

Procurement by the Department of Foreign Affairs and Trade through its Australian Passport Office

Department of Foreign Affairs and Trade

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Canberra ACT
31 October 2024

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 Foreign Affairs and Trade. The report is titled *Procurement by the Department of Foreign Affairs and Trade through its Australian Passport Office*. 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



Rona Mellor PSM
Acting 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.11 2024–25

Procurement by the Department of Foreign Affairs and Trade through its Australian Passport Office



Why did we do this audit?

- ▶ During the conduct of Auditor-General Report No. 13 2023–24 *Efficiency of the Australian Passport Office*, the ANAO observed procurement practices by the Australian Passport Office (APO) within the Department of Foreign Affairs and Trade (DFAT) that merited further examination.
- ▶ This audit provides assurance to the Parliament of the effectiveness and ethics of DFAT's Australian Passport Office procurement activity in the context of the Commonwealth Procurement Rules.



Key facts

- ▶ Between 1 July 2019 and 31 December 2023, the APO managed 331 contracts totalling \$1.58 billion.
- ▶ In this period, 243 new contracts totalling \$476.5 million were entered into, in addition to existing contracts.
- ▶ In 2022–23, contract amendments represented 69 per cent by number, or 83 per cent by value.



What did we find?

- ▶ The procurements DFAT conducted through its Australian Passport Office did not comply with the Commonwealth Procurement Rules and DFAT's procurement policies, and did not demonstrate value for money.
- ▶ Open and competitive processes were not employed.
- ▶ Procurement decision-making was not sufficiently accountable and was not transparent. Procurement practices fell short of ethical standards.



What did we recommend?

- ▶ There were seven recommendations to DFAT. These focussed on: improving planning; obtaining value for money through open, transparent and effective competition; strengthening the department's oversight and controls; and ensuring action is taken in response to ethical issues.
- ▶ The department agreed to all seven recommendations.

Nil

contracts entered into let via an approach to the open market.

29%

of 73 contracts examined were let via a genuinely competitive approach to market.

53%

of 231 approval records examined referred to value for money, although did not always demonstrate it had been achieved.

Summary and recommendations

Background

1. The Department of Foreign Affairs and Trade (DFAT) is responsible for issuing passports to Australian citizens in accordance with the *Australian Passports Act 2005*, with delivery of passport services in Australia and overseas being one of DFAT's three key outcomes. In July 2006, DFAT established the Australian Passport Office as a separate division to provide passport services. The Australian Passport Office has offices in each Australian capital city and it collaborates with Australian diplomatic missions and consulates to provide passport services to Australians located overseas.

2. DFAT is also the entity responsible for Australia's international trade agreements. The Commonwealth Procurement Rules (CPRs) incorporate the requirements of Australia's international trade obligations and government policy on procurement into a set of rules. As a legislative instrument, the CPRs have the force of law.¹ Officials from non-corporate Commonwealth entities such as DFAT must comply with the CPRs when performing duties related to procurement. Achieving value for money is the core rule of the CPRs.

Rationale for undertaking the audit

3. The issuing of passports to Australian citizens is an important function of the Department of Foreign Affairs and Trade, undertaken by its Australian Passport Office. Between 1 July 2019 and 31 December 2023, the Australian Passport Office managed 331 contracts totalling \$1.58 billion.

4. During the conduct of an earlier audit, Auditor-General Report No. 13 2023–24 *Efficiency of the Australian Passport Office*, the ANAO observed a number of practices in respect of the conduct of procurement by DFAT through its Australian Passport Office that merited further examination. The Auditor-General decided to commence a separate audit of whether the procurements DFAT conducts through its Australian Passport Office comply with the Commonwealth Procurement Rules and demonstrate the achievement of value for money.

5. The audit provides assurance to the Parliament of the effectiveness of the department's procurement activities in achieving value for money, and the ethics of the department's procurement processes, noting that procurement is an area of continuing focus by the Joint Committee of Public Accounts and Audit.²

Audit objective and criteria

6. The objective of the audit was to examine whether the procurements that DFAT conducts through its Australian Passport Office are complying with the Commonwealth Procurement Rules and demonstrating the achievement of value for money.

1 The CPRs are non-disallowable legislative instruments issued by the Minister for Finance under subsection 105B(1) of the *Public Governance, Performance and Accountability Act 2013*.

2 Joint Committee of Public Accounts and Audit inquiries into Commonwealth procurement include, for example: *Report 498: 'Commitment issues'—An inquiry into Commonwealth procurement*, August 2023; *Report 472: Commonwealth Procurement—Second Report*, October 2018; *Report 465: Commonwealth Procurement*, September 2017; and *Report 369: Australian government procurement*, June 1999.

7. To form a conclusion against this objective, the following high-level criteria were applied.
- Have open and competitive procurement processes been employed?
 - Has decision-making been accountable and transparent?
8. The audit focussed on procurement activities by the Australian Passport Office relating to contracts and contract variations that had a start date of between 1 July 2019 and 31 December 2023.

Conclusion

9. The procurements that DFAT conducted through its Australian Passport Office did not comply with the Commonwealth Procurement Rules and DFAT's procurement policies, and did not demonstrate it had achieved value for money.
10. DFAT did not employ open and competitive processes in the conduct of Australian Passport Office procurement. There were no procurements conducted between July 2019 and December 2023 by way of an open approach to the market. Of the 73 procurements examined in detail by the ANAO, 29 per cent involved competition where the department had not identified a preferred supplier prior to inviting quotes.
11. Procurement decision-making was not sufficiently accountable and was not transparent. Procurement practices have fallen short of ethical standards, with DFAT initiating inquiries of the conduct of at least 18 individuals, both employees and contractors, in relation to Australian Passport Office procurement activities examined by the ANAO.

Supporting findings

Open and competitive procurement

12. DFAT did not appropriately plan the procurement activities for its Australian Passport Office. There was no overarching procurement strategy. The department engaged a contractor to develop a multi-year procurement strategy that was never completed. Overall, only 15 per cent of the 62 approaches to market examined by the ANAO met the minimum requirements at planning stage. (See paragraphs 2.3 to 2.20)
13. None of the 243 contracts totalling \$476.5 million the APO entered between 1 July 2019 and 31 December 2023 was let via an approach to the open market.
14. DFAT's AusTender reporting indicates the APO procures by open tender from a panel arrangement 71 per cent of the time. The ANAO examined 53 contracts DFAT had reported this way and identified that for 15 contracts (28 per cent) the APO had deviated from the panel arrangement to the extent that the approach constituted a limited tender. The ANAO also examined 12 contracts valued over the \$80,000 threshold reported by DFAT as let by limited tender. The approach taken for six of these contracts (50 per cent) did not demonstrably satisfy the limited tender condition or exemption from open tender that had been reported by DFAT. The department's approach is inconsistent with the Commonwealth Procurement Rules which, in turn, reflect the requirements of the Australia-United States Free Trade Agreement (DFAT is the Australian Government entity responsible for Australia's international trade agreements). (See paragraphs 2.22 to 2.50)

15. A competitive approach was used to establish only 29 per cent of the 73 contracts tested by number or 25 per cent by value. This involved the APO inviting more than one supplier to quote in a process that did not have a pre-determined outcome. On 19 occasions the procurement approach was not genuine as the purported competitive process did not, in fact, involve competition. (See paragraphs 2.51 to 2.70)

16. For 14 per cent of contracts tested, evaluation criteria were included in request documentation with those same criteria used to assess submissions. (See paragraphs 2.72 to 2.77)

17. There was not a documented approval to approach the market for 36 per cent of the 73 contracts examined in detail by the ANAO. Advice provided to approvers on the outcomes of approaches to market in most cases did not demonstrate how value for money was considered to have been achieved. Three-quarters of the time the approval was requested by an embedded contractor, often populating a template as an administrative function and sometimes at the direction of the approver telling them what to recommend.

18. One quarter of the time, approval was given within a week of the expected contract start date. A 2022–23 practice of approving commitments on the understanding that the Department of Finance would later agree to additional funding to cover the costs was not sound financial management. (See paragraphs 2.79 to 2.104)

Accountable and transparent decision-making

19. For 71 per cent of the procurements examined by the ANAO, an appropriate contractual arrangement was in place prior to works commencing and after approval had been obtained to enter the arrangement. (See paragraphs 3.3 to 3.13)

20. Sound and timely advice was not provided to inform decisions about whether to vary contracts. In aggregate, the contracts the APO entered between 1 July 2019 and 30 June 2023 doubled in value during that period through contract amendment. The approval records for contract variations did not include advice on how value for money would be achieved and, for a number of high value contracts, approval was sought after costs were incurred. A quarter of the variations tested were entered after the related services had commenced and/or costs incurred. (See paragraphs 3.14 to 3.35)

21. ANAO analysis of AusTender data between 1 July 2019 and 30 June 2023 indicated that DFAT did not meet the Commonwealth Procurement Rules requirement to report contracts and amendments within 42 days of execution at least 22 per cent of the time. The extent of non-compliance increased to 44 per cent when the analysis was based on ANAO examination of the departmental records in a sample of 230 contracts and amendments. The AusTender reporting of 70 APO contracts examined was largely accurate. The reported descriptions of the goods or services procured was usually applicable but was also usually lacking in detail. The reported reasons given for 112 contract amendments examined did not contain sufficient detail to meet the minimum instructions in the AusTender reporting guide 81 per cent of the time. (See paragraphs 3.37 to 3.52)

22. Procurement activities fell short of ethical requirements. In response to ethical findings made by the ANAO in relation to a number of the procurements examined as part of this performance audit, the department advised the ANAO that it considers there are clear indications of misconduct involving a number of current or former DFAT officials and contractors as well as

clear cultural issues. The department has commenced, or is considering, investigation (or referral) activity in relation to the conduct of at least 18 individuals in relation to various procurements examined by the ANAO. (See paragraphs 3.53 to 3.83)

23. The department's central procurement team has not exercised sufficient oversight of the APO's procurement activities. Departmental risk controls that have been documented have not been complied with by the APO and this non-compliance should have been evident to the central procurement team, and addressed. The department also does not have adequate arrangements in place for the identification and reporting of breaches of finance legislation. (See paragraphs 3.85 to 3.105)

Recommendations

Recommendation no. 1 Paragraph 2.21

The Department of Foreign Affairs and Trade improve its planning of procurement activity for the Australian Passport Office, including but not limited to taking steps to assure itself that procurement planning requirements (internal to the department as well as those required by the Commonwealth Procurement Rules) are being complied with.

Department of Foreign Affairs and Trade response: *Agreed.*

Recommendation no. 2 Paragraph 2.71

The Department of Foreign Affairs and Trade strengthen its procurement processes for the Australian Passport Office so that there is an emphasis on the use of genuinely open competition in procurement to deliver value for money outcomes consistent with the requirements and intent of the Commonwealth Procurement Rules.

Department of Foreign Affairs and Trade response: *Agreed.*

Recommendation no. 3 Paragraph 2.78

The Department of Foreign Affairs and Trade include evaluation criteria in request documentation for all procurements undertaken for the Australian Passport Office, and procurement decision-makers ensure those criteria have been applied in the evaluation of which candidate represents the best value for money.

Department of Foreign Affairs and Trade response: *Agreed.*

Recommendation no. 4 Paragraph 2.106

The Department of Foreign Affairs and Trade to strengthen its procurement policy framework by directly addressing the risk of officials being cultivated or influenced by existing or potential suppliers.

Department of Foreign Affairs and Trade response: *Agreed.*

**Recommendation no. 5
Paragraph 3.36** The Department of Foreign Affairs and Trade strengthen its controls to ensure any contract variations are consistent with the terms of the original approach to market, and that officials do not vary contracts to avoid competition or other obligations and ethical requirements under the Commonwealth Procurement Rules.

Department of Foreign Affairs and Trade response: *Agreed.*

**Recommendation no. 6
Paragraph 3.84** The Department of Foreign Affairs and Trade examine whether procurements not included in the sample examined by the ANAO also include ethical and integrity failures, and subject any such procurements to appropriate investigatory action.

Department of Foreign Affairs and Trade response: *Agreed.*

**Recommendation no. 7
Paragraph 3.94** The Department of Foreign Affairs and Trade strengthen oversight by its central procurement area of the procurement activities of the Australian Passport Office. This should include being represented on the evaluation team for each procurement activity of higher risk or value.

Department of Foreign Affairs and Trade response: *Agreed.*

Summary of entity responses

24. The proposed report was provided to DFAT. Extracts of the proposed report were also provided to Alluvial Pty Ltd, Brink's Australia Pty Ltd, Compas Pty Ltd, Community and Public Sector Union, Customer Driven Solutions Pty Ltd, Datacom Systems (AU) Pty Ltd, Deloitte Touche Tohmatsu, Department of Finance, Grosvenor Performance Group Pty Ltd, Hays Specialist Recruitment (Australia) Pty Ltd, Mühlbauer ID Services GmbH, Peoplebank Australia Ltd, Procurement Professionals Pty Ltd, Propel Design Pty Ltd, Randstad Pty Ltd, Serco Citizen Services Pty Ltd, Services Australia, UiPath S.R.L, Verizon Australia Pty Ltd and Yardstick Advisory Pty Ltd. The letters of response that were received for inclusion in the audit report are at Appendix 1. Summary responses, where provided, are included below.

Department of Foreign Affairs and Trade

The department values the ANAO's independent review of procurement practices at the Australian Passport Office (APO). The audit came at a time when the department was assessing the effectiveness of the current procurement model. As a result of both reviews, the department's procurement practices will be amended to improve compliance and efficiency. This will include the Finance Division taking more centralised and direct control over procurement activities, and additional resources to implement changes and provide enhanced oversight.

The ANAO audit highlighted the proactive steps the current Executive Director APO took to address procurement and cultural issues when she commenced with the department in early 2023. Work has continued, leading to the creation of a new Procurement, Finance and Assurance Section within APO. Additionally, the Internal Audit Branch has initiated a wide-ranging internal audit of procurement activities across the department.

Following the ANAO audit report and internal reviews, the department will also revise its Compliance and Assurance Framework as it relates to *Public Governance, Performance and Accountability Act 2013* obligations. The updated Framework will be purpose-built, adopt a risk-based approach, and include effective assurance mechanisms. The department has initiated activities to address specific areas of concern regarding actions of staff.

Compas Pty Ltd

Compas is concerned that the Proposed Report conveys an imputation that it has engaged in conduct that may not be in accordance with the Commonwealth Procurement Rules.

Such an imputation is incorrect.

The relevant evaluation process was an internal DFAT process over which Compas, rightly, had no visibility. Given this, Compas cannot respond to, nor is it privy to, what processes were taken by DFAT to address the Panel Member's affiliation to it.

Any deficiencies in the evaluation process cannot be attributed to Compas, and the final report should make this expressly clear in its findings. Any failure to do so could result in a reader being under a misapprehension that Compas had the ability to influence the process, did in fact influence the process improperly and, as a result, gained an improper advantage or benefit.

Should such a misrepresentation occur, this would have an unreasonably adverse effect on Compas' reputation that it has built over nearly 40 years and have a deleterious effect on our business.

Propel Design Pty Ltd

Propel Design notes the extract provided by the ANAO. Propel Design submitted its tender for the procurement in question in accordance with all requirements under the Digital Marketplace (now BUYICT) and was not aware of any individuals appointed to the evaluation panel. We believe our employee was selected as the preferred contractor based on their skills and experience, as set out in their resumé and our responses to the selection criteria.

Key messages from this audit for all Australian Government entities

25. Below is a summary of key messages that have been identified in this audit and may be relevant for the operations of other Australian Government entities.

Governance

- Good governance involves entity leaders developing a culture requiring and supporting actions which are not only in compliance with rule frameworks but also with the intent of those frameworks, including those which set standards for ethical practices.
- Praising or otherwise rewarding staff for getting contracts in place quickly can influence staff to bypass procurement rules and to direct-source incumbent suppliers. Forward planning and reinforcement of rules and processes can remove or reduce time pressure.

Procurement

- Acting ethically when conducting procurement requires ethical principles to be applied to all actions throughout the entire procurement process and for management action to be taken when ethical issues are identified. It also requires good recordkeeping so that it can be transparently demonstrated that the procurement was conducted ethically.

- Entities should treat all tenderers, and potential tenderers, in a fair and non-discriminatory manner. This means that entities should undertake genuinely competitive procurements by not identifying a preferred supplier in advance of conducting a procurement process. A practice of inviting market responses when a preferred supplier has already been identified also wastes the other suppliers' time and resources and reduces trust in the integrity of government procurement.
- Entities should ensure that their procurement frameworks specifically address how risks of incumbency advantage are managed so that the procurement process is conducted with no bias or favouritism, and to maximise value for money to the Australian Government through competitive selection processes. In addition, the risks of employees and/or contractors having a conflict of interest with potential/actual market respondents, including any incumbent, should be fully considered and addressed.

Audit findings

1. Background

Introduction

1.1 Australian citizens are entitled to be issued with a passport under the *Australian Passports Act 2005* (the Passport Act). A passport enables travel across borders (with the necessary visas or entitlements) and within Australia it can also act as important proof of identity. Non-citizens may be eligible to apply for other types of travel documents.³

1.2 The Department of Foreign Affairs and Trade (DFAT) is responsible for issuing passports to Australian citizens in accordance with the Passport Act, with delivery of passport services in Australia and overseas being one of DFAT's three key outcomes. In July 2006, DFAT established the Australian Passport Office as a separate division to provide passport services. The Australian Passport Office has offices in each Australian capital city and it collaborates with Australian diplomatic missions and consulates to provide passport services to Australians located overseas.

1.3 DFAT is also the entity responsible for Australia's international trade agreements. The Commonwealth Procurement Rules (CPRs) incorporate the requirements of Australia's international trade obligations and government policy on procurement into a set of rules.

1.4 As a legislative instrument, the CPRs have the force of law.⁴ Officials from non-corporate Commonwealth entities such as DFAT must comply with the CPRs when performing duties related to procurement. Achieving value for money is the core rule of the CPRs.

Rationale for undertaking the audit

1.5 The issuing of passports to Australian citizens is an important function of the Department of Foreign Affairs and Trade, undertaken by its Australian Passport Office. Between 1 July 2019 and 31 December 2023, the Australian Passport Office managed 331 contracts totalling \$1.58 billion.

1.6 During the conduct of an earlier audit, Auditor-General Report No. 13 2023–24 *Efficiency of the Australian Passport Office*, the ANAO observed a number of practices in respect of the conduct of procurement by DFAT through its Australian Passport Office that merited further examination. The Auditor-General decided to commence a separate audit of whether the procurements DFAT conducts through its Australian Passport Office comply with the Commonwealth Procurement Rules and demonstrate the achievement of value for money.

1.7 The audit provides assurance to the Parliament of the effectiveness of the department's procurement activities in achieving value for money, and the ethics of the department's

3 Non-citizen travel documents include Certificates of Identity and Convention Travel documents. The Australian Passports Determination 2015 sets out the circumstances in which the minister (or their delegate) may issue these types of travel documents.

4 The CPRs are non-disallowable legislative instruments issued by the Minister for Finance under subsection 105B(1) of the *Public Governance, Performance and Accountability Act 2013*.

procurement processes, noting that procurement is an area of continuing focus by the Joint Committee of Public Accounts and Audit.⁵

Audit approach

Audit objective, criteria and scope

1.8 The objective of the audit was to examine whether the procurements that DFAT conducts through its Australian Passport Office are complying with the Commonwealth Procurement Rules and demonstrating the achievement of value for money.

1.9 To form a conclusion against this objective, the following high-level criteria were applied.

- Have open and competitive procurement processes been employed?
- Has decision-making been accountable and transparent?

1.10 The audit focussed on procurement activities by the Australian Passport Office relating to contracts and contract variations that had a start date of between 1 July 2019 and 31 December 2023.

Audit methodology

1.11 The audit methodology included: examination of DFAT records; testing of a sample of procurements that established and amended contracts; analysis of DFAT's SAP Contracts database⁶; analysis of AusTender data; and engagement with DFAT. The criteria applied to identify the audit population were as follows:

- procurement undertaken by the APO within DFAT, inclusive of contract amendments;
- inclusive of services procured from or through other Australian Government entities;
- inclusive of contracts procured by the APO and later transferred to the Information Management Division (IMD) in DFAT when the APO's IT functions were consolidated into the IMD in 2022;
- with a maximum value of \$10,000 or above, inclusive of contracts valued above this threshold where actual payment made fell below \$10,000; and
- were active at any time between 1 July 2019 and 31 December 2023.

1.12 In summary, ANAO testing and analysis of APO procurement covered:

- high-level analysis of the 331 contracts totalling \$1.58 billion that met the above criteria, of which 243 contracts (73 per cent) totalling \$476.5 million (30 per cent) started after 30 June 2019;

5 Joint Committee of Public Accounts and Audit inquiries into Commonwealth procurement include, for example: *Report 498: 'Commitment issues'—An inquiry into Commonwealth procurement*, August 2023; *Report 472: Commonwealth Procurement—Second Report*, October 2018; *Report 465: Commonwealth Procurement*, September 2017; and *Report 369: Australian government procurement*, June 1999.

6 DFAT uses SAP for its Financial Management Information System. DFAT's procurement policy requires that all new contracts and contract amendments at or above \$10,000 be entered into the SAP Contracts database.

- detailed examination of the establishment and variation of 73 contracts totalling \$405.1 million that started after 30 June 2019, which equated to a sample size of 30 per cent by number or 85 per cent by value from this cohort;
- detailed examination of any post 30 June 2019 variations to 15 contracts totalling \$1.02 billion that started before this date, which equated to a sample size of 17 per cent by number or 93 per cent by value from this cohort; and
- high-level analysis of contract notices on AusTender with a reported start date of 1 July 2019 to 30 June 2023, which included 217 new contracts totalling \$144.9 million and 249 amendments to new and existing contracts totalling \$307.6 million published by DFAT for its APO conducted procurements.

1.13 The ANAO has co-operative evidence gathering arrangements in operation with entities. On 25 October 2023 the ANAO requested that DFAT provide relevant email account data by 8 November 2023. DFAT advised the ANAO on 15 November 2023 that it had downloaded the requested data, and then advised the ANAO on 23 November 2023 that it was withholding that data. As DFAT would not voluntarily provide the email account data, on 8 December 2023 the Auditor-General issued DFAT with a notice to provide information and produce documents pursuant to section 32 of the *Auditor-General Act 1997* by no later than close of business 11 December 2023. The process of providing the email account data to the ANAO was completed on 14 December 2023.

1.14 During the conduct of the audit, the ANAO provided detailed analysis of a number of procurements to DFAT. DFAT responded with clear statements as to where it considered practices had fallen short of the financial, procurement and/or ethical standards the entity expected. The ANAO's analysis informed DFAT's decision making as advised to the ANAO by the department in relation to 18 individuals already under investigation or considered to be 'persons of interest' by DFAT.

1.15 All financial values presented in this audit report are GST inclusive and have been rounded to the nearest dollar, where applicable. The financial values are as per those specified in the contract and/or reported on AusTender and may not reflect actual expenditure. The paragraph references to the CPRs in this report relate to the June 2023 version, which was in effect at the time of audit fieldwork. An updated version of the CPRs came into effect on 1 July 2024.

1.16 The audit was conducted in accordance with ANAO Auditing Standards at a cost to the ANAO of approximately \$526,000.

1.17 The team members for this audit were Tracey Bremner, William Mussared, Jocelyn Watts, Joshua Carruthers, Michaelia Liu, Tracy Houston, Lachlan Miles and Brian Boyd.

2. Open and competitive procurement

Areas examined

The ANAO examined whether open and competitive procurement processes had been employed.

Conclusion

The Department of Foreign Affairs and Trade (DFAT) did not employ open and competitive processes in the conduct of Australian Passport Office procurement. There were no procurements conducted between July 2019 and December 2023 by way of an open approach to the market. Of the 73 procurements examined in detail by the ANAO, 29 per cent involved competition where the department had not identified a preferred supplier prior to inviting quotes.

Areas for improvement

The ANAO made four recommendations with a particular focus on DFAT obtaining value for money in its procurement for the Australian Passport Office, including through greater use of open and effective competition, and on transparent selection processes. The ANAO also identified an improvement opportunity for the department.

2.1 Competition is a key element of the Australian Government's procurement framework. Effective competition requires non-discrimination and the use of competitive procurement processes.⁷

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.

Were the procurements appropriately planned?

DFAT did not appropriately plan the procurement activities for its Australian Passport Office. There was no overarching procurement strategy. The department engaged a contractor to develop a multi-year procurement strategy that was never completed. Overall, only 15 per cent of the 62 approaches to market examined by the ANAO met the minimum requirements at planning stage.

Australian Passport Office procurement planning

2.3 In order to draw the market's early attention to potential procurement opportunities, each relevant entity must maintain on AusTender an annual procurement plan. The plan is to include the

⁷ Department of Finance, *Commonwealth Procurement Rules*, 13 June 2023, Finance, Australia 2023, paragraph 5.1.

subject matter of any significant planned procurement and the estimated publication date of the approach to market.⁸

2.4 DFAT maintains an annual procurement plan on AusTender. As at June 2024 it did not include any planned procurement by the APO. Further, none of the 217 APO contracts reported on AusTender from 1 July 2019 to 30 June 2023 were linked to an approach to market that had been published in DFAT's annual procurement plan.

2.5 The APO also does not have an overarching procurement plan or strategy in place. This is the case notwithstanding the department had, in September 2021, engaged a contractor through Procurement Professionals Pty Ltd at a cost of \$102,168 to develop a multi-year procurement strategy, and to undertake a stocktake of APO memoranda of understanding (MOU). While invoices for the contractor's services were paid, neither product was completed. A draft procurement strategy that was incomplete in significant respects was presented to the department in November 2021 which was followed by the contract being amended to increase the time period for delivery by more than six months (with no increase to the contract value) with DFAT advising the ANAO that it did not have a finalised APO Procurement Strategy (the hours remaining under the contract for this work were redistributed to increase other line items on the Purchase Order). The most recent version of the MOU register in the department's records was incomplete and not as described in the contract⁹ and, instead of being developed by the contractor, a register was subsequently developed internally by the department in 2023. The procurement did not deliver value for money and had not been conducted ethically.

Estimating the value of a procurement

2.6 The value of a procurement must be estimated before a decision on the procurement method is made in order to assess whether or not the procurement value is greater than the relevant procurement threshold, which in this case is \$80,000. If the procurement value is greater than the relevant procurement threshold, an Open Tender must be used or a Limited Tender condition sought. Additionally, DFAT's procurement policy has extended the Mandatory Set-Aside arrangements of the Indigenous Procurement Policy to cover procurements with an estimated value between \$10,000 and \$200,000.¹⁰

2.7 Notwithstanding these requirements, 24 of the 73 contracts (33 per cent) examined in detail by the ANAO did not include any cost estimate. This is not in line with the CPRs and does not provide the department with the capacity to select the appropriate procurement method.

2.8 Where estimates were prepared, they were often unreliable. For the 49 contracts where there was an estimate, the aggregate contract value at 31 December 2023 was 139 per cent higher

8 *ibid.*, paragraphs 7.8–7.9.

9 The contractor was required to 'Undertake a stocktake on APO's Memorandum of Understandings, undertake analysis on the current MoU documentation and identification of any gaps or changes required, and provide recommendations for proceeding with changes, as needed.'

10 The Australian Government's Indigenous Procurement Policy of December 2020 includes Mandatory Set-Aside (MSA) arrangements to provide Indigenous small to medium enterprises with the opportunity to demonstrate value for money before the procuring official makes a general approach to the market. The MSA applies to: all remote procurements; and all other procurement wholly delivered in Australia where the estimated value of the procurement is between \$80,000 and \$200,000 (GST inclusive).

than the estimates. This included three contracts where the actual cost was less than half the estimate, and 14 contracts where the actual cost was more than double the estimated value.

2.9 The two most significant cost underestimations were a bulk labour hire contract with Randstad Pty Ltd ('Randstad') and contact centre contract with Datacom Systems (AU) Pty Ltd ('Datacom'). The value of these two contracts at 31 December 2023 (\$60.3 million and \$91.2 million) were nearly seven times the estimated total costs. Further, the contract with Datacom has extension options remaining. For example, an amendment published on AusTender in July 2024 increased its value to \$133.0 million for the first three years and two months — 10 times the five-year estimate of \$13.2 million. The increase in cost through variations was not reflected in the risk rating, with all amendments assessed as 'low risk'.

2.10 A common error in DFAT's estimating was to not include the expected value of any extension options (although this was not the reason for the under-estimation of the Randstad or Datacom contracts, which were varied prior to any extension options being used). For 26 of the 49 contracts (53 per cent) where an estimate was prepared, that estimate did not include any extension options. The department's approach is not compliant with the CPRs which requires (at paragraph 9.2) that 'The expected value is the maximum value (including GST) of the proposed contract, including options, extensions, renewals or other mechanisms that may be executed over the life of the contract.' (See also paragraph 2.17 below on advice to approvers.)

Individual procurement planning

2.11 DFAT has comprehensive, step-by-step guidance on its intranet to assist staff to plan and conduct procurements. The guidance is supported by a suite of departmental templates, links to Australian Government information and contact details for further assistance.

2.12 DFAT's templates include a procurement plan for use in the scoping and pre-approvals phase of procurements valued over \$1 million or assessed as medium or high risk. The ANAO examined 23 approaches to market that met this criterion, which established 31 of the contracts tested. A procurement plan was not completed for any of these 23 approaches to the market.

2.13 DFAT's templates also include an email-based and a minute-based request for approval to approach the market. These are to evidence appropriate planning and to obtain financial delegate approval to seek quotes or tenders from potential suppliers. DFAT's requirement to obtain delegate approval is consistent with Department of Finance guidance.¹¹

2.14 Delegate approval was required for the 62 approaches to the market that established 70 of the 73 contracts examined in detail by the ANAO. (The APO used price lists when procuring the other three contracts, which were with Australian Government entities.) Delegate approval was obtained prior to approaching the market for 38 of the 62 approaches (61 per cent). Ten of the 24 approaches to market that breached this requirement were to establish contracts valued over \$80,000.

11 Department of Finance guidance includes that, before approaching the market: for procurement under \$80,000 or from an existing standing offer 'you need to gain your delegate's agreement that the proposed approach to the procurement is right for this requirement'; or for other procurement that is over \$80,000 'you **MUST** obtain the endorsement of your delegate to proceed' [emphasis in original]. Available from <https://www.finance.gov.au/government/procurement/buyright> [accessed 13 September 2024].

Scale, scope and risk

2.15 The procurement method recommended to the delegate, and selected, should be the most appropriate for the procurement activity given the scale, scope and risk of the business requirement.¹²

2.16 In terms of scope, the requests to the delegate for all 38 approaches to market for which prior approval was obtained contained a description of the proposed goods or services and related timeframe (such as the initial contract term and proposed extension options). A draft Request for Quote was also included with 25 of the 38 requests for approval (66 per cent).

2.17 In terms of scale, the expected value of a procurement must be estimated before a decision on the procurement method is made. The expected value is the maximum value (including GST) of the proposed contract, including options, extensions, renewals or other mechanisms that may be executed over the life of the contract.¹³ Of the 38 approaches to market, the request to the delegate for:

- 13 approaches (34 per cent) contained the expected value of the proposed contract/s inclusive of any extension options;
- 24 approaches (63 per cent) contained an expected value that did not include the proposed extension options; and
- one approach did not contain an expected value.

2.18 Entities must establish processes to identify, analyse, allocate and treat risk when conducting a procurement.¹⁴ DFAT's procurement templates include a risk register for assessing risks and for recording and monitoring controls. DFAT guidance outlines that procurement managers 'must' complete a risk assessment using the template for panel procurement valued at \$1.5 million or over and for non-panel procurement at \$1 million or over, and 'should' complete it for procurements below these thresholds. The risk register template had not been completed for any of the 62 approaches to market tested.

2.19 The request to the delegate for 35 of the 38 approaches to market for which prior approval was obtained contained a risk rating. In all 35 cases the risk rating was 'low', including for a procurement to engage seven suppliers at an estimated total value of \$76.1 million. Of the three requests to the delegate that did not contain a risk rating:

- one was for an approach to market with an expected total value of \$13.2 million (see paragraph 2.9);
- one was for an approach to market with an expected total value of \$32.6 million (the approver was advised a risk assessment would be conducted as part of the evaluation, with the evaluation outcome minute recording an overall risk rating of 'medium'); and
- one had not used DFAT's request for approval template and resulted in a low value contract (\$13,860).

2.20 Overall, for 11 of the 62 approaches to market examined (18 per cent) there was prior approval from a delegate that set out the procurement scope, expected maximum value and risk.

12 Finance, *Commonwealth Procurement Rules*, 13 June 2023, paragraphs 4.4, 5.2 and 6.2.

13 *ibid.*, paragraph 9.2.

14 *ibid.*, paragraph 8.1.

Two of these 11 were over the threshold for requiring a procurement plan and a risk register — which none had — thereby decreasing the percentage of approaches that met the minimum requirements at planning stage to 15 per cent.

Recommendation no. 1

2.21 The Department of Foreign Affairs and Trade improve its planning of procurement activity for the Australian Passport Office, including but not limited to taking steps to assure itself that procurement planning requirements (internal to the department as well as those required by the Commonwealth Procurement Rules) are being complied with.

Department of Foreign Affairs and Trade response: *Agreed.*

To what extent were open approaches used?

None of the 243 contracts totalling \$476.5 million the APO entered between 1 July 2019 and 31 December 2023 was let via an approach to the open market.

DFAT's AusTender reporting indicates the APO procures by open tender from a panel arrangement 71 per cent of the time. The ANAO examined 53 contracts DFAT had reported this way and identified that for 15 contracts (28 per cent) the APO had deviated from the panel arrangement to the extent that the approach constituted a limited tender. The ANAO also examined 12 contracts valued over the \$80,000 threshold reported by DFAT as let by limited tender. The approach taken for six of these contracts (50 per cent) did not demonstrably satisfy the limited tender condition or exemption from open tender that had been reported by DFAT. The department's approach is inconsistent with the Commonwealth Procurement Rules which, in turn, reflect the requirements of the Australia-United States Free Trade Agreement (DFAT is the Australian Government entity responsible for Australia's international trade agreements).

Requirement to use open tenders

2.22 Australia is party to a range of international trade agreements that include specific government procurement commitments. The Commonwealth Procurement Guidelines of January 2005 gave effect to Australia's obligations for government procurement under the Australia-United States Free Trade Agreement. Major changes to procurement requirements included the classification of procurements over a specified value as 'covered procurements' to which mandatory procedures applied and a general presumption of open tendering, with limited tendering available only in specific circumstances.

2.23 The relevant international trade obligations have continued to be incorporated in what are now the Commonwealth Procurement Rules (CPRs). The obligations are implemented through Division 2 of the CPRs. To a lesser degree, Division 1 also implements relevant obligations such as the requirement to treat all potential suppliers equitably and to publicly report contracts. Compliance with the CPRs therefore ensures compliance with those obligations.¹⁵

¹⁵ CPR 2.15 includes: 'Relevant international obligations have been incorporated in these CPRs. Therefore, an official undertaking a procurement is not required to refer directly to international agreements.'

2.24 The CPRs are part of finance law and legally binding. As the Australian Government entity responsible for Australia's international trade agreements, DFAT has the opportunity to demonstrate compliance with requirements to other public sector entities.

2.25 Australian Government procurement is conducted by open tender or by limited tender.

- Open tender 'involves publishing an open approach to market and inviting submissions'.
- Limited tender 'involves a relevant entity approaching one or more potential suppliers to make submissions, when the process does not meet the rules for open tender'.¹⁶

2.26 Officials must comply with the 'rules for all procurements' listed in Division 1 of the CPRs. Officials must also comply with the 'additional rules' listed in Division 2 when the estimated value of the procurement is at or above the relevant procurement threshold and when an exemption at Appendix A of the CPRs does not apply.¹⁷ As Department of Finance guidance has noted, open tender 'is the "default" for all procurements valued above the relevant thresholds'.¹⁸ The relevant threshold for procurement by DFAT through its APO is \$80,000.

Reported use of open tenders

2.27 Relevant entities must report contracts valued at or above the reporting threshold by publishing contract notices on AusTender. DFAT's reporting threshold is \$10,000. The information on contract notices includes the procurement method used to establish the contract. For purchases from panel arrangements, the original procurement method used to establish the standing offer is reported.

2.28 The ANAO examined the distribution by procurement method of the 217 contracts with a start date of 1 July 2019 to 30 June 2023 that DFAT had reported for its APO activities as at 30 September 2023. The ANAO used DFAT's reporting on its Australian Aid Program and on its other non-APO procurement activities, as well as the contract notices published by other Australian Government entities on AusTender, as comparator data.

2.29 DFAT had reported 73 per cent of its APO contracts as being procured by open tender, compared with 66 per cent of its Australian Aid Program contracts and 48 per cent of its other contracts. These proportions are higher than the 46 per cent collectively reported by other Australian Government entities. The results align with the relative proportions of contracts valued over the \$80,000 threshold. Specifically, 71 per cent of the APO contracts had an initial value of \$80,000 or more compared with 56 per cent of Australian Aid Program contracts, 43 per cent of other DFAT contracts and 42 per cent of other Australian Government contracts.

2.30 The ANAO separated the reported use of open tenders into two categories: contracts procured by approaching the open market, such as by publishing an open request for tender; and purchases from panel arrangements that were established by open tender.¹⁹ As per Figure 2.1, the

16 Finance, *Commonwealth Procurement Rules*, 13 June 2023, paragraphs 9.8–9.9.

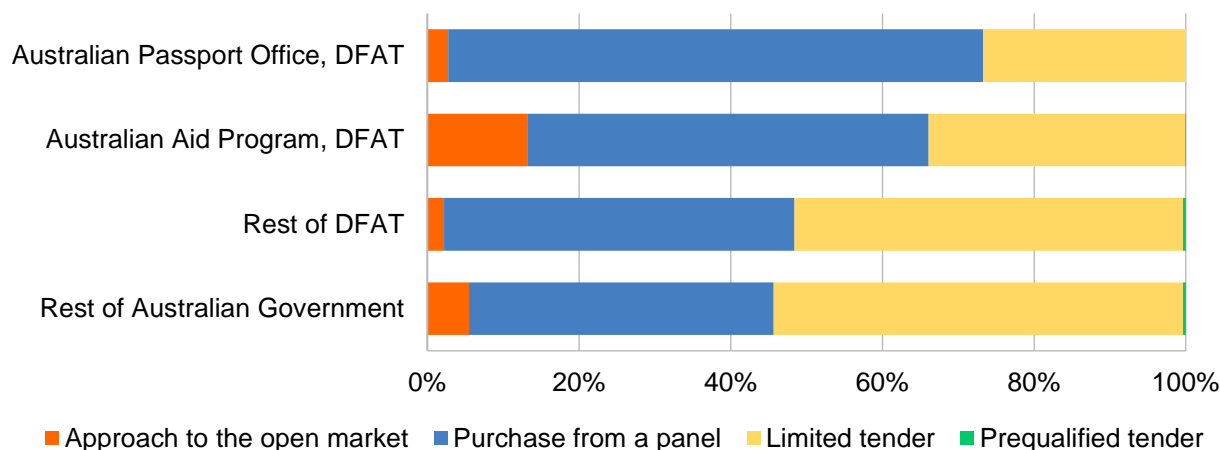
17 *ibid.*, paragraphs 3.5–3.8.

18 Department of Finance, 'Procurement Process Considerations', available from <https://www.finance.gov.au/government/procurement/buying-australian-government/procurement-process-considerations> [accessed 13 September 2024].

19 Contracts reported against a standing offer notice as being let by open tender were categorised as panel procurements for the purpose of this audit analysis.

APO reported using panel arrangements more frequently (71 per cent of the time) than the comparators (40 to 53 per cent of the time).

Figure 2.1: Contracts by reported procurement method by number

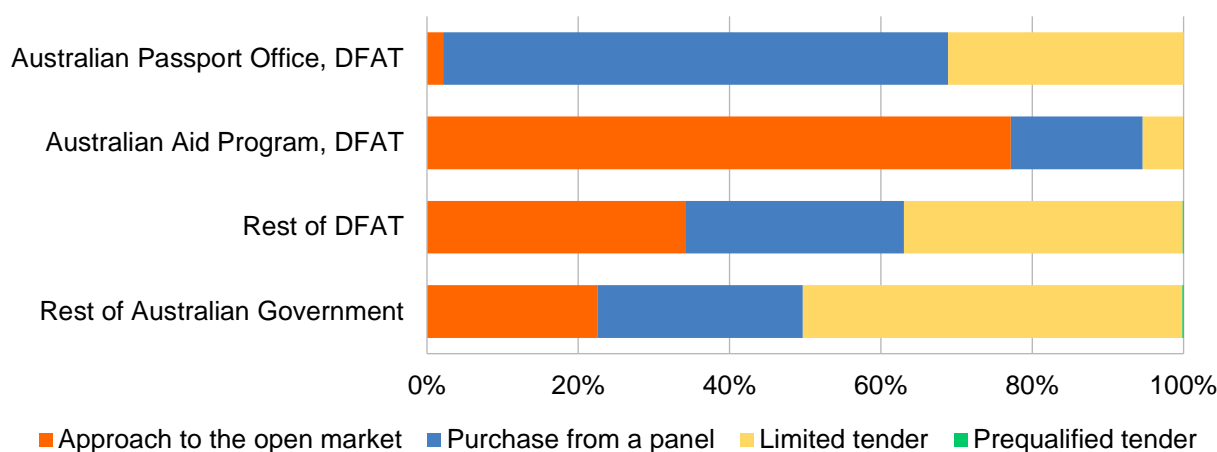


Note: Since 1 July 2019, the prequalified tender method was removed from the CPRs and phased out. There were no APO contracts reported against this method.

Source: ANAO analysis of AusTender data as at 30 September 2023 for parent contracts with a reported start date of 1 July 2019 to 30 June 2023.

2.31 As the method selected should reflect the scale, scope and risk of the procurement, it would be expected that an analysis of procurement method by contract value would see an increased proportion of approaches to the open market. This was the case for the comparators, for which the proportion of approaches to the open market increased substantially when calculated by contract value (Figure 2.2). There was little difference, however, between the APO's reported usage when calculated by contract value (Figure 2.2) as by contract number (Figure 2.1). This result is reflective of the APO's approach of preferring to issue work orders under panel arrangements, which was evident from the ANAO's testing of individual procurements as outlined below.

Figure 2.2: Contracts by reported procurement method by initial value



Source: ANAO analysis of AusTender data as at 30 September 2023 for parent contracts with a reported start date of 1 July 2019 to 30 June 2023.

Use of approaches to the open market

2.32 DFAT had reported six of the 217 APO contracts (three per cent) as procured by approaching the open market (Figure 2.1). The ANAO examined these six contracts and identified that all had been misreported. Five were purchases from panel arrangements established by open tender and so should have been reported as a use of the particular panel. The other one was a purchase from a standing offer established by limited tender and so should have been reported as a limited tender under a panel.

2.33 More broadly across the APO's procurement activities, none of the 243 APO contracts totalling \$476.5 million entered between 1 July 2019 and 31 December 2023 had been procured by publishing an open request for tender.

Procurement of secure delivery services

2.34 Running an open approach to the market may not necessarily generate effective competition if officials do not understand the market and what they are procuring, and/or if the specifications are unnecessarily restrictive. CPR 10.10 includes that, 'In prescribing specifications for goods and services, a relevant entity must, where appropriate: set out the specifications in terms of performance and functional requirements ...'.

2.35 An APO contract for the secure delivery of Australian travel documents had been let by direct source²⁰ following an unsuccessful open request for tender, which itself had followed an unsuccessful panel approach. Despite two of the three methods used having met the reporting definition of 'open tender', DFAT had failed to generate competition despite there being a competitive market for those services.²¹ DFAT's corporate procurement and security teams had provided feedback to the APO on its draft request for quote, with both questioning whether the highly prescriptive security requirements were appropriate. The security team suggested the APO 'consider allowing the service provider to determine the operational requirement ... What you want is assurance the service provider provides the appropriate vehicle to carry each shipment and has security measures in place to protect the shipment'. This advice was not followed. Instead, the requirements remained highly prescriptive.

2.36 Commencing August 2023, the contract was with Brink's Australia Pty Ltd ('Brink's') for the secure delivery of Australian travel documents and related items between the production centres in Craigieburn and Epping in Victoria and passport offices in each state and territory capital.

- The predecessor contract for secure delivery services was entered with G4S International Logistics (Australia) Pty Ltd ('G4S') in February 2017. G4S subsequently sold its Australian

20 The ANAO is using the term 'direct source' to denote a procurement conducted by directly approaching only one supplier.

21 In terms of there being a competitive market, the ANAO notes the following from an ACCC decision on an application for merger from Armaguard and Prosegur:

the Applicants submit there is a national market for the supply of full-service precious cargo services and estimate that each of them holds a market share of less than 10% ... The ACCC considers that ... there would be several substitutes available post-merger able to constrain the merged entity, including Brink's, Ferrari Logistics, Malca-Amit/Authentic Security, and Security Specialists.

Australian Competition & Consumer Commission, 'Reasons for Determination', Merger authorisation number: MA1000022, 13 June 2023, p. 78, available from <https://www.accc.gov.au/> [accessed 13 September 2024].

operations to Brink's and the contract was novated to Brink's in June 2020 on the existing terms.

- The contract with Brink's was due to expire in February 2022. Although all extension options were exhausted, in the same month the contract was due to expire (February 2022) DFAT extended the contract to February 2023.²²
- To establish a new contract, in December 2022 DFAT issued a request for quote to suppliers under the two-supplier 'Courier and Transport Services for IT and Secure IT Equipment' panel. Neither supplier quoted, with one explaining: 'your RFQ's statement of security requirements ... fall well above the parameters of the Panel'.
- The department extended its contract with Brink's by a further six months to 26 August 2023.
- The department published an open request for tender for 'secure freight services' on AusTender on 5 April 2023, which closed on 8 May 2023. No tenders were received.
- The department then conducted a direct-source limited tender with Brink's and engaged them for an initial three-year term at \$858,000.

2.37 In addition to not running a competitive limited tender, the department did not compare the pricing it received by direct source against that of other suppliers in the market when assessing value for money. It had been 11 years since it had last done so, as outlined below.

- The department benchmarked Brink's 2023 proposed pricing schedule against Brink's existing schedule.
- Brink's existing schedule was established in 2017 via the procurement of G4S, which had submitted the sole compliant bid in an open tender and was the incumbent supplier.²³
- The department had benchmarked G4S's 2017 pricing schedule against G4S's existing pricing schedule, established in 2016 via a direct-source limited tender with G4S.²⁴
- The department had benchmarked G4S's 2016 pricing schedule against G4S's then existing pricing schedule. It was from a contract signed in February 2015, for services that had commenced in November 2014, which was attributed to a request for open tender published in July 2012. That open tender had attracted two bids, with the then incumbent G4S being the successful tenderer.²⁵

Use of panel arrangements

2.38 DFAT had reported the majority of its APO contracts (71 per cent) as procured from a panel established by open tender. The ANAO's detailed testing of 73 contracts included 53 contracts (73 per cent) that DFAT had reported as having been established this way. The ANAO identified that

22 This action by DFAT was inconsistent with section 2.13 of the Department of Finance's Contract Management Guide which states that departments can only extend a contract if three conditions are met: the contract has an unused option to extend the contract; it is value for money to extend the contract; and the contract has not yet expired.

23 AusTender CN3405192 for \$1,012,845 with original supplier G4S from 27 February 2017 to 26 February 2021. The additional \$722,000 for the period 27 February 2021 to 26 August 2023, approved after the novation to Brink's, has not been reported on AusTender by DFAT.

24 AusTender CN3391143 for \$77,0000 with G4S from 28 November 2016 to 26 February 2017.

25 AusTender CN2842912 for \$508,500 with G4S from 27 November 2014 to 26 November 2016.

15 of these 53 contracts (28 per cent) were procured by the APO in a manner inconsistent with the panel arrangement, with the effect that the procurement process constituted a limited tender approach.

2.39 When undertaking a panel procurement, every firm approached is to be an approved seller of those goods or services, otherwise it constitutes a limited tender. This was outlined in a previous ANAO audit that identified DFAT having engaged in the practice of requesting a quote from a supplier not on the panel and already working in DFAT.²⁶ This was a practice observed in two of the contracts tested in this current audit indicating the department has not taken effective action to embed appropriate practices to address the issue raised in the 2014–15 performance audit. One instance resulted in a \$704,949 contract as outlined at paragraph 2.67 and the other instance is a \$133.0 million contract as follows.

2.40 On 23 February 2022 a contractor from the APO procurement team emailed two senior officials with decision-making responsibilities to advise them which out of five potential suppliers of inbound contact centre (call answering) services were on the Digital Marketplace panel. Two of the five were listed as ‘not included on the Digital Marketplace’. On 23 March 2022 one of the senior officials approved a request from APO procurement to approach three of the potential suppliers via the panel, including a supplier that was not on the panel. The request did not record that this supplier was not on the panel.

2.41 As one of the potential suppliers was not on the panel, the APO issued the request for quote by email instead of via the Digital Marketplace portal. The email stated the request had been sent to shortlisted suppliers under the Digital Marketplace panel. The matter was raised promptly by the potential supplier not on the panel upon receipt.

- The supplier emailed the APO on 24 March 2022 including: ‘I was wanting to confirm which [supplier] entity is shortlisted under the Digital Transformation Agency’s Digital Market Place that you have reached out to.’
- Within 10 minutes, the APO replied: ‘Is it possible to provide your phone number for a quick conversation regarding your query’.
- The supplier emailed the APO on 25 March 2022 including: ‘Thank you for the call yesterday – it really helped clear up my confusion around the Digital Marketplace ... we are starting to work on our proposal as well as our assessment of the market place – and it is likely we will join it as recommended by you.’

2.42 All three invited suppliers submitted quotes. The relevant supplier was transparent about not being on the panel. The approved evaluation report, the approval to engage panel supplier Datacom for \$6,990,553 and the three approvals to amend the work order with Datacom, inaccurately recorded that the APO had approached the Digital Marketplace panel. The amendments increased the value by 1,204 per cent to be \$91,174,353, which DFAT reported as procured by open tender from a panel arrangement. The contract was amended in July 2024 to be \$133,017,426; an increase of 1,803 per cent since it commenced in May 2022.²⁷

26 Auditor-General Report No.48 2014–15, *Limited Tender Procurement*, ANAO, Canberra, 2015, paragraph 2.21, available from <https://www.anao.gov.au/work/performance-audit/limited-tender-procurement> [accessed 13 September 2024].

27 AusTender CN3875881 for \$133,017,425.54 with Datacom Systems (AU) Pty Ltd from 4 May 2022 to 3 July 2025.

2.43 As per Department of Finance guidance, a ‘panel cannot be used to purchase goods or services that fall outside the scope of the arrangement’.²⁸ DFAT had used the Digital Marketplace Panel for two APO procurements of non-ICT services. Specifically, for an administrative assistant and for the services of an accountant.

2.44 Procurements from a panel are not subject to the rules in Division 2 of the CPRs.²⁹ It does not follow that conducting a limited tender in breach of Division 2 can be remedied after the fact by issuing a work order under a panel. The APO’s practice of issuing work orders for procurements it conducted outside the panel arrangement is no different in substance to that explicitly prohibited by paragraph 10.36 of the CPRs, whereby ‘A relevant entity must not use options, cancel a procurement, or terminate or modify an awarded contract, so as to avoid the rules of Division 2 of these CPRs.’³⁰ The related paragraph of the Trans-Pacific Partnership Agreement explicitly prohibits entities from designing or otherwise structuring a procurement in order to avoid their obligations.³¹ DFAT is the Australian Government entity responsible for the Trans-Pacific Partnership Agreement.

2.45 The following provides an example of the APO conducting a limited tender by direct-source for services valued over its \$80,000 threshold — in breach of the CPRs — and then using a work order as the contractual mechanism so as to report it as an open tender.

- An official from the APO had a ‘coffee catch up’ with a contractor from Deloitte Touche Tohmatsu (‘Deloitte’) who was working elsewhere in DFAT.³² The official emailed the contractor later that day, including ‘The APO requires financial support ... Please feel free to forward me a proposal and quote if you feel Deloitte’s has the capacity to assist us in this space.’ There was no reference to a panel arrangement in this invitation. Deloitte responded with a quote.
- The official forwarded the quote to the APO’s procurement team, including ‘Let me know what the next steps are to proceed’. The procurement team sent the official a request to enter into an arrangement with Deloitte to provide an accountant for 12 months at a cost

28 Department of Finance, ‘Procuring from a Panel – Panels 101’, available from <https://www.finance.gov.au/government/procurement/buying-australian-government/procuring-panel-panels-101> [accessed 13 September 2024].

29 Finance, *Commonwealth Procurement Rules*, 13 June 2023, paragraph 9.12.

30 The practice of attributing a direct source approach to a panel arrangement was also identified by the ANAO in an audit of the National Capital Authority, as was the practice of inviting suppliers from outside of the panel approached. See Auditor-General Report No.30 2021–22, *Procurement by the National Capital Authority*, ANAO, Canberra, 2022, paragraphs 2.26 and 2.48–2.49, available from <https://www.anao.gov.au/work/performance-audit/procurement-the-national-capital-authority> [accessed 13 September 2024].

31 Paragraph 6 of Chapter 15 ‘Government Procurement’ of the Trans-Pacific Partnership (TPP) Agreement states:

No procuring entity shall prepare or design a procurement, or otherwise structure or divide a procurement into separate procurements in any stage of the procurement, or use a particular method to estimate the value of a procurement, in order to avoid the obligations of this Chapter.

Australia is party to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership that incorporates, by reference, the procurement provisions of the TPP.

32 Recommendation 4 from the Joint Committee of Public Accounts and Audit in its June 2024 Report 504 *Inquiry into procurement at Services Australia and the NDIA* was that ‘the Department of Finance and the Digital Transformation Agency take appropriate action to understand the extent to which inappropriate cultivation of Commonwealth officials may be occurring as a result of hospitality and gifts by major ICT vendors.’

of \$330,000. The official approved the request as financial delegate. The approval record inaccurately stated that Deloitte had ‘provided an unsolicited proposal’.

- The approval record further stated that, ‘The method of procurement is considered Open tender by engaging Deloitte Consulting using a work order via the Digital Transformation Agency’s Digital Marketplace (SON3413842)’. The official had not approached Deloitte via this panel and the nature of the services fell outside the scope of the arrangement.³³
- DFAT issued Deloitte a work order under the panel. The work order was varied eight times, with the value increasing by 989 per cent to be \$3,592,589 and the term increasing from 12 months to 30 months, which was beyond the extension options provided. The approval records for the variations inaccurately said that ‘the original engagement process was conducted via the Digital Transformation Agency’s Digital Marketplace’. DFAT reported the procurement method as open tender from a panel arrangement.³⁴

2.46 The APO had neither approached the panel, nor entered a work order under it, for one of the contracts it let by direct-source and then reported as a panel procurement.

- The instigation for the procurement was a director from Customer Driven Solutions Pty Ltd inviting a senior official out for coffee on 9 March 2022 and, following a discussion with that official and a contractor from the APO’s procurement team, emailing the official on 10 March 2022.
- On 11 March 2022, the APO invited the supplier to quote to provide services of the nature outlined in the supplier’s email of the previous day. There was no reference to a panel arrangement in this invitation. Customer Driven Solutions responded with a quote.
- The APO’s estimated value of the services, and the quote received, exceeded the \$80,000 threshold and so the rules of Division 2 applied. CPR 9.5 states, ‘A procurement must not be divided into separate parts solely for the purpose of avoiding a relevant procurement threshold’. An official approved an initial \$77,000, just under the threshold, with the record noting ‘any further funding can be approved under a separate Section 23 and contract variation’. A further \$110,000 was approved within three months of the contract starting. Over the contract’s 15 month term, the value increased by a total of 276 per cent to be \$289,773.
- The approval records for the initial contract and the variations inaccurately said ‘DFAT will use the Digital Transformation Agency’s Digital Marketplace (SON3413842) Deed of Standing Offer to enter into a work order with Customer Driven for these activities’. The APO did not enter a work order. Instead, it raised and amended a purchase order within its financial system (see paragraph 3.10). DFAT reported this direct-source limited tender as an open tender from a panel arrangement.³⁵

33 DFAT advised the ANAO in June 2024 that ‘DFAT agrees that the “financial and accounting services” did not fall within the scope of the Digital Marketplace Panel 1.0. As such the described procurement method was not compliant with Australian Government guidance.’

34 AusTender CN3783760 for \$3,592,589 with Deloitte Touche Tohmatsu from 1 July 2021 to 31 December 2023.

35 AusTender CN3862240 for \$289,772.82 with Customer Driven Solutions Pty Ltd from 23 March 2022 to 30 June 2023.

Use of limited tenders

2.47 DFAT had reported 58 of the 217 APO contracts published on AusTender (27 per cent) as procured by limited tender (Figure 2.1). APO procurement with an estimated value at or above \$80,000 can only be conducted by limited tender in accordance with paragraph 10.3 of the CPRs, or when the procurement is exempt as detailed in Appendix A of the CPRs. The relevant limited tender condition or exemption must be reported on AusTender. Officials must also prepare a written report that includes ‘a statement indicating the circumstances and conditions that justified the use of limited tender’.³⁶

2.48 The ANAO examined the relevance of the limited tender condition or exemption DFAT had reported for the 12 out of the 58 APO contracts that had an initial value above \$80,000. For six of the contracts checked, DFAT had reported a relevant exemption or limited tender condition and prepared a written record that justified its use.

2.49 For half of the contracts checked, the use of limited tender did not demonstrably comply with the CPRs. One contract was reported against the limited tender condition ‘Supply by a particular business: for works of art’, which was irrelevant to the security clearance services procured. Four contracts were reported against the limited tender condition ‘Supply by particular business: due to an absence of competition for technical reasons’ without a convincing justification. For example, on the recorded basis of there being ‘an absence of competition’, approval was given to invite eight suppliers to compete in a limited tender for customer survey services estimated at \$550,000. That the invitation was issued to eight suppliers does not support the position recorded that there was no competition for the provision of customer survey services.

2.50 The other contract found non-compliant had been reported as exempt from the rules of Division 2 in accordance with paragraph 17 of Appendix A of the CPRs. The exemption is for procurement valued up to \$200,000 from a small to medium enterprise (‘SME’) and it requires that the Indigenous Procurement Policy first be satisfied. The APO had not satisfied the requirements of this exemption, or of the Indigenous Procurement Policy which applied to the procurement, and the written records were not accurate or complete.

- The written approval to approach the SME and three other suppliers did not identify that the approver had already met with the SME (Grosvenor Performance Group) and received a 40-page quote for \$103,273.
- A request for quote was then formally issued and two responses received: one from Grosvenor; and one from a ‘big four’ accounting firm. The approach to market did not therefore satisfy the Indigenous Procurement Policy.
- The recorded approval to engage Grosvenor at \$103,273 inaccurately stated that the competing quote had been submitted by an Indigenous enterprise. The approver would have known this was not the case given the approver, and an official who worked to them, had assessed the quotes. The contract and the subsequent variation to \$113,874 were incorrectly reported by DFAT as exempt under paragraph 17 of Appendix A.

36 Finance, *Commonwealth Procurement Rules*, 13 June 2023, paragraphs 9.10, 9.11, 10.3 and 10.5.

To what extent were competitive approaches used?

A competitive approach was used to establish only 29 per cent of the 73 contracts tested by number or 25 per cent by value. This involved the APO inviting more than one supplier to quote in a process that did not have a pre-determined outcome. On 19 occasions the procurement approach was not genuine as the purported competitive process did not, in fact, involve competition.

Encouraging fair competition

2.51 The CPRs state that procurements should ‘encourage competition and be non-discriminatory’.³⁷

2.52 Releasing requests for tender to the open market encourages competition and provides all potential suppliers an opportunity to compete for work. As noted at paragraph 2.33 above, none of the 243 APO contracts entered between 1 July 2019 and 31 December 2023 had been procured this way. Rather, the opportunity to quote for work totalling \$476.5 million was by invitation.

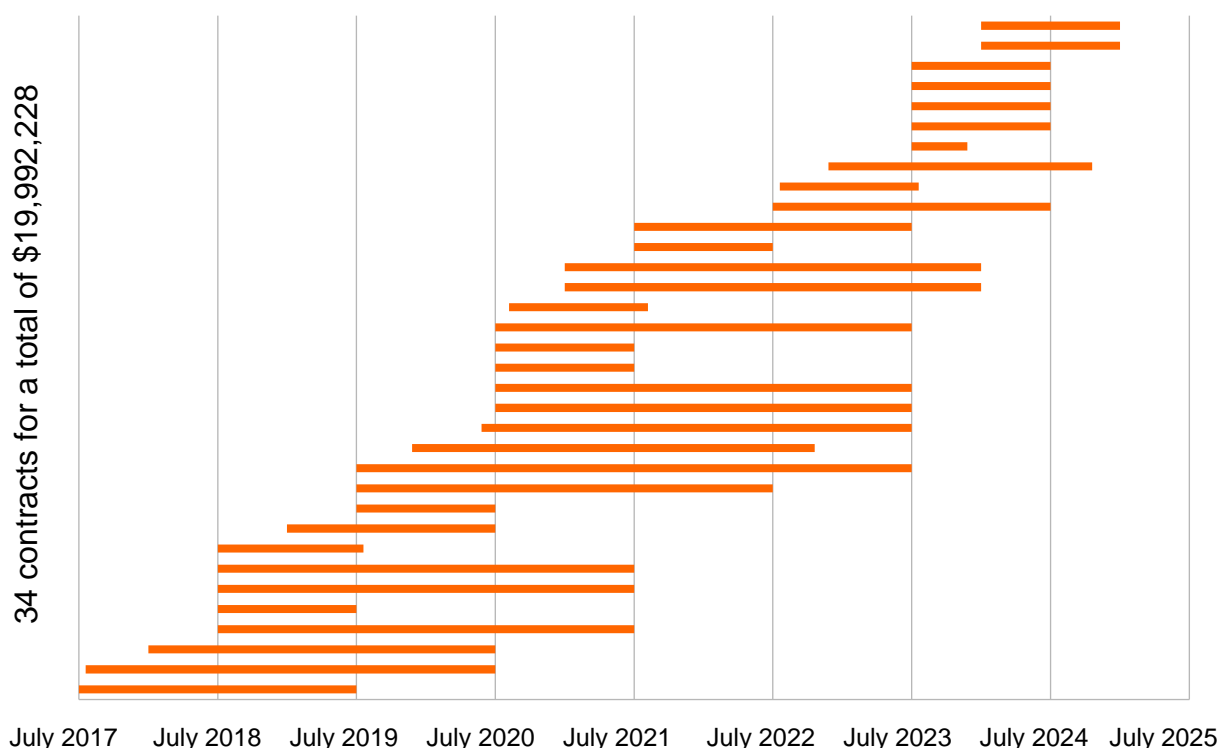
2.53 Alluvial Pty Ltd (‘Alluvial’) was the most used supplier of the 155 suppliers represented across the 331 APO contracts in the audit population. Alluvial received 25 of the APO contracts (eight per cent) with Hays Specialist Recruitment (Australia) Pty Ltd (‘Hays’) and Infront Systems Pty Ltd receiving the equal next highest number at 13 contracts each (four per cent). Of the contracts with Alluvial reported on AusTender with a start date from 1 July 2017, DFAT accounts for 70 per cent by number and 76 per cent by value as at 23 July 2024. There were:

- 35 contracts with DFAT totalling \$21,969,691 reported; and
- 15 contracts across five other entities totalling \$6,945,033 reported.

2.54 Within the audit population, there were 158 APO contracts for non-bulk labour hire that totalled \$98.8 million. Alluvial attracted the highest proportion of this work by contract number (16 per cent) and by contract value (17 per cent). The DFAT work flowing to Alluvial over the period July 2017 to December 2023 is presented in Figure 2.3. Twenty-six of the 34 contracts presented were procured by the APO. The other eight were procured by DFAT’s Information Management Division (IMD) between 1 August 2022 and 16 December 2023, with seven of those eight being the re-engagement of contractors initially procured by the APO.³⁸ The 34 contracts with Alluvial covered the engagement or re-engagement of 19 individuals, two of whom were Directors of the firm.

³⁷ *ibid.*, paragraph 4.4.

³⁸ The enabling ICT functions of the APO and related contracts were transferred to IMD over the period March–June 2022.

Figure 2.3: DFAT contracts with Alluvial for labour hire as at 31 December 2023

Source: ANAO analysis of DFAT data.

Extent to which a single supplier was invited to quote

2.55 During the scope of this audit, AusTender did not provide transparency on how many suppliers were invited to quote for each of the contracts reported. Changes introduced to AusTender from 1 July 2024 included: 'Where a contract was procured via a limited tender, or standing offer arrangement the number of suppliers approached must be reported on the contract'.³⁹ This change followed recommendations made to the Department of Finance by the ANAO⁴⁰ and the Joint Committee of Public Accounts and Audit.⁴¹ Entities are to implement the AusTender reporting changes by 1 July 2025. As at 1 September 2024, DFAT had not implemented the 1 July 2024 changes.

2.56 The ANAO identified that the APO had invited only one supplier ('direct-sourced') for 33 of the 73 contracts examined in detail. This represents 45 per cent by number or 31 per cent by value. The ANAO also considered whether the supplier direct-sourced was the sole supplier available in the market or on a mandatory use panel. The results are outlined in Table 2.1.

39 See <https://help.tenders.gov.au/getting-started-with-austender/central-procurement-systems-enhancements/austender-improvements/>.

40 Auditor-General Report No.5 2022–23, *Digital Transformation Agency's Procurement of ICT-Related Services*, ANAO, Canberra, 2022, Recommendation no. 5, paragraph 3.44, available from <https://www.anao.gov.au/work/performance-audit/digital-transformation-agency-procurement-ict-related-services> [accessed 13 September 2024].

41 Joint Committee of Public Accounts and Audit, Parliament of Australia, *Report 498: 'Commitment issues' — An inquiry into Commonwealth procurement* (2023), Recommendation 9, paragraph 2.177.

Table 2.1: Number of suppliers invited to quote in each of the 73 contracts examined

On panel or in market	One supplier was invited		Multiple suppliers were invited	
	Contracts	Value (\$)	Contracts	Value (\$)
Sole supplier	6	22,528,382	N/A	N/A
Multiple suppliers	27	101,316,336	40	281,232,075

Source: ANAO analysis of DFAT records, with contract values as at 31 December 2023.

2.57 The APO had direct-sourced 27 of the 67 contracts (40 per cent) for which multiple suppliers were available in the open market or on the panel approached. For 20 of these 27 contracts (74 per cent) there was no approval record setting out the basis for the direct-source approach (see paragraph 2.14). The ANAO identified that 11 of the 20 were with an incumbent supplier or contractor.

2.58 Of the seven contracts for which there was an approval to approach the market, the recorded basis for direct-sourcing for:

- five contracts totalling \$50.4 million related to re-engaging the incumbent supplier or contractor (see example below);
- one \$858,722 contract was that ‘The APO identified [contractor] through internal recommendations and word of mouth’; and
- one \$632,104 contract, involved an approval related to a multi-supplier approach for a different procurement, with the APO then direct-sourcing one of the unsuccessful candidates into ‘a newly defined role’.

2.59 An example of a direct-source approach to re-engage an incumbent that has been reported as open tender was the procurement of an embedded contractor to manage the APO’s procurement team. The incumbent had been engaged by the APO for 10 years via various contracts with various suppliers through various procurement panels.

- The process was initiated by the manager emailing a subordinate in the procurement team, who was also a contractor, saying:
Hey mate, With my contract coming up – if APO wants to re-engage me – I would like to go through [staff member] at Peoplebank [Peoplebank Australia Ltd] for the engagement and preferably for six month contract terms, if possible. Happy to get that kicked off whenever you are.
- The subordinate replied:
To [sic] easy, I’ll get started on the approach direct to Peoplebank for your position.
I’ll do the internal paperwork and liaise with [the staff member] to receive a proposal.
- The approval to approach the market included a contradictory statement on the procurement method used, and recorded that:
The APO has an ongoing need for the continuation of this role and is looking to retain the services of the incumbent [manager’s name] due to [their] extensive knowledge and understanding of the APO environment ... The procurement is subject to Division 2 of the Commonwealth Procurement Rules ... and will be conducted as an Open Tender under the [panel] ... A direct approach to Peoplebank will be undertaken to re-engage the incumbent resource allocation of [manager’s name].

- The request for quote was emailed directly to the Peoplebank staff member whose details had been supplied by the incumbent. DFAT subsequently reported this direct-source procurement as open tender.

2.60 As manager of the APO procurement team, the above-mentioned contractor was in a position to influence the conduct of DFAT procurement. The ANAO identified examples where contractors with pre-existing social connections to this individual were engaged by DFAT. These included instances where the individual played a significant role in the procurement, such as requesting quotes, being a member of the evaluation panel and providing advice to delegates. For example, the department's email and calendar records for the manager evidenced there had been regular social interactions with the contractor engaged to produce a procurement strategy (see paragraph 2.5). The manager was instrumental in that direct-source procurement. In a further instance, the manager had used their network of supplier contacts (including via their DFAT email account) to assist an individual introduced by a mutual acquaintance to find contract work in a different entity and was provided with a gift voucher as a gesture of thanks. The manager subsequently facilitated the engagement of that individual by the APO via a direct-source approach.⁴²

Direct sourcing from panel arrangements

2.61 The CPRs state that, 'To maximise competition, officials should, where possible, approach multiple potential suppliers on a standing offer'.⁴³ The Joint Committee of Public Accounts and Audit recommended in August 2023 that 'the Department of Finance amend its guidance on the use of panels to make it explicit that ... panel procurement should involve multiple competing tenders from panel members, with sole-sourcing from a panel generally considered inadequate to demonstrate value for money'. The Department of Finance agreed to the recommendation.⁴⁴

2.62 DFAT had reported 53 of the contracts examined in detail as let by open tender from a panel arrangement (see paragraph 2.38). The APO had approached a single supplier on a multi-supplier panel when establishing 13 of these contracts (25 per cent). DFAT reported eight of the 13 contracts (62 per cent) against the Digital Marketplace panel.

2.63 Becoming an approved seller on the Digital Marketplace does not involve a competitive process.⁴⁵ Direct sourcing from the Digital Marketplace therefore means that both the Deed and the Work Order were established without competitive pressure being applied. Further, as at July 2024 there were 3,570 approved sellers across 18 service categories from which to generate

42 Since February 2024, the contractor formally engaged as APO procurement team manager has been engaged by another Australian Government entity.

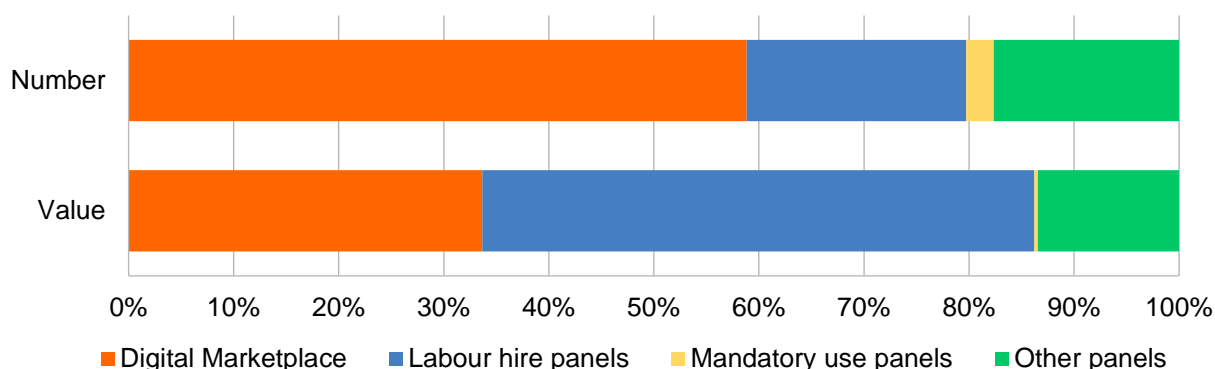
43 Finance, *Commonwealth Procurement Rules*, 13 June 2023, paragraph 9.14.

44 Joint Committee of Public Accounts and Audit, Parliament of Australia, *Report 498: 'Commitment issues' — An inquiry into Commonwealth procurement* (2023), Recommendation 7, paragraph 2.171. The Department of Finance agreed to Recommendation 7 in its January 2024 response to Report 498. The department stated in its July 2024 update to its response that it 'will refresh or develop guidance in relation to audit committees, ethics and probity and the use of panels ... and expects to release guidance on these matters in the coming six months'. Government responses to Report 498 are available from https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Public_Accounts_and_Audit/CommonwealthProcurement.

45 The ANAO examined the establishment of the Digital Marketplace panel within Auditor-General Report No.4 2020–21, *Establishment and Use of ICT Related Procurement Panels and Arrangements*, ANAO, Canberra, 2020, available from <https://www.anao.gov.au/work/performance-audit/establishment-and-use-ict-related-procurement-panels-and-arrangements> [accessed 13 September 2024].

competition. The Digital Marketplace was the most frequently used panel by the APO, as per Figure 2.4.

Figure 2.4: 153 APO contracts by panel arrangement by number and by initial value



Note: Digital Marketplace panel 1.0: SON3413842. Labour hire panels: SON867801; SON3557594; and SON3538332. Mandatory use panels: SON3622041; SON3390763 and mandatory component of SON3541738. Other panels: SON3403954; SON3637213; SON3463478; SON3490955 and non-mandatory component of SON3541738.

Source: ANAO analysis of AusTender data as at 30 September 2023 for APO parent contracts with a reported start date of 1 July 2019 to 30 June 2023 and procurement method of open tender from a panel arrangement.

Extent to which the multi-supplier approaches were competitive

2.64 The ANAO identified that the department had invited more than one supplier to quote for 40 of the contracts examined in detail, representing 55 per cent by number or 69 per cent by value (see Table 2.1). The number invited for 39 of these 40 contracts⁴⁶ ranged from three to 27 and averaged nine suppliers. These figures include seven contracts for bulk labour hire services established in June 2019 following an approach to those seven suppliers. While it was a multi-supplier approach, it was not a competitive approach.

- The department identified the seven of its 15 incumbent suppliers with the highest number of ongoing temporary contractors engaged across the passport office network. The APO identified a panel that included the seven suppliers and then invited them to quote. The APO did not invite any of the other 28 suppliers on that panel (SON3557594).
- The department intended to re-engage all seven. They were not competing on price and capability for future work. While one supplier submitted its quote late it was not excluded. Further, while two suppliers were assessed by DFAT to not satisfy one or more of the evaluation criteria they were also not excluded. One supplier offered a discounted rate in its quote that the APO then did not include in the contract.
- The value of each contract had been determined prior to approaching the market, and the contracts with the seven suppliers pre-prepared prior to receiving the quotes. The department offered the seven suppliers contracts totalling \$38,039,536. This included awarding contracts to two suppliers that had been assessed as offering 'poor' value for money.

⁴⁶ See paragraph 2.66 for the 40th contract.

2.65 In reference to the above procurement of bulk labour hire services, DFAT advised the ANAO in June 2024 that:

Competition is a key element of DFAT's procurement framework as set out in the DFAT Procurement Policy and the Commonwealth Procurement Rules. DFAT considers that this procurement process should have tested the market beyond a limited number of incumbent suppliers, selected based on volume of existing contractors, by providing new suppliers with an opportunity to demonstrate their capabilities.

2.66 For one of the 40 contracts established following a multi-supplier approach, DFAT released the request for quote via the BuyICT portal⁴⁷ to all 1,620 approved sellers of ICT labour hire services on the Digital Marketplace panel. The request was for the services of a 'commercial relationship manager'. Fifty-two approved sellers responded, putting forward a total of 71 candidates. This, however, was not a genuinely competitive procurement process.

2.67 The department had separately emailed the request to a firm (Customer Driven Solutions) that was not an approved seller. Further, in a breach of probity, the department had emailed a contractor from that firm a copy of the approval to approach the market containing the estimated procurement value and hourly rate. The firm put forward two candidates. These two were the only ones out of the 73 potential candidates that the department assessed as 'suitable', with one then contracted into the position despite not holding the required security clearance. The process had not involved checking compliance with the security requirement, assessing quotes against the evaluation criteria or interviewing potential candidates. DFAT reported the \$704,948 contract as let by open tender from the Digital Marketplace panel.⁴⁸

2.68 Another example of an approach to market that was not genuine was a procurement intended to re-engage an incumbent contractor into a 'change manager' position. Prior to DFAT issuing a request to four sellers on the Digital Marketplace, the chair of the tender evaluation panel had already met with the incumbent supplier and received a proposal. While a further 18 sellers on the Digital Marketplace requested to be included none were given access by the department to the procurement opportunity, with the contract awarded to the incumbent.⁴⁹

2.69 In total, the ANAO identified 19 procurement processes out of the 40 examined (48 per cent) where the purported competitive process did not, in fact, involve competition.⁵⁰ This practice is inconsistent with both the intent and the requirements for fair treatment (such as CPR 7.12, 10.8 and 10.13). It is also inconsistent with CPR 5.2 which advises that participation in procurement imposes costs on potential suppliers and that those costs should be considered when designing a process (given the evidence is that suppliers were being asked to quote for work where there was already an intended candidate).

47 The BuyICT marketplace is an online service operated by the Digital Transformation Agency that connects Australian Government Entities to potential suppliers of ICT hardware, software and services.

48 AusTender CN3913472 for \$704,948 with Customer Driven Solutions Pty Ltd from 17 October 2022 to 16 October 2024 as varied.

49 AusTender CN3957213 for \$790,416 with Hays Specialist Recruitment (Australia) Pty Ltd from 10 April 2023 to 9 April 2025 as varied.

50 A further one procurement started out with the approver meeting with a candidate and offering them the role in advance of issuing a request for quote to that candidate's labour hire firm as part of a multi-supplier approach. The contract, however, was then awarded to a different firm that was also invited but was not listed in the approval to approach the market minute. The departmental records were not transparent as to the basis for inviting the successful firm.

2.70 Overall, the department had already identified its preferred supplier or candidate prior to approaching the market for 52 contracts totalling \$305.5 million, which equates to 71 per cent of the 73 APO contracts examined by number or 75 per cent by value.

Recommendation no. 2

2.71 The Department of Foreign Affairs and Trade strengthen its procurement processes for the Australian Passport Office so that there is an emphasis on the use of genuinely open competition in procurement to deliver value for money outcomes consistent with the requirements and intent of the Commonwealth Procurement Rules.

Department of Foreign Affairs and Trade response: *Agreed.*

Were evaluation criteria included in request documentation and used to assess submissions?

For 14 per cent of contracts tested, evaluation criteria were included in request documentation with those same criteria used to assess submissions.

Evaluating submissions on a transparent basis

2.72 The CPRs require relevant evaluation criteria to be included in request documentation to enable the proper identification, assessment and comparison of submissions on a fair, common and appropriately transparent basis.⁵¹ Request documentation must include a complete description of evaluation criteria to be considered in assessing submissions and, if applicable to the evaluation, the relative importance of those criteria.

2.73 Of the 73 contracts examined in detail by the ANAO, 32 (44 per cent) included evaluation criteria in the Request for Quote documentation. As such, the majority were not compliant with paragraph 10.6.d of the CPRs.

2.74 For 14 of these 32 procurements (44 per cent) quotes were not then evaluated against criteria. This meant there was not a clear and transparent basis for the procurement outcome.

2.75 Of the 18 procurements where quotes were evaluated against criteria, in eight instances the criteria used were not those that had been included by DFAT in the request documentation. This meant that the suppliers invited to quote had not been informed by the department as to the basis on which the contract would be awarded. In two instances, the evaluation panel used different evaluation criteria from that advised to the potential suppliers in the request documentation and then referenced the original criteria when seeking delegate approval of the procurement outcome:

- the first instance involved the award of a \$380,160 contract to a small labour-hire firm. The department's evaluation panel for this procurement introduced a 'communication' criterion, against which it scored its desired candidate a nine out of ten, and scored the other four candidates either three or four out of ten ('not suitable') without having

51 'Evaluation criteria' is defined in the CPRs as 'the criteria that are used to evaluate the compliance and/or relative ranking of submissions. Evaluation criteria must be clearly stated in the request documentation.' See Finance, *Commonwealth Procurement Rules*, Appendix B Definitions.

interviewed any candidates or asked suppliers to demonstrate their candidates' communication skills; and

- the second instance involved the award of a \$1,369,438 contract to Peoplebank. The different criteria applied were substantially more favourable to the department's desired candidate and, as that candidate did not meet the specified security requirement, the security requirement was downgraded.

2.76 Both contracts did not involve genuine competition. Further, both evaluation panels contained individuals with undisclosed actual conflicts of interest (the chair of one panel, the chair and the panel member of the other). DFAT advised the ANAO in May 2024 that it considered these three individuals 'should not have been on the evaluation panel or involved in the procurement process in other ways'.

2.77 The above shortcomings meant that, of the 73 procurements examined in detail by the ANAO, there were 10 (14 per cent) where evaluation criteria had been included by DFAT in the request documentation with those criteria then applied to evaluate submissions received. Paragraphs 2.94 to 2.99 discuss the advice provided to delegates on procurement outcomes, including the extent to which that advice reflected evaluation of candidates against the evaluation criteria.

Recommendation no. 3

2.78 The Department of Foreign Affairs and Trade include evaluation criteria in request documentation for all procurements undertaken for the Australian Passport Office, and procurement decision-makers ensure those criteria have been applied in the evaluation of which candidate represents the best value for money.

Department of Foreign Affairs and Trade response: *Agreed.*

Was sound and timely advice provided to approvers on the outcomes of approaches to market, including on how value for money was achieved?

There was not a documented approval to approach the market for 36 per cent of the 73 contracts examined in detail by the ANAO. Advice provided to approvers on the outcomes of approaches to market in most cases did not demonstrate how value for money was considered to have been achieved. Three-quarters of the time the approval was requested by an embedded contractor, often populating a template as an administrative function and sometimes at the direction of the approver telling them what to recommend.

One quarter of the time, approval was given within a week of the expected contract start date. A 2022–23 practice of approving commitments on the understanding that the Department of Finance would later agree to additional funding to cover the costs was not sound financial management.

2.79 Paragraph 7.3 of the CPRs specifies that documentation maintained in relation to a procurement should provide accurate and concise information on, among other things, relevant approvals, the process that was followed, and how value for money was considered and achieved.

Obtaining approvals

2.80 The accountable authority has a duty under section 15 of the *Public Governance, Performance and Accountability Act 2013* ('PGPA' Act) to promote the proper use (that is, the efficient, effective, economical and ethical use) and management of public resources for which the authority is responsible. This duty applies when approving commitments of relevant money. Under section 23 of the PGPA Act the accountable authority may enter into, vary and administer arrangements and approve commitments of relevant money. The Secretary of DFAT has delegated these powers to certain DFAT officials and imposed conditions on their use. In accordance with section 18 of the PGPA Rule, the delegate approving a commitment of relevant money must record in writing their approval as soon as practicable after giving it.

2.81 As outlined at paragraph 2.13 above, DFAT requires officials to obtain written approval from an authorised delegate prior to approaching the market. Department of Finance guidance explains that the requirement to obtain the endorsement of the delegate to proceed 'is because when you release your [approach to market] you are obliged to continue the process to finalisation and award of a contract should you find a suitable supplier (see CPRs paragraph 10.35)'.⁵²

2.82 Of the 73 contracts examined in detail by the ANAO, the records for 47 (64 per cent) included documented approvals to approach the market. In each of these 47 cases, the approval was given by an authorised delegate. There was not a documented approval to approach the market for more than one-third (36 per cent) of the 73 contracts examined.

2.83 DFAT's procurement templates include email-based and minute-based requests for 's23 approval' to commit relevant money and enter into an arrangement. The procurement records for all 73 contracts included a documented s23 approval from an authorised delegate.

2.84 Controls that entities can put in place to reduce the risk of fraud and corruption include separating duties in the procurement process. Department of Finance guidance outlines that the separation of duties is also important 'to maintain fairness and transparency in a procurement process' and that 'Officials involved in evaluation of tenders should not be those who are approving the proposal to spend public money'.⁵³

2.85 For each of the s23 approvals examined at least two people were involved: a requestor and an approver. Three-quarters of the time, the requestor was an embedded contractor (for 55 of the 73 contracts examined). The benefit of the apparent separation of duties was at times undermined by the extent to which the approver had been involved in the evaluation process and/or to which the approver was telling the requestor what to recommend. In August 2024, DFAT advised the ANAO that:

DFAT agrees that the benefit of separation of duties may at times have been undermined but DFAT notes the reference to contractors being involved (embedded) may reflect government policies or difficulties filling APS roles.

52 Available from <https://www.finance.gov.au/government/procurement/buyright> [accessed 13 September 2024].

53 Finance, *Ethics and Probity in Procurement*, Finance, available from <https://www.finance.gov.au/government/procurement/buying-australian-government/ethics-and-probity-procurement> [accessed 13 September 2024].

2.86 For example, an embedded contractor in the APO procurement team emailed a partially populated request for s23 approval to the delegate:

As Delegate you should note:

- The maximum value of this request is \$?????.
- This request is for a limited period of time and will expire on DD MMM YYYY.

... This procurement represents value for money based on: [delete as appropriate *[sic]*] ...

The delegate finished populating the request, including by deleting seven of the nine 'value for money' reasons presented as options, and then recorded their approval.

2.87 In another example, an embedded contractor working to the delegate was being directed by the delegate in the conduct of the procurement. The request for s23 approval submitted by the embedded contractor to the delegate, and approved on 28 September 2023, did not evidence the extent of the delegate's involvement.

- The record did not identify that, prior to issuing the request to quote to three suppliers on 5 September 2023, the delegate had met with one of the candidates in August 2023, obtained a referee report, offered them the role and negotiated their rate.
- The procurement was for the provision of an EL1 equivalent labour hire worker and so fell under the scope of the People Panel⁵⁴, which is a coordinated procurement. CPR 4.12 states, 'Non-corporate Commonwealth entities must use coordinated procurements'. In breach of this requirement, the APO 'used the CSS panel as the People Panel did not include all the agencies we wished to approach'. The APO's then preferred candidate's supplier was not one of the 92 approved suppliers on that mandatory Panel at the time.
- A different reason for issuing the request to quote to the CSS (Capability Support Service) panel was recorded in the approval record. It incorrectly stated, 'The CSS Panel was used as it had at the time of releasing the RFQ more suppliers with relevant resources and affordable pricing than was available on the People Panel'.
- The approval record of 28 September 2023 also stated that the evaluation of the nine candidates put forward by the suppliers was conducted by two DFAT officers without mentioning the delegate's involvement. For example, the delegate had conducted the candidate interviews with the embedded contractor present (and not the two officers) and an email from the delegate to the embedded contractor on 27 September 2023 included, 'I've pulled together the attached matrix to incorporate scores based on the interviews we conducted and the referee reports received'.
- The candidate then selected was not the candidate the approver had met with in August. The successful candidate's supplier was not one of the three suppliers listed in the approval to approach the market. The records were not transparent as to the basis on which this supplier was invited to compete.

54 The People Panel is a mandatory coordinated procurement established in three phases by the Department of Finance. The Phase 2 – Labour Hire Services Panel (SON3965020) commenced 7 August 2023 and is to be used for the provision of labour hire workers, APS1–SES equivalent, for a defined period.

Advice on the available budget

2.88 A total of \$125.9 million was committed for the initial term of the 73 contracts examined in detail by the ANAO. The delegate is responsible for ensuring there is sufficient budget available to meet the commitment to which they are agreeing. For most of the contracts examined (93 per cent) the requests for approval advised there was sufficient budget available. The other seven per cent of the time, the approval record was silent on the matter and were for lower-value purchases (at \$50,000 or less).

2.89 The DFAT and Finance agreed passport services funding model included a no-win no-loss arrangement about supplier costs. Where total supplier costs (excluding changes attributable to changes in passport processing volume) increase or decrease by more than \$3 million in a single year, or by more than \$4 million over two years, the quantum of budget funding provided to DFAT is adjusted. DFAT received supplementation in the 2023–24 Federal Budget of \$57.5 million over three years to support the costs associated with increased demand for passport services not covered by the funding arrangement (\$54 million was incurred in 2022–23). Findings of Auditor-General Report No. 13 2023–24 included that ‘The funding arrangements for passport processing are not designed to promote efficiency in the delivery of passport services and are based on outdated assumptions with the result that those arrangements do not support the efficient use of resources’.⁵⁵

2.90 DFAT records of the overspend against the APO’s budget include the following extract from a paper presented to the APO Executive Group in September 2022:

Current estimate is for a spend of \$274 million with an estimated overspend of \$69 million for the 2022–23 financial year ... Budgeting and financial management is still a major issue as areas do not understand how their budgeting and financial processes impact the APO ... S23s are being approved by Directors confirming budget is available when the anticipated expenditure is not in their budget.

2.91 A delegate’s response to an October 2022 request to commit \$770,000 was: ‘Approved, noting funding availability is confirmed on the understanding the Department of Finance will cover all passport surge related expenditure above the current funding levels of the Passport Funding Agreement.’ Similarly, a response to a request of November 2022 for confirmation that the APO had funding for a proposal to increase a contract by \$62,327 to be \$92,256 was: ‘Yes, we’ll cover this ... We continuing to sign off s23s despite running a \$39m projected overspend this year, on the understanding the Department of Finance will cover all passport surge related expenditure above the current funding levels of the Passport Funding Agreement.’

2.92 DFAT advised the ANAO in April 2024 that it considered the above described approach of APO officers approving commitments of relevant money on the understanding that the costs would later be covered by the Department of Finance to be compliant with its Secretary’s delegation instrument. The ANAO considers that the approach does not encourage the APO to pursue economy in procurement costs nor does it otherwise promote the efficient use of resources.

2.93 As outlined in Auditor-General Report No. 13 2023–24 *Efficiency of the Australian Passport Office*, the Passport Services Funding Arrangement agreed by DFAT and Finance in November 2016

⁵⁵ Auditor-General Report No.13 2023–24, *Efficiency of the Australian Passport Office*, ANAO, Canberra, 2024, paragraphs 15 and 2.55–2.64, available from <https://www.anao.gov.au/work/performance-audit/efficiency-of-the-passport-office> [accessed 13 September 2024].

‘does not include any provisions relating to how DFAT procures goods and services through contractual arrangements’. As also outlined, Finance advised the ANAO in November 2023 that ‘entities such as DFAT are required to observe the CPRs, including the core rule of value for money, and the overarching requirements of the *Public Governance, Performance and Accountability Act 2013* ... We support the reiteration of these requirements in the passport funding agreement’.⁵⁶ These requirements were not then reiterated in the new passport funding agreement signed in July 2024.

Soundness of advice, including on value for money

2.94 Achieving value for money is the core rule of the CPRs. This requires the consideration of the financial and non-financial costs and benefits associated with procurement. The resulting contract ‘must be awarded to the tenderer that the relevant entity has determined: satisfies the conditions for participation; is fully capable of undertaking the contract; and 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’.⁵⁷

2.95 Overall, the request for approval packages for the procurements examined in detail by the ANAO contained insufficient information to demonstrate the capability of the recommended supplier in the context of the request documentation. For over half the funding committed, the advice to the delegate did not contain the results of any assessment, as per Table 2.2. An example is the procurement of ‘change and communications’ services, which had an initial commitment of \$365,178 approved and an amended contract value of \$848,615. There was no recorded approval to approach the market, or basis for selecting the single supplier approached, or evaluation of its submission. The advice as to the supplier’s capacity and capability in the approval minutes to enter, and later to amend, the contract was limited to the following:

[Supplier] has the experience and team members has the experience and team members ready to support ready to support the Passport Technology Passport Technology Change and Connection Change and Connection Section needs and are needs and are genuinely looking forward to building a genuinely looking forward to building a trusted relationship with Department of Foreign Affairs and Trade.

Table 2.2: Advice on the evaluation of suppliers in the request for approval package

	Contracts		Amount initially committed	
	Number	%	\$ million	%
Provided the results of an assessment of the supplier/s against the criteria in the request documentation	8	11	2.9	2
Provided the results of an assessment of the supplier/s but not against the criteria from the request documentation	16	22	47.4	38

⁵⁶ *ibid.*, paragraph 2.61.

⁵⁷ Finance, *Commonwealth Procurement Rules*, 13 June 2023, paragraphs 3.2 and 10.35.

	Contracts		Amount initially committed	
	Number	%	\$ million	%
Included a qualitative statement or other assessment containing limited detail that was not against criteria	14	19	2.7	2
Did not provide the results of an assessment of any supplier	35	48	72.8	58
Total	73	100	125.88	100

Source: ANAO analysis of DFAT records for the 73 contracts examined in detail.

2.96 As outlined in Table 2.2, the requests to the delegate for only eight of the 73 contracts examined (11 per cent), representing two per cent of the \$125.9 million initially committed, included the results of an assessment of the supplier/s against the evaluation criteria specified in request documentation. On some of these eight occasions, the advice was deficient. For example:

- For two contracts, the recorded basis for recommending a preferred candidate was largely reliant on incumbency advantage⁵⁸ as follows:
 - Engagement of the incumbent yields the best value for money for DFAT and is considered the most economical use of Commonwealth resources on the basis that they have proven recent excellent experience in the position and an ability to undertake the role with minimal impact to or interruption to APQ's [sic] activities/resources; and
 - The incumbent demonstrated experience in the position and ability to undertake the role with minimum interruption to APO's ICT activities/resources. Therefore, engagement of the incumbent yields the best value for money for DFAT and is considered the most economical use of Commonwealth resources.
- For one contract the evaluation had been conducted, and the advice to the approver given, by a contractor being supervised by the recommended candidate. It was a direct-source approach to re-engage an incumbent. The advice noted that the proposed rate was 'in the top 90% of average hourly rates' and did not adequately address whether it was value for money to increase their existing rate by eight per cent, less than a year after it had increased by seven per cent.
- For one contract the justification for recommending a supplier that had quoted 'well above the original anticipated budget' was that it 'had allowed significantly more hours than other respondents for completion of the services'. This advice did not adequately demonstrate that paying this supplier 77 per cent more than the next-ranked supplier, under a fixed-price milestone-based contract, represented value for money.

58 The NSW Independent Commission Against Corruption challenges the argument 'that awarding a contract to an incumbent provider promotes value for money, as they have the existing knowledge to do what is required and this avoids the costs of transitioning to a new provider' in its publication *Dealing with incumbent providers in procurement*. It includes a list of situations where appointing an incumbent may represent poor value for money and is available from <https://www.icac.nsw.gov.au/prevention/corruption-prevention-publications> [accessed 13 September 2024].

2.97 There was no value for money justification included in the advice to the approver for 15 of the 73 contracts examined (21 per cent), which accounted for 53 per cent of the \$125.9 million initially committed.

2.98 For a further 26 contracts (36 per cent) the claimed value for money of the proposed contract price was not evidenced by inclusion of a benchmark rate, such as by providing the prices submitted by the other suppliers in a multi-supplier approach. One of these was a direct-source approach to a former DFAT employee. The record of the approval to commit \$26,565 for the former employee's services stated 'the pricing quoted is regarded as offering value for money' without also stating the benchmark price the requester had obtained from a relevant panel arrangement. The per hour rate quoted by the recommended supplier was 63 per cent higher than the benchmark obtained.

2.99 Of the remainder, for 15 contracts the approver was given all the prices submitted. While for the other 17 contracts, the approver was given a benchmark price that was usually the average of the hourly rates proposed in a contractor engagement. The benchmarking was not necessarily appropriate, as illustrated in the example at paragraph 2.102.

Timeliness of advice

2.100 Advice provided to delegates should be timely. When advice is provided on short notice, it can create pressure on delegates to accept outcomes that are not value for money. On five occasions the supplier had already been offered, and had signed, the contract before approval to commit the funds and enter into the arrangement was requested from the delegate.

2.101 The advice to the approver for seven of the 73 contracts examined did not include an estimated start date. Of the dates in the advice for the other 66 contracts:

- 11 indicated that the approval was given after the start date. These ranged from approval being given three days to 209 days after the start date, and averaged 40 days after.
- 17 indicated that the approval was given within a week of the start date. These ranged from approval being given the same day to seven days before, and averaged five days before.
- 38 indicated that the approval was given at least a week before the start date. These ranged from approval being given eight days to 69 days before, and averaged 24 days before.

2.102 An example of advice that was neither timely nor based in evidence, and which did not demonstrate the achievement of value for money, was the request for approval to commit \$38.0 million and enter arrangements with seven suppliers to provide bulk labour hire services from 1 July 2019 (see paragraph 2.64). The approval was requested on 7 June 2019 — six months after the APO Executive Group had approved a proposal to approach a panel for the services, and 23 days before the existing arrangements expired. Two of the seven recommended suppliers had been assessed as not meeting the value for money criterion. The supplier mark-ups quoted in the advice to the delegate applied to a small minority of the temporary contractors (around seven per cent) and compared favourably with the benchmark rate. The mark-ups applicable to most contractors was omitted from the advice and was higher on average than the quoted benchmark.

2.103 The advice was also not timely from the perspective of the 15 labour hire suppliers and approximately 200 temporary contractors impacted by the decision. Contracts with the seven continuing suppliers were signed on 21 June 2019, while the other eight suppliers were advised on 14 June 2019:

I am writing in reference to DFAT's Work Order arrangement with your organisation for the provision of Temporary Labour Hire Services which expires on 30 June 2019 ... In meeting efficiencies, please be advised that DFAT has decided not to extend this Work Order, or enter into any new arrangements with [supplier] beyond this date ...

All temporary contractors currently engaged with [supplier] under the above referenced Work Order, will be formally advised by DFAT within the next 2 – 3 business days that their current contractual arrangements will be terminating on 30 June 2019. ...

2.104 In June 2024, DFAT confirmed it agreed with the ANAO's assessment that the advice provided to the approver to engage the labour hire suppliers was not timely. DFAT considered 'The timeframe for running this procurement was insufficient given the need for contracts with labour hire providers to be in place by 1 July 2019' and 'Incoming and outgoing suppliers, including specified personnel, should have been afforded sufficient time to transition to new arrangements'.

Opportunity for improvement

2.105 There is an opportunity for DFAT to strengthen procurement decision-making practices by providing training and introducing stronger requirements on those delegated to make procurement decisions for the Australian Passport Office that ensure approvals are only given where they have been informed by accurate, complete and timely advice from a source other than the approver themselves.

Recommendation no. 4

2.106 The Department of Foreign Affairs and Trade to strengthen its procurement policy framework by directly addressing the risk of officials being cultivated or influenced by existing or potential suppliers.

Department of Foreign Affairs and Trade response: *Agreed.*

3. Accountable and transparent decision-making

Areas examined

The ANAO examined whether decision-making had been accountable and transparent.

Conclusion

Procurement decision-making was not sufficiently accountable and was not transparent. Procurement practices have fallen short of ethical standards, with DFAT initiating inquiries of the conduct of at least 18 individuals, both employees and contractors, in relation to Australian Passport Office procurement activities examined by the ANAO.

Areas for improvement

The ANAO made three recommendations aimed at addressing the inappropriate use of contract variations, at strengthening the department's oversight and controls over its procurement activities, and examining whether ethical and integrity failures have occurred in procurements not examined in detail by the ANAO. The ANAO also identified as areas for improvement that DFAT should improve the timeliness of its AusTender reporting across the department and also improve its arrangements for identifying and reporting instances of non-compliance with the finance law.

3.1 Accountability means that officials are responsible for the actions and decisions they take in relation to procurement and for the resulting outcomes. Transparency involves entities taking steps to enable appropriate scrutiny of their procurement activity, including by maintaining appropriate levels of documentation for each procurement and complying with the publishing and reporting requirements as set out in the CPRs.⁵⁹

3.2 The CPRs also 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.⁶⁰

Were appropriate contracts in place prior to works commencing?

For 71 per cent of the procurements examined by the ANAO, an appropriate contractual arrangement was in place prior to works commencing and after approval had been obtained to enter the arrangement.

3.3 Paragraph 7.4 of the Commonwealth Procurement Rules (CPRs) requires that 'Relevant entities **must** have access to evidence of agreements with suppliers, in the form of one or a combination of the following documents: a written contract, a purchase order, and invoice or a receipt' [emphasis in original]. Consistent with the CPRs, DFAT Procurement Policy paragraph 34.3

59 Finance, *Commonwealth Procurement Rules*, 13 June 2023, Chapter 7.

60 *ibid.*, paragraph 6.6.

states that 'Procurement risks can be managed by: ... ensuring that a written agreement is in place prior to work commencing or delivery of goods'.

Type of contractual arrangement

3.4 The 73 contracts established from 1 July 2019 that the ANAO examined in detail comprised the following contractual arrangements, most of which (89 per cent) were appropriate for the purpose.

- 52 contracts were in the form of work orders entered under panel arrangements;
- six contracts were in the form of Commonwealth or DFAT developed contracts;
- three were supplier provided contracts, of which one was not appropriate (see paragraphs 3.5–3.6);
- one was an exchange of letters with Services Australia, which was not appropriate (see paragraphs 3.7–3.9);
- the other eleven relied on the purchase orders that are created in DFAT's financial system (SAP) for contracts at or above \$10,000, of which six were not appropriate:
 - two because they had been raised against the wrong legal entity;
 - one because the department had rejected it five-times in SAP as insufficient (it remained unapproved in SAP and the supplier's invoice was paid); and
 - three because the Commonwealth Purchase Order Terms were insufficient for the nature of the services procured (see example at paragraph 3.10).

3.5 One of the three supplier contracts was not an appropriate contractual arrangement for the following reasons. Under the DFAT security policy framework, APO production staff can be employed under a pre-employment check conducted by an ACIC accredited supplier. The APO directly approached an Australia-based ACIC accredited supplier to request a quote to provide the checking services. APO procurement then obtained delegate approval to enter into an arrangement with this Australia-based ACIC accredited supplier, with the intention of using a purchase order as the contract. A DFAT official then signed a 46-page supplier-provided contract with a related UK-based firm for the services, with the terms of the arrangement governed by the laws of England and Wales. There was no evidence that the official obtained legal advice before signing this non-standard contract.⁶¹ Under this contract the APO spent \$143,162 against an initial estimate of \$16,500. After just over a year, the APO signed a Deed of Novation with both the UK-based entity and the Australia-based entity. This deed noted that:

The Continuing Party [DFAT] wishes to obtain Australia criminal checks via the Australian Criminal Intelligence Commission ('ACIC'). However, ACIC requires the two contracting parties to be Australian Entities; the Incoming party [Australia-based supplier] is, and the Outgoing party [UK-based supplier] is not.

3.6 The ANAO asked DFAT in May 2024 whether it considered that, in this case, an appropriate contract was in place with an appropriate entity. DFAT's response was that it 'does not consider

61 DFAT's procurement policy advises officials to seek legal advice on supplier contracts before signing because 'In most cases, supplier agreements are drafted for the purpose of protecting the supplier's legal interests and will contain provisions (such as contingent liabilities) that will place greater risk onto DFAT'.

that a contract with the correct entity was in place' and notes that section 23 approval was not given to enter into a contract with the UK-based supplier.

3.7 The arrangement contracted by means of an exchange of letters with Services Australia was for the purpose of Services Australia engaging Serco Citizen Services Pty Ltd ('Serco') to provide for DFAT a passport processing capacity of up to 300 full-time equivalents at a cost of up to \$38.5 million.⁶² Selecting this contractual arrangement required DFAT to accept the terms and conditions under which Services Australia had engaged Serco and, as discussed in the earlier audit of passport services efficiency, DFAT did not obtain value for money in the delivery of services through this arrangement.⁶³

3.8 In December 2022, after the arrangement had been in place five months, DFAT assessed it as not being appropriate for the department's purposes as follows:

Services Australia has the contractual relationship with Serco so DFAT is unable to negotiate the terms and flexibility it requires. Communications are often lost and decisions are overturned by Services Australia, including not exercising service credits due to Serco poor performance.⁶⁴

It has been difficult to align to Services Australia's contractual terms and conditions with Serco, many of which are not fit for purpose for the APO, including the performance management framework.

3.9 The above contractual arrangement was scheduled to end 30 June 2023 but was terminated early, with DFAT 'forecasting insufficient demand to provide Serco personnel with meaningful work'. DFAT notified Services Australia on 6 February 2023 that it no longer required Serco assistance beyond 10 February 2023. DFAT paid \$4 million to Services Australia to reimburse Serco for separation costs associated with ceasing using Serco personnel early.

3.10 For one of the 53 contracts DFAT had reported as panel procurements, DFAT issued the supplier a purchase order instead of a work order. A purchase order was not an appropriate contractual arrangement for this procurement, which had an initial value of \$77,000 and an amended value of \$289,773. Its use was inconsistent with the delegate's approval to enter an arrangement, which stated that a work order would be entered under the Digital Marketplace panel. Further, the services included the engagement of an embedded contractor who was provided with a DFAT email account and access to DFAT systems. The Commonwealth Purchase Order Terms were not sufficient for this purpose. Unless the obligation is included in a contract, embedded contractors are not required to comply with the policies of the entity and are not subject to the APS Code of Conduct and APS Values.⁶⁵

62 See also Auditor-General Report No.13 2023–24, *Efficiency of the Australian Passport Office*, paragraphs 3.71–3.72.

63 Auditor-General Report No.13 2023–24, *Efficiency of the Australian Passport Office*, ANAO, Canberra, 2024, paragraph 3.72.

64 Services Australia advised the ANAO in October 2024 that:

Service credits for failure to deliver upon agreed Key Performance Indicators (KPIs) were applicable from 19 December 2022 until the early termination of the agreement on 10 February 2023.

Serco failed to deliver on its Quality-of-Service KPI during this applicable period, and requested the Agency exercise its contractual ability to waive service credits. Following review of evidence, the Agency determined that it would waive service credits during this period as required under the contract.

65 Australian Government Solicitor, *Legal Briefing — Embedded contractors*, AGS, Canberra, 20 July 2023, available from <https://www.ags.gov.au/publications/legal-briefing> [accessed 13 September 2024].

Timing of entering the contractual arrangement

3.11 Works had commenced prior to the contract being in place for 11 (15 per cent) of the 73 arrangements examined.

3.12 The process for executing 55 of the 73 contracts examined included having a DFAT official sign the contract. DFAT officials had signed five of the 55 contracts (nine per cent) before they had obtained written approval to commit relevant money and enter into the arrangement.

3.13 Overall, for 52 (71 per cent) of the 73 contracts examined an appropriate contractual arrangement was in place prior to works commencing and after approval had been obtained to enter into it.

Was sound and timely advice provided to the approvers of contract variations, including on how value for money was achieved?

Sound and timely advice was not provided to inform decisions about whether to vary contracts. In aggregate, the contracts the APO entered between 1 July 2019 and 30 June 2023 doubled in value during that period through contract amendment. The approval records for contract variations did not include advice on how value for money would be achieved and, for a number of high value contracts, approval was sought after costs were incurred. A quarter of the variations tested were entered after the related services had commenced and/or costs incurred.

3.14 As per Department of Finance guidance to Australian Government entities on managing contract variations:

An entity should not seek or allow a contract variation where it would amount to a significant change to the contract or significantly vary the scope of the contract if it could reasonably be determined that:

- a. other potential suppliers may have responded differently to the amended contract scope in the tendering process which may have produced a different value for money outcome, or
- b. the variation may compromise the original procurement's value for money assessment ...

You need to document your decision-making process for a contract variation to ensure your position is defensible and the contract still presents value for money ...

You can only extend a contract if **all the following conditions are met**:

- 1. the contract contains an (unused) option to extend
- 2. it is value for money to extend the contract and
- 3. the contract has not yet expired.⁶⁶ [emphasis in original]

3.15 Other Department of Finance guidance states, 'Contracts should not be extended by variation due to a failure to appropriately plan procurement needs, continue supplier relationships,

⁶⁶ Department of Finance, *Australian Government Contract Management Guide*, July 2023, sections 2.12 and 2.13, available from <https://www.finance.gov.au/government/procurement/contract-management-guide> [accessed 13 September 2024].

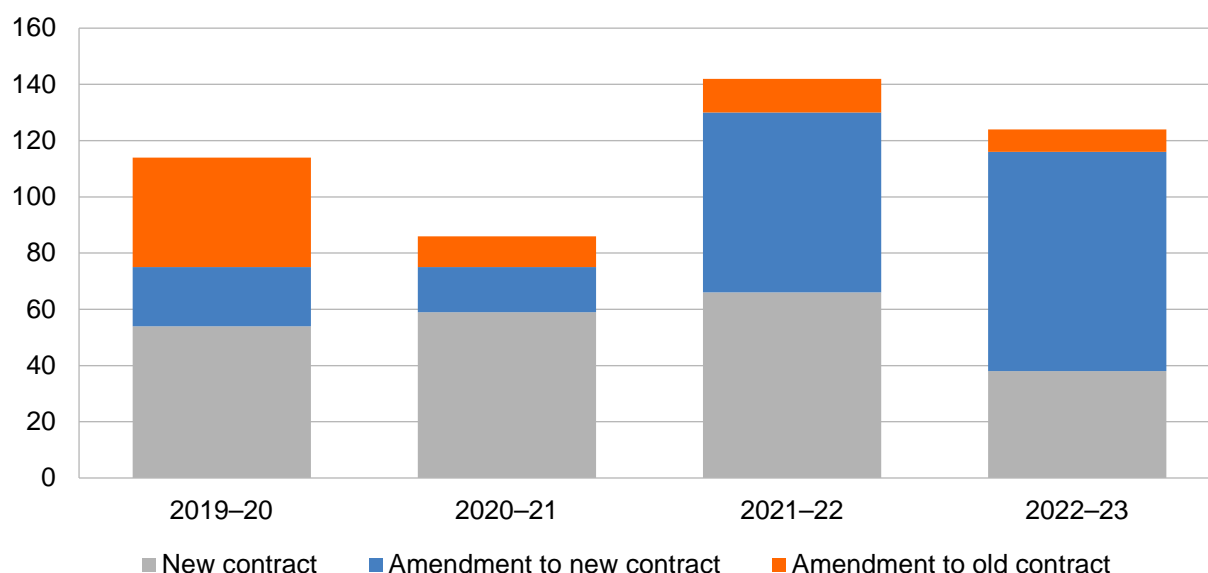
or with the intention of discriminating against a supplier, avoiding competition, or to avoid obligations under the CPRs.⁶⁷

Reported use of contract variations

3.16 The APO approached suppliers directly when varying an existing contract. This means that these processes were not undertaken in a competitive manner (the CPRs set out that competition is a key element of the Australian Government's procurement framework). This is particularly relevant when observing the number of amendments as a proportion of the total number of procurements undertaken by the APO during the audit scope.

3.17 The ANAO undertook high-level analysis of contract notices (parents and amendments) DFAT had published on AusTender for its APO procurement activities with a reported start date of 1 July 2019 to 30 June 2023. These included 217 new parent contracts totalling \$144.9 million and 249 amendments to new and old contracts totalling \$307.6 million. As can be seen in Figure 3.1, the number of amendments issued exceeded the number of new contracts entered in each year except 2020–21. By 2022–23, amendments represented 69 per cent of the total number of procurement activities reported for the APO.

Figure 3.1: Contracts and amendments by number by start date

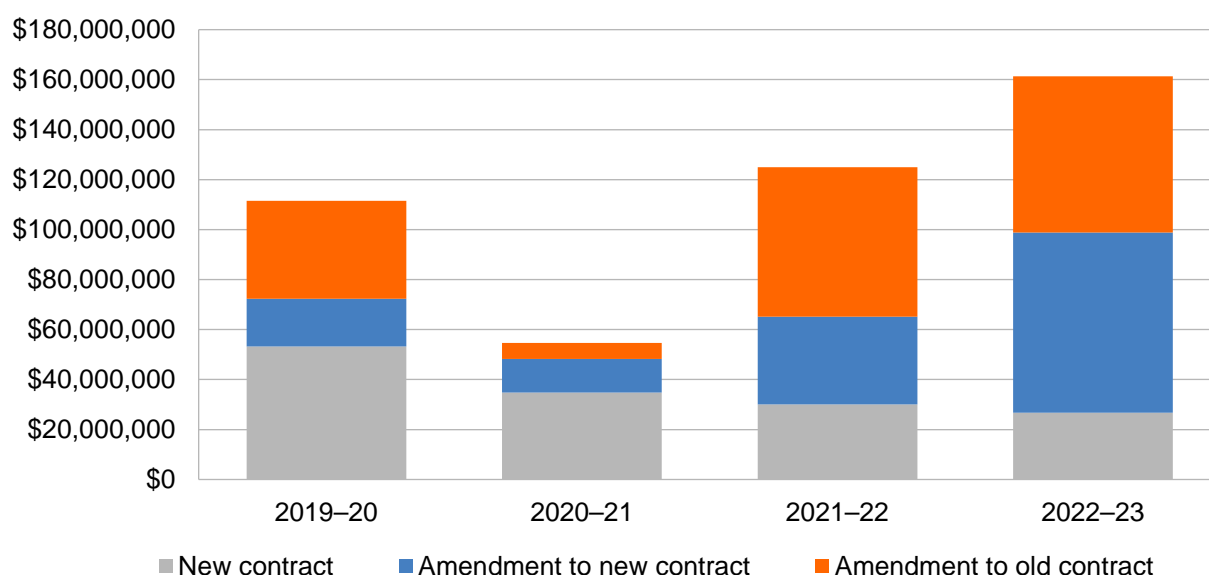


Source: ANAO analysis of AusTender data as at 30 September 2023 of contracts and amendments with a reported start date to 30 June 2023.

3.18 The department's substantial use of contract variations for APO procurements means that there has been no competitive pressure to inform assessments of value for money. The reported total value of contract amendments entered into by the APO in 2021–22 was more than three times the value of new parent contracts entered into. By 2022–23 the value of amendments was more than five times that of new contracts, with amendments representing 83 per cent of the total value of procurement activity reported for the APO, as can be seen in Figure 3.2.

67 Department of Finance, *Buying for the Australian Government — Contracts End Dates*, available from <https://www.finance.gov.au/government/procurement/buying-australian-government/contracts-end-dates> [accessed 13 September 2024].

Figure 3.2: Contracts and amendments by value by start date



Source: ANAO analysis of AusTender data as at 30 September 2023 of contracts and amendments with a reported start date to 30 June 2023.

3.19 The reported amendments to post 30 June 2019 contracts represented a 96 per cent total increase in their value, from an initial value of \$144.9 million to an amended value of \$284.5 million as at 30 June 2023.

Use of contract variations across 88 contracts examined in detail

3.20 The ANAO examined 15 contracts that started before 1 July 2019 ('old' contracts) and 73 contracts that started after 30 June 2019 ('new' contracts) and identified any amendments the APO had entered into between 1 July 2019 and 31 December 2023.

3.21 The 15 old contracts examined had an initial total value of \$371.5 million when they were established, and this had increased 106 per cent by 30 June 2019 to be \$763.5 million. The department had further amended 14 of the 15 old contracts since 30 June 2019. There were a total of 37 contract amendments starting between 1 July 2019 and 31 December 2023, of which 29 impacted the contract value. As at 31 December 2023, the 15 old contracts had a total value of \$1,020 million, representing a 174 per cent increase since establishment.

3.22 The 73 new contracts were established after 30 June 2019 with an initial total value of \$125.6 million. The department had amended 43 of the 73 new contracts since 30 June 2019. There were 166 contract amendments starting between 1 July 2019 and 31 December 2023, of which 133 impacted the contract value. As at 31 December 2023, the 73 new contracts had a total value of \$405.1 million, representing a 222 per cent increase since establishment.

3.23 Overall, across the 88 contracts examined, the APO had undertaken 203 amendments between 1 July 2019 and 31 December 2023. The 162 amendments that impacted the contract value (159 by increasing the value and three by decreasing value) totalled \$535.5 million. In the audit sample, therefore, the value of the APO's procurement by means of contract variation was more than four times the \$125.6 million in new contracts.

3.24 In some cases, the use of variation was appropriate as it involved exercising an option to extend the contract in accordance with the terms established through an approach to market. For example, a contract for the services of a 'Senior .Net Full-Stack Developer' was established via a competitive approach to a panel. The initial value was \$325,248 and the contract stated, 'the buyer may extend the term of the Work Order by two further periods of 12 months each on the same terms and conditions as this Work Order ...' DFAT exercised one of the extension options, amending the contract value an additional \$325,248 to be \$650,496.

3.25 As outlined in Chapter 2, most APO contracts were not established by means of open and fair competition, with some lacking genuine competition. Exercising an extension option in an improperly established contract compounds the impact of an inappropriate procurement.

3.26 Some variations involved adding new works well beyond the scope of the initial contract and/or increasing their value by a significant margin. These included the eight variations that resulted in a 989 per cent increase to what was initially a \$330,000 APO contract with Deloitte, as outlined in paragraph 2.45.⁶⁸

3.27 One of the 'old' contracts examined was with Verizon Australia Pty Ltd for Public Key Infrastructure services that DFAT reported as being let by limited tender with an initial value of \$3,194,739. The contract value nearly tripled between its start date of 1 August 2016 and its extended end date of 31 July 2024, growing to \$9,281,776. The contract was used to procure works beyond its original scope. An order entered in July 2021 for an additional \$3,374,800 stated 'This Work Order implements additional capabilities to support the digital signing of the Visible Digital Seal (VDS)', and it added a 44 page Statement of Requirements to the contract. Further evidencing that this work fell outside the terms of the original arrangement, a separate Purchase Order was raised for this activity. In August 2024, DFAT reported a further variation to this contract, extending its duration out to July 2026 and increasing the value by a further \$3 million to \$12.3 million (close to four times the original value).

3.28 The \$7.0 million contract with Datacom the APO established to provide inbound call answering services was increased by 1,204 per cent through variation as at 31 December 2023, including for reasons beyond the scope of the request for quote that had been issued to three potential suppliers (see paragraphs 2.40–2.42). Related concerns were raised with the ANAO by the Community and Public Sector Union (CPSU) in a submission to the audit.

3.29 Specifically, in its April 2024 submission to the ANAO on this audit, the CPSU raised concerns about a range of procurement decisions by DFAT relating to the APO, including the use of variation to expand the scope of the procured services. The CPSU submission included:

CPSU members within the APO consistently report concerns about the lack of transparency and consultation with workers, including regarding outsourcing and tendering processes.

In February this year, DFAT commenced a new contract with Datacom to perform ATLAS processing work in addition to its existing telephony work. CPSU members have raised concerns that this contract would see processing work bundled out in full to a private company, who would

68 A strategy described a 'land and expand' employed in the consulting sector was examined during the Senate Finance and Public Administration References Committee inquiry into management and assurance of integrity by consulting services.

in time develop their own trainers, Team Leaders and tech support. In effect, this would mean the creation of a privately run APO processing centre.

CPSU members also report that as of late 2023, they understand inbound call centre work has been completely transferred to Datacom. APO engaged Datacom to assist with managing inbound call centre work during the surge; the call centre was staffed by labour hire workers but managed by APS staff, trainers, tech support and Team Leaders, which appears to be no longer be the case.

Given the serious concerns with the integrity of tender management, the apparent expansion of existing contracts and engagement of new contracts is worrying ...

Advice provided on contract variations

3.30 As outlined from paragraph 2.94, advice provided to approvers on the outcomes of approaches to market was not always timely and, in most cases, did not demonstrate how value for money was considered to have been achieved. ANAO analysis of 203 amendments to the 88 contracts (old and new) examined in detailed, was that the timeliness and quality of advice to approvers further declined at contract variation stage.

3.31 DFAT procurement policy requires amendments to be approved before they are entered, including 'no cost' amendments. There was a recorded approval for 174 of the 203 amendments (86 per cent) examined. Of the 14 per cent of amendments that officials entered without recorded approval, 27 were 'no cost' amendments, one was a contract novation, and one increased the contract value by \$46,200.

3.32 Over half (59 per cent) of the 158 recorded approvals to increase the contract value contained no reference to value for money. Combined with the results of the ANAO analysis of 73 new contracts (see paragraph 2.97) the APO did not reference value for money in 47 per cent of the 231 approvals of funding examined.

3.33 In the 41 per cent of approvals for contract variations that did reference value for money, the reference was usually a brief statement that relied upon value for money having been established at contract execution, such as 'The value for money outcomes remain consistent with the initial Section 23 approval' or 'The hourly rate remains unchanged and is considered to continue representing good value for money to the Department'. These approaches do not adequately address value for money in decision-making.

3.34 For a quarter of the contract amendments examined, there were indications that services had already commenced and/or costs been incurred. At times the need for delegate approval of additional funding was triggered by there being insufficient funds remaining on the purchase order to pay a supplier invoice, which was indicative of underlying poor contract management practices within the APO.

3.35 The above shortcomings were evident in the APO's January 2023 and June 2023 amendments to its seven bulk labour hire contracts.

- The January 2023 amendments increased the combined value of the contracts by \$49.8 million. The related advice to the approver did not document how value for money was considered and achieved. The advice was not timely, given it stated that allocated expenses were currently exceeding the approved funds to the value of \$37.4 million.

(DFAT confirmed in June 2024 that this situation represented ‘a non-compliance with section 23 of the PGPA Act, the delegation instrument, and the Secretary’s Instructions’.)

- The June 2023 amendments extended the contracts by 12 months and increased their combined value by \$47.7 million. The related advice did not document how value for money was considered and achieved, or record that the contract extension options had already been exhausted. The advice was not timely, being submitted to the approver nine days before the contracts were due to expire.
- The June 2023 amendments resulted in the seven contracts reaching a combined value of \$175.4 million, representing a 361 per cent increase since they commenced in July 2019 at \$38.0 million. The amendment activity compounded the impact of two suppliers having been assessed by DFAT as ‘Poor’ against the value for money criterion during the approach to market. When calculated together, their contracts increased by 995 per cent and they attracted 51 per cent of the \$175.4 million awarded. (DFAT confirmed in June 2024 that ‘the procurement and contract management processes used in relation to [these two suppliers] did not comply with the core requirement of the Commonwealth Procurement Rules and DFAT Procurement Policy to demonstrate value for money’.)

Recommendation no. 5

3.36 The Department of Foreign Affairs and Trade strengthen its controls to ensure any contract variations are consistent with the terms of the original approach to market, and that officials do not vary contracts to avoid competition or other obligations and ethical requirements under the Commonwealth Procurement Rules.

Department of Foreign Affairs and Trade response: *Agreed.*

Were AusTender reporting requirements met?

ANAO analysis of AusTender data between 1 July 2019 and 30 June 2023 indicated that DFAT did not meet the Commonwealth Procurement Rules requirement to report contracts and amendments within 42 days of execution at least 22 per cent of the time. The extent of non-compliance increased to 44 per cent when the analysis was based on ANAO examination of the departmental records in a sample of 230 contracts and amendments. The AusTender reporting of 70 APO contracts examined was largely accurate. The reported descriptions of the goods or services procured was usually applicable but was also usually lacking in detail. The reported reasons given for 112 contract amendments examined did not contain sufficient detail to meet the minimum instructions in the AusTender reporting guide 81 per cent of the time.

Timeliness of reporting

3.37 Under the CPRs, entities must report all contracts and amendments on AusTender within 42 days of the execution date if they are valued at or above the reporting threshold.⁶⁹ An execution

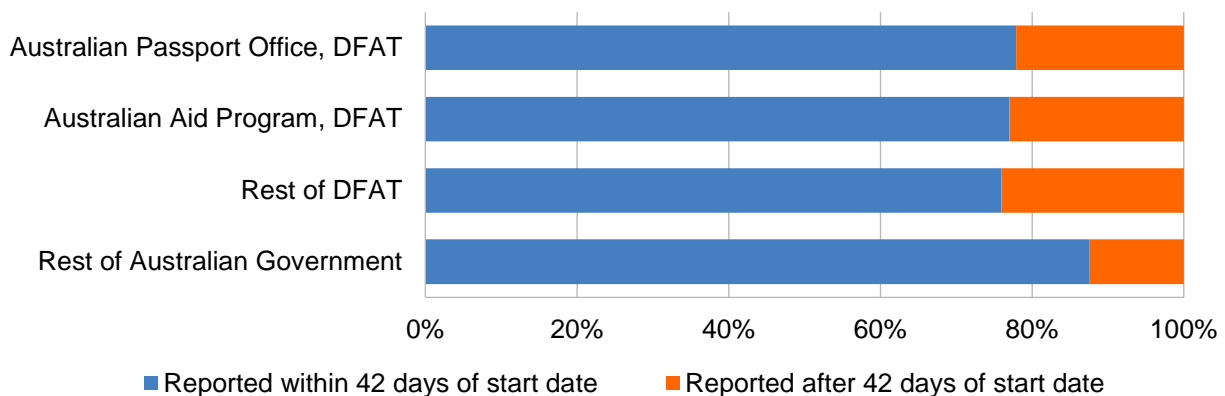
⁶⁹ The reporting thresholds are: \$10,000 for non-corporate Commonwealth entities such as DFAT; and, for prescribed corporate Commonwealth entities, \$7.5 million for procurement of construction services and \$400,000 for other procurements.

date field was introduced to AusTender from 1 July 2024. As this field was not yet available, the ANAO used the difference between the reported start date and the publish date to examine the timeliness of DFAT's reporting.⁷⁰ The scope of the analysis was contracts and amendments with a reported start date of 1 July 2019 to 30 June 2023, and the AusTender dataset was as at 30 September 2023.

3.38 DFAT reported 78 per cent of 466 contracts (including amendments) procured through its APO within 42 days of the start date, according to the AusTender data.

3.39 The total value of the 103 APO contracts reported late was \$139.1 million and the average delay for reporting was 178 days. A similar percentage of APO contracts were reported late when compared with other areas in DFAT. A greater percentage were reported late when compared with the rest of Australian Government entities, which collectively reported 12 per cent of contracts more than 42 days past the start date. (See Figure 3.3)

Figure 3.3: Contracts and amendments reported within 42 days of their start date



Note: At the entity level, DFAT reported 76 per cent of 8,590 contracts and amendments within the required 42 days.

Source: ANAO analysis of AusTender data as at 30 September 2023 of contracts and amendments with a reported start date of 1 July 2019 to 30 June 2023.

3.40 Shortcomings of AusTender analysis of the form used in Figure 3.3 include that it is based on the contract start date instead of the execution date and the data does not include contracts and amendments that were not reported until after 30 September 2023 or that have not been reported.

3.41 The ANAO examined in detail 73 new APO contracts, and 203 amendments to new and old contracts, that commenced between 1 July 2019 and 31 December 2023. DFAT was required to AusTender report 71 of the contracts and 159 of the amendments. ANAO calculated the number of days between the date of execution and the date of publication on AusTender (if any). DFAT's rate of compliance with the CPR requirement to report all APO contracts and amendments on AusTender within 42 days of the execution date was a lower 56 per cent. That is, 44 per cent of the contracts and amendments examined had either been reported late or not at all.

⁷⁰ The reported start date of a contract or amendment may not reflect the signed date, as outlined in paragraph 42 of the Resource Management Guide RMG 423 *Procurement Publishing and Reporting Obligations*.

Opportunity for improvement

3.42 There is an opportunity for DFAT to improve the timeliness of its AusTender reporting across the department.

Accuracy of reporting

3.43 One of the 71 contracts examined that DFAT was required to AusTender report had not yet been reported as at 30 July 2024. It was an October 2021 procurement from Infront Systems Pty Ltd for \$29,706 that had a status of 'awaiting approval' in DFAT's SAP Contracts database. DFAT requires that contracts at or above \$10,000, and contract amendments, be entered into SAP Contracts within seven days from execution 'to facilitate the timely publication of contract details on AusTender, and to provide a financial control when creating a purchase order'.

3.44 The ANAO identified other instances outside of the contract sample where a failure to AusTender report was reflective of the SAP Contract entries by the APO. For example:

- a \$52,628 purchase from the Print Media Group had not been AusTender reported and had a SAP status of 'Release Rejected';
- a \$104,196 contract with a resort in Port Douglas had not been AusTender reported and had a SAP status of 'Saved' (see paragraph 3.82); and
- a contract was entered against the wrong vendor in SAP, resulting in a \$1,195,968 contract with Infront Systems being incorrectly reported on AusTender as a contract with the Forward IT Trustee for Forward IT Unit Trust. A subsequent \$2,124,750 amendment to the contract with Infront Systems (increasing its value to \$3,320,718) was not then entered into SAP Contracts or AusTender reported.

3.45 Among the 70 APO contracts examined in detail that were AusTender reported by DFAT:

- One was an October 2022 procurement that was not AusTender reported until May 2024, which occurred in response to an ANAO request.
- Three had been reported against the wrong legal entity. Two of these three cases resulted from the purchase order being raised against the wrong vendor in SAP Contracts and then this error flowing through to AusTender.
- Two had been reported against the wrong panel arrangement.
- Six had been under reported by between \$5,500 and \$20.5 million (see paragraph 3.46) and a total of \$22.8 million.

3.46 In April 2024 the ANAO raised with DFAT that the reported value of the contract with Mühlbauer ID Services GmbH ('Mühlbauer') for 'passport personalisation' services of \$22.0 million was, from the ANAO's analysis, a significant understatement. In August 2024, DFAT advised the ANAO that the correct value was \$42.5 million, 93 per cent higher than the department had reported, and that it had updated AusTender.

3.47 Version 3.9 of the AusTender user guide, updated in 2018, outlined that users are provided a free text field to enter contract descriptions, noting that descriptions should be 'short, clear and relevant'. The majority of the descriptions entered by DFAT for the 70 APO contracts reported were largely applicable but lacked detail necessary for transparency. For example, 39 of the 70 contracts

were for the procurement of temporary staff in the state/territory passport offices or for embedded contractors. Of these 39:

- nine contract notices incorrectly described the procurement as being for ‘Personnel Recruitment’ services. As evidenced by the categories (‘phases’) of the whole of government People Panel, there is a difference between the procurement of: recruitment and search services; labour hire services for APS1 to SES equivalent; and professional contractor services.⁷¹
- four descriptions did not indicate the procurement was to engage an embedded contractor, with three using the description ‘Computer services’ and one ‘management advisory services’;
- 20 described the procurement as ‘Temporary Personnel Services’ which was largely applicable but did not provide insight into the differing purposes of, for example, an \$8.6 million contract for temporary APS equivalent staff to assist in passport processing versus a \$3.6 million contract for embedded accountants versus a \$380,160 contract for an embedded Solution Architect;
- two used the largely applicable but generic descriptors of ‘contractor engagement’ and ‘temporary contractor services;’ and
- four appropriately included an indication of the role of the embedded contractor (two said ‘Temporary personnel services for computer services’, one said ‘IT Manager’ and one said ‘Software administrator’).

3.48 There were some inaccurate descriptions among the 31 reported contracts for purposes other than temporary staff and contractors. Examples of inaccurate descriptions of APO contracts provided by DFAT in this free text field include: ‘radio Training’ to describe a software licence procurement; ‘Personnel Recruitment’ to describe file sentencing and destruction services; and ‘Management, Business Professionals, Administrative Services’ to describe venue hire.

3.49 The Joint Committee of Public Accounts and Audit has recommended that the Department of Finance ‘amend the reporting requirements on AusTender to ensure it is clear for every procurement: ... reasons for any amendments or variations to a contract, by standardising the relevant field to produce more structured data’. This resulted from the Committee’s concern ‘that the reasons for contract variations are not being reported in a sufficiently useful and transparent way, in that free text reasons for contract variations do not provide useful data’.⁷² The changes to the AusTender reporting functionality Finance introduced from 1 July 2024 include the removal of the free text field with entities instead required to select a standardised amendment reason when varying a contract.

3.50 ANAO analysis of the amendment reasons entered by DFAT were consistent with the Committee’s expressed concern. The AusTender user guide applicable during the scope of this audit stated that ‘all changes to Contract Notices require an “Amendment Reason” that details ‘any fields changed on this page’. Users were provided with a 140 character free text field for this purpose. The ANAO examined 112 reported amendments to APO contracts where DFAT had used the free

71 See <https://www.finance.gov.au/government/procurement/whole-australian-government-procurement/people-panel>.

72 Joint Committee of Public Accounts and Audit, Parliament of Australia, *Report 498: ‘Commitment issues’ — An inquiry into Commonwealth procurement* (2023), Recommendation 9, paragraphs 2.176–2.177.

text field. On 91 occasions (81 per cent of the time) DFAT had not identified whether the amendment had changed the contract value and/or end date field (as applicable).

3.51 Of the 21 occasions (19 per cent) where the applicable field was identified, the most descriptive reason given was 'Additional services and costs' for a \$330,489 amendment to a contract value. The amendment reason reported on the other 20 occasions did not extend beyond the form 'Value varied' or 'Period and Value varied'.

3.52 The ANAO has not made a recommendation relating to AusTender reporting in light of the changes to the AusTender functionality introduced from 1 July 2024. Further, it is expected that implementation of recommendations aimed at strengthening oversight of APO procurement and financial controls should improve the quality of the information entered into SAP Contracts and flowing through to AusTender.

Were procurement activities conducted ethically?

Procurement activities fell short of ethical requirements. In response to ethical findings made by the ANAO in relation to a number of the procurements examined as part of this performance audit, the department advised the ANAO that it considers there are clear indications of misconduct involving a number of current or former DFAT officials and contractors as well as clear cultural issues. The department has commenced, or is considering, investigation (or referral) activity in relation to the conduct of at least 18 individuals in relation to various procurements examined by the ANAO.

Ethical behaviour requirements

3.53 The Australian Parliament has established requirements in the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) including to require public monies be used and managed properly (section 5). The accountable authority for an entity responsible for relevant money has a duty under section 15 of the PGPA Act to promote the proper use of the money for which the accountable authority is responsible. 'Proper', when used in relation to the use or management of public resources, means efficient, effective, economical and ethical (section 8).

3.54 The CPRs are non-disallowable legislative instruments issued by the Minister for Finance under subsection 105B(1) of the PGPA Act. Under the CPRs, officials undertaking a procurement must act ethically throughout the procurement. This includes recognising and managing conflicts of interest, dealing with potential suppliers equitably, considering the use of public resources and complying with all relevant entity requirements and directions.

3.55 The Department of Finance PGPA Glossary defines ethical as:

the extent to which the proposed use of public resources is consistent with the core beliefs and values of society. Where a person behaves in an ethical manner it could be expected that a person in a similar situation would undertake a similar course of action. For the approval of proposed commitments of relevant money, an ethical use of resources involves managing conflicts of interests, and approving the commitment based on the facts without being influenced by personal bias. Ethical considerations must be balanced with whether the use will also be efficient, effective and economical.

3.56 The Australian Parliament has also established, through the *Public Service Act 1999* (PS Act), the Australian Public Service (APS) Values set out in section 10. Subsection 10(2) states that: ‘The APS demonstrates leadership, is trustworthy, and acts with integrity, in all that it does’. The APS Commissioner has made directions under the PS Act, including in subsection 16(f) requiring accountability of APS members by ‘being able to demonstrate clearly that resources have been used efficiently, effectively, economically and ethically’. A mandatory code of conduct is set out in section 13 of the PS Act for APS employees.

3.57 Subsection 13(4) of the PS Act includes that APS employees ‘when acting in connection with APS employment, must comply with all applicable Australian laws’. Section 32 of the PGPA Act states that, ‘To avoid doubt, the finance law is an Australian law for the purposes of subsection 13(4) of the *Public Service Act 1999*’. This means that if an official contravenes the finance law, sanctions may be imposed on the official under section 15 of the PS Act. A contravention of the CPRs is a contravention of the finance law (see also paragraph 3.96).

Probity advice

3.58 There was an identified probity advisor for 10 of the 73 procurements (14 per cent) examined in detail by the ANAO. Seven of these 10 contracts were procured through a single approach to market and, in all 10 cases, the probity advisor was a contractor from Procurement Professionals embedded within the APO procurement team. No risk assessment was undertaken for two of these procurements, while the others were assessed as low risk by the department.

3.59 Department of Finance guidance on ethics and probity in procurement notes that, while external probity advice can be a valuable asset in a tender process, the appointment of such specialists and the sign-offs provided by those specialists, do not remove the agency’s accountability for the process.⁷³ Further, it is important that entities conduct the procurement process for external probity advisers in a way that is ethical, not engage the same probity adviser on an ongoing basis and ensure that the tasks allocated to the probity adviser do not threaten the independence and objectivity of the probity adviser.⁷⁴ There were no instances in the 73 procurements examined in detail by the ANAO where DFAT engaged an external probity adviser.

Conflicts of interest

3.60 Paragraphs 6.5 and 6.6 of the Commonwealth Procurement Rules establish that identifying and managing actual, potential and perceived conflicts of interest are key aspects of ensuring that a procurement activity is ethical.

3.61 Of the procurements examined in detail by the ANAO, there was one process for which a conflict of interest declaration was completed and held in the department’s records for each member of the evaluation panel, the person who recommended the procurement outcome, the

73 Finance, *Ethics and Probity in Procurement*, Finance, available from <https://www.finance.gov.au/government/procurement/buying-australian-government/ethics-and-probity-procurement> [accessed 13 September 2024].

74 Auditor-General Report No. 42 2021–22, *Procurement of Delivery Partners for the Entrepreneurs’ Programme*, ANAO, Canberra, 2022, p.14, available from <https://www.anao.gov.au/work/performance-audit/procurement-delivery-partners-the-entrepreneurs-programme> [accessed 13 September 2024].
Auditor General Report No. 7 2023–24, *Establishment of the Workforce Australia Services Panel*, ANAO, Canberra, 2023, paragraph 2.70, available from <https://www.anao.gov.au/work/performance-audit/establishment-the-workforce-australia-services-panel> [accessed 13 September 2024].

person who approved the procurement outcome and the probity adviser (if any). This was the procurement process to engage bulk labour hire suppliers and resulted in seven of the 73 contracts examined.

3.62 There were a further 23 procurements (32 per cent of the 73 contracts examined) where a declaration was in the records for some of the key individuals involved with the procurement.

3.63 For the remaining 43 procurements, which were more than half of those examined by the ANAO (59 per cent), no conflict of interest declarations had been made and recorded by the department.

3.64 From departmental records, the ANAO identified that there were at least 16 instances where conflicts of interest existed without being declared. The department agreed with the ANAO's analysis.

- An example was the evaluation of a \$1,369,438 contract with Peoplebank for a service designer. All members of the evaluation panel signed conflict of interest declarations, declaring that they had no actual, potential or perceived conflicts of interest. This was despite the chair of the evaluation panel having previously been the employer of one of the specified personnel being assessed. This candidate had been included in the Request for Quote at the request of the chair of the evaluation panel and records indicate that person was the preferred candidate prior to the approach to market.
- In a different procurement of a \$675,840 contract with Propel Design Pty Ltd, the chair of the evaluation panel had a similar potential conflict of interest relating to their previous role as an employer and, in that case, did not complete a declaration.

3.65 DFAT advised the ANAO in May 2024 that two individuals in the first described procurement above, and one individual in the second described procurement, 'should have declared their personal interests and should not have been on the evaluation panel or involved in the procurement process in other ways'.

3.66 A further example is an approach to market for four test analysts where an evaluation panel member declared they had no conflicts of interest despite being contracted through one of the participating suppliers (Compas Pty Ltd).⁷⁵ Eleven suppliers had put forward a total of 43 candidates and, of the four candidates selected, three were from Compas resulting in three contracts totalling \$1.6 million. DFAT should have acted upon the conflict notwithstanding it had not been declared, given the department was concurrently extending the evaluation panel member's contract with Compas.

3.67 In another procurement where the chair of the evaluation panel had an undisclosed conflict of interest due to being contracted through a participating supplier, a small firm owned by an evaluation panel member was competing against one of the participating suppliers in a different APO procurement. That evaluation panel member did not disclose their conflict and was provided

75 The contractual arrangement required that 'The Supplier must ensure that the Supplier's Personnel uphold the values and behave in a manner that is consistent with the Australian Public Service Values and the APS Code of Conduct as applicable to their work in connection with this Contract.' More broadly, from 1 July 2024, the Commonwealth Supplier Code of Conduct is mandatory for inclusion in all Commonwealth contracts (see <https://www.finance.gov.au/government/procurement/commonwealth-supplier-code-conduct/commonwealth-supplier-code-conduct>).

the rates quoted by 14 suppliers for a total of 23 candidate submissions shortly before their firm submitted its own successful quote for similar services.

3.68 It was also evident that the department does not effectively manage declared conflicts of interest. This included one employee being engaged in a procurement process, including the early work preparing for the approach to market and the negotiation of the resulting contract that listed the DFAT employee's spouse as a specified personnel. In a different procurement conducted by direct-source, the DFAT employee was the approver and the manager of a contract that listed their spouse as a specified personnel to deliver the contracted services.

Fair treatment

3.69 Under the CPRs, entities must ensure that potential suppliers and tenderers are dealt with fairly and in a non-discriminatory manner. This includes avoiding a potential supplier gaining an unfair advantage in a competitive procurement process. It also means a preference for open and effective competition, rather than limited tenders (including direct sourcing).⁷⁶

3.70 Of the 73 procurement processes examined in detail by the ANAO, for 53 (73 per cent) the department had identified its preferred supplier before commencing the procurement process. While in 20 of these 53 cases the department would proceed to invite other candidates to 'compete' for the role the decision had already, in effect, been taken as to which supplier would be contracted. For one procurement, the incumbent's late tender was accepted and it was awarded the resulting \$465,590 contract notwithstanding that the request for quote stated that 'a quotation received after the closing time, other than through mishandling by DFAT, will be set aside and not evaluated further.'

3.71 Effective probity arrangements should not preclude officials undertaking market research before an approach to market is released. In this context, care must be taken to avoid the risk or perception that any potential tenderer has received an unfair competitive advantage. The APO did not maintain probity in its 2021 procurement of UiPath S.R.L at a cost of \$2.7 million for improved data capture technology. Prior to approaching the market, members of the tender evaluation panel had been exchanging emails with UiPath representatives, been meeting with them, and had arranged for UiPath to deliver a presentation to the APO Executive. Those opportunities were not afforded to the other eleven firms who responded to the subsequent approach to market. No strategies were developed to address the advantages those engagement opportunities provided UiPath over its competitors.

3.72 The APO did not conduct sufficient market research prior to a direct source engagement of Mühlbauer for 'passport personalisation' services at an estimated cost of \$32.6 million (and an actual contract value of \$42.5 million as at September 2024). Departmental records did not demonstrate that DFAT considered alternative approaches (including to other suppliers) or conducted market research. Between May to October 2019, DFAT engaged with Mühlbauer to inform the development of the requirements for the R Series personalisation solution, including travel to Germany.

3.73 Another common ethical issue involved DFAT re-engaging embedded contractors under a different supplier to perform the same, or similar, roles. This practice included, on occasion,

⁷⁶ CPR 5.1 states: 'Competition is a key element of the Australian Government's procurement framework. Effective competition requires non-discrimination and the use of competitive procurement processes.'

contacting contractors and asking them which supplier they would wish to be re-engaged through, and then approaching that supplier directly. In one instance, a contractor was engaged for 10 years through four different contracting agencies (see paragraph 2.59).

3.74 More broadly, it was evident that incumbent providers were frequently advantaged in procurement processes, with 38 of the 73 procurement processes (52 per cent) examined in detail by the ANAO involving an incumbent supplier and/or embedded contractor being re-contracted.

3.75 Consideration of a potential supplier's relevant prior experience may be a factor when assessing value for money, however previous experience with the entity must not be specified as, or be treated as, a condition.⁷⁷ A fair process involves allowing all competitors to demonstrate their ability to meet the requirements of the entity. The APO procurements involving an incumbent included examples where prior experience in the APO was the overriding justification given for re-engagement. For example⁷⁸, an October 2022 minute approving the outcome of an approach to market for an ICT contractor included the following justification for re-engaging the incumbent at a cost of \$458,304 for an initial two-year period (with two options to extend of twelve months each):

The proposal was determined as representing value for money under the established evaluation criteria of –

- Capability to deliver the services – the engagement of Alluvial ensures business continuity and the continuous provision of the current resource [candidate's name]
- Capacity to deliver the services – Alluvial have been engaged since November 2020 in the provision of these services and have continuously demonstrated ability and capacity in both the provision and administration of these services
- Experience and industry knowledge of proposed personnel – [candidate] demonstrates detailed knowledge of APO's systems and processes, and ability to develop and deliver reporting tools to support APO's operational business.

3.76 Another example of incumbency advantage, and of a failure to maintain probity⁷⁹, was a contract with Hays. This procurement began with a request from the DFAT manager of a contractor engaged through Hays requesting a contract extension. The manager was advised by the APO procurement team that a new approach to market was required because there were no extension options remaining. The manager continued to liaise with Hays and the contractor on preparation of a business case for a significant rate increase. The APO procurement team issued the request for

77 For example, CPR 10.16 says:

Conditions for participation may require relevant prior experience when that experience is essential to meet the requirements of the procurement but must not specify, as a requirement, that potential suppliers have previous experience with the relevant entity or with the Australian Government or in a particular location.

78 See also the two examples presented in paragraph 2.96, where the recorded basis for recommending a preferred candidate was largely reliant on incumbency advantage. In the second of those examples, the request for quote stated, 'Knowledge of APO Systems, Policy and Processes (Desirable)'. The incumbent received an overall score of eight out of ten, while the six competing candidates received scores of either one or two out of ten — none were interviewed by the evaluation panel.

79 See also the example outlined in paragraphs 2.66–2.67 where a contractor was emailed the approval to approach to market materials the week prior to the APO releasing a request for quote to that contractor's supplier and other suppliers. The approval materials contained pricing and other details that were not available to competing firms. CPR 10.8 includes 'Relevant entities must ensure that potential suppliers and tenderers are dealt with fairly and in a non-discriminatory manner when providing information leading to, or following, an approach to market'.

quote to four suppliers. The quote received in response from Hay's included, 'Please refer to Candidate CV and previously submitted Business Case'. The evaluation panel, which the manager chaired, recommended the incumbent. APO procurement asked Hays to revise its rate down. The supplier's justification for the significant rate increase included: 'The rate submitted was in conjunction with the Business Case document ... shared already with the APO ... the rate increase is in line with expectations set from conversations between [personnel], [manager] and the Department.' In response to detailed ANAO analysis of this procurement process, DFAT advised the ANAO in May 2024 that:

DFAT expects all approaches to market for a procurement to comply with the DFAT Procurement Policy and the Commonwealth Procurement Rules. This includes treating all potential suppliers equitably based on technical and commercial capabilities. For this procurement, the competitive advantage of the incumbent supplier, gained through their established relationships within, and knowledge of the APO was not recognised. Furthermore, other potential suppliers received lower scores because they did not have these relationships and this knowledge.

DFAT investigations and addressing misconduct

3.77 As set out in paragraph 1.6, during the conduct of an earlier audit of passport services efficiency (Auditor-General Report No. 13 2023–24), the ANAO observed a number of practices in respect of the conduct of procurement by DFAT through its Australian Passport Office that merited further examination.

3.78 During the conduct of this further ANAO performance audit of DFAT, the ANAO identified procurement practices that fell below an acceptable standard. In considering causal factors, ANAO did not identify an associated lack of procurement knowledge within the APO, or an unavailability of procurement support and guidance within DFAT. For example, during the period examined, the APO had engaged procurement expertise totalling \$7.1 million across five suppliers and 99 per cent of 247 approval records examined involved EL2 officials or above.

3.79 The ANAO provided DFAT with detailed audit analysis of a number of procurements where the ANAO had identified conduct that appeared inconsistent with ethical requirements, including the omission of relevant detail in the procurement records.⁸⁰ The ANAO first raised concerns regarding integrity and ethical matters that had been identified during the audit with DFAT in April 2024. DFAT initially advised the ANAO that it did not have sufficient investigatory resources to examine the matters identified. After the ANAO identified further matters, DFAT seconded in an experienced investigator from the Department of Defence.

3.80 DFAT advised the ANAO in June 2024 that it agreed with the audit findings relating to integrity matters, noting in particular that there are 'clear indications of misconduct involving a number of current or former DFAT Officials and contractors' as well as 'clear cultural issues within APO'.

3.81 In July 2024, the ANAO was advised by the department that, from the matters raised by the ANAO with the department, 18 individuals, comprising both employees and contractors, are 'persons of interest' (meaning they were being investigated or being considered for investigation

80 The ACT Integrity Commission's June 2024 report on 'Operation Luna (Part One): An investigation into the allegations of corrupt conduct by Canberra Institute of Technology public officials in connexion with the procurement of organisational change consultancy services' included discussion of ethical and integrity issues that arise where there is evidence of concealment.

or referral) in relation to various procurements examined in detail by the ANAO. In August 2024 DFAT advised the ANAO that the number of individuals will change as the process progresses.

3.82 A further matter raised by the ANAO with the department related to \$31,422 in travel costs for three and then four officers to take two 'planning' trips to Port Douglas in Queensland in December 2022 and February 2023. It also related to \$104,196 in cancellation fees and a non-refundable deposit paid to a resort in Port Douglas⁸¹ following a later decision to instead hold the May 2023 'Passport 6' conference in Canberra (the cost of the Canberra-based venue then selected was \$19,940). In response to questions about this expenditure from ANAO to DFAT, in July 2024 the department advised the ANAO that:

- the two trips and associated costs were not compliant with the DFAT Travel Policy and do not represent a proper use of public resources as required by the PGPA Act;
- it was not appropriate for four officials on the second trip to have accepted complimentary entry to a tourist attraction and, based on searches of DFAT records, this hospitality was not appropriately reported or approved;
- the procurement of a resort in Port Douglas did not comply with the requirements of the DFAT Procurement policy and did not represent value for money. The department noted that the justification for this venue and location was that the event would benefit the regional economy, however considered this was not substantiated by any evidence or analysis. DFAT advised the ANAO that it considered that market research or formal approach to market should have been undertaken including consideration of alternative locations and venues to justify value for money, including logistics and planning costs; and
- section 60 of the PGPA Act had not been complied with as, in signing the contract with the resort, the APO had agreed to an indemnity without a contingent liability risk assessment being undertaken and section 60 approval being obtained.

3.83 There is a risk that there are other procurements, not included in the sample of 73 examined in detail by the ANAO as part of this performance audit, that also merit further enquiry by the department given the responsibilities of a number of the 18 individuals advised by the department as being under investigation or considered to be 'persons of interest' by DFAT.

Recommendation no. 6

3.84 The Department of Foreign Affairs and Trade examine whether procurements not included in the sample examined by the ANAO include ethical and integrity failures, and subject any such procurements to appropriate investigatory action.

Department of Foreign Affairs and Trade response: *Agreed.*

81 The procurement was not reported on AusTender.

Did DFAT have sufficient oversight of its APO's procurement activities and controls in place?

The department's central procurement team has not exercised sufficient oversight of the APO's procurement activities. Departmental risk controls that have been documented have not been complied with by the APO and this non-compliance should have been evident to the central procurement team, and addressed. The department also does not have adequate arrangements in place for the identification and reporting of breaches of finance legislation.

Clearance by DFAT's central procurement team

3.85 Under DFAT's procurement policy, the APO is required to receive clearance from DFAT's central procurement team for procurements that meet certain criteria. For non-ICT non-aid related procurements these include:

- panel procurements with an estimated total value of \$1.5 million or greater and amendments where the total value of the revised agreement is above this threshold;
- non-panel procurements with an estimated total value of \$80,000 or greater and amendments where the total value of the revised agreement is above this threshold; and
- procurements that are not low risk.

3.86 Clearance from the central procurement team is required before delegate approval of the following documents:

- Section 23 PGPA Act approval to approach the market;
- approval of the evaluation outcome; and
- Section 23 PGPA Act approval to commit and enter into an agreement.

3.87 In the procurements examined in detail by the ANAO, there were at least⁸² 20 parent contracts which meet these criteria and, as such, required clearance from the DFAT central procurement team. The APO obtained central procurement clearance of the draft request for approval to approach the market stage (only) for the seven bulk labour hire contracts procured through a single approach. There were also 135 contract amendments examined that met the criteria. The APO obtained central procurement clearance for two of these 135 amendments (one per cent).

3.88 As such, the APO was not compliant with the requirements of the DFAT Procurement Policy. Non-compliance with the requirements of the DFAT Procurement Policy should have been evident to the department's central procurement team, as significant contracts were being reported by the department on AusTender without the central procurement team having been asked to provide the required clearance.

3.89 The process for requesting clearance from DFAT's central procurement team had long been in place and involved submitting the draft procurement documents via an online Agreement Clearance Worksheet. The ANAO identified, and DFAT confirmed, that all procurement information

82 As noted in paragraph 2.19, the APO assessed almost all of the procurements that were examined as 'low risk' regardless of recommended risk matrix classifications. As procurements were routinely recorded as 'low risk', despite the guidance of the DFAT procurement risk matrix, the number of procurement activities that required clearance is likely understated.

submitted by DFAT staff between July 2015 and 17 June 2024 was accessible to all DFAT officials and contractors who could access DFAT's intranet. The accessible information included, for example, the estimated value of proposed procurements, evaluation worksheets containing the prices submitted by competing tenders, and draft contracts containing the preferred tenderer's proposal and schedule of rates. This is inconsistent with the department's obligations to: maintain probity in the conduct of its procurement activities; and maintain the confidentiality of information submitted by tenderers (noting that the Commonwealth Procurement Rules state that 'Submissions must be treated as confidential before and after the award of a contract'). DFAT advice to the ANAO in June 2024 included:

The Agreement Review Worksheet is a legacy application that does not have granular security access controls. ...

DFAT considers that access to the Agreement Review Worksheet by all DFAT ICT users exposes DFAT to the risk that details of tenderers' submissions may be viewed by people who do not have a legitimate reason to do so.

DFAT notes that while system controls should be in place to limit access to information and records within the Agreement Review Worksheet application, DFAT's Ethics, Integrity and Professionals Standards Policy Manual states that APS employees, LES employees and contractors may only use, collect and assess official information where there is a legitimate need to know to fulfil their official duties.

DFAT has developed a new Agreement Review Worksheet application that is due to be released in July 2024. ...

At the request of DFAT's Internal Audit Branch, the Information Management Division has now retrieved logs of access to the Agreement Review Worksheet application between September 2021 - June 2024. There were 32,300 logged events. Work will commence shortly on analysing those events for signs of inappropriate access.⁸³

APO's internal controls

3.90 In August 2023, DFAT engaged Yardstick Advisory Pty Ltd at a reported cost of \$264,000 to undertake an internal controls review of the APO; services that were described by DFAT on AusTender as being a contract for 'management advisory services'.⁸⁴ The February 2024 report concluded that:

At an aggregated level, controls are rated as partially effective across APO. While no areas were identified as completely lacking controls, this assessment is largely due to lack of documentation, controls not yet being fully operational, or areas where control gaps were identified.

83 Further advice to the ANAO from DFAT in August 2024 was that:

The new Agreement Review Worksheet application was released on 5 July 2024. Access controls on this new Worksheet limits what a user can view, edit and delete based on their "role". Work has started on the analysis of logged events. DFAT has identified all individuals that accessed the Agreement Review Worksheet between September 2021 and June 2024 and is currently validating the rationale each of these individuals had to access the Worksheet.

84 AusTender contract notice CN3997089. Recommendation 8 of the Senate Finance and Public Administration References Committee in its June 2024 report on 'Management and assurance of integrity by consulting services' was that the Department of Finance improve the useability of AusTender by, among other things, requiring 'detailed, consistent and meaningful descriptions of contracts'.

3.91 The review identified ‘several themes or systemic control issues’ across the APO that related to ‘Records Management; Standard Operating Procedures; Management of Conflicts of Interest; Contract Management; Assurance Processes; and Manual Processes.’ It also noted two major risk sources relating to procurement and contract management arrangements between the APO and DFAT. These were ‘Procurement, Contract Management and Commercial Management across DFAT, IMD, PCE [APO], and Divisions is not clearly articulated’ and ‘ICT procurement / contract management by DFAT IMD is not clearly delineated’. The report noted that both of these risks had ‘Nil controls’. The report did not go to DFAT’s Audit and Risk Committee.

3.92 The risk identified in the internal controls review relating to the delineation of responsibilities for ICT procurement was one of the factors underpinning the underreporting of the Mühlbauer contract outlined at paragraph 3.46 above. The \$42.5 million contract comprised 33 work orders issued by the APO and/or IMD since it commenced in December 2020, with the related purchase order growing to 119 line items. The contract management issues extended beyond a failure to convert Euros to Australian Dollars for reporting purposes. The ANAO identified multiple breaches of the finance law. DFAT advised the ANAO in September 2024 that ‘we have reviewed all the Official Orders and Section 23 approvals we have on file for the Mühlbauer contract and identified the following breaches of the finance law’, being:

- sixteen instances where DFAT officers that signed the Official Orders did not have delegation for the total value of the contract and in some instances for the value of the Official Order;
- one instance where the DFAT officer that signed the section 23 approval did not have delegation for the total value of the contract;
- nine instances where section 23 approval was provided after the Official Order was signed;
- five instances where there was no properly signed Official Order on file; and
- the inconsistent application of GST to the value of the goods and services in the Official Orders and the section 23 approval minutes, with DFAT ‘investigating the issue further’.

3.93 The issues identified through the ANAO audit indicate the APO has not demonstrated sufficient capability and controls to undertake significant procurement activity in isolation of the central procurement team’s clearance and involvement, without risk of non-compliance with Commonwealth Procurement Rules and DFAT’s own policies.

Recommendation no. 7

3.94 The Department of Foreign Affairs and Trade strengthen oversight by its central procurement area of the procurement activities of the Australian Passport Office. This should include being represented on the evaluation team for each procurement activity of higher risk or value.

Department of Foreign Affairs and Trade response: *Agreed.*

Reporting non-compliance with the finance law

3.95 Section 19 of the PGPA Act requires, among other things, that accountable authorities of Commonwealth entities notify their responsible minister, as soon as practicable, of any significant

issue that has affected the entity. A significant issue, under section 19 of the PGPA Act, includes significant non-compliance with the finance law. The Minister for Finance requires that accountable authorities also notify the Minister for Finance of instances of significant non-compliance with the finance law reported to their responsible minister.

3.96 For the purpose of the PGPA Act, 'finance law' means: the PGPA Act, the PGPA Rule, the Financial Reporting Rule, and any instrument made under the PGPA Act including the Commonwealth Procurement Rules, accountable authority instructions and delegation instruments.

3.97 According to DFAT's Annual Reports for the five years from 2018–19, DFAT has not reported any significant issues to the responsible minister that relates to non-compliance with the financial law in relation to the entity.

3.98 The mandatory external compliance reporting process had changed in 2015–16. The ANAO reported in June 2018 that, following those changes, there was evidence that some entities were reducing the level of internal reporting of non-compliance captured and reported to audit committees and accountable authorities. The collation of this information, promotes greater transparency and enables the entity's management to assess risks and determine training requirements or changes to procedures required to address trends.⁸⁵ Finance's *RMG 214: Notification of significant non-compliance with the finance law* outlines that:

While a matter may not be sufficiently significant to report to the responsible Minister and/or the Finance Minister, entities are encouraged to review all incidents of non-compliance as these could indicate internal control problems or the beginning of more systemic issues.

The identification and reporting of non-compliance could also be used as the basis for improving the efficiency and effectiveness of entity internal controls and increasing awareness and understanding of the PGPA framework. For example, non-significant non-compliance could be brought to the attention of the audit committee to gauge the effectiveness of the internal controls of the entity.

3.99 DFAT Administrative Circular AC0267/17 of 11 July 2017 advised that, as only significant non-compliance issues were to be reported to entities' responsible minister and the Minister for Finance, DFAT staff were no longer required to report work units' breaches of the PGPA Act or respond to quarterly assurance surveys in the Financial Management and Compliance System.

3.100 On 18 March 2024 the ANAO checked the Financial Compliance Reporting page on DFAT's intranet. It stated that 'content has been taken down pending further review', with a 'date modified' of 23 May 2023.

3.101 DFAT's Finance Division provided the ANAO evidence of its reporting of incidents of non-compliance with the finance law to DFAT's Audit and Risk Committee. The Finance Division also advised the ANAO in April 2024 of the process it has in place to identify and/or be notified of the

85 Auditor-General Report No.47 of 2017–18, *Interim Report on Key Financial Controls of Major Entities*, ANAO, Canberra, 2018, paragraph 1.53, available from <https://www.anao.gov.au/work/financial-statement-audit/interim-report-key-financial-controls-major-entities-2017-18> [accessed 13 September 2024].

non-compliance as ‘was agreed by the Audit and Risk Committee in November 2016’.⁸⁶ The advised process included:

- ‘To identify significant breaches, Finance Division seeks confirmation throughout from line business areas and reports findings to the Audit and Risk Committee (ARC)’. (The ANAO examined some of the emails that Finance Division had used to ‘seek confirmation’ and noted that the APO was not in the recipient lists.)
- ‘Finance Division also uses the Internal Assurance Strategy, undertaken by Financial Management Branch (FMB) in preparing DFAT’s annual financial statements. This strategy assesses the risk and materiality of misstatement of each line in the financial statements and implements internal controls, system or process, to mitigate and reduce the risks to an acceptable level. These controls are tested to ensure that they operate effectively’.
- ‘Business areas who identify non-compliance are able to self-report to financial.policy@dfat.gov.au as non-compliance is identified for inclusion in the significant or systemic non-compliance review.’

3.102 During the conduct of this performance audit, the ANAO observed multiple breaches of the finance law, such as instances of costs exceeding the approved amount, which had not been reported through Finance Division to the Audit and Risk Committee. The breaches of compliance, as well as the extent of the contract variations as outlined above, are indicators of poor financial and contract management.

3.103 In addition, there were payments that did not represent a proper (efficient, effective, economical and ethical) use and management of public resources. For example, \$146,200 in license fees paid for a subscription service intended for use by two embedded contractors, which was not then used by those contractors or by other staff within the APO. The procurement was undertaken by one of the contractors in October 2021 and \$73,100 for the first year paid; both contractors left DFAT two months later in December 2021; and the APO paid \$73,100 for a second year in October 2022.

3.104 A DFAT internal audit of ‘Contract Management Arrangements’ involved the testing of a sample of 30 contracts ‘selected across a range of DFAT divisions’. According to the Final Report of August 2023, ‘Internal Audit identified 21 instances of non-compliance with Commonwealth Finance Law in the sample tested’, being ‘eleven breaches of section 23 of the PGPA Act’ and ‘ten instances of contracts not being published on AusTender within 42 days of entering the contract’. The internal audit conclusion included:

Despite having appropriate arrangements in place, Internal Audit observed poor adherence to the contract management arrangements and a lack of oversight and action in response to non-adherence. As such, Internal Audit assessed DFAT’s corporate contract management arrangements to be partially effective ...

86 As part of an Audit Committee’s assurance role the committee generally has oversight of the process for collating instances of non-compliance and the subsequent assessment regarding their significance. The reported results of a 2017–18 ANAO assessment of the key internal controls of 26 entities included that ‘the Department of Foreign Affairs and Trade’s policy requires only significant non-compliance to be reported to the audit committee and the accountable authority, therefore a complete listing of non-compliance breaches was not compiled’. The department was therefore excluded from the ANAO’s analysis of non-compliance across the 26 entities. (Auditor-General Report No.47 of 2017–18, *Interim Report on Key Financial Controls of Major Entities*, paragraph 1.48.)

Finance Division (FND) has recently commenced a body of work to uplift the capability of the department's corporate contract managers and improve their adherence with corporate contract management arrangements ...

the role of the FND as the second line monitoring and reporting function needs to be embedded into the enterprise assurance framework, with periodic reporting to a governance committee responsible for providing oversight of the risk and control environment.

3.105 The August 2023 internal audit made two recommendations. They involved DFAT's Finance Division enhancing its suite of contract management guidance and developing a risk-based assurance plan to support its role as the second line of assurance for corporate contract management activities. The two recommendations were closed as implemented by DFAT's Audit and Risk Committee at its 25 March 2024 meeting.

Opportunity for improvement

3.106 There would be benefits from DFAT requiring all instances of non-compliance with the finance law to be reported centrally to enable the entity and its audit committee to better gauge the effectiveness of internal controls.



Rona Mellor PSM
Acting Auditor-General

Canberra ACT
31 October 2024

Appendices

Appendix 1 Entity responses

1. A number of the responses to the proposed report provided by entities contracted by the Department of Foreign Affairs and Trade suggested errors in the audit report, or otherwise proposed that changes be made to the wording of the audit report. Where comments and/or proposed changes were consistent with the audit evidence, amendments to the report were made prior to tabling. None of these changes impacted the audit findings or conclusions. In other instances, the ANAO informed the respondent that the comments and/or proposed changes were inconsistent with the audit evidence.

Department of Foreign Affairs and Trade**Australian Government**
Department of Foreign Affairs and Trade**Jan Adams AO PSM**
Secretary

Ref: EC24-001741

Rona Mellor
Acting Auditor-General
Australian National Audit Office
FOREST ACT 2601

Dear Ms Mellor

Thank you for your email of 16 September 2024 providing the Australian National Audit Office's (ANAO) proposed audit report on *Procurement by the Department of Foreign Affairs and Trade through its Australian Passport Office*. We appreciate the opportunity to respond.

The department values the ANAO's independent review of procurement practices at the Australian Passport Office (APO). The audit came at a time when the department was already assessing the effectiveness of procurement activity. We are implementing a new model to improve compliance, assurance and efficiency. This model will include the Finance Division taking more centralised and direct control over procurement activities. Additional resources have been allocated to implement changes and provide enhanced oversight.

The ANAO audit highlighted the proactive steps the current Executive Director of the Australian Passport Office took to address procurement and cultural issues when she commenced with the department in early 2023. Work has continued, leading to the creation of a new Procurement, Finance and Assurance Section within the APO and the Finance Policy and Capability Section in Finance Division. Additionally, the Internal Audit Branch has initiated a wide-ranging internal audit of procurement activities across the department. Findings will be regularly presented to the department's Audit and Risk Committee.

Following the ANAO audit report and internal reviews, the department will also revise its Compliance and Assurance Framework as it relates to *Public Governance, Performance and Accountability Act 2013* (PGPA Act) obligations. The updated Framework will be purpose-built, adopt a risk-based approach, and include effective assurance mechanisms.

The department acknowledges the ANAO audit identified a range of integrity and ethics concerns involving several individuals (both contractors and public servants), which we take very seriously. The department is assessing these and has commenced a range of activities to consider and treat any wrongdoing with appropriate and proportionate remedies.

RG Casey Building, Barton ACT 0221 www.dfat.gov.au

We further acknowledge the ANAO's observations on culture and leadership. Work has begun to enhance a compliance culture through direct communication and training for senior leaders. A key focus will be on individual financial management obligations under the PGPA Act. To strengthen leadership on these issues, accountability requirements will be reflected in personal performance agreements.

The department's Integrity Strategy 2024–26, released in August 2024, will strengthen its trust with government, stakeholders and the Australian public.

The department's summary response to the audit is at Attachment A. Our response to the ANAO's recommendations are at Attachment B.

Should your office require further information on the response, please contact the department's Chief Auditor, Mr Darren Sharp, on (02) 6178 5592 or darren.sharp@dfat.gov.au.

Yours sincerely



11 /10/2024

Alluvial Pty Ltd



Alluvial Pty Ltd
www.alluvial.net.au
ABN: 21 612 803 308

Ms Rona Mellor PSM

Acting Auditor-General for Australia

Australian National Audit Office

By Email: officeoftheauditorgeneralperformanceaudit@anao.gov.au

Dear Ms Mellor PSM,

We write in relation to your email of 17 September 2024 regarding the audit report on Procurement by the Department of Foreign Affairs and Trade through its Australian Passport Office.

Thank you for the opportunity to provide a response to the findings in respect of Alluvial Pty Ltd. Based on our review of the excerpts provided to us, our response is as follows:

Alluvial is a small family-owned company that prides itself in providing exceptional ICT candidates for employment to federal government. Because we are a family-owned company with a view on long-term sustainability, and do not have the burden of large overhead costs like other large companies, Alluvial is able to offer candidates at competitive rates enabling both our government clients and our candidates to realise the benefits. Alluvial's ability to provide our candidates with flexible working arrangements together with our low fee structure means we are able to attract the best candidates.

Alluvial's aim is to always provide the most experiences and professional contractors at competitive rates creating value for money to the federal government. Alluvial upholds the highest ethical standards and complies with procurement guidelines and standards, always. All labour hire contracts which were the subject of this ANAO audit were awarded through a competitive tender process, predominantly via the Digital Marketplace.

Regarding section 2.53 and 2.54, Alluvial agrees with the facts presented however, we note that at least two of the contracts listed did not run to full term as usually occurs in a competitive contractor job market.

Regards,

MICHAEL MATHESON

Director



www.alluvial.net.au



Email

14 October 2024

Ms Rona Mellor PSM
Acting Auditor-General
Australian National Audit Office
c/o brian.boyd@anao.gov.au

Dear Ms Mellor PSM

Proposed ANAO report into Procurement by the Department of Foreign Affairs and Trade through its Australian Passport Office (Proposed Report) | Compas Pty Ltd response

Thank you for the opportunity for Compas Pty Ltd (**Compas**) to respond to sections of the Proposed Report, which we understand is primarily focussed on the actions of the Department of Foreign Affairs (**DFAT**) and the Australian Passport Office (**APO**) in undertaking procurement.

Compas is concerned that the sections of the Proposed Report it has been provided conveys an incorrect imputation that it has engaged in conduct that may not be in accordance with the Commonwealth Procurement Rules. This response addresses this imputation and how it can be remedied.

Compas' business model

Compas is an ICT and Public Sector recruitment company. We have been providing contractors to numerous APS agencies since 1987. Our business model is one where we:

- engage with ICT and public sector professionals to help find them work that best fits their expertise and lifestyle needs; and
- help put organisations together with these professionals to fulfil the needs of their business or agency.

Notably, Compas does not employ its contractors and they are not subject to the direction or control of Compas. Once a contractor is embedded with a client (such as DFAT), their duties and day-to-day responsibilities are set by the client over which Compas has no input, control or visibility.

Incorrect imputation

Proposed paragraph 3.66 concludes that:

- (a) a contractor engaged with DFAT via Compas was part of an evaluation panel to assess candidates for four test analyst positions, which included candidates from Compas (**the Panel Member**);
- (b) the Panel Member declared that they did not have any relevant conflicts of interest in relation to that process;



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Compas Pty Ltd
ABN: 90 008 615 745



ICT SERVICES & RECRUITMENT

- (c) as a result of that process, three candidates put forward by Compas were selected from a pool of 43; and
- (d) DFAT should have acted on the Panel Member's conflict because it was aware that they had been engaged by Compas.

Whilst not expressly stated, Compas considers proposed paragraph 3.66 conveys the imputation to the reader that, as a result of the Panel Member's failure to declare a conflict, Compas has, in some way engaged or assisted someone else engage in, unethical conduct that breaches the Commonwealth Procurement Rules and has gained a benefit by doing so.

From Compas' perspective, and for the reasons set out in this reply, such an imputation is incorrect and should be clarified by the ANAO in any finalised report.

No wrongdoing by Compas

Compas accepts that, if the Panel Member did not declare that they had been engaged by DFAT via Compas as part of their involvement with the evaluation panel, in circumstances where they would have been sitting in assessment of Compas nominated contractors, this may amount to an actual, potential or perceived conflict of interest.

However, it is clear that the relevant evaluation process was an internal DFAT process over which Compas, rightly, had no visibility or involvement in. Given this, Compas cannot respond, nor is it privy to, what processes were taken by DFAT to address the Panel Member's affiliation to it.

In these circumstances, it is our position that any deficiencies in the evaluation process cannot, in any way, be attributed to Compas, and the final report should make this expressly clear in its findings. Any failure to do so could result in a reader being under a misapprehension that Compas had the ability to influence the process, did in fact influence the process improperly and as a result, gained an improper advantage or benefit.

Potential consequences

Compas has worked hard over the course of nearly 40 years to build a reputation as a reliable, professional and ethical source of recruitment to government. We are acutely aware of the need for probity in government procurement and we are proud to have been appointed to various federal, state and territory panels as a trusted source of recruitment solutions across all levels. Should the ANAO publish its report in its proposed fashion, Compas is concerned that this reputation will be affected in an unreasonably adverse manner.

Compas is a comparatively small operator in the recruitment industry and any reputational damage could affect our business in a disproportionate manner. This is particularly so in circumstances where work for government comprises a significant portion of the work we undertake.



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Conclusion

For the above reasons, we request that the company name "Compas" is removed entirely from any final report and the term "participating supplier" is used instead. If, however, you are not minded to make this change, we have provided the ANAO with an amended version of proposed paragraphs 3.64 and 3.66, which would to some extent address the concerns raised in this correspondence. We would be grateful for your consideration of these amendments in light of what has been explained in this response.

Should the ANAO consider an amendment to the paragraphs of the proposed report provided to Compas is appropriate, we would appreciate a further opportunity to respond to them.

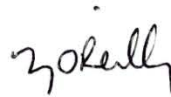
Thank you for your consideration. Please do not hesitate to get in touch if you wish to discuss this response further.

Kind regards

Yours sincerely



Wayne Murphy, Director



Terry O'Reilly, Director



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10, October 2024

Ms Rona Mellor PSM
 Acting Auditor-General for Australia
 Australian National Audit Office
 Canberra ACT

By email: OfficeoftheAuditorGeneralPerformanceAudit@anao.gov.au

Dear Ms Mellor,

I refer to your email to of 17 September 2024.

Thank you for bringing the proposed report regarding Procurement by the Department of Foreign Affairs and Trade (the **Department**) through its Australian Passport Office (the **Report**) to our attention and for allowing us the opportunity to review and provide a response.

We wish to bring the following matters to your attention in relation to the extracts from the Report provided to us:

1. The extract refers to an engagement that was the subject of a Work Order under the Digital Transformation Agency – Digital Marketplace Panel (SON3413842), that was varied eight times with the value increasing by 989% for a total of \$3,592,589 (incl GST) and the term increasing from 12 months to 30 months.
2. The extract is incorrect in that there were, in fact, two separate engagements sourced by the Department.
3. The first engagement, commenced in June 2021 was in relation to support for the finance function in the form of personnel to fulfil the role of a dedicated on-site resource to undertake BAU financial management activities and provide strategic advice to strengthen the Australian Passport Office's existing financial governance structure (**Engagement One**). The initial fees for Engagement One were \$330,000. The contract in relation to this engagement included a 12-month extension option and was varied four times as follows:
 - a. Amendment 1: January 2022 for an extension of 21 working days and for additional personnel;
 - b. Amendment 2: March 2022 for an extension of 27 working days for the same personnel;
 - c. Amendment 4: May 2022 for additional personnel and an extension of the engagement by a further 12 months to 30 June 2023, in line with the extension option set out in the Work Order; and
 - d. Amendment 5: June 2022 for additional resources.

The cumulative impact of the variations requested by the Department resulted in potential contracted fees of \$1,110,450 and a total engagement term of two years. On the basis that Engagement One was provided on a time and materials basis, only \$823,561 was billed to the client. Please note these amounts are GST inclusive.

4. The second engagement was sourced via an RFQ under the Department of Finance Panel (SON3751667) for Management Advisory Services to assist in the development of a New Policy Proposal (NPP) for the modernisation of passport services (**Engagement Two**). It appears that the Department may have incorrectly recorded this work as being an extension to Engagement One, however the following variations are related to Engagement Two:

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- a. Amendment 3: April 2022 for the provision of four resources from April 2022 to December 2022;
 - b. Amendment 6: September 2022 for the provision of three additional resources and to extend the agreement for a further 12 months; and
 - c. Amendments 7 & 8: September 2022 for extension and additional resources,
5. The cumulative impact of the variations for Engagement Two requested by the Department resulted in potential contracted fees of \$2,482,139, however total amount of \$2,408,204 was invoiced and a total term of 21 months, in line with the original term and an extension of 12 months.
6. We note that:
- a. neither of these engagements extended for 30 months - both were within the agreed terms of the contract; and
 - b. neither of these engagements were varied 8 times - each variation under the separate engagements were within the stipulated timeframes and were in relation to additional services and resources being provided at the daily rates previously agreed with the Department.

In light of the additional clarifying information in this letter, the audit team may wish to further review the extracts of the Report provided. Thank you again for the opportunity to provide input and if you have any further questions, please do not hesitate to reach out.

Best wishes,



Gabriel Mustafa
Partner

Procurement Professionals Pty Ltd



Rona Mellor, PSM
Acting Auditor General for Australia
Australian National Audit Office

13 October 2024

Dear Ms Mellor,

**Re: ANAO Report on Procurement by DFAT through its Australian Passport Office –
Extract for Procurement Professionals Pty Ltd**

Thank you for providing Procurement Professionals Pty Ltd (Procurement Professionals) with the opportunity to comment on the extract from the proposed report by the Australian National Audit Office (ANAO) relating to Procurement by the Department of Foreign Affairs and Trade (DFAT) through its Australian Passport Office (APO).

As a firm specialising in the provision of procurement services to the Australian Government, we hold the efficient, effective, economical and ethical use and management of public resources in the highest regard.

The report notes that in September 2021 the APO engaged a contractor through Procurement Professionals to develop a multi-year procurement strategy and to undertake a stocktake of APO memoranda of understanding (MOU). We confirm that a stocktake of the MOU was conducted by the contractor and documentation detailing these was prepared and provided to the APO. A draft multi-year procurement strategy was also prepared and a presentation was provided to the APO Senior Executive, and was well received.

Subsequent to the presentation of the draft multi-year procurement strategy, the APO and DFAT's IT Management Division (IMD) began discussions relating to IMD taking over all of the APO's IT related procurement. Due to the number and value of IT contracts comprising the multi-year procurement strategy, the work to further develop the strategy was put on hold by the APO and, to the knowledge of Procurement Professionals, did not subsequently recommence. Procurement Professionals stopped providing services relating to these pieces of work, as directed by the APO, and no further invoices were issued. The total amount invoiced was less than 38% of the \$102,168 allocated to the provision of these services, commensurate with the point in time in which the time and materials based services ceased.

We note there are references to the abovementioned contractor being engaged as a 'direct source procurement'. Direct source procurement is not a term used in the Commonwealth Procurement Rules (CPRs) and a definition was not provided in the



extract Procurement Professionals received so we are not aware of its definition in this report. We can confirm that the contractor was engaged by the APO through an amendment to an existing contract with Procurement Professionals. The value of the contract amendment equated to less than 7% of the overall contract value and we did not consider the value or services to be a major change in our contract scope.

The report also refers to probity advice provided by Procurement Professionals. Any probity advice provided by Procurement Professionals would have been on occasions where the APO made a business decision that external probity advice was not deemed necessary.

We cannot comment on any procurement conducted by personnel at DFAT outside of the employment of Procurement Professionals. We can state however, that any procurement conducted by Procurement Professionals was, and is always, conducted with the highest ethical standards and integrity and in accordance with the Commonwealth Procurement Rules and the Australian Government's Procurement Framework.

Procurement Professionals looks forward to receiving the ANAO's full report on this matter and thanks you for the opportunity to comment.

Yours sincerely

A handwritten signature in black ink, appearing to read "Luke Jess".

Luke Jess
Director
Procurement Professionals Pty Ltd

Propel Design Pty Ltd

13 October 2024

Rona Mellor PSM
Australian National Audit Office
OfficeoftheAuditorGeneralPerformanceAudit@anao.gov.au

Dear Ms Mellor

Thank you for providing Propel Design Pty Ltd with an extract of the proposed audit report 'Procurement by the Department of Foreign Affairs and Trade through its Australian Passport Office'.

Propel Design notes the extract, which relates to a procurement where a Propel Design employee was selected as the preferred contractor, and where the Department of Foreign Affairs and Trade has advised the Australian National Audit Office that an individual involved in the evaluation process should have, but did not, declare a potential conflict of interest.

Propel Design submitted its tender for the procurement in accordance with all requirements under the Digital Marketplace (now BUYICT) and was not aware of any individuals appointed to the evaluation panel. We believe our employee was selected based on their skills and experience, as set out in their resumé and our responses to the selection criteria.

Thank you again for the opportunity to review and comment on the extract.

Yours sincerely

Ruth Ellison
Research Director & Co-Founder
Propel Design Pty Ltd



Services Australia



Australian Government

Services Australia

Our Ref: EC24-003155

Chief Executive Officer
David Hazlehurst

Ms Rona Mellor PSM
Acting Auditor-General
Australian National Audit Office
GPO Box 707
CANBERRA ACT 2601


Dear Ms Mellor

**Services Australia's response to the Australian National Audit Office's (ANAO)
performance audit extract of the proposed report for the Procurement by the Department
of Foreign Affairs and Trade through its Australian Passport Office**

Thank you for your email of 16 September 2024 in relation to providing Services Australia (the Agency) with the opportunity to comment on the extract from the proposed s.19 report from the ANAO's performance audit, Procurement by the Department of Foreign Affairs and Trade (DFAT) through its Australian Passport Office.

I note the extract only contains references to the Agency in relation to a Serco contract involving the provision of passport processing capacity for DFAT over the 2022-23 period and the arrangement not being appropriate for DFAT's purposes due to several reasons.

The Agency's response set out at [Attachment A](#) provides additional information which clarifies the nature of the engagement and proposes editorial changes that reflect our evidence.

Considering the additional information we have provided, we kindly request the extract be amended to remove any comments directed at the Agency that could be perceived as adverse.

Yours sincerely



David Hazlehurst

9 October 2024

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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 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. In this context, the below actions were observed by the ANAO during the course of the audit. It is not clear whether these actions and/or the timing of these actions were planned in response to proposed or actual audit activity. The ANAO has not sought to obtain assurance over the source of these actions or whether they have been appropriately implemented.
 - DFAT's Internal Audit Branch and Scyne Advisory (at a cost of \$115,500) undertook a management initiated review 'to assess whether an alternative procurement operating model is appropriate for the Department to effectively conduct, oversight and assure its procurement functions'. The Final Report was presented to the department's Audit and Risk Committee at its meeting of 29 August 2024. The Final Report included:

DFAT agrees with the key findings and supports the recommendations in this MIR report. We consider a hybrid operating model, encompassing a stronger strategic procurement capability, including additional resourcing within Finance Division, will help enable improved governance and assurance of procurement activities ... Finally, we confirm that DFAT's Senior Executive are committed to enhance workforce capability and capacity, particularly with regards to financial and procurement expertise.
 - The DFAT Procurement Policy was updated in July 2024 to include, among other things, more detailed information on when staff and contractors need to complete procurement-specific conflict of interest declarations and confidentiality declarations.
 - DFAT's Integrity Strategy 2024–26, released August 2024, includes procurement related actions such as: 'Increase SES attendance at procurement training'; 'Implement and comply with the Supplier Code of Conduct'; and 'Review complex and high-risk procurement policies and practices to reflect increasing delivery complexity'.