought quotations when procuring from the panels examined by ANAO.

⁹² Attorney-General's Department (AGD), *Legal Services Directions*, Appendix F, paragraph 5. [Internet]. AGD, available from <<http://www.comlaw.gov.au/Details/F2011C00098>> [accessed March 2012]. Additionally, the Directions require FMA Act agencies to use government providers of legal services for certain legal work. The Directions are binding rules issued by the Attorney-General about the performance of legal work for the Commonwealth. The Chief Executive of an FMA Act agency is responsible for ensuring that their agency adopts appropriate management strategies and practices so as to achieve compliance with the Directions. The Attorney-General maintains standard documentation for use by all Commonwealth agencies when approaching the market for legal services. Deed of standing offer guidance for the provision of legal services is available on the Attorney-General's website at <http://www.ag.gov.au/LegalservicestoGovernment/Pages/CommonFormTenderPackage.aspx> [accessed March 2012].

Table 4.1**Number of quotes sought for the audit sample of procurements from panels⁹³**

Agency	ASIC	DBCDE	DFAT
Total panel procurements examined	38	42	53
Percentage where no quotes sought	32%	28%	51%
Percentage where one quote sought	42%	43%	15%
Percentage where more than one quote sought	26%	29%	34%
Percentage where more than one quote sought for procurements over \$100 000	33%	64%	34%

Source: ANAO analysis of agency procurement documentation

4.21 For around two-thirds of the audit sample of procurements in each agency, the agency either did not seek, or sought only one quote, when procuring property or services from the panels. Of particular note, ASIC and DFAT only sought multiple quotes for around one-third of procurements valued in excess of \$100 000. Where the agencies did seek multiple quotations, procurement documentation generally demonstrated a more comprehensive assessment of value for money.

4.22 ANAO recognises there are some standing offer arrangements where the property or services are clearly defined at a set rate and there may be less scope to alter prices. Nonetheless, having regard to the types of property and services provided under the panels, there is considerable scope for the agencies to employ more competitive arrangements through quotation practices when procuring from panels, particularly for higher value procurements. In this context, Finance advised ANAO that where prices are considered maximum rates agencies are encouraged to seek to improve upon these rates where possible when procuring property or services from panels.

4.23 There is merit in agencies reflecting on appropriate quotation practices when designing operational requirements for panels. Any operational requirements should take into account the type of property or services, pricing structures and the scale and risk profile of procurement.⁹⁴

⁹³ As indicated above, the sample number has been adjusted in order to not misrepresent results where quotations were not sought in accordance with the *Legal Services Directions 2005*.

⁹⁴ As previously mentioned in paragraph 2.32, during the audit DFAT issued new guidance which stipulates the number and types of quotes to be obtained for procurements from panels based on value.

Value for money

4.24 Procurement from panels involves a two staged approach to value for money assessment. As discussed in Chapter 3, value for money was a primary consideration in evaluating tenders in order to select panel suppliers. Successful suppliers' tender proposals were assessed as representing value for money with respect to the broad categories of property or services required under the panel. Secondly, a purchase made under a panel arrangement is a procurement activity subject to the procurement policy framework and accordingly must in itself, achieve value for money.⁹⁵

4.25 ANAO assessed whether the agencies sufficiently documented value for money considerations as part of the procurement process for the 139 procurements reviewed (Table 4.2). Specifically, ANAO sought procurement documentation showing consideration of factors such as supplier/s: fitness for purpose; performance history and/or experience; and pricing.

Table 4.2

Documented value for money considerations for procurements from panels

Agency	ASIC			DBCDE			DFAT		
Value range \$ '000	<50	50 to 100	>100	<50	50 to 100	>100	<50	50 to 100	>100
Total number of panel procurements reviewed by value	5	6	30	11	20	11	6	10	40
Percentage where documentation showed sound consideration of value for money	20%	0%	77%	36%	20%	64%	50%	40%	23%

Source: ANAO analysis of agency procurement documentation

4.26 In combination, the core procurement principle of value for money and the documentation requirements of the CPGs highlight that agencies should document how a procurement made under a panel arrangement achieves value for money, by clearly outlining the reasons for selecting the particular

⁹⁵ Finance, Good Procurement Practice No.4 *Establishing and Using Panels* [Internet], Finance, 2007. This guidance was archived during the audit but was applicable at the time the majority of panels examined were created. Current Finance guidance is available at <http://www.finance.gov.au/procurement/index.html>.

panel supplier. Such documentation need not be onerous, and could briefly address factors such as the supplier's fitness for purpose (for example, they may have necessary specialist expertise); their performance history (for example, based on the experience of previous panel users); their availability to complete the services in the required timeframe; and their pricing relative to other panel suppliers. In this context, panel managers play an important role when capturing, retaining and making available to panel users key information on panel suppliers, such as on their level of performance for previous work under the panel arrangement.

4.27 For the sample of procurements from panels, ASIC, DBCDE and DFAT did not sufficiently document how individual purchases represented value for money, for 41 per cent, 64 per cent and 71 per cent of procurements, respectively. Issues included documentation not adequately outlining why the particular supplier was selected, demonstrating consideration of the supplier's experience or performance history, or providing details of any comparative analysis of suppliers. Within this context, the Joint Committee of Public Accounts and Audit recently reinforced the need to document value for money considerations for individual procurements.⁹⁶

Recommendation No.1

4.28 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

ASIC

4.29 Agreed, ASIC will provide further guidance to staff.

DBCDE

4.30 The Department of Broadband, Communications and the Digital Economy agrees with this recommendation. Guidance material will be

⁹⁶ Joint Committee of Public Accounts and Audit, *Report 423: Review of Auditor-General's Reports Nos 39 2009-10 to 15 2010-11*, Chapter 4, paragraph 4.99, which stated in relation to documenting value for money for individual procurements: *'the Committee considers that undocumented processes should be viewed with high levels of suspicion. In these circumstances, the Committee is of the opinion that the default assumption should be that 'if it's not documented, it's not done', hence value for money is unlikely to have been achieved'*.

updated to reflect this recommendation and issued in conjunction with the changes required following the introduction of the Commonwealth Procurement Rules.

DFAT

4.31 Agree. DFAT's financial management guidance and training programs have been expanded to better address this.

Finance

4.32 Supported. The Department of Finance and Deregulation (Finance) supports agencies appropriately documenting, commensurate with the size, scope and risk of the procurement, how the procurement represents value for money, including when selecting a supplier from a panel. Finance will continue to raise awareness of the importance of documenting how procurements represent value for money through the various procurement forums Finance hosts for agencies.

Application of the FMA Regulations in procurement approval

4.33 As noted in paragraph 3.45, a delegate must not approve a spending proposal unless the delegate is satisfied, after making reasonable inquiries, that giving effect to the spending proposal would be a proper use of Commonwealth resources. In the case of standing offer arrangements, a spending proposal is required to be approved prior to entering into the DoSO and for each procurement made under the arrangement.⁹⁷

4.34 A spending proposal approval should be made by a delegate who has a FMA Regulation 9 delegation where the terms (including the value) of the spending proposal are within the limits and directions established for their delegation. Approvals can be recorded in many different forms and should include the key elements of the spending proposal, such as the items, cost, parties, and timeframes.⁹⁸

⁹⁷ Finance Circular 2011/01 *Commitments to spend public money, (FMA Regulations 7 to 12)*, Part 3.1.2 advises agencies that 'entering into the Deed of Standing Offer and utilising the standing offer arrangement are two separate actions for the purposes of the FMA Regulations. Subsequent orders made under the Deed of Standing Offer will be subject to Regulation 9. For example, the Regulation 9 delegate is approving the quantity being ordered as well as ensuring that using the standing offer arrangement in the particular circumstances is a proper use of Commonwealth resources'. Available from <<http://www.finance.gov.au/publications/finance-circulars/index.html>> [accessed March 2012].

⁹⁸ FMA Regulation 12 *Recording approval of a spending proposal* requires that '(1) If approval of a spending proposal has not been given in writing: (a) the approver must record the terms of the approval in writing as soon as practicable after giving the approval'.

4.35 For the 139 procurements in the audit sample, ANAO assessed whether the agencies were able to provide sufficient and appropriate record of FMA Regulation 9 approval (Table 4.3).

Table 4.3

Record of FMA Regulation 9 approval

Criterion	Percentage of sample assessed as having met the criterion		
	ASIC	DBCDE	DFAT
Did the agency record delegate approval of the spending proposal (FMA Regulation 9)?	76%	93%	70%

Source: ANAO analysis of agency procurement documentation

4.36 As shown in Table 4.3, the level of documented spending proposal approvals ranged from 70 per cent to 93 per cent. In ASIC the absence of a record of FMA Regulation 9 approval related to two panels, whereas in DFAT the lack of approval related to five panels. In DFAT's case around half of the procurements were under its Legal Services panel. 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.

4.37 Documentation forming purchasing approvals for the sample of procurements from panels was of varying standards, and often did not clearly set out the basis for delegates' decisions. ANAO made similar observations in ANAO Audit Report No.11 2010–11 *Direct Source Procurement*, suggesting this is an area that warrants greater attention by many agencies:

there was often a lack of documentation of value for money considerations including reliance in many cases on a single quote. In addition, there was often no evidence that decisions had taken into account the requirements of the CPGs or that actions were being taken in relation to the FMA Regulations. There were also instances where the delegate approved procurements in which parts of agency procurement templates were incomplete or not prepared.⁹⁹

4.38 The appropriate approval of spending proposals is a key legislative requirement which provides for accountability and transparency in the use of

⁹⁹ See ANAO Audit Report No.11 2010–11 *Direct Source Procurement*, p. 108.

public money. Most agencies have now had many years to establish sound processes and practices for spending proposal approvals, and should be achieving high rates of compliance for their purchases. One avenue to assist agencies achieve compliance is their Certificate of Compliance process. ANAO's recent performance audit of the Certificate of Compliance process at four agencies highlighted benefit in agencies obtaining data on non-compliance with financial management requirements from a variety of sources, and based on an assessment of risks, periodically testing key internal controls to determine if they are working as intended.¹⁰⁰

4.39 In obtaining FMA Regulation 9 approval, it needs to be clear whether the spending proposal relates to a new procurement or is a variation to a pre-existing contract. Such a requirement could, for example, be incorporated into agencies' spending proposal approval templates, and has the potential to improve the accuracy of agencies' public reporting of procurement spending. As referred to in paragraph 4.7, in selecting the sample of procurements ANAO identified a number of AusTender reporting errors due to agencies reporting contract and purchase order variations as a separate contract, rather than as amendments to the original contract.

Official orders under panel arrangements

4.40 Standing offers generally require panel users to complete official orders¹⁰¹ with suppliers in a set format, each time property or services are procured under panel arrangements. As the official order constitutes a formal contract with the supplier, it is important that it contain all the requisite details of the purchase.¹⁰² Relevant details to include in official orders are the specific property or services; names, positions and locations of designated personnel; start and end dates; prices or rates; and the agreed final or maximum value of the contract.

4.41 For the sample of 139 procurements from panels ANAO examined: whether there was an official order; the appropriateness of details contained in

¹⁰⁰ ANAO Audit Report No. 38 2010–11 *Management of the Certificate of Compliance Process in FMA Act Agencies*, p. 22.

¹⁰¹ Official orders are also referred to as contracts or work orders.

¹⁰² 'A contract is formed under a standing offer each time an agency purchases property or services under the panel arrangement'; Finance *Buying for the Australian Government* [Internet]. Finance, available at <<http://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/procurement-practice/panel-and-mul/practice.html>> [accessed March 2012].

official orders; and consistency of official orders with the overarching DoSO in terms of property or services procured and pricing. Table 4.4 shows the results of ANAO's testing.

Table 4.4

Appropriateness of official orders

Criterion	Percentage of sample assessed as having met the criterion		
	ASIC	DBCDE	DFAT
Was an official order for the required property or services provided?	80%	76%	86%
Did the official order clearly document all the information pertinent to the procurement such as the item/s, cost, parties, and timeframes?	71%	69%	77%
Was it clear that the property or services procured was consistent with those established under the DoSO?	68%	67%	82%
Was it clear that the rates contained in the official order were at or below those established under the DoSO (allowing for indexation)?	51%	40%	38%

Source: ANAO analysis of agency procurement documentation

4.42 The agencies were able to provide evidence of an official order or contract for 76 per cent (DBCDE), 80 per cent (ASIC) and 86 per cent (DFAT) of the sample respectively. While most of the official orders clearly documented the details of the procurement, where there was an absence of an order that clearly articulated the property or services to be provided it was not possible to determine whether the procurement was within the scope of the standing offer. For many of the procurements it was also difficult to ascertain whether pricing was at or below rates assessed as providing value for money when the panel was formed.

4.43 In some cases this situation reflected missing, poorly maintained or incomplete documentation, therefore providing insufficient evidence that the criterion had been met. In other cases, the official order simply mirrored the value and format provided in a quote, with the rate quoted not aligning with the rates in the standing offer. For example, some quotes were prepared for a block of work to be completed by a certain individuals and only included a consolidated total cost that could not be aligned with these individuals' rates contained in the DoSO. In such circumstances, it was not clear that official orders were consistent with rates or prices earlier assessed as providing value for money at the tender evaluation stage.

Procurements made outside the scope of the panel

4.44 A panel cannot be used to purchase property or services that fall outside the scope of the arrangement.¹⁰³ When a panel is formed, the market has only been tested for the property or services included in the panel's scope. Using the panel beyond this scope does not encourage competition and may not provide value for money.

4.45 ANAO identified two examples at DFAT where the procurement from a panel was clearly outside the scope of the panel, as discussed in the text box below. Both procurements had been approved under FMA Regulation 9.

Using panels beyond their scope

Example 1:

DFAT became aware a logistics services contract (not related to a panel) would soon expire. To ensure continuity of services, it was proposed that key logistics staff employed by the outgoing contractor be engaged using an existing panel.¹⁰⁴ Logistics roles were, however, not listed in the scope of services under the DoSOs for the panel. Four panel suppliers were asked to quote on the logistics positions required. The supplier now offering the previously identified key personnel was selected.

Example 2:

The same panel was used to hire an individual for a high level policy advice and support role for 18 months at a cost of in excess of \$200 000, even though the DoSO did not include policy advice or similar services in its list of services.

A person had already been undertaking the desired role on a contract basis for 18 months. This contract was due to expire on 31 December 2010. A request for quote (RFQ) was issued to three suppliers on the panel on 9 December 2010. The RFQ stated that the applicant was required to have a current DFAT top secret security clearance and be available to commence 1 January 2011.

The only firm that responded to the RFQ was the supplier of the current occupant of the position. DFAT's approval documentation noted approaching a different provider may cause a delay in relation to the provision of a replacement contractor with the requisite security clearance and/or required DFAT systems' operating knowledge.

ANAO notes that it was known the contract of the incumbent was going to expire on 31 December 2010. Given the circumstances, DFAT should have planned a more appropriate procurement earlier.

¹⁰³ Finance, *Buying for the Australian Government*; [Internet] available from <<http://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/procurement-practice/panel-and-mul/practice.html>> [accessed March 2012].

¹⁰⁴ The list of services listed in the deed of standing offer include services such as accountants, various ICT associated roles, programmers, web designers, electronic engineers and nothing in the line of logistics.

Timeliness and accuracy of contract reporting

Timeliness of contract reporting

4.46 Contracts formed under a standing offer arrangement that meet the contract reporting criteria must be reported on AusTender within 42 calendar days of entering into the contract. AusTender provides a contract start and gazettal date for all procurements reported. Using this data, ANAO analysed the timeliness of contract reporting for the sample of procurement from panels (Table 4.5).

Table 4.5

Timeliness of contract reporting

	ASIC	DBCDE	DFAT
Percentage of the sample recorded within 42 calendar days of entering into the contract	37%	88%	13%
Average time taken (calendar days) for publication	65	35	142

Source: ANAO analysis of AusTender data

4.47 ASIC and DFAT were uncertain as to the underlying causes of the length of time taken to report their contracts. Based on the results of this and previous ANAO audits, many agencies need improve the timeliness of their contract reporting on AusTender. This would strengthen accountability and transparency in relation to procurement activities.

Accuracy of contract reporting

4.48 The contract reporting criteria exclude items such as contract variations (which should be reported by amending contract details), purchase orders and other payments under contracts. For the sample of 180 contracts selected by ANAO approximately 23 per cent of the audit sample involved reporting errors and anomalies. These included:

- reporting contract and purchase order variations as a separate contract;
- duplication of contract entries;
- reporting contracts against the wrong panel; and
- insufficient documentation to support the contract value or timeframe reported on AusTender.

4.49 Almost all of the errors were made by ASIC and DBCDE. For ASIC, most of the reporting errors were extensions of official orders under a panel. For DBCDE, variations to official and purchase orders accounted for a significant proportion of reporting errors.

4.50 These results indicate that agencies need improve the accuracy of their contract reporting on AusTender. This would further strengthen accountability and transparency in relation to procurement activities.

Conclusion

4.51 In selecting preferred suppliers to undertake work under panel arrangements, there was considerable scope for the agencies to employ more competitive arrangements through quotation practices when procuring from panels, particularly for higher value procurements. Further, for between 41 per cent and 71 per cent of the sample of procurements using panels, the agencies did not sufficiently document how individual procurements represented value for money. There was also room for improvement with respect to agencies' spending proposal approvals, documentation of official orders, and timely and accurate reporting of contracts entered into under panel arrangements on AusTender.

5. Procurement Strategy, Monitoring and Review

This chapter examines the current impetus towards coordinated and cooperative procurement, and the implications for Finance and agencies. It also examines the audited agencies' procurement monitoring and review activities, including for established panels.

Introduction

5.1 In recent years, the Australian Government has promoted use of coordinated and cooperative procurement arrangements. These arrangements seek to reduce duplication between agencies, improve the efficiency of procurement processes, and support the achievement of value for money through economies of scale and aggregation of government demand. Coordinated and cooperative procurement often involve procurement panels. Finance has an important role in overseeing use of coordinated and cooperative procurement across government.

5.2 At the agency level, monitoring and review of procurement activity enables agencies to gauge compliance with FMA Regulations (including application of the CPGs), and take any appropriate remedial action. Procurement monitoring and review also inform strategic procurement planning and management.

5.3 ANAO examined the:

- current impetus towards use of coordinated and cooperative procurement, and the implications for Finance and agencies;
- data captured on AusTender on procurement using panels; and
- audited agencies' procurement monitoring and review activities, including for established panels.

Coordinated and cooperative procurement

5.4 Coordinated procurement involves whole-of-government contract arrangements for certain property and services in common use to maximise market benefits and deliver efficiencies and savings. Cooperative procurement is the use of a procurement contract by more than one agency. Agencies can procure cooperatively by approaching the market together (known as clustering) or utilising the contractual or standing offer arrangement of another

agency (known as piggybacking). A key focus of cooperative procurement is to reduce the number of separate but similar approaches to the market by different agencies to improve efficiency.

5.5 The current version of the CPGs was introduced in 2008 and included provision for coordinated procurement contracting for the first time. There has since been an incremental approach to the implementation of the coordinated procurement arrangements. Use of coordinated procurement arrangements is mandatory for agencies subject to the FMA Act for certain property and services. Examples of mandatory coordinated procurement arrangements include telecommunications, motor vehicle leasing, government advertising, and air travel and travel management services.

5.6 In December 2007, Finance released *Good Procurement Practice No.3 Cooperative Agency Procurement*. The definition of cooperative procurement and requirements pertaining to its use were also included in CPGs for the first time in 2008. Agencies have increasingly used cooperative procurement since the release of the above guidance and CPGs. ANAO analysis of AusTender data identified that as at 31 December 2008, there were 588 panel arrangements in place, 21 per cent of which allowed multi-agency access. At 31 December 2011, there were 602 standing offer arrangements recorded on AusTender with 44 per cent reported as allowing multi-agency access.¹⁰⁵ As referred to, in paragraph 3.13, there are also certain panels that have been accessed and used by a large number of agencies (for example, panels run by DBCDE and APSC).

5.7 A number of factors have contributed to the take-up of piggybacking opportunities by agencies, including promotion by Finance of cooperative procurement arrangements, availability of AusTender data on other agencies' standing offer arrangements allowing multi-agency access, and the drive for administrative efficiencies.

5.8 There remain, however, a large number of agency panels providing similar property and services, and further purchasing efficiencies may be possible. For example, as at 31 December 2011, there were 47 panels for management advisory services, 34 relating to education and training services, 26 for legal services, and 17 for human resource services. Some suppliers consulted by ANAO also commented on the large number of similar panels

¹⁰⁵ Data is based on standing offers reported on AusTender with more than one supplier (representative of panels).

they were on.¹⁰⁶ This imposed an administrative burden and associated costs on the suppliers which ultimately affect prices offered to government. Suppliers also advised there was scope for agencies to approach the market together (cluster) when forming new panels. One supplier had observed multiple agencies issuing RFTs to establish panels for similar services within a short timeframe.

Implications for SMEs of increased use of coordinated and cooperative procurement

5.9 The increasing use of coordinated and cooperative procurement may lead to efficiencies. However, it can also present associated risks. In particular, there is the potential for the pool of suppliers to government to be reduced as planned coordinated procurement arrangements are established; and as agencies take advantage of other agencies' panels rather than form their own, when their panels lapse.

5.10 As mentioned in Chapter 3, the Australian Government is committed to providing SMEs appropriate opportunities to compete for business. This includes committing to sourcing at least 10 per cent of the purchases of FMA Act agencies by value, in aggregate across agencies, from SMEs.¹⁰⁷ There are, however, tensions between the ability of SMEs to compete for work and the prospect of fewer panels servicing many agencies. Subject to the design of the scope of services and evaluation criteria, larger organisations may be better placed in tendering for coordinated and cooperative procurement opportunities. Depending on the design of panels, there may also be fewer opportunities for SMEs to fulfil niche roles with consolidation of panel arrangements.

5.11 In light of these risks, there would be benefit in Finance monitoring developments to help ensure SMEs have appropriate opportunities to compete

¹⁰⁶ One supplier indicated they were a supplier for in excess of 90 panels.

¹⁰⁷ Finance, CPGs, 2008, p. 11, paragraphs, 5.3–5.6. In aggregate for 2010–11, Australian Government agencies purchased almost \$11 billion in property and services from SMEs (33.5 per cent of the value of all procurement). See Finance, *Statistics on Australian Government Contracts* [Internet]. Finance, available from <<http://www.finance.gov.au/publications/statistics-on-commonwealth-purchasing-contracts/index.html>> [accessed March 2012]. Data includes: contracts and standing offers valued at more than \$10 000 for agencies subject to the FMA Act; and certain contracts and standing offers of CAC Act entities subject to the *Finance Minister's (CAC Act Procurement) Directions*.

given the prospect of a smaller number of panels servicing many agencies.¹⁰⁸ In this respect, Finance advised it is aware of the need to develop strategies to mitigate any emerging risks.

Data captured on procurement using panel arrangements

5.12 The publication of contract details on AusTender provides for accountability and transparency of Australian Government procurement. However, current AusTender data does not provide a complete picture of the extent of procurement undertaken under panel arrangements, including use of other agencies' panels. This partly reflects Finance's guidance encouraging, but not mandating, reporting of the relevant standing offer when reporting each procurement made under a panel arrangement.¹⁰⁹

5.13 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 agencies of procurement using panels, and support understanding of supply changes arising from consolidation of panel arrangements, including implications for SMEs. Under current reporting requirements, agencies that lead coordinated and cooperative panels may also not have a complete picture of the extent of use of the panel by other agencies. This results in lack of clarity on likely demand when the lead agency, or agencies, approach the market to form a replacement panel.

¹⁰⁸ Finance advised that, 'as the agency responsible for managing the Australian Government procurement framework, Finance has for a number of years, reported publicly at www.finance.gov.au/procurement, SME participation statistics across FMA Act agencies. These statistics indicate that SME participation in the Australian Government marketplace has been between 29 and 37 per cent since 2007–08.' Finance further advised that, 'under the Australian Government procurement policy framework, there are a number of initiatives and procurement connected policies aimed at improving the access to competitive SMEs to the Australian Government marketplace such as: Australian industry participation plans; SME participation targets for information and communications technology contracts; and exemptions to the mandatory procurement procedures in the CPGs for SMEs that are either Indigenous owned or that primarily exist to provide the services of persons with a disability. These measures, in-line with the rationalisation of duplicate panels, will continue to support SMEs' access to the Australian Government marketplace.'

¹⁰⁹ Finance, *Buying for the Australian Government* [Internet]. Finance, available from <http://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/reporting-requirements/contracts-agency/principles.html> [accessed March 2012]. Principle 7 of the guidance states: 'contracts formed under a standing offer arrangement that meet the contract reporting criteria must be reported in the Contract Notice section on AusTender. Each contract reported under a standing offer arrangement should reference the Standing Offer Notice identification (SON ID) which is issued by AusTender at the time the standing offer is reported'. The term 'should' relates to matters of sound practice rather than mandatory requirements.

5.14 Finance and agencies should work towards capturing more complete panel procurement data on AusTender. This could include making it a requirement for agencies to report the relevant standing offer for procurements under panel arrangements. This would also require changes within agencies to facilitate reporting of this information on AusTender. For example, agencies would need to consider including standing offer information in approval documentation, work orders and/or contract registers, as appropriate, for each procurement under a standing offer arrangement.

Recommendation No.2

5.15 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 reference 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

ASIC

5.16 Agreed, this is current ASIC practice and ASIC will provide further instructions to staff.

DBCDE

5.17 The Department of Broadband, Communications and the Digital Economy agrees with this recommendation and notes that it already meets these requirements. Currently, when a Purchase Order is raised relating to a panel arrangement in the Department's Financial Management Information System, mandatory information relating to the appropriate Standing Offer must be entered. This information can then be extracted whenever it is required.

DFAT

5.18 Agree. DFAT currently makes reference to the relevant standing offer when reporting contracts on AusTender. We will continue to review guidance and practices to identify any opportunities for further improvements.

Finance

5.19 Supported. AusTender operational guidance advises that officials should reference the relevant standing offer when reporting contracts from panels. Finance is working with agencies to develop a business case to enable this functionality in commonly used agency financial and accounting systems.

Procurement monitoring and review

5.20 Monitoring of procurement activity against Australian Government and agency-specific requirements helps agencies identify and investigate procurement risks, and where necessary to take corrective action to support compliance with requirements. Understanding the nature, value and spread of their procurement, and the contributions of different suppliers, also assists agencies to adopt more efficient ways to approach the market and achieve better value for money. Common mechanisms agencies may use to monitor and review procurement activities include:

- CPU and management oversight;
- internal audits;
- the Certificate of Compliance process; and
- evaluation.

CPU and management oversight

5.21 An agency's CPU may undertake routine monitoring and reporting of procurement related information. Agencies may also routinely report to an agency's senior management or executive on procurement activities.

5.22 The effectiveness of monitoring and reporting is impacted by the nature and quality of available data on procurement activity. Agencies may elect to monitor and review a range of procurement data. For example, in relation to panel procurement, agencies could capture information on:

- contracts entered into under the arrangement;
- the spread of use of suppliers within individual panels;

- the performance history of suppliers;¹¹⁰ and
- the extent to which property or services have been purchased outside an established panel arrangement.

5.23 The audited agencies' CPUs did not undertake routine monitoring of agency-wide procurement activity. The CPUs' involvement in the oversight of panels already in place was generally limited to an advisory role only. Further, at the time of the audit, none of the agencies produced any regular or periodic procurement-related internal management reports.

Internal audit coverage

5.24 Internal audit is one of a number of assurance and review functions agencies use to provide assurance on compliance with legislation and government policy. Whether an agency's internal audit area undertakes audits in relation to procurement will depend on a number of factors, including the agency's procurement activities, associated risks and overall assurance strategy.

5.25 Over the period 2007 to 2009 each of the agencies had undertaken internal audits on procurement which examined compliance with FMA Act legislation, FMA Regulations and the CPGs.¹¹¹ None of the audits were specifically focused on panel procurement. However, the findings from the internal audits on procurement were generally consistent with the findings from this audit. In particular, the internal audits made recommendations to improve accountability and transparency by:

- documenting procurement processes, approvals and decisions;
- demonstrating consideration of risk management and conflict of interest; and
- timely reporting on AusTender.

5.26 The consistency of many of the internal audit findings and those made by ANAO in this audit highlights the need for agencies to improve procurement practices.

¹¹⁰ That is, whether the contractors generally complete work on time, within budget and to a high standard, as well as the number and extent of variations.

¹¹¹ In particular, ASIC conducted eight internal audits between 2007 and 2008 on procurement which examined compliance with the CPGs, and also undertook a quality review of its procurement function in 2009.

Reporting Breaches of the FMA Act legislation in the Certificate of Compliance

5.27 The Certificate of Compliance provides a means to improve compliance with the Australian Government's financial management framework and to ensure that Ministers are kept informed of compliance issues within their portfolios.¹¹²

5.28 Each financial year FMA agencies' Chief Executives are required to prepare a Certificate of Compliance that reports on their agency's compliance with legislative and policy requirements including: the FMA Act; the FMA Regulations; and the FMA (Finance Minister to Chief Executives) Delegation 2009.

5.29 ANAO reviewed each agency's Certificate of Compliance for 2008–09, 2009–10 and 2010–11. Both ASIC and DFAT reported in excess of 60 procurement-related instances of non-compliance. DBCDE had only reported four procurement-related instances of non-compliance for the three financial years. Reported instances of non-compliance included lack of spending proposal approvals and not meeting certain requirements of the CPGs.

5.30 In this context, there is at present a lack of clarity with respect to mandatory requirements of the CPGs. Additionally, the appropriate treatment of non-compliance with the various requirements of the CPGs for Certificate of Compliance reporting purposes has not been stipulated. Finance is currently updating the CPGs, including to improve their clarity. As part of the update, Finance is seeking to identify the mandatory rules for Commonwealth procurement, and also plans to make clear that non-compliance with these requirements should be reported through the Certificate of Compliance.

Evaluation

5.31 In addition to benefits derived from routine monitoring and reporting on procurement activity, there is also value in agencies periodically evaluating the efficiency, effectiveness and value for money provided by panel procurement. Such evaluation activity could consider the volume, nature and relative cost of procurements under the panel arrangement; the spread of panel work between suppliers; the performance of suppliers; and whether the

¹¹² Finance, *2009–10 Certificate of Compliance Report to Parliament* [Internet]. Finance, December 2010, p. 2; available from <http://www.finance.gov.au/publications/certificate-of-compliance-report/doc/2009-10_Certificate_of_Compliance_Report.pdf> [accessed March 2012].

agency was realising the anticipated efficiencies identified when planning the establishment of the panel. Conducting evaluative work at an appropriate time in the lifecycle of a panel can also assist with monitoring use and performance of suppliers; and planning for future procurements, including the appropriate: scope for a panel, the terms and conditions of the arrangement; the process for selecting suppliers from the panel, and the number of suppliers.

5.32 None of the audited agencies evaluated the performance of their panels. Further, none of the agencies had analysed the extent to which they had procured similar property and services outside of established panels.

5.33 In this context, ANAO conducted analysis of panel use for the agencies' panels in the audit sample. There had generally been significant procurement using the panels, by number of procurements and/or their value. The analysis identified that in DFAT, with the exception of one supplier on one panel, all suppliers on all panels had received contracts under the relevant panel arrangements. In ASIC and DBCDE, for the majority of panels, less than half of the suppliers had received contracts. There is merit in ASIC and DBCDE considering the reasons underpinning decisions to not use many panel suppliers. This may lead to changes in the way the panel is used, assist provision of feedback to suppliers and/or inform future panel arrangements.

Recommendation No.3

5.34 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

ASIC

5.35 Agreed.

DBCDE

5.36 The Department of Broadband, Communications and the Digital Economy agrees with this recommendation.

DFAT

5.37 Agree. DFAT recognises the importance of assessing and evaluating the effectiveness of contracts and has recently strengthened its guidance in relation to this.

Finance

5.38 Supported. Value for money is the underlying principle that must be met by agencies when conducting procurement, including procuring from panels. As needs change and new capabilities become available, agencies should consider, on a periodic basis, the effectiveness of their panels and whether they still represent value for money.

Conclusion

5.39 Use of coordinated and cooperative procurement by agencies is increasing. With this development there are, however, associated risks; particularly the potential for the pool of suppliers to government to be reduced and in the ability of SMEs to compete with larger organisations when panels are formed. In light of these risks, there would be benefit in Finance monitoring developments to help ensure SMEs have appropriate opportunities to compete given the prospect of a smaller number of panels servicing many agencies. Additionally, Finance and agencies should work towards capturing more complete panel procurement data on AusTender. This would enable ongoing monitoring of procurement trends including the situation in respect of SMEs.

5.40 Evaluation activity at an appropriate time during the lifecycle of a panel enables agencies to understand the extent to which the initial business rationale for establishing the panel is being met. Evaluation also helps shape the design of any future panel or alternate procurement arrangement. For example, analysis of the utilisation of suppliers under the panel arrangement may result in the agency selecting fewer suppliers for any subsequent panels with a focus on building stronger relationships to enhance value for money and efficiency. None of the audited agencies evaluated the efficiency, effectiveness and value for money provided by their panel arrangements.



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Auditor-General

Canberra ACT

1 May 2012

Appendices

Appendix 1: Additional Formal Comments from ASIC

In addition to providing summary comments and responding to the individual recommendations, ASIC also provided the following formal comments.

Australian Securities and Investments Commission

Seeking multiple quotes from panels - ASIC generally supports ANAO's comments that seeking multiple quotes under the panels is one way to promote value for money. In this regard, ASIC's business rules for using panels recommend the use of competitive quotes from more than one panel member on complex projects.

However, ASIC is of the view that multiple quotes should not necessarily be sought in all cases and supports the position outlined in Para 4.18 of Good Procurement Practice (GPP) No.4 that states '*the agency may allow panel users to purchase directly from the panel member of their choice. Direct engagement may be appropriate where the agency determines that it is not necessary to seek competitive quotes - for example, routine low value purchases*'. In our view, there are a number of circumstances (including for high value procurements) where multiple or competitive quotes may not be appropriate or practical. Some examples include:

- (i) a requirement for additional or continuing services where a change of supplier is not practical or cost effective due to compatibility requirements or licensing;
- (ii) where a panel member has products or skills unique to a specific requirement; and/or
- (iii) where the goods or services covered by the panel are well defined and fully priced including optional accessories, services and volume discounts.

With respect to point (iii) seeking multiple quotes from a well defined and fully priced panel can sometimes be counter-productive, placing additional administrative burden on suppliers or agencies. Experience suggests that if suppliers expect agencies to seek multiple quotes after the panel is established, they may not submit their best pricing when bidding for the panel.

ASIC will provide further guidance to staff on the use of panels and seeking multiple quotes from suppliers where appropriate.

Evaluating panels - It is ASIC's practice to monitor panel usage during the life of the panel to determine the spread of work to understand why some panel members are used more than others and where practical, to encourage

business units to spread the work to other panel members. ASIC does evaluate its panels prior to the exercise of any options and prior to any decision regarding panel renewals however the evaluation is usually limited to panel use, broad user satisfaction and some supplier feedback. ASIC supports conducting evaluation of its panels to assess efficiency, effectiveness and value for money and will expand its panel evaluations to better address these criteria.

Explicit market analysis and assessment of alternative options - ASIC agrees that market analysis as well as consideration of administrative arrangements along with a detailed analysis of agency needs should be conducted to better inform decisions and strategies when establishing panels. With respect to cooperative procurement, at the time these ASIC panels were established, there were relatively few cooperative arrangements available across agencies to warrant consideration as an alternate procurement strategy. However ASIC fully supports the use of cooperative procurement and the use of existing cooperative arrangements is the first option considered when developing procurement strategies. With the expansion of cooperative arrangements over the last few years, ASIC has now joined 11 panels established by other agencies and is constantly looking for opportunities to participate in additional arrangements where they meet ASIC's needs.

Documenting procurement decisions and value for money - ASIC agrees that procurement decisions need to be better documented. Many of the sampled panel procurements were completed prior to the development of ASIC's current procurement policies, processes and delivery of procurement training that we believe has addressed a number of the issues identified by the ANAO. Notwithstanding this, the audit has identified a number of areas in our guidance that can be improved and ASIC will continue to address these issues.

Review of procurement activity by CPU's - ASIC agrees with the need for ongoing monitoring of agency wide procurement activity. ASIC's CPU is progressively assuming greater oversight, and monitoring, of panel procurements. ASIC's CPU will continue to expand its oversight of panel use and provide management reports to key stakeholders.

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