

Procurement of the Permissions Capability

Department of Home Affairs

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Canberra ACT

7 June 2023

Dear President
Dear Mr Speaker

In accordance with the authority contained in the *Auditor-General Act 1997*, I have undertaken an independent performance audit in the Department of Home Affairs. The report is titled *Procurement of the Permissions Capability*. 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 to the Parliament.

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

Yours sincerely



Grant Hehir
Auditor-General

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

AUDITING FOR AUSTRALIA

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Audit snapshot

Auditor-General Report No.34 2022–23

Procurement of the Permissions Capability



Why did we do this audit?

- ▶ After an earlier procurement process for a proposed Global Digital Platform was cancelled on 18 March 2020, a new policy direction was announced by Government on 20 March 2020.
- ▶ The Permissions Capability system was a whole-of-government procurement with the capability to be designed and developed for reuse across government for other similar permissions-based services such as permits, accreditations, licenses and registrations.



Key facts

- ▶ A Request for Tender (RFT) was issued in October 2020 for the engagement of a provider to deliver a Permissions Capability system.
- ▶ Eight responses were received to the Request for Tender.
- ▶ A deed of standing offer and work orders were entered into in September 2021 and terminated by mutual agreement between both parties in August 2022.



What did we find?

- ▶ Home Affairs employed an open approach to market and the procurement was designed to demonstrate that value for money could be achieved. However, the department's conduct of the procurement reduced its ability to demonstrate that value for money was achieved.
- ▶ While the procurement was undertaken through an open request for tender process, there were a number of shortcomings.
- ▶ There were inconsistencies in the evaluation which meant that the extent to which the successful tenderer met the evaluation criteria was not clearly supported.
- ▶ Overall, the tender evaluation was designed to enable the demonstration of the achievement of value for money. Home Affairs departed from the approach it had set out in the RFT in a number of important respects.



What did we recommend?

- ▶ The Auditor-General made one recommendation which the department partially agreed to.

8

Tender submissions received in response to the Request for Tender.

\$61.5m

Amount committed through the deed of standing offer and work orders at the time the arrangements were terminated.

11 months

Time elapsed between the award of the contractual arrangements and termination.

Summary and recommendations

Background

1. The Department of Home Affairs (Home Affairs or the department) commenced a multi-stage procurement process in September 2017 for a 'Global Digital Platform' (GDP) — a new IT workflow system to modernise the processing of Australian visa applications. After two-and-a-half years into the procurement, the process was terminated on 18 March 2020 on public interest grounds due to significant changes in Australian Government policy, including a materially broader scope for the system and no longer limiting the acquisition of the capability to privately financed, built, operated and owned systems.
2. In October 2020, Home Affairs commenced a new procurement process for the broader 'Permissions Capability' system that was to extend 'beyond visas to citizenship, customs functions and personnel security clearances' and for reuse beyond the Home Affairs portfolio for other similar permissions-based services such as permits, accreditations, licences and registrations.
3. A Request for Tender (RFT) was released to market on 23 October 2020. Accenture Australia Pty Ltd (Accenture) was awarded the deed of standing offer in September 2021. The initial term of the contract was three years, with up to two extension options of up to three years each. In August 2022, Home Affairs and Accenture signed a deed of agreement and release, to cease the deed of standing offer and associated work orders for the Permissions Capability.

Rationale for undertaking the audit

4. After an earlier procurement process for a proposed GDP was cancelled on 18 March 2020, a new policy direction was announced by the Australian Government on 20 March 2020.¹ In October 2020, Home Affairs commenced a procurement process for a Permissions Capability system. This audit was undertaken to provide independent assurance to Parliament as to whether Home Affairs' whole-of-government procurement was open, competitive, fair and non-discriminatory and demonstrated achievement of value for money.

Audit objective and criteria

5. The audit objective was to assess whether the Department of Home Affairs' procurement process for the Permissions Capability employed open and effective competition and achieved value for money, consistent with the Commonwealth Procurement Rules (CPRs).²
6. To form a conclusion against the objective, the following high-level criteria were adopted.
 - Was the procurement process open, competitive, fair and non-discriminatory?
 - Was achievement of value for money demonstrated?

1 Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, 'New approach to technology capability acquisition and delivery', media release, Parliament House, Canberra, 20 March 2020.

2 When examining the compliance of this procurement with the CPRs, the ANAO considered the version of the CPRs that was in effect at the time the procurement was undertaken. For the audit, this was the version of the CPRs that came into effect on 20 April 2019. General references to the CPRs in this report (not in relation to a specific procurement) relate to the 2019 version of the CPRs, which was in effect at the time of audit fieldwork. An updated version of the CPRs came into effect on 1 July 2022.

Conclusion

7. Home Affairs employed an open approach to market and the procurement was designed to demonstrate that value for money could be achieved. However, the department's conduct of the procurement reduced its ability to demonstrate that value for money was achieved.

8. While the procurement was undertaken through an open request for tender, there were a number of shortcomings in the approach taken by Home Affairs. In particular:

- the two shortlisted tenderers from the terminated procurement process for the Global Digital Platform had a competitive advantage as a result of their 'deep engagement' with Home Affairs through that 24-month process. The department implemented in full or in part three of the nine strategies identified by its legal and probity advisers to 'level the playing field';
- the department had approached the market for a tenderer to take end-to-end responsibility for the Permissions Capability. Some tenders accepted for evaluation proposed an alternative commercial model that involved a material shifting of risk to the department. The department's ability to compare prices was also impacted by tenderers bringing forward alternative commercial models; and
- there were inconsistencies in the available evaluation records which meant that the extent to which the successful tenderer met the criteria relating to the solution proposed ('very good') and capacity and capability ('good') was not clearly supported.

9. Overall, the approach to tender evaluation was designed in a way that enabled the department to demonstrate the achievement of value for money. The successful tender was the only one of the three shortlisted tenders that Home Affairs evaluated as representing value for money (one other tender was assessed as 'likely' to represent value for money). In conducting the procurement, the department departed in a number of respects from the approach it had set out in the RFT.

Supporting findings

Open and effective competition

10. An open approach to the market was undertaken by Home Affairs through a RFT published on 23 October 2020 with an eight-week response period. Home Affairs described this as an 'accelerated' open approach, acknowledging the risk that it may reduce the level of market interest. (see paragraphs 2.3 to 2.11)

11. The RFT provided the information necessary to inform decisions by potential tenderers about participating in the procurement process. The RFT set out the requirements to participate and the approach to evaluation. This included identifying six conditions for participation, five minimum content and format requirements and seven evaluation criteria. Weightings were included for two of the seven criteria. The RFT could have been improved by Home Affairs including additional information to transparently inform potential tenderers of the relative importance of the remaining five unweighted criteria to the evaluation. (see paragraph 2.12 to 2.17)

12. Only those tenders submitted by the closing date were accepted for evaluation. A total of eight tenders were lodged on time. Home Affairs received a late submission, which it declined to accept. (see paragraph 2.18 to 2.20)

13. The exclusion of three tenders from evaluation was consistent with the RFT. The department undertook an initial screening of tender responses and identified that three of eight tenders did not satisfy the conditions of participation and minimum content and format requirements. Home Affairs excluded these three tenders from further consideration and promptly advised the tenderers of the rejection of their submissions (see paragraph 2.21 to 2.30).

14. The department's records of the procurement do not adequately demonstrate that each of the five tenders that progressed to evaluation were assessed fully and fairly against each of the seven criteria. There were a number of inconsistencies in the underlying evaluation records which meant that the rating of Accenture's tender, including the extent to which it met the criteria relating to the solution proposed ('very good') and capacity and capability ('good'), was not clearly supported. Evaluation against the price criterion was not undertaken in the way that had been planned by Home Affairs to enable tender prices to be compared. The tender evaluation report nevertheless directly compared the prices submitted by each of the five tenderers that proceeded to evaluation. (see paragraph 2.31 to 2.42)

15. The approach taken to clarifying and verifying tender responses included providing opportunities for changes to be made to the commercial models. It also resulted in changes being made to the tender prices that were evaluated. Home Affairs asked one tenderer to re-submit its statement of compliance with the draft agreement because the tenderer provided insufficient information to enable its risk to be evaluated — an approach which probity advice said would be unfair to other tenderers. Offer definition and improvement activities and best and final offer processes were not undertaken. (see paragraph 2.43 to 2.57)

16. Five advisers were contracted by Home Affairs through seven procurement processes for a total value of \$9.7 million. Home Affairs undertook limited planning for the procurement of its advisers and there was insufficient procurement documentation. Non-competitive processes were a feature with the department engaging providers with which it had existing relationships. The use of non-competitive processes, and the department's failure to evaluate submissions against published criteria, means that Home Affairs is unable to satisfactorily demonstrate that its approach complied with the Commonwealth Procurement Rules, including the core rule of achieving value for money. (see paragraph 2.58 to 2.70)

17. An appropriate probity framework was developed for the procurement. This included the establishment of a probity plan and protocols prior to the RFT being released. There were shortcomings with the implementation of the probity framework.

- Home Affairs did not implement the recommended mitigations in such a way as to address the competitive advantage held by two tenderers from the predecessor terminated procurement process.
- Contrary to the probity plan and protocols, the Minister for Employment, Workforce, Skills, Small and Family Business held a meeting with personnel from the preferred tenderer before the commencement of contract negotiations. This meeting was not recorded in the probity register.

- A complete and accurate conflict of interest register was not in place and conflict of interest declarations were not obtained from 15 per cent of individuals involved with the procurement examined by the ANAO.
- The risk of contracted advisers having conflicts of interest with potential tenderers or tenderers was not considered during procurement planning for six of seven procurements of advisers. Identification of conflicts of interest by advisers was less effective compared to other individuals involved in the procurement examined by the ANAO, with 38 per cent of individuals examined in the adviser category not completing conflict of interest declarations.
- Timely action was not always taken to address instances where officials or personnel from the advisers had declared they had a conflict of interest.
- Home Affairs took appropriate action to investigate a tenderer's complaint outlining 'material concerns about the conduct and proper assessment and evaluation of the tenders' relating to an adviser's conflict of interest. However, the department's approach provided the complainant with the positive findings whilst excluding the negative findings that there was an actual conflict of interest that represented a breach of the probity plan leading to the termination of the adviser's services. (see paragraph 2.71 to 2.107)

Value for money

18. The approach to evaluation was planned in advance of tenders being received and aligned with the RFT. A tender evaluation plan was not in place before the RFT was released — it was approved by the procurement delegate on the same day as the closing date for responses to the RFT. Updates to the tender evaluation plan did not include all changes in the evaluation teams. The tender evaluation teams were largely in place prior to the commencement of evaluations and all evaluation team members received probity training. (see paragraph 3.2 to 3.10)

19. The successful tender was the only one of the three shortlisted tenders that Home Affairs evaluated as representing value for money (the second ranked tender was assessed as 'likely' to represent value for money and the other shortlisted tender was assessed as 'not likely' to represent value for money). In reaching those conclusions, the department:

- included for evaluation tenders that adopted different commercial models to that included in the RFT. Tenders that proposed a different commercial model to the end-to-end responsibility approach set out in the RFT involved additional risk for the department and made pricing comparisons during the tender evaluation stage more difficult for the department;
- undertook a hosting certification process that was not a requirement outlined in the RFT. While the RFT set out that components for the Permissions Capability must align and be hosted in accordance with the Whole of Government Hosting Strategy, the Australian Government's Hosting Certification Framework was not released until after the RFT had been issued and the evaluation plan finalised. The two preferred tenderers were selected by the department prior to receiving advice from the Digital Transformation Agency that the hosting provider for those tenderers had been conditionally certified; and
- changed the service delivery model (to exclude the Simple Visa and change the order of delivery for the base capability and the Digital Passenger Declaration). The Digital

Passenger Declaration was prioritised so as to reflect the government decision on border reopening timeframes. (see paragraph 3.11 to 3.28)

20. The separation between those responsible for the tender evaluation and the procurement decision-maker was largely appropriate. The governance structure set out in the tender evaluation plan included an appropriate separation between those responsible for the tender evaluation and the procurement delegate. The probity adviser identified occasions where there was an elevated risk of the procurement delegate performing his own evaluation work or pre-empting a recommendation from the Evaluation Committee. The probity adviser was satisfied with the reasons for this involvement given the expedited tender timeframe. (see paragraph 3.29 to 3.38)

21. Appropriate procurement records were largely maintained by Home Affairs. Available records addressed the requirement for the procurement, the process that was followed, how value for money was considered and achieved and relevant decisions and the basis for the decisions. The department did not maintain satisfactory records of its moderation process for technical evaluation or the appointment of advisers for the procurement, and the completeness of records of individual assessors' evaluation could be improved. (see paragraph 3.39 to 3.43)

22. Home Affairs' reporting of contracts and amendments on AusTender was partly compliant with the CPRs. With one exception, Home Affairs' reporting of the standing offer, work orders and amendments with Accenture on AusTender was within the required 42 days. The department did not accurately report on AusTender within 42 days all contracts and amendments with its advisers for the procurement process, with 27 per cent being reported outside the required timeframe and 39 per cent being reported inaccurately (see paragraph 3.44 to 3.47)

Recommendations

Recommendation no. 1 When undertaking procurements, the Department of Home Affairs clearly identify in its request documentation whether responses that depart from its preferred contracting approach will be accepted and, if so, identifying in its tender evaluation plan how those departures will be addressed in the evaluation and ranking of competing tenders.

Paragraph 2.27

Department of Home Affairs response: *Partially Agreed.*

Summary of entity responses

23. The proposed audit report was provided to Home Affairs. Extracts of the proposed report were also provided to: the Digital Transformation Agency (DTA), Accenture, Maddocks, MinterEllison, Deloitte Touche Tohmatsu (Deloitte), Group 10 Consulting and Ngamuru Advisory Pty Ltd. The letters of response that were received for inclusion in the audit report are at Appendix 1. Summary responses from Home Affairs and the DTA are below.

Department of Home Affairs

The Permissions Capability Procurement was undertaken in the unprecedented context of the rapidly changing response to the COVID-19 pandemic, with the Government considering it to be a key enabler for the safe reopening of the international border. In light of this, the Department, and other government agencies involved in the procurement process, operated within the

parameters of the Commonwealth Procurement Rules in order to meet Government expectations within compressed timeframes.

The Department accepts that it could have sought multiple quotes when engaging procurement advisors. This will be taken into account in future procurements. It also accepts that in some instances, its probity administration was not timely. This is being addressed through the implementation of a Digital Probity Administration Capability.

The Department disagrees with the ANAO's finding that its conduct of the procurement reduced its ability to demonstrate that value for money was achieved. The Department undertook a holistic assessment of all tenders it received and the relative benefits and risks of each. The RFT afforded Tenderers the opportunity to provide alternative ways for the requirements to be met unless specified otherwise.

ANAO comment on Department of Home Affairs summary response

24. The aim of a competitive tender process should be to award the contract to the tenderer that provides the best value for money, identified as the tenderer that has best met the evaluation criteria specified in the approach to market. A key issue identified by the audit was that a number of tenderers proposed a different commercial model to that included in the RFT, which involved additional risk for the department and impacted upon the evaluation of the value for money offered by the competing tenderers. This affected the comparative evaluation of tenders by the department. In addition, there were gaps in the records of the evaluation against the two technical criteria and the higher rating of Accenture's tender against the criteria was not clearly supported by the department's evaluation records.

Digital Transformation Agency

The Digital Transformation Agency (DTA) welcomes the Audit Report on the Procurement of the Permissions Capability.

The DTA notes its ongoing policy ownership of digital reuse, and the importance of its role in reducing duplication of investment and ongoing costs involved in digital and ICT delivery across government. This extends to the effective reuse of assets within government's digital portfolio to drive lower build and run costs, increase speed and certainty of delivery, and provide more joined-up services for people and businesses.

The DTA also emphasises the integral nature of the Hosting Certification Framework in protecting Australian Government systems and the data they hold, as well as the guidance it provides to Australian Government departments and agencies in enabling them to identify and source hosting services that meet enhanced privacy, sovereignty and security requirements.

The DTA further thanks the ANAO for the opportunity to provide comment and for its professionalism in the preparation of this report.

Key messages from this audit for all Australian Government entities

25. Below is a summary of key messages, including instances of good practice, which have been identified in this audit and may be relevant for the operations of other Australian Government entities.

Governance and risk assessment

- The risks of contracted advisers having a conflict of interest with potential/actual market respondents should be fully considered and addressed.

Procurement

- Achieving value for money is the core rule of the Commonwealth Procurement Rules. Generally, the more competitive the procurement process, the better placed an entity is to demonstrate that it has achieved value for money. Competition encourages respondents to submit more efficient, effective and economical proposals. It also ensures that the purchasing entity has access to comparative services and rates, placing it in an informed position when evaluating the responses.
- The termination of lengthy procurement processes can undermine public confidence in Government procurement processes. Care should be taken to ensure that the market is engaged in future related procurement processes, through market engagement and consultation processes.
- Competition is enhanced when entities implement measures to level the playing field in instances where potential suppliers have gained a competitive advantage.

Audit findings

1. Background

Introduction

1.1 On 20 March 2020, the Australian Government (the Government) announced³ a new policy approach to the acquisition and delivery of a workflow processing capability, referred to as the Permissions Capability.⁴ The Government agreed the Minister for Government Services would develop a first pass business case for consideration as part of the 2020–21 Mid-Year Economic and Fiscal Outlook and a steering committee chaired by the Chief Executive Officer of the Digital Transformation Agency (DTA) for the Permissions Capability be established. A joint agency task force between the Department of Home Affairs (Home Affairs or the department) and the DTA was formed to progress the development of the business case.

1.2 In August 2020, the Government agreed the Department of Home Affairs run an open, 'expedited' procurement to source the Permissions Capability. Home Affairs was responsible for the management of the Request for Tender (RFT) process, while the DTA was the policy owner of the reuse element.⁵

1.3 Prior to undertaking the Permissions Capability procurement, Home Affairs had commenced a procurement process for a new digital visa servicing platform called a 'Global Digital Platform' (GDP), which was terminated on 18 March 2020 (see Appendix 3 for more information about the GDP procurement).

Conduct of the procurement process

Approach to market

1.4 On 17 October 2020, Home Affairs released a Notice of Intent to procure regarding the Permissions Capability on the AusTender website, along with a supporting Industry Information Paper jointly released by the DTA and Home Affairs.

1.5 A RFT was released to market on 23 October 2020 and closed on 18 December 2020. The RFT sought to secure the services of a suitably qualified and experienced provider to take end-to-

3 Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, 'New approach to technology capability acquisition and delivery', media release, Parliament House, Canberra, 20 March 2020.

4 A Permissions Capability is the sum of all components that enables an individual to apply for, be assessed for and, if appropriate, be granted a permission. Permissions include government services such as visas, import-export permits, licences, accreditations, declarations and registrations.

5 Auditor-General Report No 5 of 2022-23 *Digital Transformation Agency's Procurement of ICT-Related Services* concluded that the DTA's procurement had been ineffective for the nine procurements examined by the ANAO. The Permissions Capability procurement examined in this performance audit was not within the scope of that earlier performance audit.

end responsibility⁶ for the Permissions Capability. The RFT stated that the successful tenderer was to work with the Commonwealth under a deed of standing offer to:

- collaboratively design the Permissions Capability architecture, suitable for whole-of-government applications with the successful tenderer to take end-to-end responsibility for the Permissions Capability;
- collaboratively design the first 'use cases' for the Permissions Capability;
- deliver and support the base Permissions Capability (to enable the delivery of the first 'use cases')⁷; and
- deliver the first 'use cases' (a Digital Passenger Declaration and a Simple Visa Type).

1.6 The implementation of the resulting Permissions Capability and Digital Passenger Declaration was intended to align with the reopening of the international border and in response to the COVID-19 pandemic health and national interest risks. Table 1.1 compares the indicative timeline for the procurement process set out in the RFT with the actual timeframe. Until the evaluation period, the procurement was proceeding in accordance with the timeline included in the RFT. Evaluation of tenders took six months to be completed, compared to the one month set out in the RFT with negotiation also taking longer than planned (two months rather than one month).

Table 1.1: Indicative and actual timeline for the procurement process

Milestone	Indicative timeline in RFT	Actual timeline
Home Affairs released the RFT through AusTender	23 October 2020	23 October 2020
Intended release of Part B of Attachment A – Statement of Requirements (separately in the data room) and of Attachment D – Draft Agreement (separately via an addendum)	30 October 2020	31 October 2020
Industry briefing	Week of 2 November 2020	4 November 2020
Closing time	2pm 18 December 2020	2pm 18 December 2020

6 In February 2023, the department advised the ANAO that: 'the Description of the Services and Objectives from the RFT did not contain reference to 'end-to-end' services or responsibility of the contracted provider. This phrase has been created by the ANAO.' While the RFT document did not use the term 'end-to-end', the ANAO's analysis was of the substance of what was being sought through the RFT, and this was reflected in relevant records of the procurement. For example, the department's legal adviser in its September 2021 sign-off of the transaction documents stated that the RFT sought a successful tenderer that would take 'end-to-end responsibility for the Permissions Capability'. Similarly, the department's Tender Evaluation Report commented on the extent to which each tenderer was prepared to accept 'end-to-end responsibility' for Permissions Capability.

7 According to the RFT, the base Permissions Capability was to be the foundation upon which the use cases will be delivered and would be re-used and extended to other cases across agencies over time. The base capability was required to include customer-facing functions necessary to deliver the initial use cases, as well as supporting core security, storage, language translation, reporting, case management, customer relationship management and automation functionality.

Milestone	Indicative timeline in RFT	Actual timeline
Evaluation period end date	Late January 2021	11 January 2021 to 6 July 2021
Negotiation with preferred tenderer(s) end	Late February 2021	16 July to 6 September 2021
Agreement with successful tenderer(s) finalised (subject to departmental and Australian Government decision-making).	March 2021	6 September 2021

Source: ANAO analysis of departmental records..

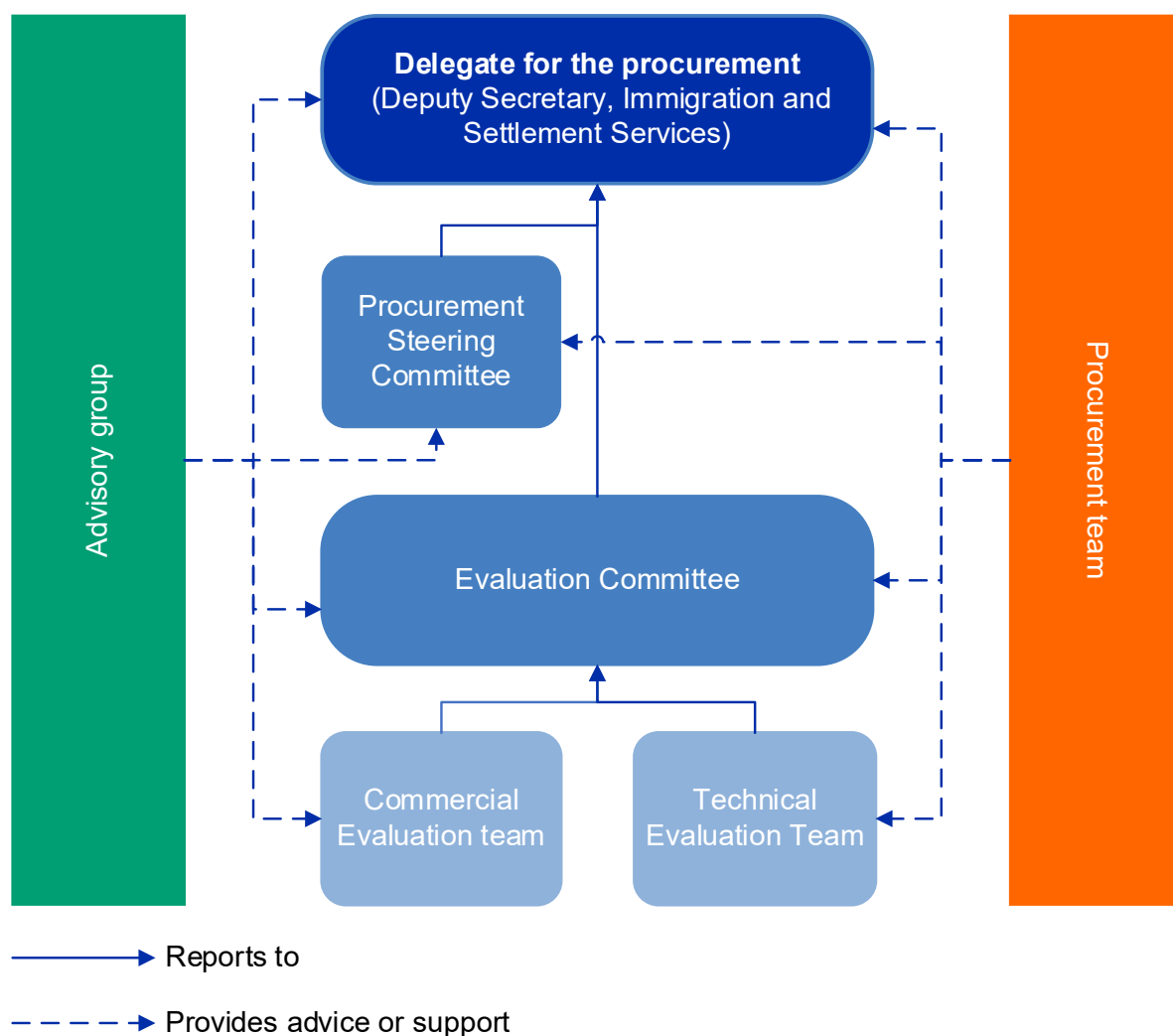
Evaluation governance arrangements

1.7 Eight responses were received to the RFT.

1.8 The tender evaluation plan for the procurement set out the evaluation governance framework. Due to the status of the procurement as 'high-risk, high-value'⁸, there were additional governance requirements including that the financial delegation be exercised at the Deputy Secretary level and a steering committee be established.⁹

8 Home Affairs' procurement framework sets out that the Chief Procurement Officer may select some procurements valued at \$10 million or more for additional oversight where the procurement presents as 'high-risk, high value'. The Permissions Capability procurement was designated as 'high-risk, high-value' in October 2020.

9 Home Affairs' guidance requires the steering committee to be chaired at the First Assistant Secretary level and members must include the Chief Risk Officer, Chief Finance Officer, Senior Assistant Secretary Civil, Commercial and Employment Law Branch (as an adviser) and Chief Procurement Officer. The Procurement Steering Committee for the Permissions Capability was chaired by the Chief Operating Officer and included all required members.

Figure 1.1: Governance arrangements for the procurement

Source: ANAO analysis of Home Affairs records.

1.9 As illustrated by Figure 1.1, the evaluation governance framework for the procurement consisted of:

- a procurement delegate (at the Deputy Secretary level), responsible for approving the tender evaluation plan, managing probity issues referred by the Evaluation Committee and approving the award of a contract to a tenderer;
- a Procurement Steering Committee, tasked with providing strategic direction and acting as an advisory body for the procurement delegate;
- an Evaluation Committee, primarily responsible for ensuring that the evaluation of tenders and associated recommendations, were in accordance with the evaluation criteria and evaluation process set out in the RFT; and
- a Commercial Evaluation Team and a Technical Evaluation Team responsible for evaluating tenders against evaluation criteria allocated to it, including undertaking assessment of risks posed by each tender and preparing reports to be considered by the Evaluation Committee.

1.10 The procurement team and advisory group provided advice and support to those undertaking evaluation. The procurement team provided support and maintained oversight of the procurement process but was not responsible for evaluation. The advisory group provided advice on an as needs basis relating to members' fields of expertise to support the evaluation process. The advisory group was comprised of Maddocks (probity adviser), MinterEllison (legal adviser), Deloitte Touche Tohmatsu (Deloitte) (commercial adviser)¹⁰, Group 10 Consulting (procurement and contract negotiation activities) and Ngamuru Advisory Pty Ltd (strategic adviser). The total amount the department paid to these various advisers between July 2020 and June 2022 was \$5.5 million.

Government approval process

1.11 In parallel with the development of the RFT, approach to market and evaluation of tender responses, Home Affairs was to develop a fully-costed proposal and second pass business case for the Permissions Capability for consideration by government.¹¹ In October 2020, Home Affairs received \$74.9 million in funding for market engagement and the tender evaluation of the initial procurement; commencement of design and early implementation of technology and infrastructure; and development of a second pass business case.

1.12 Home Affairs received authority to negotiate with a preferred tenderer in February 2021. The department received funding on 28 June 2021 for the foundational elements of the Permissions Capability, with the first deliverables of the Digital Passenger Declaration due by October 2021. Home Affairs did not receive funding for the delivery of the Simple Visa use case.

Cancellation of the Permissions Capability program

1.13 On 6 July 2021, Accenture Australia Pty Ltd (Accenture) was selected as the 'preferred tenderer' to deliver the Digital Passenger Declaration and base capability.¹² Accenture was awarded the deed of standing offer on 6 September 2021. As of December 2022, six contract notices relating to five work orders with a total value of \$61.5 million had been published on AusTender.

1.14 In July 2022, the department advised the Minister for Home Affairs that it intended to pursue a contract termination path for the Permissions Capability deed of standing offer because:

10 Deloitte's engagement as the commercial adviser was suspended on 29 March 2021 and later terminated on 18 May 2021. This followed a complaint from one of the tenderers and a departmental investigation which determined Deloitte had an organisational conflict of interest that was not disclosed to the department when it was engaged. The engagement of Deloitte, the department's handling of the complaint and termination of Deloitte as commercial adviser is examined further in paragraphs 2.98 to 2.107.

11 A business case is considered the key document to support investment-decision making. Business cases demonstrate the need for and the benefits of investment and provide the Government with policy and funding options for addressing its priorities.

See: Department of Finance (Finance), *Developing a business case* [Internet], Finance, Canberra, 2020, available from <https://www.finance.gov.au/government/commonwealth-investment-framework/commonwealth-investments-toolkit/developing-business-case> [accessed June 2022].

12 The procurement delegate did not approve the inclusion of the Simple Visa use case in the deed of standing offer with Accenture. This was because, while Home Affairs received funding for the base capability and Digital Passenger Declaration on 28 June 2021, funding for the Simple Visa was not approved at that time and was to be the subject of future government consideration.

- '[d]espite their delivery of the first iteration of the [Digital Passenger Declaration], Accenture has failed to meet its contracted milestones, and instead has delivered an inflexible product with unresolved defects'¹³; and
- Accenture 'delivered only a small amount of the entire contracted scope for the [Digital Passenger Declaration] and has not delivered a re-useable Base Capability, [which was] due by 30 June 2022.'

1.15 A deed of agreement and release, to cease the deed of standing offer and associated work orders for the Permissions Capability, was agreed between the department and Accenture on 12 August 2022, 11 months after the deed of standing offer was entered into. As of 31 October 2022, the department had paid Accenture a total of \$16.5 million, inclusive of a final payment of \$774,500 agreed as part of the deed of agreement and release for partial delivery of Release 1 outcomes (refer to Appendix 4 for further information regarding the cancellation of the Permissions Capability program).

Rationale for undertaking the audit

1.16 After an earlier procurement process for a proposed GDP was cancelled on 18 March 2020, a new policy direction was announced by government on 20 March 2020.¹⁴ In October 2020, Home Affairs commenced a procurement process for a Permissions Capability system. This audit was undertaken to provide independent assurance to Parliament as to whether Home Affairs' whole-of-government procurement was open, competitive, fair and non-discriminatory and demonstrated achievement of value for money.

Audit approach

Audit objective, criteria and scope

1.17 The audit objective was to assess whether the Department of Home Affairs' procurement process for the Permissions Capability employed open and effective competition and achieved value for money, consistent with the Commonwealth Procurement Rules (CPRs).¹⁵

1.18 To form a conclusion against the objective, the following high-level criteria were adopted.

- Was the procurement process open, competitive, fair and non-discriminatory?
- Was achievement of value for money demonstrated?

13 The department also outlined in this advice that the 'first iteration of the [Digital Passenger Declaration], which focussed on the collection and sharing of critical health information to support the successful re-opening of the international border, was due on 13 December 2021. The [Digital Passenger Declaration] was not ready for a release to the public in the planned timeframe due to quality issues and a large number of outstanding defects. Accenture delivered the first iteration of the [Digital Passenger Declaration] on 15 February 2022.'

14 Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, 'New approach to technology capability acquisition and delivery', media release, Parliament House, Canberra, 20 March 2020.

15 When examining the compliance of this procurement with the CPRs, the ANAO considered the version of the CPRs that was in effect at the time the procurement was undertaken. For the audit, this was the version of the CPRs that came into effect on 20 April 2019. General references to the CPRs in this report (not in relation to a specific procurement) relate to the 2019 version of the CPRs, which was in effect at the time of audit fieldwork. An updated version of the CPRs came into effect on 1 July 2022.

1.19 The audit examined the design and conduct of the procurement process undertaken by the Department of Home Affairs for the deed of standing offer and work orders.¹⁶ While the audit scope did not include the circumstances regarding the termination of the Global Digital Platform procurement or the eventual termination of the Permissions Capability program, information related to both is included in the audit report at Appendix 3 and Appendix 4.

Audit methodology

1.20 The audit methodology included:

- examination and analysis of Home Affairs and DTA records;
- meetings with relevant officials; and
- review of citizen contributions to the audit.

1.21 The audit was conducted in accordance with ANAO Auditing Standards at a cost to the ANAO of approximately \$793,000.

1.22 The team members for this audit were Michelle Mant, Sean Neubeck, Kai Swoboda, Jocelyn Watts, Joshua Carruthers, Tessa Royal, Michaelia Liu and Brian Boyd.

16 As of December 2022, the work orders published on AusTender under the deed of standing offer are Work Order 1 – Discovery and Co-design; Work Order 2 – Base Permissions Capability; Work Order 3 – Digital Passenger Declaration; Work Order 5 – Third Party Component Re-sale; and Work Order 6 – Interim Support.

2. Was the procurement process open, competitive, fair and non-discriminatory?

Areas examined

The ANAO examined whether the procurement process was open, competitive, fair and non-discriminatory.

Conclusion

While the procurement was undertaken through an open request for tender, there were a number of shortcomings in the approach taken by the Department of Home Affairs (Home Affairs or the department). In particular:

- the two shortlisted tenderers from the terminated procurement process for the Global Digital Platform had a competitive advantage as a result of their 'deep engagement' with Home Affairs through that 24-month process. The department implemented in full or in part three of the nine strategies identified by its legal and probity advisers to 'level the playing field';
- the department had approached the market for a tenderer to take end-to-end responsibility for the Permissions Capability. Some tenders accepted for evaluation proposed an alternative commercial model that involved a material shifting of risk to the department. The department's ability to compare prices was also impacted by tenderers bringing forward alternative commercial models; and
- there were inconsistencies in the available evaluation records which meant that the extent to which the successful tenderer met the criteria relating to the solution proposed ('very good') and capacity and capability ('good') was not clearly supported.

Areas for improvement

The ANAO made one recommendation aimed at Home Affairs improving its procurement processes by outlining in tender documentation whether tenders that depart from the department's preferred contracting approach will be accepted and, if so, how they will be evaluated.

The ANAO also identified one opportunity for improvement aimed at Home Affairs improving its procurement processes by transparently informing potential tenderers about the relative importance of the criteria used to evaluate tenders.

2.1 Competition is a key element of the Australian Government's procurement framework set out in the Commonwealth Procurement Rules (CPRs).¹⁷ Effective competition requires non-discrimination and the use of competitive procurement processes.

2.2 Generally, the more competitive the procurement process, the better placed an entity is to demonstrate that it has achieved value for money. Competition encourages respondents to submit more efficient, effective and economical proposals. It also ensures that the purchasing entity has access to comparative services and rates, placing it in an informed position when evaluating the responses. Openness in procurement involves giving suppliers fair and equitable access to opportunities to compete for work while maintaining transparency and integrity of process.

17 Finance, *Commonwealth Procurement Rules*, paragraph 5.1.

Was an open approach to the market employed?

An open approach to the market was undertaken by Home Affairs through a RFT published on 23 October 2020 with an eight-week response period. Home Affairs described this as an ‘accelerated’ open approach, acknowledging the risk that it may reduce the level of market interest.

2.3 The CPRs require ‘relevant entities’¹⁸ to use AusTender to publish open tenders and, to the extent practicable, make relevant request documentation available.¹⁹ An open tender involves publishing an open approach to market and inviting submissions.²⁰ Potential suppliers must be given at least 25 days to lodge a submission from the date and time that a relevant entity publishes an approach to market.²¹

2.4 In March 2020, the Australian Government (the Government) decided to adopt a new policy for the acquisition and development of a ‘workflow processing capability’, which later became the Permissions Capability, in the Home Affairs Portfolio and potentially the wider public service. As a result of this new policy, Home Affairs decided to terminate the procurement process for a new digital visa servicing platform called a ‘Global Digital Platform’ (GDP) that was in progress at the time (see Appendix 3 for more information).

2.5 As outlined in paragraph 1.1, after the Government agreed the Minister for Government Services would develop a first pass business case for the Permissions Capability, a joint agency task force between Home Affairs and the Digital Transformation Agency (DTA) was established to progress the development of the business case. In July 2020, the Minister for Government Services requested Home Affairs and the DTA explore options to expedite the replacement of the visa processing system. The Minister for Government Services was advised by Home Affairs and the DTA that there were four procurement options:

- a limited tender to the two previous GDP tenderers;
- an ‘accelerated’ open market approach using modified GDP procurement documents;
- an open approach to market, not on accelerated timelines which would require an additional twelve months; or
- reinstatement of the GDP procurement.

2.6 The Minister was informed that, while Home Affairs supported the limited tender approach, the DTA supported the ‘accelerated’ open market approach. The advice provided to the Minister by Home Affairs was that the ‘accelerated’ open market approach involved a risk that the process would be viewed as ‘tokenistic’ by other market providers given the ‘deep engagement’ since September 2017 between Home Affairs and the two down-selected GDP tenderers, which could result in other potential providers choosing not to engage in the process. In comparison, Home Affairs and the DTA noted that while an open market approach not on accelerated timelines was expected to allow for ‘levelling’ of the market, it would involve significantly extended timeframes

18 The CPRs define ‘relevant entities’ as including non-Corporate Commonwealth entities and prescribed corporate Commonwealth entities listed in the Public Governance, Performance and Accountability Rule 2014. Home Affairs is a non-Corporate Commonwealth entity: Finance, *Commonwealth Procurement Rules*, Appendix B.

19 Finance, *Commonwealth Procurement Rules*, paragraph 7.10.

20 Finance, *Commonwealth Procurement Rules*, paragraph 9.8.

21 Finance, *Commonwealth Procurement Rules*, paragraph 10.22.

(two years) for delivery of a suitable product. In addition, it was considered that an open approach to market was unlikely to result in a new solution that was based on a more thorough understanding of government requirements given the extent of the work carried out with the previous tenderers.

2.7 The Minister agreed to a recommendation from Home Affairs that he seek input from the Prime Minister on the procurement process.²² On 26 August 2020, the Government decided that an 'expedited' open market procurement process should be undertaken. After receiving further advice on the implementation of this decision, on 21 October 2020, the Government agreed that the Permissions Capability would be procured and delivered in two phases:

- Phase 1 to include the immediate commencement of an expedited open approach to market for the foundational Permissions Capability, delivering the scalable and reusable platform and applying it to two priority use cases (the Simple Visa and the Digital Passenger Declaration); and
- Phase 2 to build on the successful delivery of the platform to implement use cases across government.²³

2.8 The advice that informed this decision cited two key imperatives that the proposed two-phase approach was intended to address: opening of Australia's borders; and demonstrating whole of government capability.

'Expedited' open approach to market

2.9 Home Affairs released a RFT on AusTender on 23 October 2020. Tenders were required to be lodged by 18 December 2020, meaning potential suppliers had eight weeks to respond to the RFT.²⁴

2.10 Consistent with Home Affairs' earlier advice to the Minister, the 'expedited' or 'accelerated' open approach resulted in fewer responses from the market when compared with the terminated Global Digital Platform (GDP) procurement.²⁵ Specifically, eight tender responses were received to the Permissions Capability RFT, of which five were assessed as being compliant with the RFT's conditions for participation and the minimum content and format requirements. In comparison, the

22 The recommendation to seek the Prime Minister's input was made, and the resultant letter sent, notwithstanding that the Prime Minister had previously declared an interest in relation to the GDP procurement and had recused himself from discussions and decisions regarding the GDP, including in March 2020 when the Government decided its new policy direction. There was no evidence that the Prime Minister had responded to the Minister's letter. The Prime Minister later recused himself from consideration of the Permissions Capability in August 2020, and again declared an interest in October 2020 and recused himself from consideration of the Permissions Capability.

23 A Permissions Capability Review Report prepared by Home Affairs and the DTA in June 2022 concluded that: Outside of the Home Affairs portfolio, agencies have not yet committed to specific reuse of the Permissions Capability. Due to a lack of a completed detailed design and operating costs and sustainment models, engagement has not yet been undertaken with agencies. Agencies have therefore not been able to determine which aspects of the Permissions Capability they can reuse, how they could reuse the Permissions Capability, nor if it will provide an affordable and sustainable solution.

24 The department initially proposed releasing the tender for a period of at least six weeks. The Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs indicated a preference for a longer 'open' period of eight weeks to enable better, high quality tender responses.

25 The department's procurement plan stated that while it was a separate procurement, utilising a different delivery and funding model, the Permissions Capability would provide the capability that was to be delivered through the GDP procurement, which was terminated in March 2020 (with the delegate annotating that termination decision with advice that the capability should include and expand beyond visas to other permissions in other portfolios).

department received 36 responses to the GDP market consultation process in July 2017 (four weeks in duration), and 16 responses to the five-week GDP Phase 1 Request for Expression of Interest (REOI) process (after which six shortlisted respondents were invited to participate in the second phase, which involved the provision of 'scenario briefing clarifications' and workshops over an eight week period). This was notwithstanding that Home Affairs had identified in March 2020 that potential tenderers had declined to participate in the GDP procurement process due to the private financing model that was required.

2.11 The department's implementation of mechanisms recommended by its probity and legal advisers to 'level the playing field' are discussed in paragraphs 2.75 to 2.78 and Appendix 11.

Did the request for tender clearly set out the requirements to participate and the approach to evaluation including the criteria that would be employed and any weightings to be applied?

The RFT provided the information necessary to inform decisions by potential tenderers about participating in the procurement process. The RFT set out the requirements to participate and the approach to evaluation. This included identifying six conditions for participation, five minimum content and format requirements and seven evaluation criteria. Weightings were included for two of the seven criteria. The RFT could have been improved by Home Affairs including additional information to transparently inform potential tenderers of the relative importance of the remaining five unweighted criteria to the evaluation.

2.12 The CPRs outline that request documentation must include a complete description of:

- any conditions for participation, including financial guarantees, information and documents that potential suppliers are required to submit;
- any minimum content and format requirements; and
- evaluation criteria to be considered in assessing submissions and, if applicable to the evaluation, the relative importance of those criteria.²⁶

2.13 The CPRs also include a requirement that non-corporate Commonwealth entities, such as Home Affairs, comply with procurement-connected policies where the policy indicates that it is applicable to the procurement process.²⁷

2.14 The RFT contained six conditions for participation and five minimum content and format requirements.²⁸ For example, consistent with the Shadow Economy Procurement Connected

26 Finance, *Commonwealth Procurement Rules*, paragraph 10.6.

27 Finance, *Commonwealth Procurement Rules*, paragraph 4.9.

See also: Finance, *Procurement Connected Policies* [Internet], Finance, available from <https://www.finance.gov.au/government/procurement/buying-australian-government/procurement-connected-policies> [accessed August 2022].

28 Appendix 7 outlines the conditions for participation and minimum content and format requirements as outlined in the RFT.

policy²⁹, the conditions for participation and minimum content and format requirements included the requirement for tenderers to hold a valid Statement of Tax record.

2.15 The RFT outlined the evaluation process that was to be employed (see Appendix 5) and the seven evaluation criteria to be applied for the purposes of evaluation. The first two criteria, described as technical criteria were weighted ('proposed solution' was weighted 60 per cent and 'capacity and capability' was weighted 40 per cent).³⁰ The remaining five criteria, including the price criterion, were not weighted (see Appendix 6).

2.16 While the relative importance of the first two 'technical' evaluation criteria was indicated by the weightings included in the RFT, information to transparently demonstrate to potential respondents the relative importance of the remaining criteria was not included. This meant that the RFT did not make clear the considerations that were of relative importance to the evaluation in terms of demonstrating value for money. The benefits of doing so have been outlined in earlier ANAO performance audit reports.³¹ In February 2023, the department advised the ANAO that:

The department did not adopt weightings³² for the five criteria referred to in order to maintain flexibility. The department also notes that no clarification questions were asked by Tenderers about the criteria or the relative importance of them, either during the RFT process or in debriefing sessions, indicating that there was no confusion amongst Tenderers.

Opportunity for improvement

2.17 There would be merit in the Department of Home Affairs including information in request documentation that transparently demonstrates to potential respondents the relative importance of all evaluation criteria to be applied, whether weighted or otherwise.

Were only those tenders submitted by the specified closing date accepted for evaluation?

Only those tenders submitted by the closing date were accepted for evaluation. A total of eight tenders were lodged on time. Home Affairs received a late submission, which it declined to accept.

29 According to the Shadow Economy Procurement Connected Policy, for government procurements undertaken through open tenders, subject to the CPRs and have an estimated value for over \$4 million, Commonwealth entities must require that tenderers provide a satisfactory Statement of Tax record. Until August 2022 and at the time the Permissions Capability procurement was conducted, the Shadow Economy Procurement Connected Policy was known as the Black Economy Procurement Connected Policy.

See: Treasury, *Shadow Economy Procurement Connected policy* [Internet], Treasury, available from <https://treasury.gov.au/publication/p2019-t369466> [accessed September 2022].

30 On the same day the RFT was released, the delegate requested a late change to the evaluation criteria so that the first two 'technical' evaluation criteria were weighted. The justification for this approach was so that 'this would make the evaluation process more transparent'.

31 Informing potential respondents of the evaluation criteria, and any weightings of those criteria, helps to promote competition as well as provide transparency. See, for example: Auditor-General Report No.23 2017–18 *Delivery of the Moorebank Intermodal Terminal* and Auditor-General Report No.42 2021–22 *Procurement of Delivery Partners for the Entrepreneurs' Program*.

32 Allocating weightings to each criterion is not the only way for entities to outline the relative importance of the criteria.

2.18 The CPRs require all potential suppliers to lodge submissions in accordance with a common deadline.³³ The RFT set out a closing time for submissions of 2:00pm Canberra time, 18 December 2020. A total of eight submissions were lodged before this deadline.

2.19 Late tenders must not be accepted unless the submission is late as a consequence of mishandling by the relevant entity.³⁴ A departmental official received a proposal related to the Permissions Capability via email on 11 February 2021. The probity adviser reviewed the proposal and advised that if it was to be treated as a late tender, it should not be accepted as a 'tender' for the purposes of the RFT because there was no evidence of mishandling by the department. Consistent with the RFT and the probity advice, on 19 February 2021 the department declined to accept the submission on the basis that the RFT required tenders to be lodged by 2:00pm on 18 December 2020 via AusTender.

2.20 The CPRs also state that it may be necessary to open a late submission if there is no indication of which approach to market the submission relates. If a submission is opened, the potential supplier should be advised of the reason it was opened.³⁵ The late submission was 'opened' to determine which approach to market it related to and, in line with the CPRs, the potential supplier was advised of the reason it was opened.

Was the exclusion of any tenders from evaluation consistent with the request for tender?

The exclusion of three tenders from evaluation was consistent with the RFT. The department undertook an initial screening of tender responses and identified that three of eight tenders did not satisfy the conditions of participation and minimum content and format requirements. Home Affairs excluded these three tenders from further consideration and promptly advised the tenderers of the rejection of their submissions.

2.21 The CPRs require that further consideration only be given to submissions that meet minimum content and format requirements.³⁶ The RFT set out that the department would undertake an initial screening of tender responses to identify any tenders that did not comply with the conditions of participation and minimum content and format requirements. Following this initial screening, Home Affairs would exclude any tenders that did not comply with the conditions of participation and minimum content and format requirements. The department also had the discretion to exclude tenders that were incomplete or non-compliant with the RFT or otherwise clearly non-competitive.

2.22 Home Affairs followed the evaluation approach set out in the RFT and undertook an initial screening of the eight tender responses. It concluded that three tender responses did not satisfy the conditions for participation and/or the minimum content and format requirements and should be excluded from further consideration. The CPRs require that, following the rejection of submissions, officials must promptly inform affected tenderers of the decision.³⁷ Consistent with

33 Finance, *Commonwealth Procurement Rules*, paragraph 10.20.

34 Finance, *Commonwealth Procurement Rules*, paragraph 10.28.

35 Finance, *Commonwealth Procurement Rules*, paragraph 10.31.

36 Finance, *Commonwealth Procurement Rules*, paragraph 10.34

37 Finance, *Commonwealth Procurement Rules*, paragraph 7.17.

this requirement, on 3 February 2021 Home Affairs advised the three tenderers that they would not be considered further in the evaluation process.

2.23 Initial screening of tenders also identified that Tenderer 4's proposal to use an existing agreement with the Australian Government would need to be referred to the legal adviser for a detailed assessment, as this was different to the proposed Permissions Capability draft agreement included in the RFT (refer to paragraphs 2.55 to 2.56 for more information). The procurement delegate noted that this matter would be addressed through the evaluation process and Tenderer 4 should proceed to step 3 of the evaluation process.

2.24 The department's legal adviser was tasked with providing options for the preferred contracting model.³⁸ The systems integrator model that ultimately resulted from the procurement process was not one of the options considered. Rather, the department's approach to the market sought a contractor that would take end-to-end responsibility for the Permissions Capability.³⁹ During the evaluation, the department identified that three tenderers (Accenture, Tenderer 2 and Tenderer 4) had proposed a commercial contracting model that was different to that sought in the RFT.⁴⁰ This was reflected in the sign off provided to the department by its legal adviser in September 2021 in relation to the execution of the transaction documents, as follows:

This model was in contrast to the approach sought by the Department in the RFT, whereby the Successful Tenderer would take end-to-end responsibility for the Permissions Capability. Consequently, Accenture's model was raised during verification activities, where Accenture proposed to provide a limited warranty in relation to the end-to-end solution. The limited warranty provided did not materially improve the allocation of risk associated with Accenture's proposed commercial model.

During negotiations the Department was able to improve on the limited warranty and the commercial model proposed by Accenture more broadly, for example ...

Even with these negotiated improvements, Accenture's model involves a material shifting of risk from Accenture to the Department. The contracting model is complex and, under it, the Department assumes a key role in the end-to-end management of the solution. We understand that the Department is aware of this and has already taken steps to put in place contract management arrangements. Highly active contract management will be important to ensuring the success of this model.

2.25 The ANAO's analysis of the request documentation is that it did not clearly identify if tenders that proposed alternative commercial models would be accepted for evaluation, and if they were accepted, how those tenders would be addressed in the evaluation and ranking of competing tenders. Rather than a single contractor to design, implement and support the Permissions Capability as sought in the approach to the market, Accenture, Tenderer 2 and Tenderer 4 proposed a systems integrator model, whereby the department would be required to enter into contracts directly with third party vendors, the products and services of which the Permissions Capability

38 The advice to the department noted that the structuring model would significantly impact on the RFT documentation, particularly the draft agreement, and would be an important part of being transparent with tenderers as to how the Permissions Capability is being procured.

39 See also footnote 6.

40 In the Legal Compliance Report, in respect of the commercial models offered by the three tenderers, the department was informed that 'The Department will assume cost and risk (including for support [in the case of Accenture and Tenderer 2]) under the model proposed by the Tenderer and there is a question as to whether this model is acceptable to the Department'.

provider would assume no liability (see Appendix 9). Paragraphs 2.53 to 2.54 below examine the conduct of verification activities during tender evaluation, including where tenderers had proposed an alternative commercial model to that set out in the RFT be adopted.

2.26 In February 2023, the department advised the ANAO that:

It is common for final agreements to differ from what is proposed in an RFT. The contracting model proposed was not new to the department nor the Commonwealth more broadly and it is commonly adopted in large ICT procurements.

Recommendation no. 1

2.27 When undertaking procurements, the Department of Home Affairs clearly identify in its request documentation whether responses that depart from its preferred contracting approach will be accepted and, if so, identifying in its tender evaluation plan how those departures will be addressed in the evaluation and ranking of competing tenders.

Department of Home Affairs response: *Partially Agreed.*

2.28 *The Department agrees that it is important that the market is clear on whether alternative commercial models an RFT will be accepted. The Department will consider how to optimise communications with tenderers in this regard in future and to ensure Tender Evaluation Plans are clear on how alternative commercial models proposed by Tenderers will be assessed.*

2.29 *The Department does not agree, however, that potential tenderers were confused as to whether alternative commercial models would be considered in the Permissions Capability Procurement, or that they had a strong interest in how various possible models would be assessed. This is supported by a number of tenderers proposing alternative contracting models and that no clarification questions were received on this matter. The RFT afforded Tenderers the opportunity to provide alternative ways for the requirements to be met unless specified otherwise.*

ANAO comment

2.30 A key issue identified by the audit was that a number of tenderers proposed a different commercial model to that included in the RFT, which involved additional risk for the department and impacted upon the evaluation of the value for money offered by the competing tenderers. The recommendation and audit findings on which it was based do not suggest confusion on the part of tenderers or that tenderers be privy to the department's tender evaluation plan. Rather, by not addressing in tender evaluation planning how it would evaluate and compare tenders prepared on the basis of different commercial and contracting models to that proposed in the RFT, the department was unable to undertake a 'full, detailed forensic price normalisation'. This adversely affected the comparative evaluation of tenders by the department.

Were all tenders accepted for evaluation assessed fully and fairly against each of the specified criteria?

The department's records of the procurement do not adequately demonstrate that each of the five tenders that progressed to evaluation were assessed fully and fairly against each of the seven criteria. There were a number of inconsistencies in the underlying evaluation records which meant that the rating of Accenture's tender, including the extent to which it met the criteria relating to

the solution proposed ('very good') and capacity and capability ('good'), was not clearly supported. Evaluation against the price criterion was not undertaken in the way that had been planned by Home Affairs to enable tender prices to be compared. The tender evaluation report nevertheless directly compared the prices submitted by each of the five tenderers that proceeded to evaluation.

2.31 The CPRs set out that relevant evaluation criteria should be included in request documentation to enable proper identification, assessment and comparison of submissions on a fair, common and appropriately transparent basis.⁴¹

2.32 The RFT outlined that the objective of the evaluation process was to identify the tender (if any) that represented best value for money for the Commonwealth and that the department would evaluate tenders against seven evaluation criteria, two of which were weighted and the remaining five were not weighted.

2.33 Following the initial screening to determine if the tenders complied with the mandatory requirements and conditions of participation, five tenders were progressed for evaluation. The results of the department's assessment against each of the criteria for the five tenderers is detailed in Appendix 10.

Weighted technical criteria

2.34 There were some gaps in the records of the department's evaluation of the two weighted 'technical' criteria:

- against the highest ranked criterion (proposed solution), while scores were recorded by evaluation team members in accordance with the rating scale outlined in the tender evaluation plan, only 58 per cent of the underlying individual assessments recorded the strengths and weaknesses, and a justification for each of the ratings (the extent of the completeness of individual assessment sheets varied from 33 per cent to 100 per cent);
- similarly for the capacity and capability criterion, while scores were recorded by evaluation team members in accordance with the rating scale outlined in the tender evaluation plan, sufficient background and reasoning was not recorded to provide evidence that the correct assessment had been made (while 73 per cent of individual assessments recorded the strengths, weaknesses and a justification for the rating applied, 27 per cent did not); and
- individual assessments were moderated through consensus meetings, and the results compiled in a 'Moderation Tool'. According to the relevant evaluation report, each sub-team considered each individual assessment and agreed a score that reflected the sum view of the tenderer's strengths, weakness, risks, understanding of the requirements, and the degree of substantiation of their claims. While the consensus scores that resulted from these meetings were recorded in the moderation tool, the records were not sufficient to explain why the consensus scores were inconsistent with individual scores on some occasions.

2.35 The department assessed Accenture's tender submission as being the first ranking tender. Accenture was rated as having submitted the best technical response and was given a rating of

41 Finance, *Commonwealth Procurement Rules*, paragraph 7.12.

‘Good,’ coupled with an overall residual technical risk rating of ‘Low’ (on the basis that identified risk treatments could be applied).

2.36 The ANAO’s analysis was that there were a number of inconsistencies in the underlying evaluation records which meant that the higher rating of Accenture’s tender was not clearly supported by the records.

- The consensus scores for Accenture’s submission were generally higher relative to the distribution of the individual scores, and for all other tenderers, the consensus scores were generally lower when compared to the distribution of individual scores (see Appendix 8). The underlying evaluation records did not always contain sufficient justifications for these deviations.
- On eight occasions, the consensus scores were lower than the individual scores in the evaluations of submissions from Tenderer 2, Tenderer 4, and Tenderer 5 (see Appendix 8). The underlying evaluation records did not always contain sufficient justifications for these deviations (no justification was recorded for one out of two instances for Tenderer 5 where the consensus score was lower than the individual scores in the evaluation of submissions).
- While for all other tender submissions the ‘final consensus scores’ were subject to further moderation, Accenture’s submission was not. The final moderated scores for two tenderers, including the tenderer ranked second by the technical evaluation, were moderated down to a lower rating overall which increased the difference between the tenderers ranked first (Accenture) and second (Tenderer 3).
- The ‘technical’ evaluation did not take into account that Accenture’s (and Tenderer 2’s and Tenderer 4’s) proposed solution included a systems integrator or ‘commercial model’ that was different to the approach sought in the RFT (see paragraph 2.24).
- Accenture’s submission was the only proposal with a technical risk rating lower than ‘High’ (refer to Appendix 10). The team responsible for evaluating the technical risks rated Accenture’s ‘residual risk’ as ‘Low’ as ‘most risks were related to technical and delivery issues, which ... could be mitigated through a clarification and/or the contract negotiation process’. Six medium and high technical risks (60 per cent of identified technical risks) identified by individual assessors for Accenture were downgraded to low during a moderation process.⁴²

2.37 Appendix 4 includes information regarding the cancellation of the Permissions Capability project as well as a table that sets out the reasons recorded by the department for terminating the contract. In February 2023, the department advised the ANAO that it:

acknowledges that Accenture failed to deliver against the representations that Accenture made, however this does not mean the evaluation was incorrect.⁴³

42 In contrast for other tenderers: during moderation for Tenderer 2 one technical risk was downgraded from medium to low; two technical risks were downgraded from medium to low for Tenderer 3; one technical risk was downgraded from medium to low for Tenderer 4 and one technical risk was downgraded from high to medium for Tenderer 5.

43 The department also advised the ANAO that: ‘At the time of evaluation and decision, the successful tenderer was considered to offer a viable technical solution with the required delivery capability and capacity which was challenged throughout the evaluation process, including specifically in the verification activities’.

2.38 Accenture advised the ANAO in February 2023 that ‘While we do not dispute that the department may have briefed Ministers etc on the department’s intent to terminate the program, the contracts between the department and Accenture for the Permissions Program were not actually terminated by the department, but were ended by mutual agreement (as reflected in the Deed of Release and Settlement)’. Accenture further advised that:

The report refers to various amounts that were contracted and/or paid to Accenture. We believe it is worth noting that those amounts include amounts that were to be paid to a range of third parties, including software vendors for licences the department ultimately owned, infrastructure providers and small & medium enterprises. By way of breakdown — approximately 40 per cent of the stated amounts was paid to other partners in the program.

During the delivery of the Permissions Program, the department and Accenture were not always in alignment on what had been delivered and what needed to happen (including department inputs) to complete delivery. We have previously shared our views on this with the department during delivery, the DTA in their review, as well as the Department of Finance Gateway.

Price criterion

2.39 The tender evaluation plan required that the evaluation against the price criterion result in one of three ratings being awarded (favourable, not favourable, and unacceptable) after the evaluation of the technical criteria.

2.40 The pricing evaluation of the five tenders that were progressed for evaluation was done on the tendered ‘raw’ prices of the five tenderers. The results of the pricing evaluation as presented in the evaluation report are shown in Table 2.1. The evaluation report noted that it was a ‘point-in-time view of tender evaluations’. It stated that pricing adjustments/changes were not made with the limited information available within the tenders, but opportunities were identified to clarify cost drivers through verification and clarification activities, and that the submitted price may change in response to pricing clarification questions submitted by the department to ‘preliminary shortlisted tenderers’ on 8 February 2021.

Table 2.1: Price summary prior to verification and clarification

Tenderer	Submitted price (GST excl.)	Rating
Accenture	\$111,808,213	Favourable
Tenderer 2	\$291,005,930	Not Favourable
Tenderer 3	\$645,221,831	Not Favourable
Tenderer 4	\$109,915,779	Favourable
Tenderer 5	\$73,565,989	Unacceptable ^a

Note a: According to the Tender Evaluation Report, Tenderer 5’s pricing was considered to be incomplete and it appeared that the tenderer had misunderstood the scope and what the department required as part of the solution.

Source: ANAO analysis of departmental records.

2.41 As illustrated by Table 2.1 above, there was a significant difference between the lowest and highest price tender. The difference in pricing was driven, in part, by different commercial models offered by each tenderer, which was reflected in the tenderers’ response to legal non-compliance, with some taking responsibility for the end-to-end process where other tenderers were not (having an impact on price and governance), a matter discussed at paragraph 2.24.

2.42 The RFT had stated that ‘for the purposes of evaluation in Step 4, the department may adjust and ‘normalise’ prices and undertake a sensitivity analysis of prices or take any other steps it considers necessary in order to establish a common base for comparative evaluation of tenders’. While the prices for the three shortlisted tenderers were adjusted following clarification questions and verification activities (refer to paragraph 2.48 to 2.54 for more information) this did not involve a ‘full, detailed forensic price normalisation’ that allowed for a common base for comparison to be established.⁴⁴ Nevertheless, the tender evaluation report compared prices as illustrated by Table 2.2 and the following statements included in the report when assessing value for money:

It was noted that pricing [for Tenderer 3] was deemed uncompetitive ... noting that in comparison to other Tenderers that appeared to provide a complete and ‘Favourable’ pricing estimate, [Tenderer 3’s] pricing was approximately 6 times higher. When considering Value for Money, the high price, relative to other apparently complete offerings, did not appear to contribute in a positive way.

Table 2.2: Comparison of shortlisted tender submissions in tender evaluation report

	Criterion	Accenture	Tenderer 3	Tenderer 4
Technical	1. Capacity and capability	7	5	7
	2. Proposed solution	8	6	4
	<i>Weighted total</i>	7.6	5.6	5.2
Financial and Non-Technical	3. Financial evaluation (Price)	Favourable	Not favourable	Favourable
	4. Economic benefit to Australia	Good	Good	Adequate
	5. Indigenous participation	Good	Good	Good
	6. Collaboration and relationship	Exceptional	Good	Good
Risk	Overall risk (assigned by Evaluation Committee)	Medium	High	High
	Commercial – Non-Technical risk	Low	High	Low

44 The Tender Evaluation Report recorded the following rationale: ‘Following the preliminary shortlisting of Tenderers by the EC, the CET undertook a more detailed assessment of the responses to the pricing. This took into account the information provided by the preliminary shortlisted Tenderers through verification and clarification questions and verification activities. The CET undertook a review of the additional pricing information in order to provide a normalised view of the pricing with a clearer understanding of the elements included in each of those prices. As the review of pricing was completed after the preliminary shortlisting it was only completed on the three (3) preliminary shortlisted Tenderers. The normalisation undertaken was not a full, detailed forensic price normalisation exercise as this was not determined by the EC to be necessary on the basis that it considered the CET’s final evaluation of Tenderers’ pricing to be sufficient for it to assess value for money for the shortlisted Tenderers. The EC considered the pricing to be sufficient as it had noted that normalising the only material price driver remaining (following the normalisation that had already been undertaken by the CET), being the Tenderers’ commercial models, would not have resulted in the price of the Tender rated as having the best technical solution increasing so as to be relative to (or higher than) the price of the Tender with the second best technical solution. And that the Tenderers with similar pricing proposed similar commercial models and therefore further normalisation of these prices would not have resulted in any additional differentiation.’

Criterion		Accenture	Tenderer 3	Tenderer 4
	Commercial – Financial risk	Medium	Low	Medium
	Commercial – Financial Viability Assessment	Low	High	Medium
	Commercial – Compliance risk	High	Medium	High
	Technical risk	Low	High	High
Price	Total 9-Year cost (initial price not adjusted or normalised, as presented in tender submission)	\$111,828,377.24	\$645,221,830.50	\$109,915,778.79
	Total 9-Year cost (adjusted price through clarification)	\$199,453,428.10	\$660,221,830.50	\$191,936,437.23
	Preliminary Total 9-Year cost (adjusted price through verification)	\$227,357,483.51	\$660,221,830.50	\$229,274,976.91
	Government Furnished Facilities	\$675,540.00	\$2,082,915.00	\$281,475.00

Source: ANAO analysis of Home Affairs records

Were tender clarification, offer definition and improvement activities and/or best and final offer processes conducted in a fair and transparent manner?

The approach taken to clarifying and verifying tender responses included providing opportunities for changes to be made to the commercial models. It also resulted in changes being made to the tender prices that were evaluated. Home Affairs asked one tenderer to re-submit its statement of compliance with the draft agreement because the tenderer provided insufficient information to enable its risk to be evaluated — an approach which probity advice said would be unfair to other tenderers. Offer definition and improvement activities and best and final offer processes were not undertaken.

2.43 The RFT set out that the department may conduct offer definition and improvement activities and best and final offer processes, seek written clarification of information contained in the tender in writing, or require tenderers to give presentations on tender responses, attend interactive workshops or interviews or host site visits on their premises. The department did not conduct offer definition and improvement activities or best and final offer processes but did undertake clarification of tender responses.

2.44 Home Affairs' procurement framework sets out that if departmental officials consider that there is a mistake or inaccurate information in a submission, verification or clarification should be sought. Clarification must not be used as an opportunity for respondents to revise, modify the scope of, or change a submission (including the submitted price). Additional information should be assessed to determine whether it is truly a clarification of submitted information, or whether it effectively amounts to the submission of late material that seeks to vary the existing submission.

2.45 The RFT set out that the department may:

- seek written clarification of information contained in the tender in writing; and
- require tenderers to give a presentation on its tender, attend interactive workshops or interviews or host site visits on their premises.

2.46 As part of its tender evaluation process, the department issued clarification questions to the five tenderers that were progressed to evaluation and held two sets of verification activities⁴⁵ with the three shortlisted tenderers.⁴⁶ Verification activities consisted of the department issuing written verification questions, holding interactive workshops with tenderers and obtaining written responses to verification questions and any additional matters raised in the verification workshops. Table 2.3 below sets out the number of engagements between Home Affairs and each of the five tenderers through tender clarification and verification activities.

Table 2.3: Number of tailored engagements with tenderers during the evaluation period

	Accenture ^a	Tenderer 2	Tenderer 3 ^a	Tenderer 4 ^a	Tenderer 5
Number of tailored clarification questions asked by Home Affairs	32 ^b	4	17	20	1
Number of tailored verification questions asked by Home Affairs	7	0	6	7	0
Number of one-on-one interactions with Home Affairs	2	0	2	2	0

Note a: Accenture, Tenderer 3 and Tenderer 4 were shortlisted by the Evaluation Committee on 3 February 2021. Following shortlisting, these tenderers were asked to address clarification questions on pricing elements. Each of the shortlisted tenderers was issued between 13 to 15 clarification questions on pricing elements on 8 February 2021.

Note b: Home Affairs advised the ANAO in December 2022 that ‘Accenture was issued with 13 clarification questions after they were selected as the preferred tenderer.’ This is at odds with the ANAO’s analysis of departmental records, which indicated that Accenture was issued with 13 clarification questions on 5 July 2021, the day before Accenture was identified as the preferred tenderer by the delegate.

Source: ANAO analysis of Home Affairs’ records.

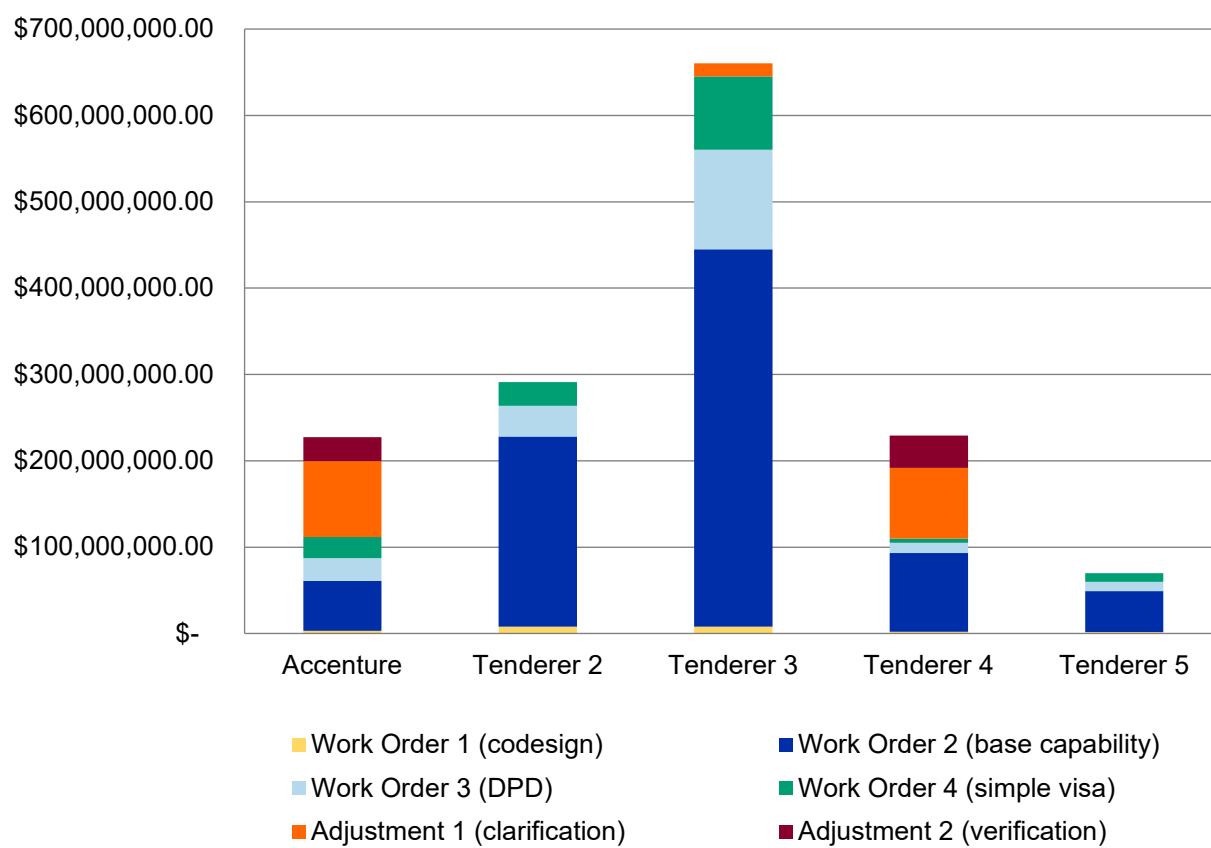
Pricing elements

2.47 As set out in Table 2.1, there was a significant difference between the lowest and highest price tenders. The department sought to ‘clarify cost drivers’ through additional clarification and verification activities. In total, each of the shortlisted tenderers was asked between 13 to 15 clarification questions on pricing elements and additional verification questions in the February 2021 verification workshops. Figure 2.1 illustrates the effect of the department’s clarification and verification on the shortlisted tenderers’ prices.

45 Workshops occurred on the 16 and 17 February 2021 (prior to submission of the tender evaluation report to the delegate) and on 23 March 2021 (at the request of the procurement delegate to inform considerations of the Evaluation Committee’s recommendations).

46 Accenture, Tenderer 3 and Tenderer 4 were shortlisted by the Evaluation Committee on 3 February 2021. All five compliant tender responses were evaluated against the evaluation criteria in the RFT prior to shortlisting.

Figure 2.1: Price per tenderer including adjustments sought through clarification and verification



Source: ANAO analysis of Home Affairs records.

2.48 The department did not require tenderers to include software pricing for the full term of the contract in the RFT (only the initial three year term). Instead, as part of tender clarification processes, shortlisted tenderers were asked to ‘clarify’ the pricing impact of including licencing and/or support for software components for the full contract term (nine years). As illustrated in Figure 2.1, the price offered by all three shortlisted tenderers increased as a result of the clarification questions. The prices offered increased by \$87 million (Accenture), \$15 million (Tenderer 3) and \$82 million (Tenderer 4).

2.49 The department’s probity adviser did not express concern over the extent of the clarification questions. In the clearance process, it was requested that the responses from tenderers also be probity cleared before evaluation. Maddocks did not undertake a screening of tenderers’ responses due to time pressures, instead advising that responses should be distributed on a need-to-know basis and, if any material changes to responses were identified, these should be notified for discussion after the verification workshops. No material changes to tender submissions were noted or recorded as discussed.

2.50 Verification activities included an activity to ‘verify’ the shortlisted tenderers’ assumptions about the nature and quantity of Government resources needed to deliver the project, as well as

the impact on the tenderers' price based on increased levels of technical support required to be provided by the successful service provider.⁴⁷ Specifically, Accenture and Tenderer 4 were asked to:

provide estimated pricing (at a high level at this stage is sufficient) to provide the end-to-end solution for the Permissions Capability under a model by which the Contractor accepts responsibility for the entirety of the Permissions Capability solution (including subcontractor and third party supplier software, products and services).

2.51 As shown in Figure 2.1, prices of two shortlisted tenderers increased as a result of the additional verification activities, by \$27.9 million (Accenture) and \$37.3 million (Tenderer 4).

2.52 Home Affairs' approach was not consistent with its internal procurement framework, which notes that clarification must not be used as an opportunity to change a submission, including the submitted price.

Commercial models

2.53 As Accenture and Tenderer 4 had not submitted tender responses that were consistent with the commercial model requested in the RFT, through the conduct of the verification processes they were asked to provide 'estimated pricing' to provide the end-to-end solution for the Permissions Capability under a model by which the tenderers would accept responsibility for the entirety of the solution (including subcontractor and third-party supplier software, products and services) (see paragraph 2.50 above).⁴⁸ In their responses:

- Accenture confirmed the Systems Integrator model proposed in its RFT response and offered to provide only a limited warranty in relation to its end-to-end solution. Liability for third party products remained with third parties; and
- Tenderer 4 (offered a second option where it would accept end-to-end responsibility for its solution (including subcontractor and third party supplier software, products and services) subject to tripartite negotiations with the department.

2.54 This meant that both tenderers were provided with opportunities to alter their tender responses and change their bids so that they would be consistent with the commercial model proposed in the RFT, an approach which is contrary to the department's internal procurement framework.

Statement of compliance

2.55 Tenderers were required to submit a statement of compliance with the draft agreement and work orders as part of their tender responses. The RFT set out that if a tenderer did not include a statement of non-compliance, partial compliance or non-applicability relating to any matter, the tenderer would be deemed to comply with that matter. As noted in paragraph 2.23, Tenderer 4 did not submit a statement of compliance that specifically identified partial compliance gaps or provide explanations for each instance of partial compliance with the provisions in the draft agreement (as

47 Each of the shortlisted tenderers' prices were based on varying ticketed support volumes. For example, Accenture had assumed 100 tickets per month, whereas Tenderer 3 had assumed 1000 tickets per month.

48 Tenderer 3, the other shortlisted tenderer, had proposed a commercial model whereby it would accept end-to-end responsibility for the delivery of the solution. During the verification workshops, the department noted it wished to discuss 'key aspects of the commercial model or the reuse requirements that are impacting materially on the pricing tendered ...'

required by the RFT), but instead included in its tender that it 'partially complied' with the entire draft agreement and noted that it would seek to rely on the provisions of an existing agreement with the government.

2.56 The probity adviser noted (in the form of draft advice that the department advised the ANAO in February 2023 was not finalised) that it was not open to the department to ask Tenderer 4 to materially change its tender by substituting a statement of compliance against the draft agreement:

it is not open to the Department to ask [Tenderer 4] to materially change its Tender by retracting its statement that the [Whole of Government Agreement] applies (even if this were permissible under DTA's policy) and substituting a Statement of Compliance against the Draft Agreement. This would result in unfairness to other Tenderers'.

2.57 Contrary to this probity advice, on 25 January 2021, Home Affairs issued a clarification question to Tenderer 4 requesting that it submit a full statement of compliance by 15 February 2021. Tenderer 4 resubmitted its statement of compliance within the advised timeframe. The tender evaluation report noted that the tenderer failed to adequately detail the areas of non-compliance to the draft agreement and following clarification it was still challenging for the Commercial Evaluation Team to understand its position on significant, complex issues.

Were advisers involved with the procurement process, including the evaluation of tenders, engaged through appropriate procurement processes?

Five advisers were contracted by Home Affairs through seven procurement processes for a total value of \$9.7 million. Home Affairs undertook limited planning for the procurement of its advisers and there was insufficient procurement documentation. Non-competitive processes were a feature with the department engaging providers with which it had existing relationships. The use of non-competitive processes, and the department's failure to evaluate submissions against published criteria, means that Home Affairs is unable to satisfactorily demonstrate that its approach complied with the Commonwealth Procurement Rules, including the core rule of achieving value for money.

2.58 As outlined in paragraph 1.10, Home Affairs appointed five advisers for the procurement process to provide a range of advisory services. This comprised Maddocks (probity adviser), MinterEllison (legal adviser), Deloitte Touche Tohmatsu (Deloitte) (commercial adviser), Ngamuru Advisory Pty Ltd (Ngamuru Advisory) (strategic adviser) and Group 10 Consulting (procurement and contract negotiation advice). ANAO analysis of Home Affairs records indicates that the total approved value of the adviser contracts as at November 2022 was \$9.7 million and the value of the payments made to these providers between July 2020 and June 2022 was \$5.5 million.

2.59 To assess whether the advisers were engaged through appropriate procurement processes, the ANAO examined the seven procurement processes for the consultants/advisers.⁴⁹ The ANAO

⁴⁹ The department's compliance with its obligations to conduct these procurements ethically is examined at paragraph 2.71 to 2.107 and its compliance with its AusTender reporting requirements is examined at paragraph 3.44 to 3.47.

examined whether these procurement processes complied with mandatory requirements in the CPRs, as well as requirements in the Home Affairs internal procurement framework.⁵⁰

Procurement planning

2.60 Adequate planning assists in achieving the efficient, effective, ethical and economical procurement practices required under the CPRs. A thorough consideration of value for money begins by officials clearly understanding and expressing the goals and purpose of the procurement.⁵¹ Finance guidance states that prior to approaching the market, entities should determine the objectives for the procurement and detail a clear scope of requirements.⁵²

2.61 The department undertook limited planning for the procurements of its advisers.

- While the department documented the objectives for all procurements and detailed the scope of requirements, this was not done prior to approaching the market for any of the procurements.
- Home Affairs did not estimate the value of the procurements for six of the seven procurements prior to selecting a procurement method.⁵³
- Despite being required by its procurement framework, procurement plans were prepared by Home Affairs for only one of the seven procurements. Similarly, despite the Home Affairs procurement framework requiring that a business case be prepared prior to approaching the market, no business cases were approved prior to approach to market documentation being issued. Instead, business cases were prepared and approved prior to or on the same day of contract signature for all seven procurements.
- Value for money was mentioned in procurement planning documentation for only one of the seven procurements.

Approach to market

2.62 Under the CPRs, procurements from existing standing offers (including panel arrangements) are not subject to the rules in Division 2 of the CPRs but must comply with the rules in Division 1.⁵⁴ All advisers were sourced from existing panel arrangements and reported on AusTender as 'open tender'.⁵⁵

2.63 The department's approach to engaging its advisers for the Permissions Capability procurement did not meet the requirements of the CPRs.

50 The Home Affairs internal procurement framework is comprised of its Accountable Authority Instructions, policy frameworks and guidance available to all staff via its internal intranet.

51 Finance, *Commonwealth Procurement Rules*, paragraph 4.1.

52 Finance, *Procurement Process Considerations* [Internet], Finance, available from <https://www.finance.gov.au/government/procurement/buying-australian-government/procurement-process-considerations> [accessed August 2022].

53 The expected value of a procurement must be estimated before a decision on the procurement method is made.

See: Finance, *Commonwealth Procurement Rules*, paragraph 9.2.

54 Finance, *Commonwealth Procurement Rules*, paragraph 9.12.

55 This is consistent with the CPRs which state that officials should report the original procurement used to establish the standing offer when they report procurements from standing offers.

See: Finance, *Commonwealth Procurement Rules*, paragraph 9.13.

- On no occasion did Home Affairs seek a quote from more than one supplier.⁵⁶ That is, there was no competition for any of the adviser roles, an approach at odds with guidance from the Department of Finance.⁵⁷ Three of the five advisers (Maddocks, MinterEllison and Ngamuru Advisory) were advisers for the GDP procurement before it was terminated.
- Request for quote documentation was issued to suppliers for two of seven procurements. Evaluation criteria were not included in the request for quotes or otherwise communicated by Home Affairs.
- Following a 'catch up' meeting between a Deloitte employee and Home Affairs official on 3 September 2020, the department emailed Deloitte outlining the potential scope of work for commercial advisory services. Home Affairs advised the ANAO in June 2022 that it considered that this was 'evidence of a Request for Quote'.
- No request for quote documentation or written offer for services was issued for the strategic advisory services. Home Affairs advised the ANAO in June 2022 that 'a quote was identified' by an official after 'a discussion with Ngamuru'. In support of its statement, the department provided an email from a Home Affairs official which set out that '[Ngamuru]'s 30 days came in at \$105K', but no written quote from the supplier was received.⁵⁸
- The department did not issue approach to market documentation for any of the three Group 10 Consulting procurements and did not seek responses from the supplier outlining its scope of services and offered rates. Home Affairs advised the ANAO in July 2022 that it did 'not issue a formal Request for Quote to the supplier as the pricing is identified in the Deed of Standing Offer'.

Demonstrating achievement of value for money

2.64 Achieving value for money is the core rule of the CPRs. Each purchase from a panel represents a separate procurement process — officials must be able to demonstrate that they have achieved value for money for each engagement.⁵⁹ The absence of competition for the adviser roles adversely affected the ability of Home Affairs to demonstrate that it achieved value for money, and this was compounded by other shortcomings in the department's approach.

2.65 Officials for procurement process must be satisfied that the procurement achieves a value for money outcome. Price is not the sole factor when assessing value for money. An

56 The department's procurement framework in place at the time of the adviser procurements did not require officials to seek more than one quote to demonstrate value for money. The Accountable Authority Instructions (AAIs) have since been updated note that value for money is best achieved when a minimum of three verbal or written quotes are sought, commensurate with the scale, scope and risk of the procurement.

57 Finance, *Procuring from a Panel – Panels 101* [Internet], Finance, available from <https://www.finance.gov.au/government/procurement/buying-australian-government/procuring-panel-panels-101> [accessed August 2022].

58 The Accountable Authority Instructions in place during the adviser procurements state that officials 'must ensure that any procurement achieve a value for money outcome. Value for money is best achieved when you can demonstrate that 1-3 verbal or written quotations have been obtained, commensurate with the scale, scope and risk of the procurement.' These instructions have since been updated to require a minimum of three verbal or written quotes.

59 Finance, *Procuring from a Panel – Panels 101* [Internet], Finance, available from <https://www.finance.gov.au/government/procurement/buying-australian-government/procuring-panel-panels-101> [accessed August 2022].

official must consider the relevant financial and non-financial costs and benefits of each submission. This includes the quality of the goods and services; fitness for purpose of the proposal, the potential suppliers' relevant experience and performance history, and whole-of-life costs.⁶⁰

2.66 As noted in paragraph 2.63, the department did not identify evaluation criteria in request documentation to enable the proper identification, assessment and comparison of submissions on a fair, common and appropriately transparent basis.⁶¹ The failure to identify evaluation criteria means that the procurement decision-makers were not presented with evaluation or analysis to support the department's conclusions that their chosen suppliers represented value for money. The decision makers within Home Affairs did not question the lack of evaluation or analysis against criteria before making the decision to proceed with the procurement.

2.67 For all seven procurements, a value for money justification was recorded in the approval documentation for the delegate to authorise entry into contract with the preferred supplier. The quality of the department's consideration of financial and non-financial costs of the procurements was mixed.

- For two procurements, the value for money justification recorded was that value for money was established through the panel arrangement, an approach that does not comply with the CPRs. Specifically, as outlined in guidance from Finance, each purchase from a panel represents a separate procurement process and officials must be able to demonstrate that they have achieved value for money for each engagement.⁶²
- For five procurements, the department recorded consideration of the non-financial costs and benefits of appointing the supplier, although asserted costs and benefits of each supplier were not substantiated by evaluation against evaluation criteria for all five procurements.
- For four procurements, the department did not seek reduced rates, discounting or alternative pricing structures and agreed to the maximum rates set out in the deeds of standing offer.

Contract variations

2.68 The seven adviser contracts have been varied a total of 11 times. Table 2.4 below sets out the adviser contracts, as well as the original and current values of the contracts. In aggregate, the variations more than doubled the amount to be paid to the five advisers compared with the amounts at the time they were engaged.

60 Finance, *Commonwealth Procurement Rules*, paragraphs 4.4 to 4.5.

61 Finance, *Commonwealth Procurement Rules*, paragraph 7.12.

62 Finance, *Procuring from a Panel – Panels 101* [Internet], Finance, available from <https://www.finance.gov.au/government/procurement/buying-australian-government/procuring-panel-panels-101> [accessed August 2022].

Table 2.4: Variation to contract value for adviser contracts

Supplier	Signature date	Original value (\$)	Current value (\$)	Variance between original and current value (%)
Deloitte	23 September 2020	151,800	1,520,605	902
Group 10 Consulting procurement one	2 July 2020	423,500	501,523	18
Group 10 Consulting procurement two	10 September 2020	115,500	597,371	417
Group 10 Consulting procurement three	1 July 2021	2,517,075 ^a	2,517,075 ^a	0
Maddocks	26 October 2020	146,520	1,120,265	665
MinterEllison ^b	26 October 2020	856,600	3,300,000	285
Ngamuru Advisory	22 December 2020	105,000	105,000	0
Total	Not applicable	4,315,995	9,661,839	124

Note a: The value of this contract includes procurement advisory services for the Permissions Capability and other ongoing procurement processes of the department. The department estimated the value of the work related to the Permissions Capability at \$1,775,950 (71 per cent of the contract value).

Note b: One contract variation for MinterEllison legal advisory services was approved after the deed of standing offer and work orders with Accenture were signed.

Source: ANAO analysis of Home Affairs' records.

2.69 In February 2023, Home Affairs advised the ANAO that:

In each instance, the department engaged advisors through the relevant Whole of Government Panel Arrangement. Suppliers are appointed to Panels, or Standing Offers, through a separate competitive procurement process that tests their suitability and likelihood of providing value for money. While further testing value for money by obtaining quotes from multiple providers on a panel is best practice, it was not a requirement of the CPRs at the time of the procurement (neither is it a strict requirement now with paragraph 9.14 of the current CPRs stating: *to maximise competition, officials should, where possible, approach multiple potential suppliers on a standing offer*).

2.70 The core principle of the CPRs is achieving value for money, and this is enhanced and complemented by other key principles including encouraging competition in procurement processes. The approach taken by Home Affairs to engaging advisers for the procurement of the Permissions Capability reflected the situation the ANAO has observed in other audits of entities seeking to comply with the letter of the procurement rules without considering how this achieves the intent of the rules.

Was the procurement conducted ethically, including identifying and managing any conflicts of interest and other probity risks?

An appropriate probity framework was developed for the procurement. This included the establishment of a probity plan and protocols prior to the RFT being released. There were shortcomings with the implementation of the probity framework.

- Home Affairs did not implement the recommended controls in such a way as to address the competitive advantage held by two tenderers from the predecessor terminated procurement process.
- Contrary to the probity plan and protocols, the Minister for Employment, Workforce, Skills, Small and Family Business held a meeting with personnel from the preferred tenderer before the commencement of contract negotiations. This meeting was not recorded in the probity register.
- A complete and accurate conflict of interest register was not in place and conflict of interest declarations were not obtained from 15 per cent of individuals involved with the procurement examined by the ANAO.
- The risk of contracted advisers having conflicts of interest with potential tenderers or tenderers was not considered during procurement planning for six of seven procurements of advisers. Identification of conflicts of interest by advisers was less effective compared to other individuals involved in the procurement examined by the ANAO, with 38 per cent of individuals examined in the adviser category not completing conflict of interest declarations.
- Timely action was not always taken to address instances where officials or personnel from the advisers had declared they had a conflict of interest.
- Home Affairs took appropriate action to investigate a tenderer's complaint outlining 'material concerns about the conduct and proper assessment and evaluation of the tenders' relating to an adviser's conflict of interest. However, the department's approach provided the complainant with the positive findings whilst excluding the negative findings that there was an actual conflict of interest that represented a breach of the probity plan leading to the termination of the adviser's services.

2.71 The CPRs require that procuring entities act ethically throughout the conduct of a procurement process. Ethical behaviour includes recognising and dealing with actual, potential and perceived conflicts of interest, dealing with potential suppliers, tenderers and suppliers equitably and carefully considering the use of public resources.⁶³

Probity plan and protocols

2.72 Home Affairs established probity arrangements for the procurement prior to the RFT being released to market. A probity plan was developed by the probity adviser and approved by the procurement delegate on 11 October 2020. The plan states that it applies to 'project personnel' including:

all Departmental personnel and advisers and any other Commonwealth agency personnel and advisers, directly or indirectly involved with the Project, or who have access to non-public information relating to the Project, including, without limitation, members of the Evaluation Teams (as defined in the Evaluation Plan), the Delegate and ... portfolio ministers and their offices.

2.73 The purpose of the probity plan was to 'ensure that probity is observed at all times during this project'. The plan outlined requirements for identification and management of conflicts of interest, maintaining confidentiality, handling of gifts and hospitality, offers of employment,

⁶³ Finance, *Commonwealth Procurement Rules*, paragraph 6.6.

business meetings and social functions. The plan also contained protocols for communications with potential or actual tenderers, business as usual protocols to address probity risks in relation to 'incumbent' service providers and information security protocols.

Equitable treatment of tenderers

2.74 The CPRs state that all potential suppliers to government must be treated equitably based on their commercial, legal, technical and financial abilities.⁶⁴

2.75 Prior to the release of the RFT, in August 2020, Home Affairs and the DTA sought legal and probity advice about 'levelling the playing field' for the Permissions Capability procurement given the competitive advantages that were recognised to exist for the two tenderers from the GDP procurement process, and what could be done to encourage market participation in the procurement process. The legal and probity advice observed that there were two issues that would need to be addressed to the extent possible to ensure that the Permissions Capability procurement process would be genuinely competitive and result in a defensible value for money outcome:

- the two tenderers that participated in the GDP RFT process had a 'head start' in understanding the requirements of the Permissions Capability, as well as an advantage in having already advanced their thinking and technology development through the GDP RFT process; and
- given that the GDP RFT process was terminated following significant commitment by the tenderers involved over more than two years, the market's confidence in the Permissions Capability procurement may be adversely affected.

2.76 A number of mechanisms were recommended by the legal and probity advisers to address these issues, including some that would need to have been implemented before approaching the market, as well as others that would form part of the actual procurement structure and methodology. As illustrated by Appendix 11, two of the recommended mechanisms were implemented in full, one was partly implemented and six were not implemented.

2.77 The legal and probity advice identified the importance of the market being 'notified as far in advance as possible about the development of the Permissions Capability project' and the likelihood it would involve a procurement. Four of the nine recommended mechanisms were 'pre-approach to market' activities that would assist with addressing the identified competitive advantage held by the two GDP tenderers and 'enable potential tenderers to start considering the Government's requirements and determining whether they have the capability, capacity and appetite to participate and, if so, to start mobilising resources and forming consortia'. The two GDP tenderers were ranked first and second against the 'technical criteria' related to the capability and capacity of the tenderer and the proposed solution (and first and third at the completion of the evaluation stage of the Permissions Capability procurement process).

2.78 In providing advice on the release of the RFT to the market, the department's legal adviser noted that:

64 Finance, *Commonwealth Procurement Rules*, paragraph 5.4

The CPRs note that ethical behaviour includes dealing with potential suppliers, tenders and suppliers equitably, see: Finance, *Commonwealth Procurement Rule*, paragraph 6.6b.

- in addition to the action taken in response to four of the nine recommended mechanisms, the intention to approach the market had been announced on 20 March 2020, relevant Ministerial media releases had been issued on 7 July 2020 and 17 October 2020, and that documentation relating to the GDP procurement's statement of requirements remained publicly available; and
- it was assumed that the department had considered the joint legal and probity advice fully and had satisfied itself the measures taken had facilitated 'levelling of the playing field' and encouraged market participation in the Permissions Capability process.

Communication with tenderers

2.79 Home Affairs' better practice guide on probity in procurement states that 'sometimes there can be a perception that sharing information about the procurement within Government, for example to other agencies or the Ministers' office, is acceptable. This is not always the case'.⁶⁵ The communication protocols for the procurement noted that until the conclusion of the RFT process, contact with tenderers should be limited to written correspondence or any other form of contact expressly provided for in the RFT (such as interactive workshops, interviews or presentations).

2.80 The ANAO's analysis of departmental records indicates that the Minister for Employment, Workforce, Skills, Small and Family Business met with staff from Accenture on 13 July 2021, before contract negotiations with the first preferred tenderer⁶⁶ commenced. The request for a meeting followed an email sent on 6 July 2021, from the procurement delegate to the Chiefs of Staff to the Minister for Home Affairs and the Minister for Immigration, and staff of the Minister for Employment, Workforce, Skills, Small and Family Business that advised Accenture had been selected as the preferred tenderer.⁶⁷ Departmental officials from Home Affairs and the DTA and personnel from the department's probity adviser were also present at the meeting.

2.81 Departmental correspondence indicates that the 'intent of the meeting was for [the] Minister ... to engage with Accenture, not for us to update the Minister on Permissions' and the procurement delegate 'has asked [that the] Minister ... is briefed specifically on not discussing the RFT more broadly as it remains a live RFT process.'

2.82 In response to the ANAO's queries, in December 2022, Home Affairs advised the ANAO that 'the department disagrees with the ANAO statement that the meeting was contrary to the probity plan and protocols' and indicated that the meeting of the Minister, Accenture and the procurement delegate was an 'interview', as allowed for under the RFT. Home Affairs further advised in December 2022 that:

the meeting was not recorded in the probity register. This was an administrative oversight. The Department did maintain a record of the meeting. The Department notes that this was a hand-written record, which has been transcribed. Although probity advice was not explicitly sought regarding whether the meeting should occur at that point in the procurement, a brief was prepared for the Secretary to attend the meeting with then Minister Robert, outlining matters of probity that should apply to discussions. This was cleared by the procurement's Probity Advisor, Maddocks. Further, a representative from the procurement's Probity Advisor, Maddocks, was in

⁶⁵ Home Affairs' better practice guidance of probity in procurement was released in June 2021.

⁶⁶ Accenture was selected as the first preferred tenderer by the procurement delegate. Another tenderer (Tenderer 4) was selected as the second preferred tenderer subject to further verification activities.

⁶⁷ This was before Accenture was advised of its status as the first preferred tenderer on 8 July 2021.

attendance at the meeting to assist in any matters of probity that might arise. The meeting was, therefore, conducted with the full oversight of the Probity Advisor.

Conflicts of interest

Identification of conflicts of interest

2.83 Department of Finance guidance to entities on ethics and probity in procurement states that 'persons involved in the tender process, including contractors such as legal, commercial or probity experts, should make a written declaration of any actual, potential or perceived conflicts of interest prior to taking part in the process.'⁶⁸ Consistent with this guidance, the probity plan required 'project personnel' to disclose actual, apparent or potential conflicts of interest in relation to the procurement in the form of a written declaration.

2.84 The department maintained a conflict of interest and probity register which recorded individuals identified for probity clearance, links to conflict-of-interest declarations and dates on which these were completed, records of probity training and management of declared interests. ANAO analysis of Home Affairs' conflict of interest register indicates that 2544 individuals were identified for probity clearance.

2.85 The ANAO compiled a list of key personnel with a substantive role in the procurement and assessed whether a conflict of interest declaration had been completed.⁶⁹ Out of the sample of 184 individuals examined, 156 individuals (85 per cent) completed conflict of interest declarations, while 28 individuals (15 per cent) did not. All individuals participating in the evaluation of tenders completed conflict of interest declarations. Identification of conflicts of interest was less effective when it came to advisers, with 39 of 63 advisers (62 per cent of individuals examined within the adviser category) completing conflict of interest declarations and 24 advisers (38 per cent of individuals examined within the adviser category) not completing declarations.

Management of conflicts of interest

2.86 Agencies should seek to eliminate conflicts of interest or implement effective management strategies where this is not possible.⁷⁰ Clear records documenting steps taken to manage declared interests should be kept to ensure transparency and accountability in the procurement process.⁷¹

2.87 The department's probity register records that it managed 676 probity matters, 298 of which related to declared conflicts. Of the 184 individuals in the targeted sample examined by the ANAO, 47 individuals (26 per cent) declared 59 conflicts of interest that may have required management. Officials performing or supporting evaluation work were more likely to have declared conflicts of interest (24 individuals or 30 per cent of departmental officials), compared to advisers

68 Finance, *Ethics and Probity in Procurement* [Internet], available from <https://www.finance.gov.au/government/procurement/buying-australian-government/ethics-and-probity-procurement> [accessed September 2022].

69 This approach was selected because the conflict of interest register was not a complete and accurate record of all personnel participating in the procurement and the register did not always identify the role of individuals in the process. The targeted sample was designed to provide coverage of individuals with most influence on the outcome of the procurement process.

70 Finance, *Ethics and Probity in Procurement* [Internet], available from <https://www.finance.gov.au/government/procurement/buying-australian-government/ethics-and-probity-procurement> [accessed September 2022].

71 Auditor-General Report No.9 2021–22 *Regional Land Partnerships*, p. 11.

(10 individuals or 16 per cent of advisers). Twelve portfolio ministers or staff (30 per cent of portfolio ministers and staff examined) also declared conflicts that may have required management.

2.88 The department maintained clear records of declared conflicts and resultant management actions in its probity register. For the conflicts of interest examined by the ANAO, each declared conflict was designated a reference number in the probity register and the location of the probity advice and resultant management actions were recorded.

2.89 The ANAO identified issues with the timeliness of the department's conflict of interest management in some instances.

- For the declared interests examined, the average time between the declaration of interest and receipt of probity advice was 25 days and the median time was seven days.
- On average, the time between declaration of interests for members of the evaluation teams and receipt of probity advice was 18 days and the time between the declaration of interest and relay of probity advice to members of the evaluation teams was 45 days. This means that members of the evaluation teams had commenced and, in some instances, finalised their evaluation of tenderers prior to receiving advice on how to mitigate declared conflicts of interest.
- The maximum time between a declaration of interest and referral of the declaration to the probity adviser for the conflicts examined was 255 days. This was a member of the Procurement Steering Committee, who declared a pre-existing relationship with a potential tenderer on 15 September 2020. Probity advice was not received until 28 May 2021 stating that no further mitigation was required because the potential tenderer did not submit a bid.
- One member of the Procurement Steering Committee declared that they had been approached by a potential tenderer with an employment opportunity in October 2020. The probity advice was not relayed to this member until 108 days later in February 2021 and the potential conflict was not declared to the delegate until March 2021.⁷² The member recused themselves from participating in steering committee meetings in April 2021. Between October 2020 and April 2021, this member attended seven meetings of the Procurement Steering Committee.

2.90 While officials were required to declare conflicts of interest prior to their involvement in the project, officials were not prevented from commencing work on the project before probity advice was received. Coupled with the timeliness issues identified in paragraph 2.89, this created an elevated risk that a declared conflict could adversely affect the integrity of the procurement process.

2.91 Home Affairs advised the ANAO in May 2022 that:

Probity management was highly manual and administrative in nature and given the timeframes for expedited procurement, this meant substantial administrative pressure was placed on the relatively small team that undertook the probity management. Monitoring and tracking using excel spreadsheets was cumbersome, and the quality assurance requirements to check [that] Conflict of Interest and Confidentiality Agreements were returned, were completed correctly and had sufficient detail to address any declared conflict of interest was time consuming.

72 In contrast, the probity plan required any project personnel approached by a tenderer regarding the possibility of employment to notify the delegate and the probity adviser immediately.

2.92 To address these shortcomings, Home Affairs advised that it had commenced a project to digitise the workflow process for probity management, including automated process for managing probity records, registering clients for probity briefings, managing forms and documents and managing the status of unresolved probity issues. Home Affairs advised the ANAO in December 2022 that

the capability is currently being piloted with two procurements ... after the completion of the pilot in early 2023, the Department will consider whether the Capability should be expanded for broader departmental use ...

Organisational conflicts of interest

2.93 The risk of contracted advisers having conflicts of interest with potential or actual market respondents should be fully considered and addressed.⁷³ As discussed in paragraph 2.60, Home Affairs undertook limited planning for the procurement of its advisers and the approach to market was limited to suppliers that had existing relationships with the department. In its planning of procurement of advisers, Home Affairs did not consider the risk of its advisers having conflicts of interests with potential or actual market respondents for six out of the seven procurements.

2.94 This risk was realised with the department's appointment of Deloitte as commercial adviser for the procurement. On 3 September 2020, a Home Affairs official met with a Deloitte employee to 'catch up regarding the urgent need for commercial advisory services for an upcoming tender'; although the department has not retained a record of the discussion at this meeting. The Deloitte employee referred the Home Affairs' official to two Deloitte employees with experience in ICT procurement following the meeting.

2.95 Signing of the commercial adviser contract was delayed due to time taken to obtain internal finance clearance. During this period of delay, the two Deloitte employees attended a probity briefing on 18 September 2020. In their returned conflict of interest declarations, the employees declared that 'Deloitte may ask to be considered as an invited tenderer for any ensuing RFT ... No conflicts exist to date.'⁷⁴

2.96 On 18 September 2020, the department sought probity advice on the risks of engaging Deloitte as commercial adviser and permitting it to submit a tender response. The advice highlighted the probity risks with this approach, including that there may be a perception or actual unfair advantage because of Deloitte's early access to inside information about key aspects of the procurement process (such as the statement of requirements), the potential for complaints from other tenderers and Deloitte personnel having a 'perceived (at least)' conflict of interest.

2.97 Home Affairs considered that the 'cumulative obstacles, risks and issues are deemed to be too great to allow Deloitte to both advise on and potentially tender for, the Permissions Capability project.' While Deloitte subsequently agreed that it would not participate in the tender or advise any tenderer participating in the procurement, and this agreement was incorporated into its work order, a complaint was received in March 2021 from a tenderer which stated that a partner from Deloitte had been seconded to the company to assist it with preparation of its tender bid (refer to paragraph 2.98 to 2.107 below).

73 Auditor-General Report No.23 2017–18 *Delivery of the Moorebank Intermodal Terminal*, p. 13.

74 The probity plan required individuals to declare personal conflicts but did not explicitly require individuals to declare conflicts on behalf of their employer organisations.

Procurement complaints handling

2.98 The CPRs state that if a complaint about a procurement is received, relevant entities must apply timely, equitable and non-discriminatory complaints handling procedures.⁷⁵ A complaint is an 'implied or express statement of dissatisfaction where a response is sought, reasonable to expect or legally required.'⁷⁶ The inclusion of implied complaints is consistent with the Australian Public Service Commission advice that it is good practice to be alert to a communication that might constitute a complaint, even though the word complaint is not used.⁷⁷

2.99 The RFT stated that any complaints could be directed to the contact officer in writing, clearly identifying the issue of concern and the facts and evidence which support the tenderers' complaint. The contact officer was to promptly acknowledge the complaint and endeavour to respond to any complaint within 10 business days of the complaint being received.

2.100 On 10 March 2021, Tenderer 3 emailed the department through the RFT complaints process raising concerns about the appointment of Deloitte as commercial adviser. Tenderer 3 stated that a 'senior partner' from Deloitte was seconded to the company to assist it with preparation of its tender bid. Tenderer 3 sought confirmation from the department that 'adequate conflict checks were carried out by the department' and requested 'urgent clarification on the avenue available to [it] to raise [its] concerns formally and to understand potential remediation'.

2.101 The department acknowledged receipt of the tenderers' complaint on 11 March 2021, and responded to Tenderer 3 on 26 March 2021 (13 business days following the complaint). In its response, the department advised that 'the department to date, has, treated your email as a request for clarification (rather than a formal complaint)' and requested that the tenderer clarify whether the email was intended to be a formal complaint. Tenderer 3 did not respond to the department.

Investigation of the conflict of interest

2.102 Home Affairs referred the complaint to its probity adviser for further investigation in March 2021. Following a period of investigation from March to April 2021, Maddocks found that:

- a Deloitte partner was seconded to Tenderer 3 from 30 July 2020 to 1 November 2020;
- at the time of its engagement in September 2020, Deloitte had an actual conflict of interest and the failure to declare this interest was a breach of the probity plan; and
- the actual probity risk implications 'appears to be low' and there was a medium to high probity risk of the perceived impartiality of the commercial advisory services.

2.103 Home Affairs suspended Deloitte's commercial advisory services on 30 March 2021 following initial probity advice provided by Maddocks and terminated the contract on 18 May 2021.

75 Finance, *Commonwealth Procurement Rules*, paragraph 6.8.

76 Office of Commonwealth Ombudsman, *Better Practice Complaint Handling*, available from <https://www.ombudsman.gov.au/publications/better-practice-guides/Better-practice-complaint-handling-guide> [accessed December 2022].

77 Australian Public Service Commission, *Values and Code of Conduct in Practice*, available from <https://www.apsc.gov.au/publication/aps-values-and-code-conduct-practice> [accessed December 2022].

2.104 Home Affairs also wrote to Tenderer 3 on 18 May 2021 (more than two months after the initial complaint), advising that the department had commissioned and undertaken a number of enquiries to determine the veracity of Tenderer 3's claims, and on the basis of those enquiries:

- the department was satisfied that the arrangement between Deloitte and Tenderer 3 ended before the submission of its tender,
- the arrangement was not known to the Deloitte personnel advising the department and did not affect the impartiality with which they provided that advice; and
- the department was satisfied with the integrity and probity of the conduct of the procurement process, including the evaluation of tenders.

2.105 Home Affairs did not advise Tenderer 3 of the breach of the probity plan or termination of Deloitte's services. As a result, the department's approach provided Tenderer 3 with the positive findings set out in paragraph 2.104 whilst excluding the negative findings that there was an actual conflict of interest that represented a breach of the probity plan leading to the termination of Deloitte's services.

Review by the internal auditor

2.106 Home Affairs also commissioned a review of the matter by its internal auditor (Synergy). On 19 April 2021, the internal auditors provided their final report which found that:

- there were no anomalies or areas of concern identified that required further investigation; and
- Deloitte had performed the role of commercial adviser in accordance with the approved tender evaluation plan.

2.107 ANAO analysis of Home Affairs' records indicates that there were six versions of the review report, to incorporate amendments resulting from comments from senior departmental officials and external advisers. The internal auditors made three alterations to their findings and recommendations.

- The internal auditors made changes to their recommendation regarding Deloitte's financial viability assessments. The initial recommendation was that 'the department should ensure that all of the financial information of a tenderer including risk mitigation that the parent company (owners) may be able to offer is taken into consideration'. This was modified to suggest that the financial viability assessment did not affect the overall assessed outcome and no further assessment was required by the department at that stage.
- The internal auditors removed a statement which noted that 'the financial viability assessments were rushed due to problems obtaining employee suitability clearances for the nominated Deloitte team'.
- The internal auditors removed the following finding: '[Tenderer 3] have described the member and ownership of their organisation. The risk rating of High for [Tenderer 3] would appear to be on the high side and without consideration of owners' commitment. Seeking a guarantee from the owners may reduce this risk from high to medium.'

3. Did the procurement process demonstrate achievement of value for money?

Areas examined

The ANAO examined whether the procurement demonstrated the achievement of value for money, which is the core rule of the Commonwealth Procurement Rules.

Conclusion

Overall, the approach to tender evaluation was designed in a way that enabled the Department of Home Affairs (Home Affairs or the department) to demonstrate the achievement of value for money. The successful tender was the only one of the three shortlisted tenders that Home Affairs evaluated as representing value for money (one other tender was assessed as 'likely' to represent value for money). In conducting the procurement, the department departed in a number of respects from the approach it had set out in the Request for Tender (RFT).

3.1 Achieving value for money is the core rule of the Commonwealth Procurement Rules (CPRs). Officials responsible for a procurement must be satisfied, after reasonable enquiries, that the procurement achieves a value for money outcome. Procurements should encourage competition, use public resources in an efficient, effective, economical and ethical matter, facilitate accountable decision-making, encourage appropriate engagement with risks and be commensurate with the scale and scope of the business requirement.⁷⁸

Was the approach to tender evaluation appropriately planned in advance of tenders being received, as well as being aligned with the request for tender?

The approach to evaluation was planned in advance of tenders being received and aligned with the RFT. A tender evaluation plan was not in place before the RFT was released — it was approved by the procurement delegate on the same day as the closing date for responses to the RFT. Updates to the tender evaluation plan did not include all changes in the evaluation teams. The tender evaluation teams were largely in place prior to the commencement of evaluations and all evaluation team members received probity training.

Tender evaluation plan

3.2 Home Affairs' procurement framework states that an evaluation plan should be established before market responses are sought. Drafting the evaluation plan and RFT together helps to avoid any inconsistencies between the evaluation plan and requirements specified in RFT documentation, and to ensure that the evaluation methodology proposed in the plan is consistent with the RFT.⁷⁹

3.3 The tender evaluation plan was approved by the procurement delegate on 18 December 2020, the same day as the closing date for submissions for the RFT and the evaluation

⁷⁸ Finance, *Commonwealth Procurement Rules*, paragraph 4.4.

⁷⁹ AGS, *Commercial notes No.1* [Internet], AGS available from <https://www.ags.gov.au/publications/commercial-notes/comnote01.htm> [accessed October 2022].

criteria and methodology set out in the RFT were consistent with the criteria and methodology in the evaluation plan. In February 2023, Home Affairs advised the ANAO that

Finalising a Tender Evaluation Plan (TEP) months in advance of RFT closure can create an undue administrative liability associated with the management of any necessary changes that may occur following RFT release. For this reason, TEP finalisation before market release is not mandatory.

the Department notes that the source webpage the ANAO relies upon in relation to paragraph 3.2 is over two decades old and is an online 'commercial note' by the Australian Government Solicitor (AGS) which is not the policy authority for Commonwealth procurement. Such advice is not reflected in the CPRs or in the Department of Finance's official guidance.

3.4 The department's advice to the ANAO is in contrast to its own procurement framework which states that 'the Evaluation Plan should be approved prior to approaching the market. It is critical to align the EP [evaluation plan] with the request documentation, particularly for Complex and Strategic procurements'. In addition, one of the 'Key learnings for all Australian Government entities' from Auditor-General Report No. 23 of 2017–18 (*Delivery of the Moorebank Intermodal Terminal*), was that 'an evaluation plan should be established before market responses are sought'.

3.5 The evaluation plan for the Permissions Capability procurement was updated on six occasions between 18 December 2020 and 9 August 2021 (one month after the preferred tenderer was selected by the delegate). These changes included:

- updates on five occasions to reflect changes to the membership of the Evaluation Committee, evaluation teams, procurement team and advisory group;
- one update to provide for members of the Evaluation Committee to access tender submissions, including pricing; and
- an update to reflect the division of evaluation work between the evaluation teams by the Technical Evaluation Team (TET) and Commercial Evaluation Team (CET) leads.

3.6 The department did not update the tender evaluation plan to reflect the removal of Deloitte as commercial adviser (refer to paragraph 2.103) or the non-continuation of Ngamuru Advisory's services beyond March 2021.⁸⁰

Tender evaluation teams

3.7 Guidance available to entities at the time of the procurement was that the evaluation team should be selected carefully and early (before the RFT is released) and that probity training should

80 Ngamuru Advisory's contract was not extended upon the original term of the contract (December 2020 to March 2021). The non-continuation of the strategic adviser's services followed an email from the strategic adviser to the procurement delegate in February 2021 which advised that:

At the outset, there are two limbs to conducting a procurement properly. First, it must comply with Commonwealth policy (ie the Commonwealth Procurement Rules (CPRs)). Second it should be conducted in accordance with good practice to best ensure an efficient and effective outcome for the Commonwealth. There are numerous examples of procurements that have technically met the first limb, but have not met the second, resulting in very poor outcomes including cost and/or schedule blow outs, capability not being delivered at all, contract terminations...Primarily because of the unrealistic timeframe being imposed on the Department, we are at risk of not meeting either limb.

be provided to the team as soon as they are identified, not when the evaluation is about to start.⁸¹ The evaluation teams should have (or have access to) sufficient expertise to evaluate the tenders.

3.8 The Evaluation Committee, TET and CET were primarily responsible for evaluating tenders. While Home Affairs did not establish the Evaluation Committee or teams prior to issuing the RFT, these were largely in place prior to the commencement of evaluation work in January 2021.

3.9 Consistent with best practice, all members of the evaluation teams and evaluation committee received probity training and completed conflict of interest declarations. Conflicts of interest declarations were completed prior to members of the teams and committee commencing evaluations, although probity advice on the management of declared interests was not provided to the relevant individuals prior to the commencement of evaluations and, on some occasions, was provided after the individual evaluation of tender submissions was finalised (refer to paragraph 2.89 for more information).

3.10 Home Affairs advised the ANAO in December 2022 that:

The Department acknowledges that it is best practice for all probity advice requested to have been received prior to individuals participating in evaluation activities.

The Department received all COI Declarations made by members of the EC, Technical Evaluation Team (TET) and CET prior to evaluation activities commencing. 11 of 31 members of these groups declared COIs. Eight of the 11 did not receive COI management advice before evaluation activities commenced.

This was due to the large volumes of probity requests that the Probity Team and the Probity Advisor, Maddocks, were managing at the time. Due to the timeframes involved, and the need to prioritise higher-risk probity matters, it was not possible in all circumstances to have management advice back to members prior to evaluation activities commencing.

The Department notes, however, that all EC, TET, and CET members had received a probity briefing and were aware of their confidentiality obligations in relation to the Procurement.

Was the successful candidate the entity assessed as providing the best value for money?

The successful tender was the only one of the three shortlisted tenders that Home Affairs evaluated as representing value for money (the second ranked tender was assessed as 'likely' to represent value for money and the other shortlisted tender was assessed as 'not likely' to represent value for money). In reaching those conclusions, the department:

- included for evaluation tenders that adopted different commercial models to that included in the RFT. Tenders that proposed a different commercial model to the end-to-end responsibility approach set out in the RFT involved additional risk for the department and made pricing comparisons during the tender evaluation stage more difficult for the department;
- undertook a hosting certification process that was not a requirement outlined in the RFT. While the RFT set out that components for the Permissions Capability must align and be

81 AGS, *Commercial notes No.1* [Internet], AGS available from <https://www.ags.gov.au/publications/commercial-notes/comnote01.htm> [accessed October 2022].

hosted in accordance with the Whole of Government Hosting Strategy, the Australian Government's Hosting Certification Framework was not released until after the RFT had been issued and the evaluation plan finalised. The two preferred tenderers were selected by the department prior to receiving advice from the Digital Transformation Agency that the hosting provider for those tenderers had been conditionally certified; and

- changed the service delivery model (to exclude the Simple Visa and change the order of delivery for the base capability and the Digital Passenger Declaration). The Digital Passenger Declaration was prioritised so as to reflect the government decision on border reopening timeframes.

Evaluation Committee's value for money assessment and recommendation

3.11 As highlighted above in paragraph 1.9, the Evaluation Committee was responsible for the value for money assessment and making a recommendation to the delegate. The Evaluation Committee held deliberation sessions on which of the shortlisted tenders represented value for money on 22 and 23 February 2021.⁸²

3.12 In the tender evaluation report submitted to the delegate on 4 March 2021, the recommendation by the Evaluation Committee was that:

- Accenture be selected as the first preferred tenderer and be invited to enter negotiations with the department;
- concurrently with negotiations commencing with Accenture, Tenderer 4 be invited to conduct additional verification activities on technical matters; and
- Tenderers 2, 3 and 5 are not preferred tenderers (and will be informed of such promptly).

3.13 The tender evaluation report was provided to the delegate for approval on 6 March 2021. Further information was sought from the three shortlisted tenderers through additional verification activities on 23 March 2021. After a 'pause' on decision-making⁸³, the delegate sought additional information through clarification questions regarding the three shortlisted tenderers' compliance with the hosting certification framework and compression of the timeline to bring forward the delivery of the Digital Passenger Declaration (refer to paragraph 3.23 to 3.25). The delegate selected Accenture as the first preferred tenderer on 6 July 2021.⁸⁴

3.14 The delegate's decision was also made after Ministers had agreed to fund the foundational elements of the Permissions Capability, including the first deliverable of the Digital Passenger

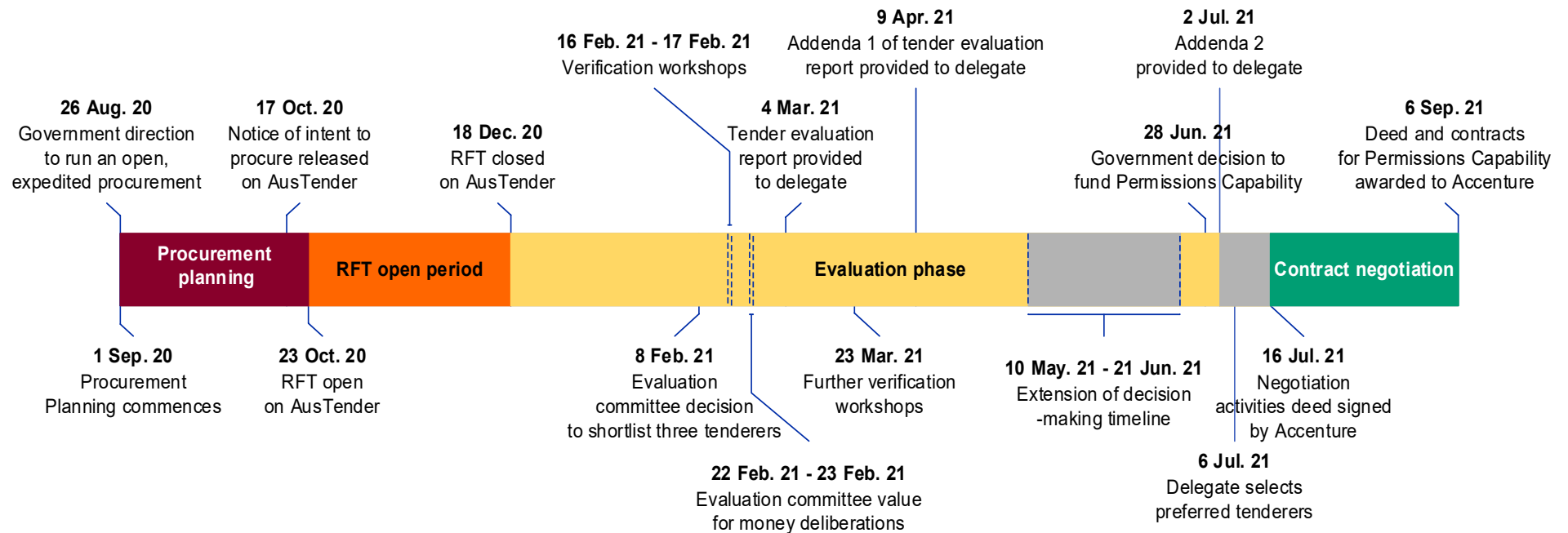
82 This followed assessment of the five compliant tender responses against the evaluation criteria by the TET and CET (refer to paragraph 2.31 to 2.42) and tender clarification questions and verification workshops for the shortlisted tender responses. As set out in Appendix 5, the value for money assessment was step 8 in the evaluation process where the Evaluation Committee would determine the extent to which each tender represents value for money by comparing the outcomes of each previous step.

83 Following the March 2021 release by the DTA of the *Hosting Certification Framework*, the procurement delegate in deciding to extend the decision-making timeframe by six to eight weeks in May 2021 to enable DTA to finish the certification process (refer to paragraph 3.20) noted
a clear preference of the Government to finalise certification in accordance with the Framework for the purposes of the [Whole of Government Hosting Strategy] before considering approval of funding and proceeding to implementation of the permissions capability with the preferred tenderer; and
DTA advice that certification was expected to be finalised in six to eight weeks.

84 See Table 1.1 for a comparison of the indicative timeline (included in the RFT) and the actual timeline for the procurement process.

Declaration on 28 June 2021. Home Affairs did not receive funding for the Simple Visa use case and this was reflected in the procurement delegate's decision to depart from the recommendations of the Evaluation Committee and to deliver only the base Permissions Capability and Digital Passenger Declaration.

Figure 3.1: Decision-making timeline for the Permissions Capability procurement



Source: ANAO analysis of Home Affairs records.

Changes from RFT

Commercial model

3.15 As highlighted in paragraph 2.24 above, tender responses that proposed a commercial model that was different to that sought in the approach to the market were progressed for evaluation against the criteria. The department's evaluation against the price criterion (refer to paragraphs 2.39 to 2.42) was not a 'full-detailed forensic price normalisation exercise' and also did not account for the differing commercial models. The stated rationale in the tender evaluation report for not conducting this normalisation was that it 'would not have resulted in the price of the tender rated as having the best technical solution increasing so as to be relative to (or higher than) the pricing of the tender with the second-best technical solution.' The department's strategic adviser wrote to the procurement delegate in February 2021, expressing concern that:

Normally, the financial evaluation will take the tendered prices (i.e. the raw prices), then normalise the prices (based on inputs from the TET and CET), then risk adjust the prices — to ensure a common base for comparison ... while the project team and adviser have done some pricing normalisation ... they have not been able to undertake any pricing risk adjustment for identified risks. Hence the [value for money] decision becomes problematic.⁸⁵ Having said this, despite the incomplete financial evaluation, based on the clarifications/verifications, it may be that we have just enough information to be able to down select to two tenderers because the margin of difference is so great to the third tenderer. More work would then need to be done with the remaining two tenderers to get to a preferred tenderer decision.

Nevertheless, questions (at least, if not complaints and/or legal claims from the unsuccessful tenderers) could potentially arise as to:

- (i) how the Evaluation Committee, and the Delegate, can be confident that the procurement has achieved a [Value for Money] outcome, particularly noting there are (in summary) two markedly different solutions proposed by the preliminary shortlisted Tenderers;
- (ii) whether the officials involved have fully discharged their obligations under the *Public Governance, Performance and Accountability Act 2013*.

As noted above, this is because it would reasonably be expected that a robust [Value for Money] assessment would be undertaken, involving a thorough understanding, evaluation and consideration on a comparative basis of:

- (i) the evaluation and findings of each of the TET and CET;
- (ii) the risks, qualifications, assumptions and dependencies made or identified by each Tenderer, and the implications of these for cost, risk, schedule and achievement of the procurement outcomes;
- (iii) other non-financial risks (including contract non-compliances, risks associated with achievement of the Government's objectives; risks associated with the future agency uptake of the Permissions Capability);
- (iv) the extent to which each Tender would achieve the objectives in the RFT, Part 2;

85 As noted in Footnote 81 above, Ngamuru Advisory's contract was not extended upon the original term of the contract (December 2020 to March 2021). The non-continuation of the strategic adviser's services followed the provision of this advice to the procurement delegate.

(v) advice from the DTA as to which Tender would best meet the objectives regarding Reuse (for audit trail purposes, this should be written advice);

(vi) whole-of-life costs, as discussed above, but also including, in particular, the costs of Government furnished items (GFx), being the provision by the Department and other Commonwealth agencies of personnel, accommodation and other resources (for instance, tenderer personnel will require access to 30 or more computer terminals in Home Affairs' premises, depending on the tenderer), hardware and software products and licences required by the respective Tenderer solutions, as well as the full costs of the Tenderers' solutions once the other risks, qualifications, assumptions and dependencies are fully assessed; and

(vii) the deliverability and workability of each of the proposed solutions from a technical perspective.

3.16 During the clarification and verification activities, Accenture confirmed that it was proposing a 'systems integrator' commercial contracting model and would only provide a warranty for the services Accenture provides (see paragraph 2.53). Liability for third party products would remain with the third party.

3.17 Accenture's proposed commercial model was different from that sought in the RFT. It involved a significant transfer of risk from the contractor to the department. This was recognised by the department during contract negotiations, with a record of an initial meeting stating that Accenture's 'commercial model is not what the department requested' and as a result, it sought to improve on the limited warranty offered by Accenture during the verification activities. While the legal adviser (in its sign off on the contract negotiation) recognised that the department had been able to improve on the limited warranty and commercial model that had been proposed, it also stated that:

Even with these negotiated improvements, Accenture's model involves a material shifting of risk from Accenture to the Department. The contracting model is complex and, under it, the Department assumes a key role in the end-to-end management of the solution ... Highly active contract management will be important to ensuring the success of this model.

Hosting certification framework

3.18 The RFT set out that components for the Permissions Capability must align and be hosted in accordance with the Whole of Government Hosting Strategy. The Digital Transformation Agency (DTA) released the Hosting Certification Framework⁸⁶ in March 2021 (after the RFT was released and evaluation was finalised) to 'operationalise the principles outlined in the Whole of Government Hosting Strategy'. The framework included a requirement for agencies going to market or seeking to enter into contract to stipulate their requirements for hosting providers to be certified 'strategic' or 'assured' by the DTA. Under the transition arrangements outlined in the framework, should a registered provider be selected as the preferred tenderer in a procurement process, agencies were to work with the DTA to support expediting the process of certification for that provider.

3.19 While the requirement for providers to be certified was not included in the Permissions Capability RFT, Home Affairs referred to the Permissions Capability as an 'exemplar' in relation to the Hosting Strategy Certification compliance and expectations that tenderers would be compliant

86 See: DTA, *Whole of Government Hosting Strategy: Hosting Certification Framework, March 2021* [Internet], DTA available from <https://www.hostingcertification.gov.au/sites/default/files/2021-11/Hosting%20Certification%20Framework%20-%20March%202021.v2.pdf>

with these processes. As stated in the legal and probity advice, the department also understood that there existed a preference for the Government to consider the submission seeking funding for any resulting agreement after the certification of hosting providers was completed.

3.20 On 10 May 2021, the procurement delegate decided to extend the ‘decision-making timeline’ by six to eight weeks to enable DTA to finish the certification processes of hosting providers for each of the Permissions Capability tenderers (refer to Figure 3.1). All five tenderers that the department progressed to evaluation were advised by the procurement delegate on 12 May 2021 that the DTA was in the process of certifying hosting providers, it expected this process to be finalised within four to six weeks, and the department did not anticipate making its decision on a preferred tenderer before then.⁸⁷ In response to the ANAO’s request for clarification as to whether certification processes were conducted for all tenderers’ hosting providers, the DTA advised in December 2022 that

DTA was not specifically certifying hosting providers for each of the Permissions Capability tenderers. Rather, the DTA had previously commenced certification activities of a range of providers to government, which included the providers that had been proposed by tenderers for the Permissions Capability.

3.21 ANAO’s analysis of the contemporaneous records indicates that Home Affairs was receiving updates from DTA regarding the status of the certification process in relation to one hosting provider only (the hosting provider proposed by both Accenture and Tenderer 4) and this was because Accenture had been identified as the preferred tenderer by the Evaluation Committee, although the delegate had not formally made his decision.⁸⁸

3.22 Notwithstanding the introduction of this requirement and pause of the evaluation phase, the delegate selected the preferred tenderers on 6 July 2021 prior to receiving advice from the DTA in August 2021 that the hosting provider for Accenture and Tenderer 4 had been conditionally certified.⁸⁹ In response to the ANAO’s query as to when Home Affairs received advice that the hosting provider had been fully certified, Home Affairs advised in December 2022 that ‘the department’s records indicate that it was advised by the DTA on 26 August [2021] that the hosting provider had been certified. There is no indication that this certification was conditional.’⁹⁰

87 In contrast, the tender evaluation report provided to the delegate on 4 March 2021 set out that Accenture should be selected as the first preferred tenderer.

88 The ANAO’s analysis of the Home Affairs’ records indicates that the Minister for Government Services was ‘concerned’ with Accenture’s hosting provider’s ability to achieve certification. In early June 2021, the delegate sought urgent legal advice on options in the event that Accenture and Tenderer 4’s hosting provider did not achieve certification.

89 Factors influencing the decision were reflected in departmental records, with internal correspondence stating:

The status of the WOAG hosting certification requirement remains unclear – noting that it was not an original requirement of the Request for Tender (RFT). We understand the Delegate has been advised in the past few days that [the] Minister [for Government Services] is now wishing to support the economy and employment, and re-open borders as soon as possible. As such, the Delegate is of the view that he may have changed his mind with regard to his strong position on [Accenture’s and Tenderer 4’s hosting provider].

90 The department’s view is not supported by its records, which indicated that the hosting provider was ‘certified (with caveats but they are the same type of caveats for all companies)’. ANAO analysis of contemporaneous records indicates that the DTA advised Home Affairs on 12 August 2021 that the hosting provider ‘... was conditionally certified as a Strategic Cloud Service provider under the [Hosting Certification Framework].’

Change in program delivery strategy

3.23 The Permissions Capability did not receive consideration as part of the 2021–22 Budget process. On 28 June 2021, the Government gave the department authority to commence delivery of the Permissions Capability and the Digital Passenger Declaration (but not the Simple Visa component), with the initial pilot of the Digital Passenger Declaration expected to be released in December 2021.

3.24 As a result of the Government decision, the department changed the delivery strategy from what was set out in the RFT. While the RFT prioritised the base capability and included the Digital Passenger Declaration and Simple Visa as use cases, the department decided instead to prioritise the Digital Passenger Declaration to support border reopening timeframes. The Digital Passenger Declaration was then expected to be subsequently made ‘generic’ to enable future reuse and configuration to meet other use cases as part of the base capability.⁹¹

3.25 As part of additional verification activities undertaken in March and June 2021, the department sought information on how the shortlisted tenderers could ‘further compress and accelerate the timeframe for the delivery of the Digital Passenger Declaration’. While tenderers outlined an approach to compress the timeframe, the additional information did not alter the evaluation of the tenders or the recommendations made in the tender evaluation report.

Contract negotiation

3.26 Contract negotiation took place with the first preferred tenderer between 16 July 2021 and 6 September 2021. While the delegate agreed with the recommendations of the Evaluation Committee to conduct parallel verification activities with Tenderer 4, these were not conducted. There was not a clear record of the reasons for this departure in the department’s records of the procurement. In December 2022, Home Affairs advised the ANAO that:

In signing the Tender Evaluation Report and recommendations, the delegate placed emphasis on expediting negotiations with the first preferred tenderer. As such, the procurement team focussed on this element of the procurement. Ongoing discussions with the delegate through this time confirmed that, given the criticality of the [Digital Passenger Declaration] to the safe reopening at the scale of Australia’s international border, and noting the government’s expectations in relation to the delivery timeline, the focus was to remain on finalising negotiations with the first preferred tenderer. The Delegate was kept apprised of negotiation activity and resource allocation throughout [sic] the process.

3.27 According to the legal adviser’s sign off on the contract negotiations, the transaction documents were negotiated and finalised in a compressed timeframe, given the size and complexity of the procurement, including its whole of government application. The department accelerated the process by undertaking a number of negotiation activities in parallel, with a ‘Negotiation Activities Deed’ on 16 July 2021 at a cost to the department of \$1 million. On 6 September 2021, Home Affairs entered a deed of standing offer and work orders with Accenture to collaboratively design and deliver the base Permissions Capability architecture, suitable for Whole of Government applications, and the Digital Passenger Declaration.

91 As noted in Appendix 4, Home Affairs did not receive delivery of the full Digital Passenger Declaration or base capability by the contracted deadline of 30 June 2022. As set out at paragraphs 1.14 and 1.15, this situation contributed to the department deciding to terminate the contract.

3.28 Accenture was awarded \$61.5 million (GST inclusive) under five work orders issued under the Deed of Standing Offer. Costs expended under those work orders were to be based on milestone deliverables. The amount paid as at December 2022 was \$16.5 million (GST inclusive).

Was there an appropriate separation between those responsible for the tender evaluation and the procurement decision-maker?

The separation between those responsible for the tender evaluation and the procurement decision-maker was largely appropriate. The governance structure set out in the tender evaluation plan included an appropriate separation between those responsible for the tender evaluation and the procurement delegate. The probity adviser identified occasions where there was an elevated risk of the procurement delegate performing his own evaluation work or pre-empting a recommendation from the Evaluation Committee. The probity adviser was satisfied with the reasons for this involvement given the expedited tender timeframe.

3.29 Probity guidance published by the Department of Finance states that the separation of duties is required ‘to maintain fairness and transparency in a procurement process’. Specifically, ‘officials involved in evaluation of tenders should not be those who are approving the proposal to spend public money.’⁹²

3.30 The governance structure set out in the department’s tender evaluation plan (see Figure 1.1) provided for an appropriate separation of duties between the delegate and the evaluation teams. While the tender evaluation plan stated that, in making a decision, the delegate may seek any information or advice, the probity adviser identified several occasions where there existed an elevated risk of the procurement delegate performing their own evaluation work.

3.31 On 5 January 2021, the delegate requested access to tender response documents from the five tenders progressed for evaluation prior to detailed evaluation being done by the evaluation teams. The department’s probity adviser noted that it was ‘unusual for a delegate to request access to the Tender documents before detailed evaluation has commenced. Generally, a delegate will ask to see the tenders when considering the recommendations in the Evaluation Report’.

3.32 The potential issues raised by the probity adviser included the risk that the delegate pre-judges or pre-empts the outcome of the detailed evaluation that is yet to be undertaken, and forms their own view without having the benefit of that detailed evaluation, or any matters for clarification or potential negotiation issues having been identified. Measures recommended by the probity adviser to mitigate these risks included:

- withholding the tenderers’ detailed pricing information from the delegate if possible;
- the delegate ensuring that he does not conduct his own evaluation when reading the tenders; and
- the delegate ensuring he leaves himself sufficient time to give full consideration to the final Evaluation Report and the full tenders when making his ultimate decision with respect to the recommendations.

3.33 Having considered the advice of the probity adviser, the department formed the view that it was acceptable to provide the delegate with early access to parts of the tender responses as it

92 Department of Finance, *Ethics and Probity in Procurement* [Internet].

would assist the delegate to quickly digest the contents of the tender evaluation report, when finalised, given the relatively short timeframe for the tender evaluations and contract negotiations that was originally planned. The department also noted that Accenture and Tenderer 3 were involved in the predecessor Global Digital Platform (GDP) procurement, which was terminated by the department in March 2020, and that early access to the five tender responses progressed to evaluation provided to the delegate 'may negate the possibility of any perception of bias or greater understanding of the responses received by these two Tenderers, over the responses received from the other three Tenderers'.⁹³

3.34 The department proposed that the delegate for the Permissions Capability procurement would not view the tenderers' detailed pricing information, only the specific aspects of tenders to allow an early understanding of the solutions proposed by each tenderer. In doing so, the delegate was to ensure that he did not conduct his own evaluation of the tenders and would ensure he left sufficient time to give full consideration to the final evaluation report.

3.35 Notwithstanding the risks identified, the probity adviser concluded that the reasons for early access were defensible from a probity perspective.

3.36 On 15 February 2021 the delegate and a Procurement Steering Committee member attended a detailed briefing given by the TET to the Evaluation Committee in relation to the evaluation of tenders against the technical criteria. This briefing occurred prior to the value for money assessment and finalisation of the Evaluation Committee's recommendations.

3.37 The department received probity advice on the delegate's attendance on 13 February 2021. The probity adviser identified that potential probity issues with the delegate's attendance included the risk that the delegate pre-judges or pre-empts the evaluation outcome, as well as the potential for the delegate's presence to influence Evaluation Committee members in their deliberation.

3.38 The probity adviser concluded that it would be 'acceptable (and sensible)' for the delegate to attend the briefing, as the TET Report was already finalised and it would expedite the delegate's decision in line with the compressed procurement schedule consistent with previous advice given. Mitigation strategies proposed by the probity adviser included ensuring the delegate does not conduct his own evaluation of tenders, and ensuring the delegate leaves himself sufficient time to consider the final evaluation report.

Were appropriate procurement records maintained?

Appropriate procurement records were largely maintained by Home Affairs. Available records addressed the requirement for the procurement, the process that was followed, how value for money was considered and achieved and relevant decisions and the basis for the decisions. The department did not maintain satisfactory records of its moderation process for technical evaluation or the appointment of advisers for the procurement, and the completeness of records of individual assessors' evaluation could be improved.

93 The delegate was previously the chair of the Evaluation Committee for the procurement of the GDP. As a result, he had pre-existing knowledge of the technical capabilities of Accenture and Tenderer 3, the two tenderers which were previously involved in the procurement process for the GDP, including the co-design and RFT phases until it was eventually terminated in March 2020.

3.39 The CPRs state that officials must maintain a level of documentation commensurate with the scale, scope and risk of each procurement.⁹⁴ The CPRs require that documentation provides accurate and concise information on the requirement for the procurement; the process that was followed; how value for money was considered and achieved; relevant approvals; and relevant decisions and the basis of those decisions.⁹⁵

3.40 As noted in paragraph 1.8, Home Affairs' internal procurement framework requires that procurements valued at \$50 million or more be considered by the Chief Procurement Officer and may be designated as 'high-risk', 'high-value' (HRHV) procurements. Designation as a HRHV procurement means that additional governance steps must be applied, unless a non-standard process has been approved. On 23 October 2020, the delegate approved a non-standard HRHV process for the procurement, including some changes to the additional governance requirements.

3.41 The requirement for the procurement was recorded in the procurement plan and endorsed by the delegate on 10 October 2020. Other relevant approvals were also endorsed by the delegate, including approach to market documentation, the tender evaluation report, contract negotiation directive and report and approval for authorisation for entry into the deed of standing offer and associated work orders with Accenture.

3.42 The TET and CET reports, and the tender evaluation report and addenda, addressed the process that was followed and how value for money was considered and, in the view of the Evaluation Committee, achieved. Additional information regarding the evaluation was included in records of Procurement Steering Committee minutes and Evaluation Committee minutes. The department also maintained records on relevant decisions, and the basis for those decisions. For example, the delegate's reasoning to pause the procurement process and to depart from the recommendations of the Evaluation Committee when selecting the preferred tenderers were set out in file notes contained within the department's record management system.

3.43 The ANAO observed the following deficiencies in the department's record management practices for the Permissions Capability procurement (including the procurement of advisers).

- The department did not maintain all necessary records relating to the procurement of its advisers. Documentation did not always set out how value for money was considered and achieved (refer to paragraph 2.67) and the department did not obtain all necessary approvals for the procurements.
- Individual assessments of tender submissions performed by the technical evaluation teams were not always complete (refer to paragraph 2.34 for more information).
- The consensus scoring and moderation process of scores for the technical evaluation was not sufficiently recorded. Existing records do not sufficiently explain why consensus scores deviated from individual scores on some occasions (refer to paragraph 2.34 for more information).
- There was not a clear record of the reasons for the department not conducting parallel verification activities with Tenderer 4 in the department's records of the procurement (refer to paragraph 3.26).

94 Finance, *Commonwealth Procurement Rules*, paragraph 7.2.

95 Finance, *Commonwealth Procurement Rules*, paragraph 7.3.

Has the contract and any amendments been accurately reported on AusTender within 42 days of a contract being entered into or amended?

Home Affairs' reporting of contracts and amendments on AusTender was partly compliant with the CPRs. With one exception, Home Affairs' reporting of the standing offer, work orders and amendments with Accenture on AusTender was within the required 42 days. The department did not accurately report on AusTender within 42 days all contracts and amendments with its advisers for the procurement process, with 27 per cent being reported outside the required timeframe and 39 per cent being reported inaccurately.

3.44 The CPRs require all standing offers to be reported on AusTender within 42 days of the relevant entity entering into or amending such arrangements. Details included in the standing offer notice, including supplier details and the names of other entities participating in the arrangement, must be reported and kept current.⁹⁶ The deed of standing offer with Accenture was reported accurately and within the deadline and has been updated to reflect the termination of the deed in August 2022 (refer to paragraph 1.14).

3.45 The CPRs also establish reporting requirements for all relevant entities that enter into or amend a contract value above the reporting threshold.⁹⁷ Home Affairs (a non-corporate Commonwealth entity) has a reporting threshold of \$10,000 with a reporting deadline within 42 days of entering into or amending a contract.

3.46 As of December 2022, the department had entered into five work orders with Accenture, including for the codesign, base capability, digital passenger declaration, third-party component resale and interim support to the value of \$61.5 million. ANAO analysis of Home Affairs' records was that with one exception, the department met its obligation to report all work orders and amendments accurately, within the 42 day deadline.

AusTender reporting for advisers

3.47 Since commencement, the adviser contracts have been varied a total of ten times, one of which was not required to be reported on AusTender (as it was to include an additional negotiator which had no effect on the value or duration of the contract). As illustrated by Table 3.1, five contracts or variations (27 per cent) were not reported within 42 days and seven contracts or variations (39 per cent) were not reported accurately on AusTender. Reporting errors included three incorrectly reported contract values, two incorrectly reported variation values and two incorrectly reported expiration dates of the contracts or variations.

96 Finance, *Commonwealth Procurement Rules*, paragraph 7.19.

97 Relevant entities must report contracts and amendments on AusTender within 42 days of entering into (or amending) a contract if they are valued at or above the reporting threshold: Finance, *Commonwealth Procurement Rules*, paragraph 7.18.

Table 3.1: Adviser AusTender reporting compliance

Supplier	Total contract and amendments reported within 42 days ^a	Total contracts and amendments reported accurately
Deloitte	0 out of 3	1 out of 3
Group 10 Consulting procurement one	2 out of 2	2 out of 2
Group 10 Consulting procurement two	4 out of 4	4 out of 4
Group 10 Consulting procurement three ^b	1 out of 1	1 out of 1
Maddocks	2 out of 3	0 out of 3
MinterEllison	3 out of 4	2 out of 4
Ngamuru Advisory	1 out of 1	1 out of 1
Total	13 out of 18	11 out of 18

Note a: This column refers to the number of times Home Affairs met the reporting requirements on AusTender, including the original contract and variations that exceeded the \$10,000 threshold.

Note b: The value of this contract includes procurement advisory services for the Permissions Capability and other ongoing procurement processes of the department. The department estimated the value of the work pertaining to the Permissions Capability at \$1,775,950 (71 per cent of the contract value).

Source: ANAO analysis of Home Affairs records.



Grant Hehir
Auditor-General

Canberra ACT
7 June 2023

Appendices

Appendix 1 Entity responses



Australian Government
Department of Home Affairs

Mr Grant Hehir
Auditor-General
Australian National Audit Office
GPO Box 707
Canberra ACT 2601

Dear Mr Hehir,

Thank you for the opportunity to provide comments on the Australian National Audit Office's (ANAO) report on the *Procurement of the Permissions Capability* (the Report). The Department of Home Affairs (the Department) acknowledges the value of the ANAO providing independent analysis of, and insights into, the effectiveness of the procurement of the permissions capability.

This procurement occurred during the height of the COVID-19 Pandemic, which had a significant impact on the procurement process, particularly in relation to timeframes. The key driver of the procurement was to enable the Government to re-open Australia's international border, whilst ensuring human biosecurity was not compromised during the global COVID-19 pandemic, through the first use case, the Digital Passenger Declaration. The course of the global COVID-19 pandemic resulted in unprecedented policy responses, requiring the Department to adapt and pivot as Australian Government priorities changed, including those relating to hosting certification and the order for delivery of different Permissions Capability requirements. The impact on the procurement was significant and required a careful balance to meet Government expectations.

Within this context, the Permission Capability was conducted in accordance with the Commonwealth Procurement Rules and the Department of Finance guidance that underpins them. The evaluation of tenders received involved a holistic assessment of the technical and commercial solutions offered, the capability and capacity of tenderers, and the relative risk of each tender to the Commonwealth. Evaluation was undertaken by a range of experts across five government agencies who were best placed to make this assessment. The acceptance of the commercial model was driven by a holistic comparison of the relevant benefits and risks of what each tenderer in the market was willing to offer. The Department maintains that the outcome represented the best value for money available to the Commonwealth and enabled the Department to deliver the first use case to Government.

The Department agrees that there are opportunities for improvement arising from its experience with this procurement. For example, probity advice was not timely in some instances. This was due to the manual nature of the Department's probity processes, a situation it is improving through the Digital Probity Administration Capability (DPAC).

Regarding the engagement of advisors, the Department would like to reinforce the key driver for the Permissions Capability, which was to rapidly, safely and securely re-open Australia's international border during the COVID-19 pandemic. In this context, the requirement of the CPRs were met by utilising available whole of Government Panel Arrangements, however the Department acknowledges that the procurement of advisory services could have been better, and more consistently, planned in line with the observations of the ANAO, were it not for the urgency relating to the COVID-19 pandemic and safety of the Australian population.

Whilst the Department believes that its records demonstrate the extent to which the successful tenderer met the evaluation criteria, it does acknowledge that further detail regarding the rationale for the moderated scores for each provider could have been provided. The Department will factor the ANAO observations in this regard into its internal guidance for future procurements.

The Department agrees that it is important that the market is clear on whether alternative delivery approaches to those outlined in an RFT will be accepted. The fact that a number of tenderers proposed alternative commercial models, combined with the absence of any tenderer clarification questions on this matter, indicate the market clearly understood that alternative models would be considered in the Permissions Capability RFT.⁹

The flexibility retained in the CPRs is critical to achieving effective procurement outcomes for Government. CPRs do not require that the relative importance of all evaluation criteria be included in a RFT in all instances. The Department notes the ANAO comments that weightings are not the only way that an agency can reflect the relative importance of evaluation criteria. While this is true, any attempt to illustrate relative importance reduces the flexibility available during the evaluation phase of a procurement and can result in unintentional distortions that affect the ability to achieve value for money. This is supported by Department of Finance advice¹ that evaluation methodology should be appropriate to the nature of the procurement and that inflexible 'rating' and 'weighting' approaches should not be mandated.⁹

The Department also wishes to highlight that there are some statements in the report that the Department asserts are based either on errors of fact or misinterpretation of the available evidence.

Levelling the playing field

The Department disagrees that its failure to implement only some of a total of nine strategies identified by its advisors to 'level the playing field' contributed to any competitive advantage held by two tenderers. The Department's advisors outlined a range of options that could apply to address the advantage and did not suggest that all nine must be adopted. Having regard to the history, size and complexity of the procurement, the Department chose to implement some strategies, but not others, as they were not appropriate in the circumstances.⁹

Statement of compliance

The ANAO's statement that the Department acted contrary to probity advice in relation to the matters raised under 'statement of compliance' (paragraphs 2.55 – 2.57 of the Report) is factually incorrect. The probity advice which indicated that asking a tenderer to resubmit its statement of compliance may be unfair to other tenderers also stated that "...it is not open to the Department to evaluate [Tenderer 4] as being completely non-compliant with the Draft Agreement...This would result in unfairness to [Tenderer 4]. The draft advice went on to recommend a course of action, which included that "...a clarification question should be sent to [Tenderer 4] asking it to confirm...the extent of its compliance with these clauses." The Department therefore acted in accordance with the probity advice, rather than contrary to it.⁹

Hosting Certification Framework

The Department considers it immaterial that the two preferred tenderers were selected by the Department prior to receiving advice from the Digital Transformation Agency that the hosting provider for those tenderers had been conditionally certified (Paragraphs 19, 3.13 and 3.18-3.22).

The Hosting Certification Framework related to entering into a contract – not to selecting preferred tenderers. The Hosting Certification Framework arose from a newly released mandatory Commonwealth policy document that applied from 1 March 2021. It was released after the RFT, but included that (emphasis added):

¹ *Traps, Paragraph 7, dot point 3, Ethics and Probity in Procurement | Department of Finance*
(<https://www.finance.gov.au/government/procurement/buying-australian-government/ethics-and-probity-procurement>)

*From 1 March 2021, agencies going to market **or seeking to enter into a contract** for any solutions that involve a data centre component, whether direct or through a third-party provider, must stipulate their requirements for Certified Strategic or Certified Assured Hosting Providers as appropriate.*

*Providers, including direct and indirect providers, that have registered their interest to apply for a specific certification level **will be able to respond to a market approach or enter contract negotiations** for solutions that involve a hosting service component at the certification level they have registered interest.*

*Should a **registered provider be selected as the preferred tenderer, the agency will work with the DTA to support expediting the process of certification for that provider.***

*The Agency will **only be able to enter into a contract** with the preferred provider if the provider achieves certification at the required level.*

At the time the RFT was released, the Department was aware that the Digital Transformation Agency was developing the framework, but its timeframe for release was unknown. The Delegate considered the timing of the certification of the service providers prior to making a decision on the preferred tenderer. The Delegate did not, in accordance with the mandatory policy, select the successful tenderer until the Delegate had been assured that its proposed cloud services provider had gained certification from the DTA.⁹

Clarification and verification activities

It is factually incorrect that the Department's approach to clarification and verification activities allowed tenderers to alter their pricing and make changes to their commercial models (Paragraphs 2.47 – 2.52). The clarification process undertaken did not provide opportunities to change commercial models or tendered pricing, but sought clarity on matters that had been identified during the evaluation of tenders.⁹ This is the intended purpose of the clarification process. What the ANAO has identified as 'changes' to pricing were actually adjustments made to allow the Department to compare pricing on a like-for-like basis. Such normalisation of pricing is a standard procurement practice and does not alter tendered pricing.⁹

Selection of the tender evaluation team

The ANAO has stated in the Report that "guidance to entities at the time of the procurement was that the evaluation team should be selected carefully and early (before the RFT is released) and that probity training should be provided to the team as soon as they are identified, not when the evaluation is about to start...". The source webpage the ANAO relies upon in relation to paragraph 3.7 and Footnote 81 is over 20 years old (dated 20 May 2000) and has since been removed from the internet. This 'commercial note' was a publication from the Australian Government Solicitor (AGS) which is not the policy authority for Commonwealth procurement. Such advice is not reflected in the CPRs or in the Department of Finance's official guidance, and there is therefore no reason why the Department should have been aware of this note, or taken it into consideration.⁹

Please find attached a summary response to the Report for inclusion in the formal Report (**Attachment A**), the response to the recommendation (**Attachment B**).

The Department welcomes the opportunity to discuss this feedback further. We would like to thank the ANAO audit team for their professionalism, collaboration and openness throughout this process.

Yours sincerely,



Dr Michelle Graham
Acting Chief Audit Executive

18 May 2023

ANAO Comments on the Department of Home Affairs response

- (a) Under the framework of the Commonwealth Procurement Rules (see, for example, paragraph 10.35), evaluation is to be undertaken against the evaluation criteria set out in the approach to market to inform a decision about which of the competing tenders provides the best value for money. Any 'holistic assessment' of value for money should be based on the evaluation of competing tenders against the evaluation criteria included in the approach to the market. Paragraphs 2.39 to 2.41 in the audit report sets out that there were gaps in the records of the evaluation against the two technical criteria (the only two of the seven criteria that were weighted by the department) and that the higher rating of Accenture's tender against the criteria was not clearly supported by the records.
- (b) A key issue identified by the audit was that a number of tenderers proposed a different commercial model to that included in the RFT which involved additional risk for the department and impacted upon the evaluation of the value for money offered by the competing tenderers. As reflected in the sign off for the transaction documents provided to the department by its legal adviser (see paragraph 2.24), the commercial contracting model that resulted from the procurement was different to the approach sought by the department in its approach to the market. The approach to the market did not outline whether changes to the commercial model would be accepted and, if so, how this would be addressed in the evaluation and ranking of competing tenders. The CPRs outline that providing information to the market assists entities to achieve value for money including by encouraging competition.
- (c) The full guidance from Finance in respect to traps relating to probity arrangements for procurements is that they should not: "mandate an inflexible 'rating' and 'weighting' approach where numerical scores are entered into a predetermined mathematical formula rather than allowing Evaluation Committees to use their judgement — the evaluation methodology adopted should be appropriate to the nature of the procurement, to ensure value for money is achieved". This guidance from Finance does not suggest that the approach to the market should not inform potential tenderers of the relative importance of the criteria, and does not suggest that weighting of criteria or otherwise indicating the relative importance of the criteria is, of itself, an approach that is inflexible such that it adversely impacts on the ability to achieve value for money.
- (d) Home Affairs and the DTA sought legal and probity advice about 'levelling the playing field' for the Permissions Capability procurement in August 2020, prior to the release of the RFT, to address the competitive advantages that were recognised to exist for the two tenderers from the GDP procurement process. A number of mechanisms were recommended to address these issues, including some that would need to have been implemented before approaching the market, as well as others that would form part of the actual procurement structure and methodology. Paragraphs 2.75 to 2.78 and Appendix 11 set out the extent to which each of these mechanisms were implemented by the department. Two of the recommended mechanisms were implemented in full and one was partly implemented. Six of the recommended mechanisms were not implemented, including mechanisms that would have contributed to addressing the identified issue that the two tenderers that participated in the predecessor Global Digital Platform (GDP) RFT process had a 'head start' in understanding the requirements of the Permissions Capability.

(e) The draft probity advice stated that ‘it is not open to the Department to ask [Tenderer 4] to materially change its Tender by retracting its statement that the [Tenderer] [Whole of Government Agreement] WOGA applies (even if this were permissible under DTA's policy) and substituting a Statement of Compliance against the Draft Agreement’. The course of action recommended by the probity adviser was that:

- The Legal Adviser should compare the clauses in the [Tenderer] WOGA with the clauses in the Draft Agreement to identify the extent to which they are similar and the extent to which they materially differ (including the extent to which terms and conditions in the Draft Agreement are not addressed at all in the [Tenderer] WOGA). This comparison should be undertaken at a high level, and also in detail ...
- In relation to the provisions in the Draft Agreement identified (at a high level) as being materially different from, or not existing in, the [Tenderer] WOGA, a clarification question should be sent to [Tenderer 4] asking it to confirm, in view of paragraph (f) of Form 15, the extent of its compliance with these clauses.

As set out in paragraph 2.57, contrary to the approach recommended by the probity adviser, Home Affairs asked the tenderer to submit a ‘full statement of compliance’ as part of a ‘clarification’ question. Specifically, this request was for the tenderer to submit ‘full statements of compliance which provide for each instance of non-compliance, partial compliance or non-applicability of the [tenderer’s] proposed approach/terms against the Draft Agreement and each Work Order’.

(f) Paragraphs 3.18 to 3.22 set out the findings in relation to the hosting certification framework.

(g) The two shortlisted tenderers which had proposed alternative commercial models to that requested in the RFT were specifically asked to ‘provide estimated pricing ... to provide the end-to-end solution for the Permissions Capability under a model by which the Contractor accepts responsibility for the entirety of the Permissions Capability solution (including subcontractor and third party supplier software, products and services)’. Paragraphs 2.50, 2.53 and 2.54 set out the findings in relation to the department’s approach in providing opportunities for tenderers to alter their commercial models, including their prices.

(h) The department’s response suggests that it adjusted prices to allow it to compare pricing on a like-for-like basis. As set out in paragraph 2.48, as the RFT had not required tenderers to include software pricing for the full term of the contract, tenderers were asked to provide the pricing impact of including licencing and/or support for software components for the full contract term. Verification activities also resulted in changes to submitted prices (see paragraphs 2.50 to 2.52).

- (i) The guidance from the Office of the Australian Government Solicitor (AGS) was issued following the 1997 decisions of the Federal Court in *Hughes Aircraft Systems International versus Airservices Australia* as well as *JS McMillan Pty Limited versus Commonwealth of Australia*. These cases had significant implications for the conduct of tenders by the Commonwealth, including the approach to tender evaluation. Those implications were addressed in guidance published by various providers of legal advice to Commonwealth entities, including AGS. The age of the AGS advice cited by the ANAO demonstrates that the importance of tender evaluation being planned prior to approaching the market has been recognised in the Commonwealth for a considerable period of time, including in various ANAO performance audit reports since the late 1990s.⁹⁸ It is also evident in current advice from the Department of Finance⁹⁹ which sets out that the tender evaluation plan should be prepared prior to approaching the market.

98 See, for example, Auditor-General Report No.9 2000-2001 *Implementation of Whole of Government Information Technology Infrastructure Consolidation and Outsourcing Initiative* and Auditor-General Report No.32 2005-06 *Management of the Tender Process for the Detention Services Contract*.

99 Department of Finance, *Procurement Process Considerations*, [Internet], available from <https://www.finance.gov.au/government/procurement/buying-australian-government/procurement-process-considerations> [accessed 19 May 2023].



Australian Government
Digital Transformation Agency



Chief Executive Officer
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Mr Grant Hehir
Auditor-General
Australian National Audit Office
GPO Box 707
Canberra ACT 2601

Dear Auditor-General,

Extract - Proposed Audit Report of the Procurement of the Permissions Capability

Thank you for the correspondence of the 24 January 2023, providing the extract of the proposed Performance Audit Report of the Procurement of the Permissions Capability, pursuant to section 19 of the Auditor-General Act 1997.

The Digital Transformation Agency (DTA) notes the Australian National Audit Office's (ANAO) consideration of the DTA's role as policy lead for whole-of-government reuse, and acknowledges clarifications incorporated in the extract provided regarding the Hosting Certification Framework.

This letter of reply contains additional editorial comments for your attention and consideration at **Attachment A**. Please note this attachment is not intended for publication in the final report.

I wish to thank the ANAO for the opportunity to participate in and provide comments on the proposed report and look forward to receiving ANAO's full report on this matter.

Chris Fechner
17 February 2023



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21 February 2023

Mr Grant Hehir
 Auditor General for Australia
 Australian National Audit Office
 38 Sydney Avenue
 Forrest ACT 2603

Dear Mr Hehir

RE: PROCUREMENT OF THE PERMISSIONS CAPABILITY – EXTRACT FOR ACCENTURE AUSTRALIA PTY LTD (ACCENTURE)

Thank you for giving us the opportunity to comment on an extract of the Australian National Audit Office's (**ANAO**) proposed report on the Procurement of the Permissions Capability (**Report**).

The Report covers the procurement process conducted by the Department of Home Affairs (**Department**), and also touches on the development and closure of the program of work for the Permissions Capability, including Digital Passenger Declaration (**DPD**), by the Department and Accenture (**Permissions Program**).

We respect the integrity of the Commonwealth Procurement processes, and act in accordance with the rules, as well as Agency directions, applicable to any procurement activity with the Commonwealth.

With respect to the delivery and closure of the Permissions Program, we would like to make the following comments:

- We have been fortunate to partner with the Australian Public Service (**APS**) on numerous occasions over the last 40+ years to deliver complex national technology infrastructure and platforms. Our organisation, our people and our leadership take much pride in the outcomes that, together with the APS, we have delivered for Australia.
- We welcome considered scrutiny and findings by the ANAO on any Commonwealth project we are involved in, and we hold ourselves accountable for delivery of these complex programs for our clients. Whether these programs adhere to their initial expectations or have unforeseen challenges, we are committed to their successful delivery, always learning from and continuously improving ways of working, delivery methods and tools.
- When reviewing the content of the Report, we believe it is worth reflecting on the context surrounding the Permissions Program. The program commenced during the COVID-19 Pandemic when the Australian border was playing a pivotal role in keeping

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Australians safe. As the course of the Pandemic changed, so did the border requirements.

- Whilst we do not consider it appropriate to delve into matters that have been resolved between ourselves and the Department, we do note that the DPD that went live in February 2022 was highly secure and processed DPDs for inbound passengers from February 2022 until the 5th July 2022, when the DPD was switched off in response to changing border entry requirements.
- Finally, as the Report acknowledges, the Department and Accenture reached a mutually agreed conclusion of the Permissions Program, which is reflected in the terms of the Deed of Agreement and Release and the joint public statement (both noted in the Report).

Accenture appreciates the opportunity to comment on this Report and we look forward in continuing to partner with the APS, as the Commonwealth introduces new policy and consumes changes in Technology to enhance the delivery of vital services for the people of Australia.

Sincerely



John Vidas

Senior Managing Director
Health and Public Service Lead
Accenture Australia and New Zealand



2/65 Tennant Street
Fyshwick ACT 2609
Australia

31 January 2023

Grant Hehir
Auditor-General for Australia
Australian National Audit Office

By email: OfficeoftheAuditorGeneralPerformanceAudit@anao.gov.au

Dear Mr Hehir

Thank you for the opportunity to review the extract of the proposed audit report on the Procurement of the Permissions Capability, provided to us by email on 24 January 2023.

We have reviewed the extract and have no comments.

Yours sincerely

A handwritten signature in black ink, appearing to read "Harry Dunstall".

Harry Dunstall
Managing Director

M 0417 201 450
E hdunstall@ngamuru.com



Group 10 Consulting Pty Limited
ABN: 36 163 479 883
Level 1, 54 Marcus Clarke Street
Canberra ACT 2601

13 February 2023

Brian Boyd
Executive Director
National Security, Industry & Infrastructure

Dear Brian,

Re: Extract from Auditor-General Proposed Audit Report on the Procurement of the Permissions Capability

Thank you for the opportunity to review and respond to this extract.

Group 10 is committed to and continues to support and work alongside Commonwealth agencies in delivering a complex sourcing agenda and program.

At all times Group 10 acted ethically and professionally and worked diligently to support and respond to client needs during a period of high demand and unusually tight, ministerially enforced, timeframes targeted at opening Australia's borders. As part of its ethical business practices Group 10 never seeks to influence or gain improper insight into a procurement process that involves its services, hence it cannot comment further on the processes undertaken by the department (relating to same).

Please do not hesitate to contact me, should you require further assistance or wish to discuss this further at any time.

Grateful if you could please acknowledge receipt of this response and do let me know if anything further is required.

Sincerely,

Trent Pellow
Executive General Manager
Group 10 Consulting

Appendix 2 Improvements observed by the ANAO

1. The existence of independent external audit, and the accompanying potential for scrutiny improves performance. Improvements in administrative and management practices usually occur: in anticipation of ANAO audit activity; during an audit engagement; as interim findings are made; and/or after the audit has been completed and formal findings are communicated.
2. The Joint Committee of Public Accounts and Audit (JCPAA) has encouraged the ANAO to consider ways in which the ANAO could capture and describe some of these impacts. The ANAO's 2022–23 Corporate Plan states that the ANAO's annual performance statements will provide a narrative that will consider, amongst other matters, analysis of key improvements made by entities during a performance audit process based on information included in tabled performance audit reports.
3. Performance audits involve close engagement between the ANAO and the audited entity as well as other stakeholders involved in the program or activity being audited. Throughout the audit engagement, the ANAO outlines to the entity the preliminary audit findings, conclusions and potential audit recommendations. This ensures that final recommendations are appropriately targeted and encourages entities to take early remedial action on any identified matters during the course of an audit. Remedial actions entities may take during the audit include:
 - strengthening governance arrangements;
 - introducing or revising policies, strategies, guidelines or administrative processes; and
 - initiating reviews or investigations.
4. During the course of the audit, the ANAO did not observe changes in Home Affairs' procurement approach relevant to the procurement of the Permissions Capability.

Appendix 3 Global Digital Platform procurement

1. Prior to undertaking the Permissions Capability procurement, the Department of Home Affairs (Home Affairs or the department) had commenced a procurement process for a new digital visa servicing platform, called a 'Global Digital Platform' (GDP). The GDP procurement was a multi-stage process involving:

- market consultation which resulted in 36 responses being received informing the decision to proceed with the procurement;
- a three-phase request for expressions of interest (REOI) process that ran from September 2017 to July 2018 and included a co-design process¹⁰⁰ (Phase 3) with two down-selected tenderers¹⁰¹; and
- a two-phase request for tender (RFT) process that ran from November 2018 to September 2019.

2. At the conclusion of the RFT stage, the department decided to undertake an offer definition and improvement activity (ODIA) process with both tenderers. ODIA was an option available to the department to exercise in 'order to clarify, improve and maximise value for money of Phase Two tenders for the department'. The ODIA process commenced in November 2019.¹⁰²

Termination of the GDP procurement

3. In November 2019, the department prepared an update on the GDP process for the Minister for Home Affairs (the Minister) in advance of a meeting to be held on 27 November 2019. Home Affairs advised the Minister that:

- evaluation of the two GDP tenders received on 28 June 2019 was well advanced;
- the commercial model (where the platform would be funded, built and maintained by a private provider) set out in the RFT process had significant benefits to the Commonwealth in terms of delivery risk transfer, access to innovative technology and design capabilities, and avoided cost¹⁰³;
- it had determined potentially viable technical solutions had been presented by both tenderers, well aligned with the department's expectations¹⁰⁴;

100 Co-design involved the down-selected tenderers collaborating with departmental teams and subject matter experts to design and prototype end-to-end visa process maps as part of two separate teams with three high level objectives: to refine and inform requirements in a build-like environment; to refine and develop detailed requirements for a request for tender; and to accelerate early value for Government by delivering solution demonstrations.

101 The department paid the two down selected tenderers \$1.1 million each for the co-design activities.

102 Tenderers were advised on 19 December 2019 that they had successfully addressed threshold issues identified by the department in the context of the ODIA and that substantial ODIA discussions would commence in the New Year. On 19 February 2020, the department approved ODIA process deeds and documents to be released to tenderers subject to the conclusion of discussions with the acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs in relation to the Government's policy on workflow processing capability.

103 The briefing also highlighted that the proposed commercial model also meant that in the event the department were to delay implementation, it would become liable for the provider's lost revenue.

104 The briefing went on to say that 'this outcome is not surprising given this cumulative procurement process has involved significant engagement with potential providers since June 2017'.

- it had decided to commence an ODIA process, which was designed to allow the department to pursue changes to tender responses to clarify, improve and maximise value for money of those tenders for the Commonwealth; and
 - it was seeking the required funding to complete the procurement process.
4. A separate briefing was also provided to the Minister on anti-privatisation amendments to two Migrations Bills, which were then awaiting debate in the Senate. The department advised that the amendments would prohibit the delegation of powers relating to receiving or considering visa applications to persons who are not APS employees and would have adverse impacts on the department's ability to receive and process visa applications.
5. Following a request on 29 November 2019 from the Minister for Home Affairs, the department prepared, for the Minister's consideration at a meeting of 4 December 2019, an additional brief on options for advancing the GDP, involving advice on:
- potential opportunities for broader strategic application of technology and related capabilities that could be applied at scale to a range of application and decision-making workflow processes in the Home Affairs Portfolio and, over time, in a whole-of-government context; and
 - options open to the Government to advance the GDP.
6. In its advice, the department stated that the procurement process for the GDP had highlighted significant opportunities for the department beyond the existing visa-focussed remit of the GDP procurement and that the same automated business rules-based processing could apply to other functions in the portfolio as well as the potential for the technology to be directed to broader functions and services across the wider Australian Public Service (APS).
7. The department outlined that the Government may wish to consider commissioning a new market engagement process for an enterprise-scale workflow processing capability. In relation to advancing the GDP procurement, the department advised that there were two options for the Government to consider:
- proceeding with the current procurement process based on its original Government policy; or
 - aligning it with current government policy in relation to a broader strategic application of technology and related capabilities.
8. The department advised that, if the government decided to broaden the overall policy approach to strategic technology procurement, including by way of a new approach to market for broader applications beyond just visa processing, the better course would be to terminate the GDP process on public interest grounds.

9. On 10 March 2020, the Government decided new policy for the acquisition and development of a 'workflow processing capability' in the Home Affairs Portfolio and potentially the wider APS.¹⁰⁵

10. On 16 March 2020, the Secretary of Home Affairs agreed to terminate the GDP procurement process on the basis that it was not in the public interest to award a contract resulting from that process. The CPRs provide that:

Unless a relevant entity determines that it is not in the public interest to award a contract, it must award a contract to the tenderer that the relevant entity has determined:

- a. satisfies the conditions for participation;
- b. is fully capable of undertaking the contract; and
- c. will provide the best value for money, in accordance with the essential requirements and evaluation criteria specified in the approach to market and request documentation.¹⁰⁶

11. In a footnote to paragraph 10.35, the CPRs state that:

public interest grounds generally arise in response to unforeseen events or new information that materially affects the objectives or reasons underlying the original procurement requirements as specified in the request documentation.¹⁰⁷

12. The Evaluation Committee for the GDP procurement considered the Government's new policy direction and formed the view that it included new information that materially affected the objectives of the GDP procurement and the reasons underlying both the general requirements of the procurement and the requirements specified in the RFT. The department received legal and probity advice on 2 December 2019 and on 13 March 2020 on the options available to cancel a procurement process. The Evaluation Committee considered that advice in making its recommendation to the Secretary.

Probity issues

13. At the same time the department was advising the Government on its options for broadening the GDP procurement beyond the visa processing remit to a workflow processing capability, it was also managing a probity issue that had not been resolved at the time of the GDP procurement's termination.

14. In December 2019, the Chair of the Evaluation Committee advised the incoming acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs that the department had become aware that a former senior executive of the Australian Border Force had recently made contact with United Kingdom counterpart agencies using an email address from one of the GDP tenderers, in which he:

¹⁰⁵ In advance of government decision-making, the department advised the Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs that it was highly desirable that a preferred Government Policy approach to acquisition of workflow processing technology was settled as the Phase Two GDP tenders had been received on 28 June 2019 and ODIA with both tenderers had commenced in November 2019, and the GDP tenderers were increasingly anxious to know the next steps in the procurement process.

¹⁰⁶ Finance, *Commonwealth Procurement Rules*, paragraph 10.35

¹⁰⁷ *ibid.*

- outlined his professional qualifications and acquaintances;
- asserted he was well connected with government and non-government Members of Parliament;
- asserted he was conducting unrelated work on behalf of the Prime Minister;
- stated he was working for an entity that was one of the final two bidders in the GDP procurement process; and
- sought meetings to discuss potential commercial opportunities.

15. In a series of correspondence with the tenderer, the department, in consultation with its probity advisers, outlined its concerns about the implications of the issue for the integrity of the GDP procurement process, including that it may represent a conflict of interest. The department sought information relating to the tenderer's potential engagement of the former senior executive and requested certain actions be undertaken by the tenderer to address the potential conflict of interest.

16. At the time the procurement was terminated, the matter had not been addressed to the department's satisfaction.

Senate inquiry into the impact of changes to service delivery models on the administration and running of Government programs

17. On 1 August 2019, the Senate referred an inquiry into the impact of changes to service delivery models on the administration and running of Government programs to the Legal and Constitutional Affairs References Committee for report by 16 October 2019. The Senate later extended the reporting date to the last sitting day in February 2020. The inquiry included a particular reference to the GDP procurement.

18. The final recommendation from the inquiry was that the Australian Government not proceed with the *Request for Tender – Delivering Visa Services for Australia – Global Digital Platform* and instead seek to fund and deliver an in-house solution.

Appendix 4 Cancellation of the Permissions Capability project

1. As discussed at paragraph 1.14, the department's advice to the Minister for Home Affairs in July 2022 was that Accenture had not delivered the base capability or Digital Passenger Declaration by 30 June 2022, and that it intended to pursue a contract termination path for the Permissions Capability deed of standing offer.
2. Home Affairs and Accenture entered into a 'deed of agreement and release' to cease the deed of standing offer and associated work orders for the Permissions Capability on 12 August 2022. The agreement included a final payment of \$774,500 to Accenture and public statements to the effect that the parties had decided upon a mutual separation.¹⁰⁸ The final payment was for the completion of two milestones under two work orders relating to the release of the Base capability and the Digital Passenger Declaration.¹⁰⁹ In response to the ANAO's request for evidence supporting the achievement of the milestones, Home Affairs advised the ANAO in February 2023 that '[t]he payment amount negotiated as part of the cessation agreement included payment for deliverables that the Department assessed as partially delivered by Accenture for both [Work Order] 2 – Base Release 1; and [Work Order] 3 [Digital Passenger Declaration] Release 1. The negotiated cessation agreement also varied the contract to include Accenture's assistance to decommission the [Digital Passenger Declaration] and the provision of key artefacts to the standard required by the Department'.
3. As discussed in paragraph 2.38, Accenture advised the ANAO in February 2023 that 'While we do not dispute that the Department may have briefed Ministers etc on the Department's intent to terminate the program, the contracts between the Department and Accenture for the Permissions Program were not actually terminated by the Department, but were ended by mutual agreement (as reflected in the Deed of Release and Settlement)'.
4. The department also formally notified all third-party contractors (buyer furnished item arrangements) of termination in August 2022. Confirmation of receipt has been provided by all parties, with the exception of one contractor due to there not being a termination provision in its agreement with the department.
5. Table A.1 below sets out the reasons recorded by the department for terminating the contract (against the technical criteria used in the evaluation of tenders). The rationale for deciding to terminate the contract was inconsistent with various conclusions drawn at the time of the tender evaluation.

108 The deed of agreement and release between the department and Accenture also included a public statement that each party was to make following the execution of the deed:

The Department has concluded its contractual arrangements with Accenture regarding the Permissions Program and agreed a mutual separation. Delays encountered in achieving the planned objectives were a factor in this decision. Both the Department and Accenture have worked proactively and diligently to ensure that contractual arrangements have been concluded in a cost effective and equitable way.

109 The invoices relating to the final payment were for Work Order 2 – Base Release 1 (\$178,750) and Work Order 3 Milestone 2 – Digital Passenger Declaration Release 1 (\$673,200).

Table A.1 Reasons recorded by the Department's for terminating the contract

Criterion	Permissions Capability Review Report Findings (June 2022)	Department's advice to the Minister for Home Affairs (July 2022)
Capability and Capacity	<p>Home Affairs identified that delays in delivery of the capability were due to:</p> <ul style="list-style-type: none"> challenges with Accenture's leadership and resourcing, including a high staff turnover and a lack of suitably qualified subject matter experts; and providing a design that meets the Statement of Requirements to the extent that is acceptable to Home Affairs. 	<p>Home Affairs advised that, despite multiple assurance and rectification opportunities, Accenture failed to deliver against its contractual obligations.</p> <p>Home Affairs intended to pursue a contract termination for the deed with Accenture due to:</p> <ul style="list-style-type: none"> its inability to meet contracted milestones; disputes on scope and delivery; low confidence in its delivery capability; and a lack of strategic alignment with Accenture.
Proposed Solution	<p>Home Affairs identified that:</p> <ul style="list-style-type: none"> the Permissions Capability would not be delivered by the contracted 30 June 2022; only four per cent of the base capability had been delivered; the extent to which the Permissions Capability would deliver a reusable capability outside Home Affairs was unclear; while the Permissions Capability architecture was to enable a modular, loosely coupled solution which can be tailored to meets the needs of a range of reuse cases, the cost of such tailoring was unclear and may create a barrier to reuse, particularly for smaller agencies; and the high-level solution design, while critical to the reusability of the Permissions Capability, was yet to be accepted by Home Affairs as it did not meet the Statement of Requirements. 	<p>Home Affairs advised that:</p> <ul style="list-style-type: none"> the first iteration of the Digital Passenger Declaration was not ready to release to the public in the planned timeframe due to quality issues and a large number of outstanding defects; although the first iteration of the Digital Passenger Declaration was eventually delivered (albeit late and only partially), it was an inflexible product with unresolved defects; only a small amount of the entire contracted scope for the Digital Passenger declaration was delivered; Release 2 of the Digital Passenger Declaration (scheduled for 4 March 2022) was not delivered; subsequent contracted releases for the Digital Passenger Declaration were not delivered; a re-usable Base Capability, due by 30 June 2022, was not delivered; and after the department requested a final rectification plan by 12 July 2022 which demonstrated delivery of outstanding scope items by 29 July 2022, Accenture did not deliver the plan and advised that it cannot deliver the outstanding scope items by the deadline.

Source: ANAO analysis of Home Affairs records.

Appendix 5 Evaluation process as outlined in the RFT

1. The below table outlines the 11-step evaluation process to be undertaken for the procurement of the permissions capability.

Steps	Evaluation process
Step 1: Registration of tenders	<p>Following the closing time, all tenders will be downloaded from AusTender.</p> <p>All tenders received on or before the closing time will be registered.</p> <p>Any tenders received after the closing time and any disputes or issues regarding receipt of tenders will be managed in accordance with Part 3 – Terms and Conditions.</p> <p>Late tenders will be identified and dealt with in accordance with Part 3 – Terms and Conditions.</p>
Step 2: Initial screening	<p>The department will screen all registered Tenders to identify any Tender that:</p> <ul style="list-style-type: none"> • fails to comply with any one or more of the conditions for participation specified in Part 1 – RFT Details; • fails to comply with any one or more of the minimum content and format requirements specified in Part 1 – RFT Details; • fails to comply with any one or more of the mandatory requirements (if any) specified in Part 1 – RFT Details; • contains any unintentional errors of form; or • is otherwise incomplete or non-compliant with a term or provision of the RFT. <p>Subject to Part 3 – Terms and Conditions, a tender which fails to comply with a:</p> <ul style="list-style-type: none"> • condition for participation; • minimum content and format requirement; or • mandatory requirement (if any), <p>will be excluded from further consideration.</p> <p>The department may also exclude a tender from further consideration where, in the department's opinion, the tender is:</p> <ul style="list-style-type: none"> • incomplete or non-compliant with the RFT; or • otherwise clearly non-competitive. <p>Without limiting any rights in Part 3 – Terms and Conditions, the department may, however, decide to consider these tenders and seek further clarification from the tenderer if it believes that this is appropriate.</p> <p>Screening is an ongoing process. The department may, in its absolute discretion, decide at any time during the evaluation process that a tender or tenderer falls within the categories listed above and should therefore be excluded from further consideration.</p>
Step 3: Technical evaluation	<p>For each tender that passes steps 1 and 2 above, the department will evaluate tenders against the technical evaluation criteria.</p>

Steps	Evaluation process
Step 4: Financial evaluation	<p>For each tender that passes steps 1 and 2 above, the department will evaluate tenders against the financial evaluation criterion.</p> <p>For the purposes of evaluation in step 4, the department may adjust and 'normalise' prices and undertake a sensitivity analysis of prices or take any other steps it considers necessary in order to establish a common base for comparative evaluation of tenders.</p> <p>The department reserves the right to ask tenderers (or, if tenderers have been shortlisted, the shortlisted tenderers) to submit new or revised pricing based on an alternative methodology.</p>
Step 5: Non-technical evaluation	<p>For each tender that passes steps 1 and 2 above, the department will assess tenders against the non-technical evaluation criteria.</p>
Step 6: Risk assessment	<p>The department will assess tenders against the risk evaluation criterion taking into account all risks associated with each tender that have not already been taken into account in steps 3, 4 or 5. This may include (but is not limited to) an assessment of the matters listed in the risk evaluation criterion below.</p>
Step 7: Verification activities	<p>The department, after reviewing the tenders, may decide to, in relation to some or all of the tenderers:</p> <ul style="list-style-type: none"> • conduct site visits to tenderer(s)' premises; • seek presentations by tenderer(s) on their tender; • require the tenderer(s) to attend an interview; • require the tenderer(s) to attend interactive workshops; • conduct referee checks; • discuss with, and/or visit, customers or subcontractors of a tenderer, whether or not the customers or subcontractors are provided as referees by the tenderer; • carry out independent enquiries about any matter that may be relevant to the evaluation of a tender including security, financial and probity checks in relation to the tenderer, its subcontractors, consortium members and any related entities or their personnel; and • undertake any other activities the department considers necessary in order to obtain information relevant to the evaluation of tenders. <p>Where the department elects to conduct site visits, presentations or interview, the department may issue protocols to tenderers invited to participate in the activity which will govern how the activity will be conducted. Tenderers must comply, and ensure any of its representatives involved in the relevant activity comply, with such protocols.</p> <p>Following the conclusion of any activities, the department may, unless the activities result in completely new information that improves a tender or are irrelevant, take into account the further information received in the evaluation of tenders.</p>

Steps	Evaluation process
Step 8: Evaluate value for money	<p>The department will determine the extent to which each tender represents value for money by comparing the outcomes of each previous step for each tender, and any other risks, matters or issues that it considers relevant, including the extent to which the tender will facilitate the Commonwealth achieving the objectives of this procurement.</p> <p>Value for money is the core principle governing the department's procurement and is enhanced by three supporting principles:</p> <ul style="list-style-type: none"> • encouraging competition; • efficient, effective, ethical and economic use of resources; and • accountability and transparency. <p>Value for money is a comprehensive assessment that takes into account the outcome of the following:</p> <ul style="list-style-type: none"> • the technical evaluation under Step 3; • the financial evaluation under Step 4; • the non-technical evaluation under Step 5; • the assessment of risks, under Step 6; and • the outcome of any verification activities undertaken, under Step 7.
Step 9: Offer definition and improvement activities and/or Best and Final Offer (optional)	<p>The department may, in its absolute discretion, elect to:</p> <ul style="list-style-type: none"> • conduct Offer Definition and Improvement Activities (ODIA); and/or • request a Best and Final Offer from the tenderer(s). <p>If the department elects to conduct ODIA and/or request a Best and Final Offer from the tenderers, the department may issue an ODIA process document or Best and Final Offer process document which provides further details and sets out any specific terms and conditions governing the process.</p> <p>If ODIA is undertaken and/or a Best and Final Offer is requested, the department may again conduct a value for money assessment at the conclusion of these activities, using the outcomes of the ODIA and/or Best and Final Offer process in accordance with the process set out in step 8.</p>
Step 10: Identification of preferred tenderer (optional)	<p>At the end of step 8 (evaluate value for money) (including step 8 as conducted after step 9 (ODIA and/or Best and Final Offer (Optional)) (if relevant)), the department may identify a tender(s) that represents the best value for money and should therefore be selected as the preferred tenderer(s).</p>

Steps	Evaluation process
Step 11: Negotiation (optional)	<p>Following completion of the previous steps, the department may enter into negotiations with one or more tenderers, including parallel negotiations, or if it has selected a tenderer as the preferred tenderer it may enter into negotiations with that tenderer only.</p> <p>The purpose of negotiations is for the department to address any risks and issues it has identified in the evaluation process. As part of this process, any tenderer participating in step 11 may be asked to improve on any or all aspects of their tender.</p> <p>More details on the negotiation process is included at clause 3.24 of Part 3 – Terms and Conditions.</p>

Source: Department of Home Affairs' records.

Appendix 6 Evaluation Criteria in the RFT and rating scale

1. The table below outlines the evaluation criteria as outlined in the RFT.

Evaluation criteria	Description of evaluation criteria	Weighting
Technical evaluation criteria		
Capacity and Capability	The extent to which the tenderer demonstrates that it has the technical, administrative, managerial, personnel, and commercial expertise, experience, capability and capacity to perform the services as set out in Attachment A – Statement of Requirement.	40%
Proposed solution	The extent to which the tenderer demonstrates a solution that achieves the objectives and performs the services as set out in Attachment A – Statement of Requirement, including the successful implementation and performance of the Permissions Capability and use cases.	60%
Financial evaluation criteria		
Pricing	The extent to which the tenderer's proposed fee model(s), fees, costs, allowances and charges associated with the implementation and performance of the services contribute to value for money.	Not weighted
Non-technical evaluation		
Economic Benefit to Australia	The extent to which the tender will provide an economic benefit to Australia	Not weighted
Indigenous Participation	The extent to which the tenderer has demonstrated its commitment to Indigenous participation, including its proposed: <ul style="list-style-type: none"> • use of Indigenous enterprises in its supply chain; and • employment of Indigenous Australians. 	Not weighted
Collaboration and Relationship	The extent to which the tenderer's approach to working collaboratively with the department, other agencies and other suppliers builds and maintains strong relationships and maximises the likelihood of achieving the successful implementation and performance of the services, including the Permissions Capability and use cases.	Not weighted

Evaluation criteria	Description of evaluation criteria	Weighting
Risk evaluation criteria		
Risk	<p>The extent to which there are risks inherent in the tender that have not already been evaluated, including in respect of:</p> <ul style="list-style-type: none"> • the tenderer's financial viability; • any actual, potential, or perceived conflict of interest; • national security; • the tenderer's level of compliance with this RFT (including the draft agreement and draft work orders); • the extent of the tenderer's compliance with the Commonwealth policies specified in the RFT; • the tenderer's proposed intellectual property regime; • the tenderer's request for information to be treated as confidential; and • any other risk the department considers relevant. 	Not weighted

Source: Department of Home Affairs records.

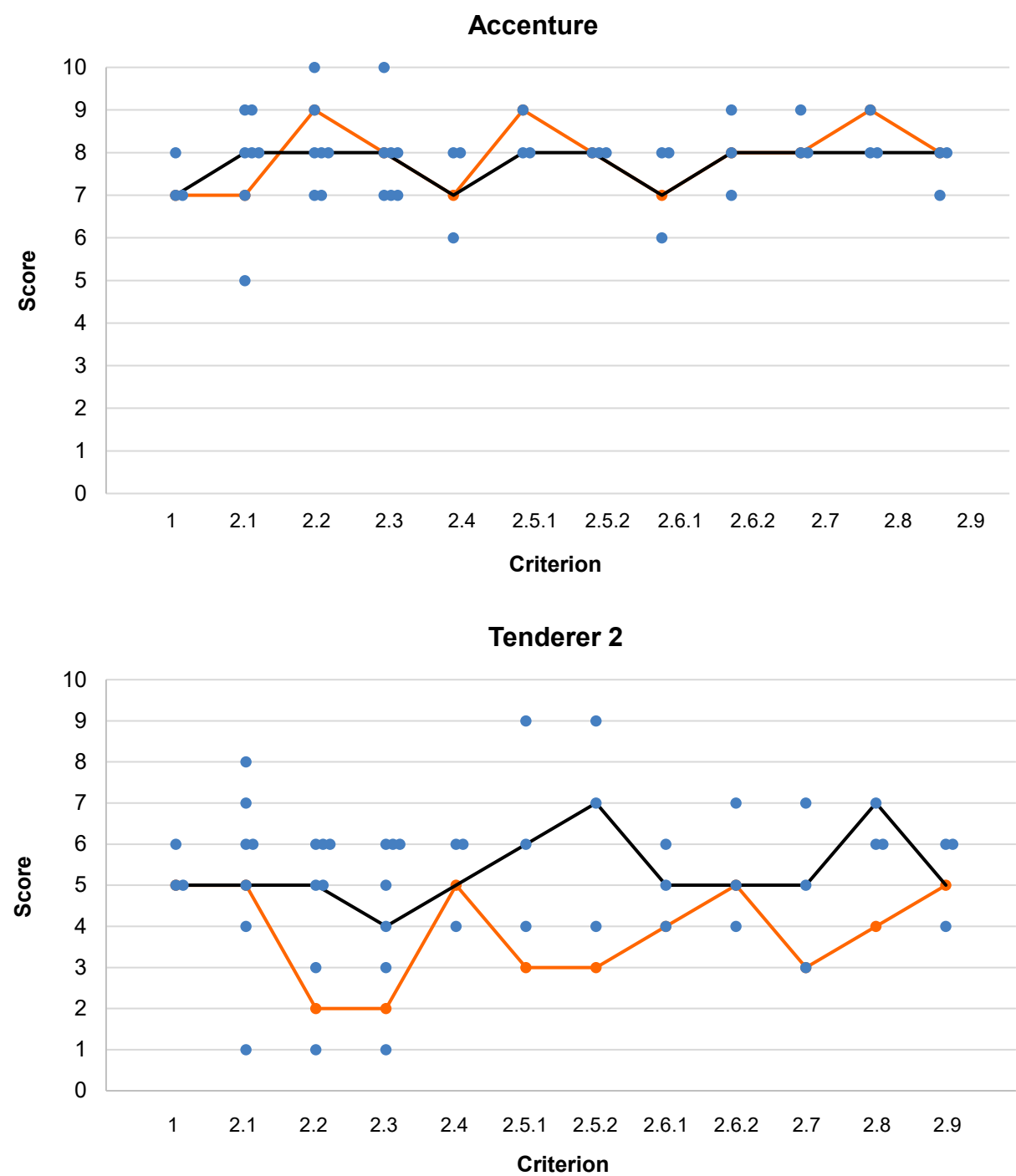
Appendix 7 Conditions for participation and minimum content and format requirements

1. The table below outlines the conditions for participation and minimum content and format requirements as outlined in the RFT. All eight tenderers were assessed against these requirements as part of the initial screening process.

Conditions for Participation	Minimum content and format requirements
<ol style="list-style-type: none"> 1. The tenderer must not have had any judicial decisions against it (excluding decisions under appeal) relating to employee entitlements and have not satisfied any resulting order. 2. The tenderer, its personnel, consortium members, and any subcontractors proposed in its tender must not be listed as terrorists under section 15 of the <i>Charter of the United Nations Act 1945</i> (Cth). 3. The tenderer, its personnel, consortium members, and any subcontractor proposed in its Tender must not be named in the consolidated list referred to in Regulation 40 of the <i>Charter of the United Nations (Dealing with Assets) Regulations 2008</i> (Cth). 4. The tenderer must either: <ul style="list-style-type: none"> • hold a Valid and Satisfactory Statement of Tax Record by the closing time; or • have a receipt demonstrating that a Statement of Tax Record has been requested from the Australian Taxation Office by the closing time, and holds a Valid and Satisfactory Statement of Tax Record no later than 2:00 pm (local time in Canberra, Australian Capital Territory (AEDT)) on the fourth business day after the closing time. 5. The tenderer must hold a Valid and Satisfactory Statement of Tax Record for any first tier subcontractor that it proposes, as part of its response, to engage to deliver goods or services with an estimated value of over \$4 million (GST inclusive). 6. The tenderer must be a legal entity with the capacity to contract. 	<ol style="list-style-type: none"> 1. Tenderers must attach to their tender a completed and signed copy of the “Deed of Undertaking” substantially in the form set out in Form 2 set out in Attachment C – Tender Response Forms. 2. Tenderers must submit with their tender either: <ul style="list-style-type: none"> • a Valid and Satisfactory Statement of Tax Record for the Tenderer; or • a receipt demonstrating that a Statement of Tax Record has been requested from the Australian Taxation Office for the tenderer and the Tenderer then provides a Valid and Satisfactory Statement of Tax Record by 2:00 pm (local time in Canberra, Australian Capital Territory (AEDT)) on the fourth business day after the closing time. 3. Tenderers must ensure, unless otherwise specified in the Statement of Requirement, all measurements are expressed in Australian legal units of measurement. 4. All pricing in the tender must be in Australian dollars. 5. The tender must be in English.

Source Request for Tender for Permissions Capability.

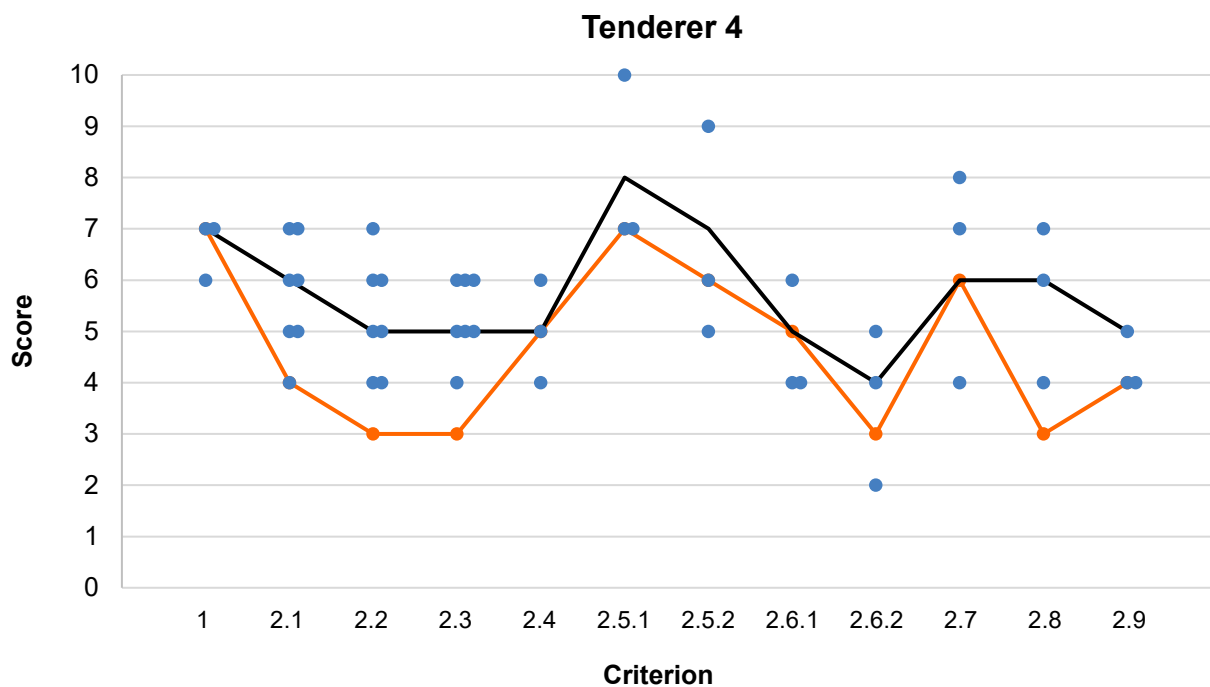
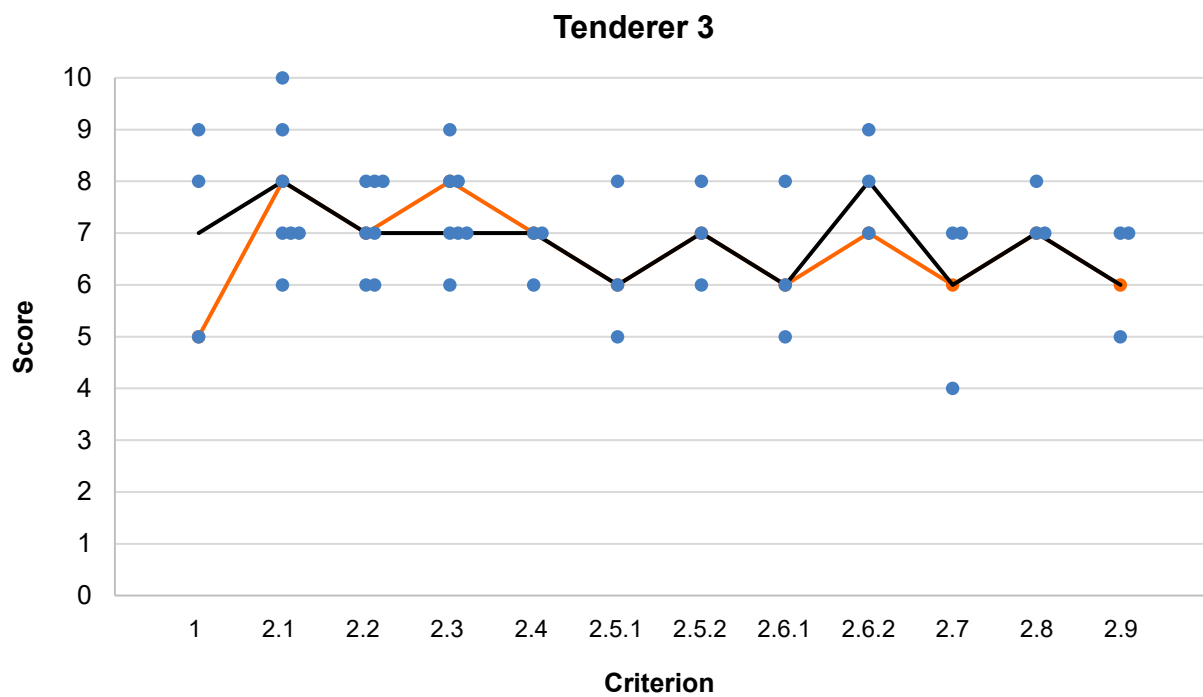
Appendix 8 Technical evaluation — individual and consensus scoring



Key:

- Individual assessor score
- Consensus score
- Calculated average of individual assessor scores

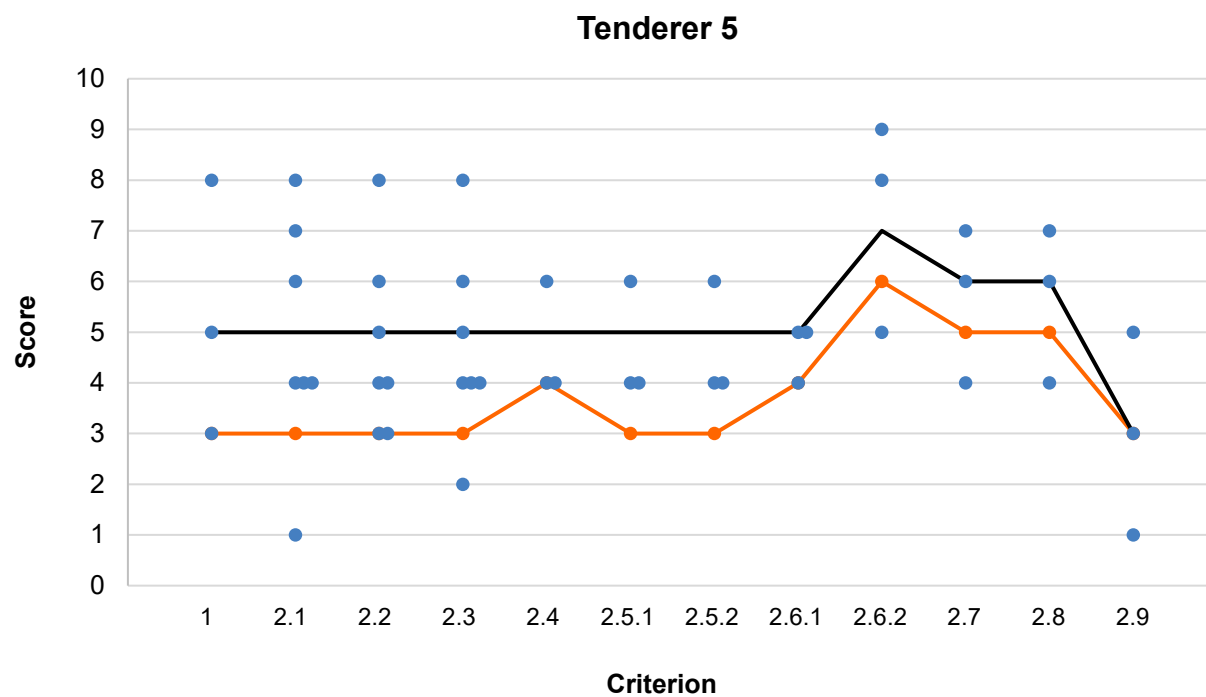
Source: ANAO analysis of Home Affairs records.



Key:

- Individual assessor score
- Consensus score
- Calculated average of individual assessor scores

Source: ANAO analysis of Home Affairs records.



Key:

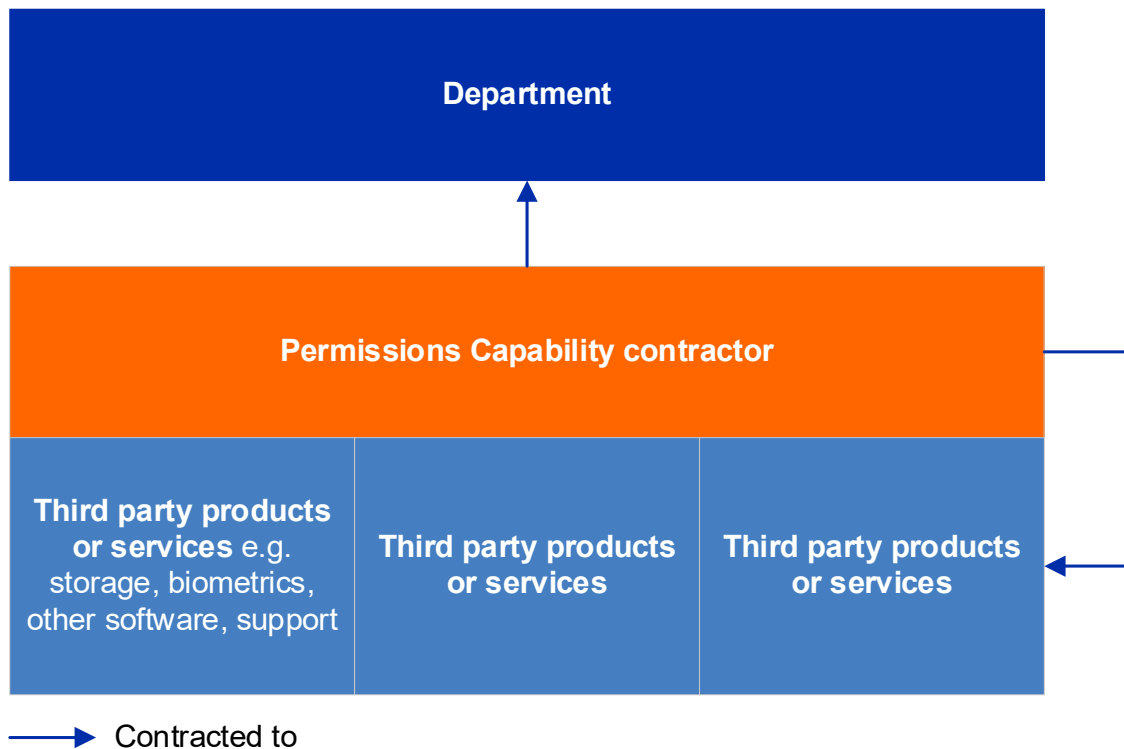
- Individual assessor score
- Consensus score
- Calculated average of individual assessor scores

Source: ANAO analysis of Home Affairs records.

Appendix 9 Tenderers commercial models

1. The department approached the market for a single contractor to design, implement and support the Permissions Capability (illustrated in Figure A.1).

Figure A.1 End-to-end model



Source: Home Affairs tender evaluation records.

2. Key characteristics of this model include:

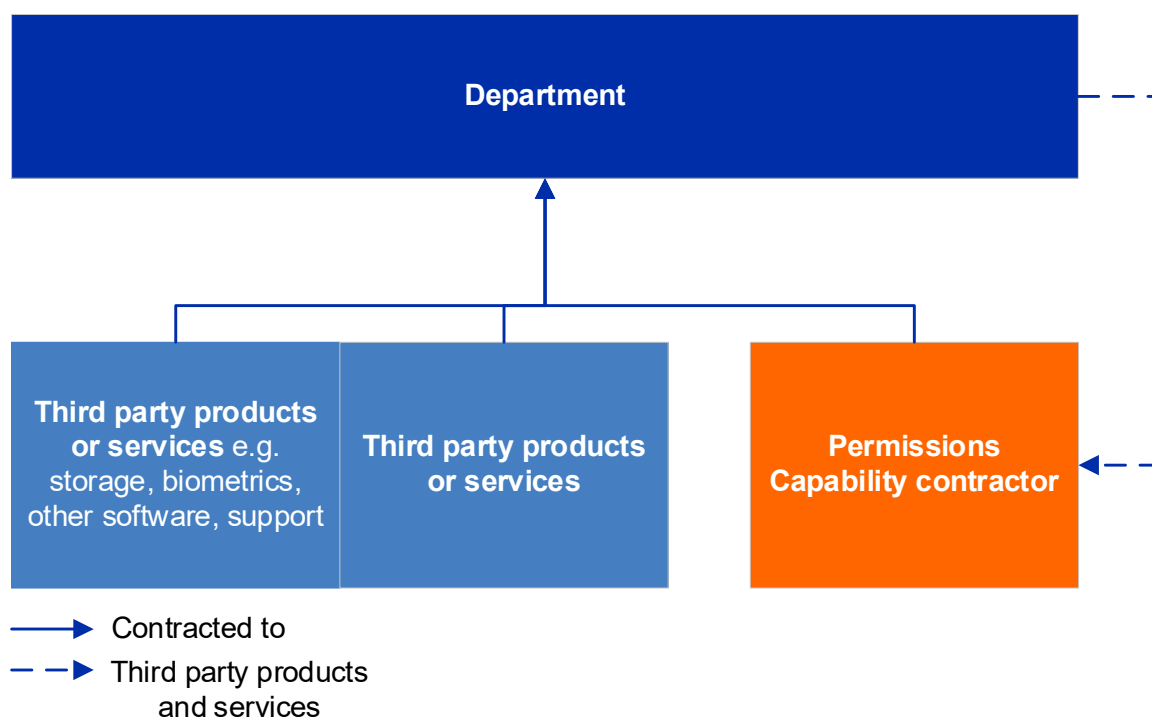
- the department entering into the agreement and work orders with the selected contractor;
- the contractor assuming responsibility for the provision of the Permissions Capability solution as a whole; and
- the contractor entering into agreements with suppliers of any third party products or services, thereby assuming the risk of any 'gap' between the terms of the agreement with the department and the terms of its agreement with third party providers.

3. Some tenderers proposed a model whereby they would assume no liability for third party products and services comprising the Permissions Capability. Figure A.2 below shows the systems integrator model some tenderers proposed in their submissions. Key characteristics of this model include:

- the department maintaining contracts for third party products and services directly with the third party suppliers, and maintaining a contract with the Permissions Capability contractor; and

- the department providing the third party products and services to the Permissions Capability contractor as 'buyer furnished items', with the Permissions Capability provider assuming no liability in respect of the third party products and services.

Figure A.2 System integrator model










Source: Home Affairs tender evaluation records.






Appendix 10 Results of the Department's assessment against the Evaluation Criteria

	Criterion	Accenture	Tenderer 2	Tenderer 3	Tenderer 4	Tenderer 5
Technical	1 – Capability and Capacity	7	4	5	7	3
	2 – Proposed Solution	8	3	6	4	3
	<i>Weighted Total (/10)</i>	7.6	3.4	5.6	5.2	3
Financial	3 – Pricing	Favourable	Not Favourable	Not Favourable	Favourable	Unacceptable
	Price	\$111,828,377.24	\$291,005,929.75	\$645,221,830.50	\$109,915,778.79	\$73,565,989.15
Non-technical	4 – Economic Benefit to Australia	Good	Good	Good	Adequate	Superior
	5 – Indigenous Participation	Good	Superior	Good	Good	Good
	6 – Collaboration and Relationship	Exceptional	Adequate	Good	Good	Good
Risk	Overall Risk	Medium	High	High	High	Extreme
	CET – Non-technical risk	Low	Low	High	Low	Low
	CET – Financial risk	Medium	High	Low	Medium	High
	CET – Financial Viability assessment	Low	Medium	High	Medium	Low
	CET – Compliance risk	High	High	Medium	High	Low
	TET – Technical risk	Low	High	High	High	Extreme

Source: ANAO analysis of departmental records

Appendix 11 Implementation of mechanisms to ‘level the playing field’

Suggested control	Was this implemented?	
Pre-approach to market		
Advanced industry information paper outlining the anticipated procurement approach and requirements.		An industry information paper was released on Saturday 17 October 2020, six days before the RFT was released to the market. The industry information paper outlined the drivers for change, the concept of reusability and details about the base permissions capability and initial use cases.
Industry consultation paper if market input is needed. ^a		No industry consultation papers were released.
Information release through ‘roadshows’ to generate market interest. ^b		The department did not hold ‘roadshows’ to generate market interest.
Releasing an advance draft of the Statement of Requirement. ^c		<p>An advanced draft of the statement of requirement was not released. The statement of requirement for the procurement was released with the approach to market documentation in two parts.</p> <ul style="list-style-type: none">Part A of the statement of requirement was published on AusTender on 23 October 2020 and included the permissions capability reuse requirements, capability components and delivery and support requirements.Part B was published in the data room on 31 October 2020 and included the requirements for the first two use cases.
After procurement documentation released		
Two-stage procurement process could assist to quickly identify a shortlisted group of tenderers.		The department did not conduct a two-stage procurement process.
Detailed industry briefing after the release of procurement documentation.		An industry briefing was held on 4 November 2020 and uploaded to the data room on 11 November 2020. Home Affairs offered potential tenderers the opportunity to have individual briefings, with six individual industry briefings being conducted on 23 November 2020.
A secure data room be established to release detailed information to tenderers to help inform the development of tenders.		Home Affairs used a data room during the RFT process to make information available to tenderers which was either considered sensitive in nature. Tenderers were required to execute a deed of confidentiality before accessing the data room. A total of 91 documents were uploaded to the data room and the data room was accessed by 29 verified external organisations.

Suggested control		Was this implemented?
A 'lengthy' open period given the complexity of the permissions capability project.		The RFT was released to market on 23 October 2020 and submissions were due by 18 December 2020. Six addenda to the RFT were released during the RFT open period.
Site visits for shortlisted tenderers to facilitate understanding of the relevant entity's business requirements that will be subject of the permissions capability platform.		Site visits for shortlisted tenderers were not conducted.
Key:  Control not implemented  Control partly implemented  Control fully implemented		

Note a: The department advised the ANAO in December 2022 that 'market input was not needed to prepare the RFT (to have done so would not have been an efficient and effective use of Commonwealth resources)'. In March 2020, the Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs said in a media release that Home Affairs was to 'conduct a market consultation process in the coming months seeking industry engagement and insights into the best way to deliver large-scale workflow processing capability for visa and citizenship applications'. Home Affairs did not do this.

[See: Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs 'New approach to technology capability acquisition and delivery', media release, Parliament House, Canberra, 20 March 2020.]

Note b: In December 2022, Home Affairs advised the ANAO that the Government, including Ministers, made a range of announcements earlier in March, July and October 2020 alerting the market to the future requirement, which is in its view equivalent to 'information release through 'roadshows'.

Note c: In December 2022, Home Affairs advised the ANAO that it published the Global Digital Platform (GDP) RFT documentation on the publicly available departmental website, which is in its view equivalent to 'releasing an advance draft of the Statement of Requirement'. There is no evidence that the GDP RFT documentation was left on the website in order to inform potential tenderers of the Permissions Capability requirements.

Source: ANAO analysis of departmental records.