

Conduct of Procurements Relating to Two New Child Sexual Abuse-related National Services

Attorney-General's Department

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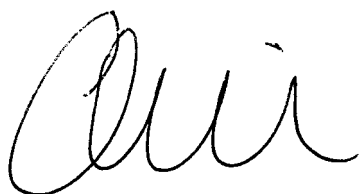
Canberra ACT
18 June 2025

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 Attorney-General's Department. The report is titled *Conduct of Procurements Relating to Two New Child Sexual Abuse-related National Services*. 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



Dr Caralee McLiesh PSM
Auditor-General

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

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Audit snapshot

Auditor-General Report No.44 2024–25

Conduct of Procurements Relating to Two New Child Sexual Abuse-related National Services



Why did we do this audit?

- ▶ The establishment of the new services is part of the response to the 2017 final report of the *Royal Commission into Institutional Responses to Child Sexual Abuse*.
- ▶ The timely conduct of the related procurements is intended to establish services that will provide support and advocacy for a cohort of victims of child sexual abuse and also to protect children by intervening before an individual offenses.



Key facts

- ▶ Requests for Tender were issued in November 2023 to engage service providers to deliver a new national support service for non-offending family members of child sexual abuse perpetrators and a national child sexual abuse offending prevention service.
- ▶ Funding for the services was provided through the 2021–22 Budget with the expectation that services would begin to be provided by the start of 2023–24.
- ▶ Contracts have not been signed and services are yet to commence.



What did we find?

- ▶ The new child sexual abuse-related national services identified as needed by the Royal Commission are not being provided, with no contracts in place for the delivery of those services.
- ▶ The procurements did not involve open and effective competition and the selection of preferred tenderers did not demonstrate the achievement of value for money.
- ▶ The conduct of the request for tender processes was not timely, non-compliant tenders were accepted for evaluation and ethical requirements were not met.
- ▶ Tender evaluation to select preferred tenderers was not well planned, was not timely and did not demonstrably achieve value for money.



What did we recommend?

- ▶ The Auditor-General made six recommendations to the department to improve the conduct of procurements.
- ▶ The department agreed to the recommendations.

\$19.8 m

budgeted for the provision of the new services.

June 2024

notification to preferred tenderer for a national child sexual abuse offending prevention service.

Sept 2024

notification to preferred tenderer for a new national support service for non-offending family members of perpetrators.

Summary and recommendations

Background

1. The National Office for Child Safety (NOCS) was established in July 2018 in response to the *Royal Commission into Institutional Responses to Child Sexual Abuse* (the Royal Commission). The Royal Commission had reported in December 2017. NOCS was initially located in the Department of the Prime Minister and Cabinet. It was moved in 2022 to the Attorney-General's Department (AGD) as a result of the June 2022 Administrative Arrangements Order.
2. In October 2021, the Australian Government launched the *National Strategy to Prevent and Respond to Child Sexual Abuse 2021–2030* (National Strategy).¹ The first phase of the National Strategy includes two four-year action plans (from 2021 to 2024): the First National Action Plan (NAP), to be delivered by Commonwealth, state and territory governments; and the First Commonwealth Action Plan, to be delivered by Commonwealth agencies.
3. NOCS is responsible for launching three new national support services. The provision of the three national support services is to be contracted. The approach to procuring service providers for NAP Measures 7, 10 and 21 was considered in the same procurement strategy, in which the department stated, 'the three services are in varying stages of development and would likely be ready to approach the market at different times throughout 2023'. A Request for Tender (RFT) process has been undertaken for NAP Measures 10 and 21. Procurements have also been undertaken for the advisers and consultants to assist with the NAP Measure procurement processes as well as an evaluation provider for the NAP 10 and NAP 21 services.
4. There will be a lag between contracts being signed and services being provided to non-offending family members of child sexual abuse perpetrators (NAP 10) and persons at risk of offending or re-offending (NAP 21). The contractual arrangements that were the subject of the RFTs set out that there would be four phases to service delivery. The first two phases are, on the basis of the tender responses from the two preferred tenderers, expected to take at least five to six months. Those phases involving planning, design and establishing the infrastructure to enable service delivery (including the operation of the helplines and provision of websites) to commence in the third phase. Service delivery to citizens commences in the third phase. The offer periods were extended in January 2025 from August 2024 to April 2025 and the department advised the ANAO in April 2025 that the preferred tenders had agreed to further extend their offer periods (to 31 July 2025).

Rationale for undertaking the audit

5. The establishment of the new services is part of the response to the 2017 final report of the *Royal Commission into Institutional Responses to Child Sexual Abuse*. The timely conduct of the related procurements is intended to establish services that will provide support and advocacy for a cohort of secondary victims of child sexual abuse perpetration and protect children by intervening before an individual offends. The audit was conducted to provide assurance to the

¹ Commonwealth of Australia, National Office for Child Safety, *National Strategy to Prevent and Respond to Child Sexual Abuse 2021–2030*, available from <https://www.childsafety.gov.au/resources/national-strategy-prevent-and-respond-child-sexual-abuse-2021-2030> [accessed 18 October 2024].

Parliament about the establishment of the two new national services, as well as the department's approach to procurement.

Audit objective and criteria

6. The audit objective was to assess whether the Attorney-General's Department's conduct of the procurements relating to two of the new child sexual abuse-related national services employed open and effective competition and achieved value for money, consistent with the Commonwealth Procurement Rules (CPRs).²

7. The new child sexual abuse-related national services identified as needed by the Royal Commission and agreed by government are not being provided, with no contracts in place for the delivery of those services as at May 2025. The audit examined the conduct of the procurements up to the point at which preferred tenderers were selected as representing the best value for money, and did not examine the conduct of contract negotiations given they had not been completed.

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

- Were the procurement processes open, competitive, fair and non-discriminatory?
- Was the selection of preferred tenderers consistent with achieving value for money?

Conclusion

9. The Attorney-General's Department's conduct of the procurements for two of the new national services (NAP 21 and NAP 10) did not involve open and effective competition and the selection of preferred tenderers was not consistent with achieving value for money. There have been significant delays with the conduct of both procurements and the preferred tenders were not capable of being accepted by the department without further clarification and negotiation. The offer validity periods expired with substantive matters continuing to be negotiated with each preferred tenderer.³ While the department selected preferred tenderers in June 2024 (for NAP 21) and September 2024 (for NAP 10) as offering the best value for money through a competitive procurement process, since then it has, in effect, conducted limited tenders with the two preferred tenderers, in circumstances that do not satisfy the conditions for a limited tender set out in the Commonwealth Procurement Rules (CPRS).⁴

10. The Attorney-General's Department (AGD) conducted a single-stage, open approach to market for each of the NAP 10 and NAP 21 services. In most respects, the Request for Tender (RFT) documentation for the NAP 10 and NAP 21 procurements identified the information required by the Commonwealth Procurement Rules. The procurement processes were not conducted in accordance with the Commonwealth Procurement Rules. Of note:

- Seven of the 11 tenders received for the NAP 10 and NAP 21 procurements were not compliant with one or more of the requirements set out in the RFTs. This included six

2 Reflecting the length of time taken to conduct these procurements, four versions of the CPRs applied: the December 2020 version; the July 2022 version; June 2023 version; and June 2024 version. The substantive requirements audited against did not change across the versions.

3 See further at paragraphs 3.34 to 3.36.

4 Department of Finance (Finance), *Commonwealth Procurement Rules*, paragraph 10.3, specifies the limited circumstances in which an entity may conduct a relevant procurement through limited tender.

tenders that did not provide all of the pricing information that the RFT stated was required to be submitted to inform evaluation. The department's approach did not include any marking down of the evaluation of those tenderers against the price criterion to reflect that information required by the RFT had not been provided. The two preferred tenderers were in the cohort of seven.

- The procurement processes were not consistently conducted in accordance with ethical requirements. The engagement of the probity adviser was through a process that lacked probity, and the later engagement (without any competition) of the probity adviser to also provide strategic procurement advice adversely impacted the independence and objectivity of the probity adviser.⁵ The declaration and management of conflicts of interest was also not to an appropriate standard. This included ineffective management of a conflict the chair of the Evaluation Committee for the NAP 21 procurement had with the tenderer that emerged as the preferred candidate.

11. In relation to advisers and consultants to support the conduct of the NAP 10 and NAP 21 service procurements, competition was not employed for five of the nine engagements and the department did not evaluate candidates against the specified criteria for each of the procurements.

12. The procurements were not timely with the result that selection of preferred tenderers occurred later than planned, no contracts are in place as of May 2025 and services are not being provided. The approach to evaluation was not designed and conducted in a way that enabled the Attorney-General's Department (AGD) to demonstrate achievement of value for money in the selection of preferred tenderers for the National Action Plan Measure 10 (NAP 10) and National Action Plan Measure 21 (NAP 21) procurements.

- Departmental records do not document how the budgeted funding amounts for services were arrived at. Awarding the contracts to tenders that were less than the budgeted funding was an important element of procurement planning yet the price criterion was not one of the weighted evaluation criteria. The budgeted amounts played an important role in the outcome of the procurement process for the NAP 10 procurement.
- While tender evaluation plans were in place prior to the closing date for the NAP 10 and NAP 21 tenders, they did not adequately address how the department planned to evaluate the pricing information tenderers were required to include. The department also admitted into evaluation tenders that had not provided all of the required pricing information (including from the two preferred tenderers).
- The conduct of the tender evaluation for the NAP 10 and NAP 21 procurements was not timely. It was also not consistent with approach to market documents.
- The department's evaluation records do not clearly demonstrate that the preferred tenderers for the NAP 10 and NAP 21 procurements provided the best value for money.

13. The processes to engage the consultants and advisers to support the NAP 10 and NAP 21 procurements also did not demonstrate value for money. This was due to an absence of competition and/or value for money not being assessed, or the successful candidate not being assessed as providing the best value for money.

5 See further at paragraphs 2.109 to 2.127.

Supporting findings

Open and competitive procurement

14. Open tender approaches to market were employed to engage the service providers for the NAP 10 and NAP 21 services. The procurement approach to engage the evaluation provider was a panel procurement, which involved approaching 12 candidates to respond to a RFQ. When procuring advisers and consultants to assist with the NAP 10 and NAP 21 procurements, the department's processes involved some competition for less than half of the engagements and no competition for more than half of the engagements, which is inconsistent with the Commonwealth Procurement Rules. (See paragraphs 2.3 to 2.16)

15. In most respects, the RFT documentation for the NAP 10 and NAP 21 procurements issued by AGD identified the information required by the CPRs. This included the conditions for participation, minimum content and format requirements and evaluation criteria. AGD did not clearly identify the relative importance of each of the criteria to be applied in the evaluation processes. (See paragraphs 2.17 to 2.34)

16. With one exception, all tenders accepted for evaluation had been lodged by the specified closing date. (See paragraphs 2.35 to 2.36)

17. Six of the tenders received for the NAP 10 and NAP 21 procurements were not compliant with the requirements of the RFT. The two preferred tenderers were not compliant with all of the requirements set out in the RFT, as neither had submitted all of the pricing information that the RFT had said was required. In addition, for the NAP 21 procurement, for the preferred tenderer the evaluation report identified 24 items related to service delivery, the solution/technical issues, legal/contract issues and pricing issues for which additional information was required by the department before a contract negotiation directive could be prepared. The department's approach also did not satisfy the requirement of the CPRs that further consideration only be given to submissions that meet minimum content and format requirements. Three of the tenders for the NAP 10 and NAP 21 procurements that did not meet those requirements were progressed to evaluation before the department sought to address the situation. (See paragraphs 2.37 to 2.43)

18. Tenders for the NAP 10 and NAP 21 procurements were not fully and fairly evaluated against each of the criteria. In relation to the price criterion, tenderers were required to provide information under three scenarios (low, medium and high call volumes). The department did not evaluate tenders under each of the three scenarios because not all tenderers provided the required information. For the NAP 21 procurement, the department analysed the high volume call scenario whereas, for the NAP 10 procurement, the medium call volume scenario was used. The department's approach reflects that it accepted for evaluation tenders that had not provided all the required price information and so it used the call volume scenario in each tender where it had a response from all tenderers. The approach to evaluation did not include any marking down of the evaluation against the price criterion for the tenderers that had not provided all of the required information.

19. In relation to the evaluation provider procurement, a second evaluation panel had to convene to re-evaluate responses after the department became aware it had not evaluated all four of those received.

20. For one of the procurements of advisers, the department's evaluation did not address a mandatory requirement such that it had to retract its advice that the candidate assessed as offering value for money was preferred after it eventuated that the candidate did not meet the requirement. (See paragraphs 2.44 to 2.91)

21. The department did not conduct all tender clarification and collaboration activities in a fair and transparent manner as required by the Commonwealth Procurement Rules. (See paragraphs 2.92 to 2.105)

22. The department's procurement processes did not demonstrate ethical conduct as required by the Commonwealth Procurement Rules.⁶ This included the approach employed to procuring the probity adviser. The department did not have an effective approach to the declaration, and management, of conflicts of interest. (See paragraphs 2.106 to 2.151)

Demonstrating achievement of value for money

23. Departmental records do not document how the budgeted funding amounts for services were arrived at. (See paragraphs 3.2 to 3.8)

24. There have been significant delays with the department's conduct of the procurements with the result that the services aimed at protecting children from sexual abuse by intervening before an individual offends or re-offends, and at providing nationally available free support to non-offending family members of child sexual abuse perpetrators, are not yet available. The Requests for Tender (RFTs) were issued later than had been planned by the department. It also took longer than planned to evaluate the tender responses, select the preferred tenderers (who were notified in June 2024 and September 2024) and enter into contract negotiations. The offer validity periods expired with substantive matters continuing to be negotiated with each preferred tenderer. Should contract negotiations be successful, the department expects that services will not begin to be provided until mid-2025, which would be four years and eight months after the National Strategy was released. (See paragraphs 3.9 to 3.19)

25. Tender evaluation plans were in place prior to the closing date for the NAP 10 and NAP 21 tenders. The evaluation plans had not been signed off by the probity adviser. The evaluation plans did not adequately address how the department planned to evaluate the pricing information tenderers were required to submit. (See paragraphs 3.20 to 3.30)

26. The conduct of the tender evaluation for the NAP 10 and NAP 21 procurements was not timely and was not consistent with approach to market documents. (See paragraphs 3.31 to 3.44)

27. The department's evaluation records do not clearly demonstrate that the preferred tenderers provided the best value for money.

- Each of the two preferred tenderers had not provided all of the information the RFT had identified as being required.
- For the NAP 21 procurement, after it was selected as the preferred tenderer, the department obtained significant additional information from the tenderer related to

6 The CPRs require that procuring entities act ethically throughout the conduct of a procurement process. Ethical behaviour includes recognising and dealing with actual, potential and perceived conflicts of interest, dealing with potential suppliers, tenderers and suppliers equitably and carefully considering the use of public resources. See: Finance, *Commonwealth Procurement Rules*, paragraph 6.6.

service delivery, the solution/technical issues and legal/contract issues. The need for this information was not identified in the tender evaluation report.

- For the NAP 10 procurement, the tenderer that scored highest against the weighted criteria was excluded from participating further in the tender process in favour of the second highest scoring tenderer. There were also departures from the RFT in terms of the evaluation criteria that were applied, and the approach taken to putting in place a performance guarantee with the successful tenderer. Further, the tender evaluation report did not identify that the department considered there were areas requiring clarification relating to pricing issues and solution/technical issues, including a concern that the tenderer's pricing for the medium and high call volume scenarios exceeded the budgeted amount for each year of service delivery. (See paragraphs 3.45 to 3.60)

28. The roles and responsibilities of individuals involved in the NAP 10 and NAP 21 procurements set out in the evaluation plans provided for an appropriate separation of duties between the spending delegate and the Evaluation Committees. The probity adviser was not independent of the procurement processes as it also performed the role of strategic procurement adviser. (See paragraphs 3.61 to 3.65)

29. Appropriate procurement records were partly maintained. While available records addressed the requirement for the NAP 10 and NAP 21 procurements, evidence to support key decisions was not maintained. In addition, the tender evaluation report did not accurately reflect the evaluation process that was employed or satisfactorily demonstrate that value for money had been achieved. There are no records evidencing how the department arrived at the budgeted amounts for the two services. (See paragraphs 3.66 to 3.71)

30. Contracts for the two new services have not been signed, meaning the requirement to report on AusTender has not been triggered. The department met its obligation to report the evaluation provider contract accurately within the 42 day deadline. The department was also required to report on AusTender a number of the adviser and consultant contracts it entered into for the purpose of assisting with the main procurements. There were delays and inaccuracies in reporting of six of the eight contracts that required reporting on AusTender. (See paragraphs 3.72 to 3.74)

Recommendations

Recommendation no. 1 Paragraph 2.25

When conducting procurements, the Attorney-General's Department clearly identify the relative importance of each of the criteria to be applied in the evaluation process. This should include appropriate weighting of the price criterion in circumstances where a budget has been established for the goods and/or services being procured.

Attorney-General's Department response: *Agreed.*

- Recommendation no. 2**
Paragraph 2.65
- When planning procurements, the Attorney-General's Department:
- (a) ensures that potential suppliers are required to provide all the information that is relevant for the purposes of evaluation, and not ask for any information that is not required;
 - (b) where data that is required for evaluation is not provided by a tenderer, this should be reflected in the tender either being excluded or a lower score against the relevant criterion (where the missing information relates to the evaluation criteria); and
 - (c) where data that is required for evaluation has been provided, the department should have a plan to evaluate this information and it should be evaluated in full by the department.

Attorney-General's Department response: *Agreed.*

- Recommendation no. 3**
Paragraph 2.104
- The Attorney-General's Department improve its procurement framework to address the conduct of additional processes, including collaboration activities to ensure they are conducted in a fair and transparent manner.

Attorney-General's Department response: *Agreed.*

- Recommendation no. 4**
Paragraph 2.151
- The Attorney-General's Department strengthen its adherence to recognised principles and processes for conducting procurements ethically, including the identification and effective management of conflicts of interest.

Attorney-General's Department response: *Agreed.*

- Recommendation no. 5**
Paragraph 3.29
- When developing evaluation plans, the Attorney-General's Department ensure that the planned evaluation addresses all information tenderers are required to include in submissions.

Attorney-General's Department response: *Agreed.*

- Recommendation no. 6**
Paragraph 3.70
- The Attorney-General's Department improve its procurement record keeping so that accurate and concise information exists on the process that was followed, how value for money was considered and achieved, and relevant decisions and basis of those decisions.

Attorney-General's Department response: *Agreed.*

Summary of entity response

31. The proposed audit report was provided to the Attorney-General's Department and an extract of the proposed report was provided to Astryx Pty Ltd. The Attorney-General's Department's summary response is reproduced below.

Attorney General's Department

The department appreciates the opportunity afforded from the ANAO audit process to improve future procurement practices and accepts the ANAO's key finding in the Section 19 Report. This includes all six of the ANAO's recommendations, along with the opportunities for improvement identified throughout. The procurement processes being reviewed were complex in nature and the department made genuine efforts to ensure correct process was followed and ethical requirements were met throughout. The department has already taken steps to improve current procurements being run by the National Office for Child Safety (NOCS) based on discussions with the ANAO, and is also committed to implementing departmental-wide improvements. The department thanks the ANAO for its audit of the conduct of procurements relating to two new child sexual abuse-related national services, and is confident that procurement practices of NOCS, and across the whole of the department, will be improved as a result.

Key messages from this audit for all Australian Government entities

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

Procurement

- When advising ministers on the conduct of procurements it is important that entities provide advice that is comprehensive and does not, for example, exclude important information that identifies shortcomings or risks with the conduct of the procurement.
- To treat potential suppliers fairly, entities should issue any addenda to all candidates in a limited tender, and make the addenda available to all potential candidates when the procurement is by way of an open tender process.
- To conduct a fair evaluation process, it is important that entities ensure information required to be submitted by tenderers is appropriate and sufficient to enable a full evaluation against each evaluation criterion. If incomplete tenders, including where required pricing has not been provided, are accepted by an entity, the entity faces an increased risk of not being able to consider the tenders on a level playing field and then move to efficiently put the contract in place when the preferred tenderer is selected. The non-provision of pricing and any other information the approach to market identifies as required should be reflected in the tender evaluation results.
- Tender evaluation reports should be objective, impartial and written to give the decision-maker all the information they need. This includes all relevant information, good and bad, about tenderers and not just the information that supports the selection of the preferred tenderer.
- Selecting a lead negotiator, and members of the negotiation team, is an important decision in order for negotiations to be timely and effective. For important and/or complex procurements in particular, a lead negotiator who has a senior role in the entity can assist to drive the process forward within the entity, as well as sending an important message to the other party. Entities should also consider the benefits of specialist negotiation training being undertaken by the negotiation team, or investigating how the entity can access the necessary skills and experience (including, potentially, from other Australian Government entities).

Probity in procurement

- When obtaining probity advice on the conduct of tender evaluations, entities should direct probity advisers to explicitly address whether the issue on which advice is being sought is acceptable in terms of the approach to market documentation and evaluation plan for the particular procurement. The focus should not be only on identifying opportunities for improvement in future procurements.
- Acting ethically when conducting procurements requires more than documenting plans and guidance, obtaining and filing conflict of interest declarations and obtaining sign offs at key points from probity advisers. It 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.
- While probity advisers can be engaged to assist entities conduct procurements ethically as required by the Commonwealth Procurement Rules, responsibility and accountability for the procurement cannot be outsourced by entities to their probity (or any other) advisers. When engaging an external probity adviser, it is important that entities conduct the procurement process in a way that is ethical. It is also important that entities consider the risks of engaging 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.

Audit findings

1. Background

Introduction

1.1 On 12 November 2012, the prime minister announced that she would recommend to the Governor-General that a Royal Commission be appointed to inquire into institutional responses to child abuse. The *Royal Commission into Institutional Responses to Child Sexual Abuse* (the Royal Commission) presented a final report on 15 December 2017. Of the 409 recommendations, 206 were directed wholly or partially to the Australian Government. On 13 June 2018, the Australian Government released its response to the Royal Commission.

1.2 The National Office for Child Safety (NOCS) was established in July 2018 in response to the Royal Commission. NOCS was initially located in the Department of the Prime Minister and Cabinet. It was moved in 2022 to the Attorney-General's Department (AGD) as a result of the June 2022 Administrative Arrangements Order.

1.3 In October 2021, the Australian Government launched the *National Strategy to Prevent and Respond to Child Sexual Abuse 2021–2030* (National Strategy).⁷ The National Strategy established a nationally coordinated framework intended to prevent and better respond to child sexual abuse in all settings. The National Strategy was a recommendation of the Royal Commission and responds to approximately 100 other Royal Commission recommendations to address child sexual abuse in all settings.⁸

1.4 NOCS led the development of the National Strategy and is leading its implementation. The first phase of the National Strategy includes two four-year action plans (from 2021 to 2024): the First National Action Plan (NAP), to be delivered by Commonwealth, state and territory governments; and the First Commonwealth Action Plan, to be delivered by Commonwealth agencies.

1.5 NOCS is also responsible for launching three new national support services, as summarised in Table 1.1. The provision of the three national support services is to be contracted. The approach to procuring service providers for NAP Measures 7, 10 and 21 was considered in the same procurement strategy, in which the department stated, 'the three services are in varying stages of development and would likely be ready to approach the market at different times throughout 2023'. A Request for Tender (RFT) process has been undertaken for NAP Measures 10 and 21. Procurements have also been undertaken for the advisers and consultants to assist with the NAP Measure procurement processes as well as an evaluation provider for the NAP 10 and NAP 21 services.

⁷ Commonwealth of Australia, National Office for Child Safety, *National Strategy to Prevent and Respond to Child Sexual Abuse 2021–2023*, available from <https://www.childsafety.gov.au/resources/national-strategy-prevent-and-respond-child-sexual-abuse-2021-2030> [accessed 18 October 2024].

⁸ *ibid.*

Table 1.1: Procurements to establish new national services

Service	Purpose	RFT issued	Tender closing date
NAP 7: a website and helpline to assist victims and survivors to access help and information	The objective of the NAP 7 service is to reduce the risk, extent and impact of child sexual abuse and related harms in Australia by providing a free nationally available information and referral service that provides advice about all forms of child sexual abuse, and connects people with existing national and jurisdictional child sexual abuse and related services and support.	Not yet ^a	Not known
NAP 10: a new national support service for non-offending family members of child sexual abuse perpetrators	Non-offending family members of child sexual abuse perpetrators are considered secondary victims ^a of child sexual abuse perpetration, experiencing trauma associated with the discovery and aftermath of a family member's perpetration. The objective of the NAP 10 service is to reduce child sexual abuse-related harms by providing nationally available and free support and advocacy for these secondary victims and also working with law enforcement agencies to support how officers engage with secondary victims.	21 Nov 23	27 Feb 24
NAP 21: a national child sexual abuse offending prevention service	The objective of the NAP 21 service is to protect children from sexual abuse by intervening before an individual offends or reoffends. It is expected that people will be able to contact the service if they are worried about their own sexual thoughts and behaviours towards children or young people, or when they are worried that an adult is at risk of or is already offending. Advice and guidance are to be provided on: <ul style="list-style-type: none"> • how people can learn to manage unwanted sexual thoughts and feelings, and stop harmful or offending behaviour; and • what people can do and where they can go if they are concerned about an adult's (i.e., someone else's) behaviour. 	21 Nov 23	23 Feb 24

Note a: A Request for Expression of Interest (EOI) was published on AusTender on 14 October 2024 seeking responses by 22 November 2024 from parties interested in participating in a potential multi-stage procurement to secure a service provider to deliver the national information and referral service to assist victims and survivors of child sexual abuse and others seeking help and information. In January 2025, AGD advised the ANAO that it 'anticipates releasing the RFT in or around March 2025 ... this is indicative and subject to the outcomes of the EOI, which closed on 22 November 2024 and is currently in the process of evaluations.' Further advice from AGD to the ANAO in April 2025 was that, due to delays, the department expected to be in a position to release the RFT in June 2025.

Source: ANAO analysis of AGD records.

1.6 There will be a lag between contracts being signed and services being provided to non-offending family members of child sexual abuse perpetrators (NAP 10) and persons at risk of offending or re-offending (NAP 21). The contractual arrangements that were the subject of the RFTs set out that there would be four phases to service delivery. The first two phases are, on the basis of the tender responses from the two preferred tenderers, expected to take at least five to six months. Those phases involving planning, design and establishing the infrastructure to enable service delivery (including the operation of the helplines and provision of websites) to commence in the

third phase. Service delivery to citizens commences in the third phase.⁹ The offer periods were extended in January 2025 from August 2024 to April 2025 and the department advised the ANAO in April 2025 that each of the preferred tenders had agreed to further extend their offer periods (to 31 July 2025).

Rationale for undertaking the audit

1.7 The establishment of the new services is part of the response to the 2017 final report of the Royal Commission into institutional responses to child sexual abuse. The timely conduct of the related procurements is intended to establish services that will provide support and advocacy for a cohort of secondary victims of child sexual abuse perpetration and protect children by intervening before an individual offends. This audit was conducted to provide assurance to the Parliament about the establishment of the two new national services, as well as the department's approach to procurement.

Audit approach

Audit objective, criteria and scope

1.8 The audit objective was to assess whether the Attorney-General's Department's conduct of the procurements relating to two of the new child sexual abuse-related national services employed open and effective competition and achieved value for money, consistent with the Commonwealth Procurement Rules (CPRs).¹⁰

1.9 The new child sexual abuse-related national services identified as needed by the Royal Commission are not being provided, with no contracts in place for the delivery of those services as at May 2025. The audit examined the conduct of the procurements up to the point at which preferred tenderers were selected as representing the best value for money, and did not examine the conduct of contract negotiations given they had not been completed.

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

- Were the procurement processes open, competitive, fair and non-discriminatory?
- Was the selection of preferred tenderers consistent with achieving value for money?

1.11 The audit focused on the design and conduct of the Attorney-General's Department's procurement processes in relation to the contracts summarised in Table 1.2. The procurement process for NAP 7 was not examined. As set out in Table 1.1, a Request for Tender for that service had not been released at the time this ANAO performance audit commenced.

9 In October 2024, AGD issued a Public Interest Certificate for this procurement, similar to the approach taken for the NAP 21 procurement (see further at paragraph 3.13).

10 Reflecting the length of time taken to conduct these procurements, four versions of the CPRs applied: the December 2020 version; the July 2022 version; June 2023 version; and June 2024 version. The substantive requirements audited against did not change across the versions.

Table 1.2: Procurements examined by the ANAO

Contract	Counterparty	Reported value (\$)	Contract term
NAP 10 service	NAP 10 Preferred Tenderer	9,601,467 ^a	Not yet known
NAP 21 service	NAP 21 Preferred Tenderer	7,200,000 ^b	Not yet known
Evaluation of NAP 10 and NAP 21 services	ARTD Consultants	405, 859	24 Oct 2024 to 23 Oct 2026
Legal and commercial adviser	Australian Government Solicitor	88,483	n/a ^c
Procurement adviser	Astryx Pty Ltd	345,000	10 Feb 2023 to 31 Jul 2024
Probity adviser	Astryx Pty Ltd ^d	298,000	18 May 2022 to 30 Jun 2025
Consultation provider — NAP 10	Lonergan Research Pty Ltd	50,930	17 May 2022 to 26 Jul 2022
Consultation provider — NAP 21	Lonergan Research Pty Ltd	79,420	22 Aug 2022 to 25 Nov 2022
Contact centre adviser — RFT advice	MinterEllison Consulting	25,000	10 Oct 2023 to 24 Nov 2023
Contact centre adviser — evaluation advice	MinterEllison Consulting	55,640	20 Feb 2024 to 31 Aug 2024
NAP 21 Evaluation Committee member	Broomhall Consulting Psychology	14,124	15 Jan 2024 to 30 Aug 2024
NAP 10 Evaluation Committee member	Morag McArthur	10,660 ^e	23 Jan 2024 to 27 Jul 2024

Note a: A contract with the preferred tenderer has not been signed. AGD's estimated value of the procurement has been used. This estimate includes a reduction of \$0.6 million of the \$10.2 million that the department recorded as being provided through the 2021–22 Budget. The department allocated \$0.6 million for staffing, travel, consultations, and evaluation.

Note b: A contract with the preferred tenderer has not been signed. AGD's estimated value of the procurement has been used. This estimate includes a reduction of \$2.4 million of the \$9.6 million that the department recorded as being provided through the 2021–22 Budget. The department reduced the budgeted amount by \$1.6 million it had allocated to other expenses and by a further 10 per cent (\$0.8 million) at the suggestion of the department's probity adviser.

Note c: In February 2025, AGD advised the ANAO that 'a contact term does not exist between the department and AGS as AGS is part of the department. Arrangements for the provision of advice related to these procurements are covered in the email correspondence between the department and AGS... This differs to other Commonwealth agencies where a contract may exist. As of 1 July 2019, AGS uses an internal charging (cost recovery) model for all legal work'.

Note d: Astryx is engaged through a subcontracting arrangement with ServeGate Australia Pty Ltd.

Note e: The reported value does not reflect the amended value of \$17,589. The department has not met its reporting obligation.

Source: ANAO analysis of AGD records.

1.12 The tender evaluation plans for the NAP 21 and NAP 10 procurements each identified that tender evaluation would be completed by the end of April 2024, with a recommendation then provided to the decision-maker within AGD. These were the same timeframes that had been set out in the respective RFTs, with tenderers informed that the NAP 10 contract would be awarded by

the end of April 2024, and the NAP 21 contract in May 2024. AGD selected preferred tenderers in June 2024 (NAP 21) and September 2024 (NAP 10) as offering the best value for money following competitive procurement processes. As of May 2025, contract negotiations remained ongoing.

Audit methodology

1.13 The audit methodology involved:

- examination and analysis of Attorney-General's Department records;
- meetings with departmental staff; and
- consideration of the citizens contributions to the audit that were received, including from some of the tenderers for the NAP 10 and NAP 21 procurements.

1.14 The audit was conducted in accordance with ANAO Auditing Standards at a cost to the ANAO of approximately \$610,000.

1.15 The team members for this audit were Sean Neubeck, Lachlan Miles and Brian Boyd.

2. Open and competitive procurement

Areas examined

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

Conclusion

The Attorney-General's Department (AGD) conducted a single-stage, open approach to market for each of the NAP 10 and NAP 21 services. In most respects, the Request for Tender (RFT) documentation for the NAP 10 and NAP 21 procurements identified the information required by the Commonwealth Procurement Rules. The procurement processes were not conducted in accordance with the Commonwealth Procurement Rules. Of note:

- Seven of the 11 tenders received for the NAP 10 and NAP 21 procurements were not compliant with one or more of the requirements set out in the RFTs. This included six tenders that did not provide all of the pricing information that the RFT stated was required to be submitted to inform evaluation. The department's approach did not include any marking down of the evaluation of those tenderers against the price criterion to reflect that information required by the RFT had not been provided. The two preferred tenderers were in the cohort of seven.
- The procurement processes were not consistently conducted in accordance with ethical requirements. The engagement of the probity adviser was through a process that lacked probity, and the later engagement (without any competition) of the probity adviser to also provide strategic procurement advice adversely impacted the independence and objectivity of the probity adviser. The declaration and management of conflicts of interest was also not to an appropriate standard. This included ineffective management of a conflict the chair of the Evaluation Committee for the NAP 21 procurement had with the tenderer that emerged as the preferred candidate.

In relation to advisers and consultants to support the conduct of the NAP 10 and NAP 21 service procurements, competition was not employed for five of the nine engagements and the department did not evaluate candidates against the specified criteria for each of the procurements.

Areas for improvement

The ANAO made four recommendations aimed at the department: clearly identifying the relative importance of each of the criteria to be applied in the evaluation process for procurements; an improved approach to obtaining and using relevant information to inform tender evaluations; improving its procurement framework to address the conduct of collaboration activities and similar processes to ensure they are conducted in a fair and transparent manner; and improved approaches to identifying and managing conflicts of interest.

The ANAO also identified opportunities for the department to improve its approach to ensuring all candidates in procurement processes receive addenda to the information provided to the market, and ensuring that the provision of advice within the department to senior officers is

relevant and comprehensive, is not affected by fear of consequences, and does not withhold important facts or bad news.

2.1 Competition is a key element of the Australian Government's procurement framework set out in the Commonwealth Procurement Rules (CPRs).¹¹ Effective competition requires non-discrimination and the use of competitive procurement processes.

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

Were open approaches to market employed?

Open tender approaches to market were employed to engage the service providers for the NAP 10 and NAP 21 services. The procurement approach to engage the evaluation provider was a panel procurement, which involved approaching 12 candidates to respond to a RFQ. When procuring advisers and consultants to assist with the NAP 10 and NAP 21 procurements, the department's processes involved some competition for less than half of the engagements and no competition for more than half of the engagements, which is inconsistent with the Commonwealth Procurement Rules.

2.3 The CPRs require 'relevant entities'¹² to use AusTender to publish open tenders and, to the extent practicable, make relevant request documentation available.¹³ An open tender involves publishing an open approach to market and inviting submissions.¹⁴ Potential suppliers must be given at least 25 days to lodge a submission from the date and time that a relevant entity publishes an approach to market.¹⁵

NAP 10 and NAP 21 procurements

2.4 The RFTs were developed by the department between June 2023 and November 2023. In developing the RFT, the department obtained a copy of the RFT developed by the Department of Social Services for its 2020 to 2022 procurement of counselling and support services provided through 1800RESPECT. The ANAO performance audit of that tender process concluded that it was effective and complied with the CPRs.¹⁶

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

12 The CPRs define 'relevant entities' as including non-Corporate Commonwealth entities and prescribed corporate Commonwealth entities listed in the Public Governance, Performance and Accountability Rule 2014. The Attorney-General's Department is a non-Corporate Commonwealth entity: Department of Finance, *Commonwealth Procurement Rules*, Appendix B.

13 *ibid.*, paragraph 7.10.

14 *ibid.*, paragraph 9.8.

15 *ibid.*, paragraph 10.22.

16 Auditor-General Report No.15 2022–23, *Procurement of 1800RESPECT*, ANAO, Canberra, 2023, pp. 7–8, available from <https://www.anao.gov.au/work/performance-audit/procurement-1800respect> [accessed 3 December 2024].

2.5 On 21 November 2023, the department released RFTs on AusTender to engage service providers for NAP 10 and NAP 21.

2.6 A total of 11 addenda¹⁷ were issued by the department between 29 November 2023 and 19 February 2024 (eight days prior to the closing date for the NAP 10 procurement) to provide documents omitted during the original release, the link for an industry briefing, and to respond to or clarify potential tenderers' enquiries.¹⁸

2.7 Tenders were required to be lodged by 23 February 2024 for the NAP 21 procurement and 27 February 2024 for the NAP 10 procurement. Potential suppliers had more than three months to respond to the RFTs. The RFT process resulted in six tenders being received for the NAP 10 procurement, and five tenders for the NAP 21 procurement.

Evaluation provider

2.8 The procurement approach to engage the evaluation provider was a panel procurement. The department recorded that it would approach organisations with significant experience and expertise in evaluating services and programs in relevant sectors, including social services, children and family services, family and domestic violence services, sexual abuse and child sexual abuse victim support services, and offending prevention and intervention programs. In September 2023, the department shortlisted 13 candidates of 89 organisations identified by the department on the Management Advisory Services (MAS) Panel¹⁹ listed under 'program/project evaluation' following its research on each organisation's level of evaluation experience or expertise in social/criminology service (or project) evaluations in relevant sectors.

2.9 On 19 December 2023, RFQs were issued to 12 candidates of 89 program/project evaluation panellists to respond to a Request For Quote (RFQ) (see Table 2.1) on the MAS Panel.²⁰ The department incorrectly attached the RFQ intended for a different supplier to the email to one candidate. That candidate did not provide a response to the RFQ. The closing date for responses was 16 February 2024.

2.10 Two addenda were issued by the department to respond to questions from candidates.²¹ The second addendum issued on 9 February 2024 to all 12 candidates included a revised RFQ and

17 Of the 11 addenda, five addenda were for the NAP 21 RFT and six were for the NAP 10 RFT.

18 Addendum 5 to the NAP 21 RFT included an update to the draft contract stating that 'Tenderers should note that whether the Department requires a Deed of Guarantee will be determined during negotiations with the preferred tenderer and based on the risk profile associated with the preferred tenderer's provision of the services. The Department expects it will only require this type of security where it is assessed as necessary in the circumstances'. This amendment was made following a question from NAP 21 Preferred Tenderer on 6 February 2024. As highlighted in footnote 75, the department's recommendation to the delegate was to not pursue a Deed of Guarantee and Indemnity from the preferred tenderer.

19 The Management Advisory Services Panel (SON3751667) is a cooperative procurement arrangement managed by the Department of Finance. Such arrangements are intended to improve the quality, consistency, and efficiency of the procurement of Management Advisory Services by Commonwealth entities, while supporting entities to achieve value for money outcomes. As of January 2025, there were 455 suppliers on the panel, and all Australian Government agencies are authorised to access it.

20 One of the 13 candidates originally identified was no longer on the MAS Panel and was not issued the RFQ.

21 A candidate advised the department on 15 January 2024 that it had decided not to participate. This followed an earlier email of 11 January 2024 that set out some questions relating to subcontractors and travel expenses, to which the department did not respond. Addendum 1 was not sent to that candidate, which is inconsistent with the CPRs.

an extension of the RFQ closing date to 15 March 2024 (the original closing date was 16 February 2024).

2.11 Four responses to the RFQ were received.

Advisers and consultants

2.12 Table 2.1 outlines the extent of competition employed in the procurements of the advisers and consultants, as well as the evaluation provider.

Table 2.1: Extent of competition

Adviser/ consultant	Services	Expected value of the procurement (\$)	Reported procurement method	Extent of competition
Astryx Pty Ltd	Probity adviser	920,000	Open tender — panel	RFQ to six candidates on 23 March 2022. Four responses from three candidates were received.
Lonergan Research Pty Ltd	Consultation provider (NAP 10)	40,000	Limited tender	RFQ to fifteen candidates on 21 April 2022 One response was received.
Lonergan Research Pty Ltd	Consultation provider (NAP 21)	79,000	Limited tender	RFQ to 19 candidates on 27 June 2022. Two responses were received that exceeded the \$80,000 threshold that requires an Open Tender approach to be used or a Limited Tender exemption sought. The contracted price was negotiated down to below the threshold.
Astryx Pty Ltd	Strategic procurement adviser	Not estimated	Open tender — panel	No competition. The reported procurement method does not reflect that this was a sole source procurement.
Australian Government Solicitor	Legal and commercial adviser	88,483	Not reported (limited tender)	No competition.
MinterEllison Consulting	Contact centre adviser — RFT advice	Less than 20,000	Open tender — panel	RFQ to ten candidates on 14 September 2024. Two compliant responses were received. MinterEllison Consulting was rated as providing 'low value for money'. The candidate rated as providing the best value for money and notified that it had been successful was later notified that its proposal no longer met the requirements.

Adviser/ consultant	Services	Expected value of the procurement (\$)	Reported procurement method	Extent of competition
MinterEllison Consulting	Contact centre adviser — evaluation advice	25,000	Open tender — panel	No competition. The reported procurement method does not reflect that this was a sole source procurement.
Broomhall Consulting Psychology	Evaluation Committee member	Less than 20,000	Limited tender	No competition. Although AGD stated in the record of its spending approval that the candidate was identified following a 'rigorous process', only one candidate was approached 'to avoid damaging existing relationships with the child safety sector'.
Morag McArthur	Evaluation Committee member	Less than 20,000	Limited tender	No competition. The department recorded that one candidate was approached 'to avoid damaging existing relationships with the child safety sector'.
ARTD Consultants	Evaluation provider	255,000	Open tender — panel	RFQs were issued to 12 candidates of 89 program/project evaluation panellists on 19 December 2023. Four responses were received.

Source: ANAO analysis of AGD records.

2.13 Of the nine procurement processes for advisers and consultants, five involved no competition. This included the engagement of Astryx Pty Ltd (Astryx) as the 'strategic procurement adviser' (also referred to as the 'specialist procurement adviser'), which followed a recommendation from Astryx in its capacity as the probity adviser that it should be engaged to provide the additional services. While the procurement method was reported on AusTender as an open tender through a panel arrangement that was established by open tender, this does not reflect the process that occurred (see paragraphs 2.114 to 2.119).

2.14 In December 2024, the department advised the ANAO that it procured Astryx 'without an open tender process as enabled through the SME [Small and Medium Enterprise] exemption to the CPRs'. The department was referring to the list of procurements in Appendix A of the CPRs that are exempt from the rules of Division 2 of the CPRs and from paragraphs 4.7, 4.8 and 7.26 of Division 1. As noted in paragraph 2.13, the procurement method was reported on AusTender as open tender. The department had not sought to rely on this exemption at the time it conducted the procurement.

2.15 There was some competition for four of the nine procurements, largely involving RFQs being issued to a number of the providers on a panel. This included the two processes for consultation providers, which resulted in the engagement of the same provider. The CPRs require entities to

estimate the expected value of a procurement before a decision on the procurement method is made.²² This is to assess whether the procurement value is greater than the relevant threshold (in this case \$80,000), and if it is, an open tender must be employed or a limited tender condition sought. The estimated value for both procurements was below \$80,000 (\$40,000 for the NAP 10 consultation, and \$79,000 for the NAP 21 consultation). The planning for the procurements was that the department would approach candidates it had identified from an existing panel as well as through comparable procurements previously undertaken by NOCS. Limited tender was considered to be the 'most appropriate procurement approach' due to the procurement activities being under the relevant threshold and the 'administrative burden' related to the panel.

2.16 In advice²³ on the department's proposed response to a potential supplier's enquiry regarding where the approach to market was advertised, the probity adviser described the department's approach to the procurement as containing 'ambiguity in how the suppliers were identified' due to:

- the absence of criteria used to decide whether to include or exclude a panel supplier;
- the expected value calculated as \$79,000 and the perception that it 'conveniently' falls under the \$80,000 threshold²⁴; and
- why the panel, managed by Services Australia, was an 'administrative burden' leading to it not being used.²⁵

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

In most respects, the RFT documentation for the NAP 10 and NAP 21 procurements issued by AGD identified the information required by the CPRs. This included the conditions for participation, minimum content and format requirements and evaluation criteria. AGD did not clearly identify the relative importance of each of the criteria to be applied in the evaluation processes.

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

- any conditions for participation, including financial guarantees, information and documents that potential suppliers are required to submit;
- any minimum content and format requirements; and

22 Finance, *Commonwealth Procurement Rules*, paragraph 9.2.

23 The ANAO's analysis of the department's emails identified this probity advice, which was not retained by the department in its records management system.

24 The two proposals received in response to the RFQ, including the successful candidate's, exceeded the \$80,000 threshold for limited tender procurements. The delegate for the procurement approved a proposal to enter into contract negotiations with the preferred tenderer with the aim to negotiate the costs below \$80,000. The value of the resultant contract was \$79,420.

25 The probity advice was provided in the context of the department seeking Astryx's review of correspondence to a potential supplier who had not been approached for the procurement and was seeking information on where the approach to market was advertised.

- evaluation criteria to be considered in assessing submissions and, if applicable to the evaluation, the relative importance of those criteria.²⁶

2.18 The CPRs also include a requirement that non-corporate Commonwealth entities, such as the Attorney-General's Department, comply with procurement-connected policies where the policy indicates that it is applicable to the procurement process.²⁷

Requirements to participate

2.19 The same three conditions for participation were included in the RFT Conditions of Tender for both procurements. While the request documentation for both procurements included the same four minimum content and format requirements, the NAP 10 RFT included an additional requirement. The additional requirement was that the tender complies with a clause requiring tender responses to be lodged electronically via AusTender before the RFT closing time and in accordance with the tender response lodgement procedures set out in the RFT documentation and on AusTender.²⁸

2.20 Consistent with the Shadow Economy Procurement-Connected policy, the conditions for participation and minimum content and format requirements included the requirement for tenderers to provide a valid Statement of Tax record.

Evaluation approach and criteria

2.21 The request documentation set out, consistent with the CPRs, that tenders would be evaluated to identify the tender that represented the best value for money on the basis of evaluation criteria. It defined value for money as 'a comprehensive assessment involving a comparative analysis of the relevant financial and non-financial costs and benefits of the Tenders, including risk'.

2.22 The request documents for both procurements set out that the criteria to be applied for the purposes of evaluation were 'not in any order of importance'. In contradiction to this statement, tables containing the criteria included a list of four criteria with weightings of decreasing magnitude. The first of the four criteria ('service delivery' in each case) was weighted as the most important — 50 per cent for NAP 10, and 55 per cent for NAP 21. The weighted criteria were followed by a list of non-weighted criteria, including the criterion related to price.

2.23 This approach does not satisfy the requirement of the CPRs that request documentation set out the 'evaluation criteria to be considered in assessing submissions and, if applicable to the evaluation, the relative importance of those criteria'. Further, the decision to not weight the price criterion did not have a rationale. This is important given the department's procurement planning set out that the approach to market for the two tenders would include asking respondents to outline what level of service they could provide for the budgeted amounts.

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

27 *ibid.*, paragraph 4.9.

28 The department's records did not explain why this requirement was not included as a minimum content and format requirement of both RFTs.

2.24 The remaining non-weighted criteria were to ‘also be considered as part of the evaluation process’.²⁹ The request documentation did not include information to demonstrate to potential respondents the relative importance of the non-weighted criteria, or the proposed approach to evaluating the extent to which tender responses met the criteria. This meant that the request documentation did not make clear the considerations that were of relative importance to the evaluation in terms of demonstrating value for money.

Recommendation no. 1

2.25 When conducting procurements, the Attorney-General’s Department clearly identify the relative importance of each of the criteria to be applied in the evaluation process. This should include appropriate weighting of the price criterion in circumstances where a budget has been established for the goods and/or services being procured.

Attorney-General’s Department response: Agreed

2.26 *The department will develop internal guidance to further support staff in weighting criteria to be applied during tender evaluation processes. This will include advice regarding the appropriate weighting of price criterion, including in circumstances where a budget has been established for the goods and/or service being procured.*

Evaluation provider

2.27 The RFQ set out that responses would be evaluated against six evaluation criteria. The criteria were not weighted.

2.28 Important information included in the RFQ was that the service provider ‘may not’ nominate subcontractors to provide some or all of the services, and that ‘Travel will not be paid for by the Service Provider and the Service Provider will not be reimbursed for travel’. These two restrictions were the subject of enquiries from candidates.³⁰

2.29 Two addenda were issued by the department.

- The first addendum, issued on 19 January 2024 to 11 of the 12 candidates³¹, stated that the successful candidate would not be able to sub-contract its responsibilities and deliverables to another organisation or individual but ‘would be able to work with, consult or collaborate with other organisations, academics, clinicians or experts as necessary’.

29 The NAP 10 RFT included three non-weighted criteria (including ‘pricing and payment arrangements’) and the NAP 21 RFT included five non-weighted criteria (including ‘pricing and payment arrangements’).

30 On 22 December 2022, the department advised a candidate that not allowing subcontractors was deliberate and that ‘due to probity’ the department was unable to alter the requirement as the RFQ had been released to a number of organisations. Further advice was sought by the candidate on 12 January 2024 including in relation to the subcontracting restrictions. The department advised the candidate on 17 January 2024 that it was preparing a response to be sent out to all potential tenderers ‘to ensure probity is maintained’. On 11 January 2024, a different candidate requested clarification regarding the subcontractor and travel requirements. That candidate advised the department on 15 January 2024 that it had decided not to participate. The department had been preparing a response to the enquiries but decided not to respond after being notified the candidate was not intending to provide a response.

31 The addendum was not sent to the candidate that had advised the department on 15 January 2024 that it had decided not to participate.

- The second addendum, issued on 9 February 2024 to all 12 candidates³² included a revised RFQ. The closing date was extended to 15 March 2024 (from 16 February 2024), and the proposed commencement date was amended to 3 May 2024 (from 29 March 2024). It also included changes to the subcontracting arrangements such that the candidates were allowed to nominate subcontractors to provide specific parts of the services.

2.30 The amendment to the subcontracting arrangements resulted from AGS advice that the RFQ and AGD's draft second addendum were inconsistent with the terms of the MAS Panel. AGD had not sought AGS advice prior to issuing the RFQ or the first addendum.

Opportunity for improvement

2.31 To treat potential suppliers fairly, the department should issue any addenda to all candidates in a limited tender, and make the addenda available to all potential candidates when the procurement is by way of an open tender.

Procurements of advisers and consultants

2.32 Evaluation criteria were included in six of the nine procurement processes for advisers and consultants. The CPRs were not complied with in relation to the other three of these procurement processes (see paragraph 2.17).

2.33 For one of those six where evaluation criteria were available to potential suppliers, being the procurement of the NAP 10 consultation provider, the criteria that were used to evaluate the one response received by the department were not the same as the evaluation criteria included in the RFQ.

2.34 In addition, the RFQ that was issued to engage a service provider for contact centre advice on the NAP 10 and NAP 21 RFT packages was not well constructed. A requirement for the engagement was for key personnel to hold a baseline security clearance. The requirement was specified in one section — 'Key personnel' — but the section that was directly relevant — 'Security clearance requirements' — was blank (that is, it neither restated the requirement, nor cross-referenced to the other section). This impacted the evaluation of the responses and the selection of the successful candidate (see paragraphs 2.91 and 3.59).

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

With one exception, all tenders accepted for evaluation had been lodged by the specified closing date.

32 Prior to releasing the second addendum and revised RFQ, the department sought advice from its probity adviser on whether it was permissible to send the addendum to the candidate that had notified the department that it would not be providing a response and whether there were any probity considerations the department should take into account. Astryx advised that all 12 potential tenderers should be issued the addendum for equity and fairness as more may have decided not to tender but the amended terms could make them reconsider. Further, any addendum should always go to all potential tenderers for those reasons. As noted in footnote 31, the first addendum was not sent to one of the candidates.

2.35 The CPRs require all potential suppliers to lodge submissions in accordance with a common deadline.³³ Late tenders must not be accepted unless the submission is late as a consequence of mishandling by the relevant entity.³⁴ Consistent with this requirement, the RFTs for both procurements stated that tenders must be lodged before the closing time, as defined in the RFT.

2.36 A tenderer for the NAP 10 procurement submitted part of its tender response after the closing time of 4:00pm, 27 February 2024, as specified in the RFT (see Table 2.3). After submitting its response, the tenderer, NAP 10 Tenderer 6, emailed the department's RFT contact officer at 6:10pm on 27 February 2024 a signed tenderer's deed (required to satisfy the conditions for participation and minimum content and format requirements), which it had not submitted with its tender. Inconsistent with the CPRs, the department accepted the tender for evaluation (tenders were provided to the Evaluation Committee on 6 March 2024). The department did not seek to address this situation until the Initial Screening Report, which recommended the tender be accepted, was provided to and endorsed by the Evaluation Committee for the procurement between 12 March 2024 and 25 March 2024, after evaluations had commenced.

Was the approach to evaluation consistent with the request documents?

Six of the tenders received for the NAP 10 and NAP 21 procurements were not compliant with the requirements of the RFT. The two preferred tenderers were not compliant with all of the requirements set out in the RFT, as neither had submitted all of the pricing information that the RFT had said was required. In addition, for the NAP 21 procurement, for the preferred tenderer the evaluation report identified 24 items related to service delivery, the solution/technical issues, legal/contract issues and pricing issues for which additional information was required by the department before a contract negotiation directive could be prepared. The department's approach also did not satisfy the requirement of the CPRs that further consideration only be given to submissions that meet minimum content and format requirements. Three of the tenders for the NAP 10 and NAP 21 procurements that did not meet those requirements were progressed to evaluation before the department sought to address the situation.

2.37 The RFTs for the NAP 10 and NAP 21 procurements identified:

- that tenders received after the closing date would be deemed to be a late tender and would not be admitted into evaluation unless the tender was late solely due to mishandling by the department;
- the conditions for participation³⁵;
- the minimum content and format requirements; and

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

34 *ibid.*, paragraph 10.28.

35 One of the contributions to this ANAO performance audit from a tenderer commented that 'the tender did not require providers to be accredited under the Commonwealth Government's own new Digital Mental Health Safety and Quality standards which is a double standard given mental health organisations are required to be accredited and this is a high-complexity mental health service for non-offending family members and children yet the standards weren't a factor'.

- certain information that was required to be provided as part of the tender. In particular, the RFT identified that tenderers ‘must’ address each of the evaluation criteria by completing various tender response forms. Of note given the nature of the services being procured, tenderers were ‘required’ to provide information on their service pricing for calls of 30 minutes duration under three scenarios (low, medium and high call volumes).³⁶

2.38 In relation to the latter, tenderers were advised in the RFT that the department determined high, medium and low call volume scenarios by examining the call volumes of similar services.³⁷ The RFTs did not permit tenderers to select their own preferred call duration. Rather, they should submit the required information and detail any cost implications if the 30 minute call duration assumption (or the assumption that the service would operate 8 hours a day, 5 days a week (for NAP 10) or 7 days a week (for NAP 21)) was materially different to the actual service operation.³⁸

2.39 As illustrated by Table 2.2, four of the five tenderers for the NAP 21 procurement did not, on the basis of the department’s evaluation records, meet one or more of the above four requirements. The most common area of non-compliance related to the pricing information, specifically the requirement to provide service pricing for 30 minute calls under three call volume scenarios. This included the preferred tenderer which, rather than providing pricing on the basis of 30 minute calls as required by the RFT, outlined in its tender that it was pricing on the basis of 45 minute calls for the three call volume scenarios. The department, while identifying the issue, did not seek to address it until after it had been approved as the preferred tenderer by the spending delegate for the procurement. The assessment of tenders against the price criterion did not reflect that some tenders had not provided all the pricing information the RFT stated was required, or had provided pricing information based on a different call duration assumption. In February 2025, the NAP 21 preferred tenderer advised the ANAO that its perspective³⁹ was that:

- it complied with all RFT requirements and, while a potential alternative was provided that it considered has the potential to enhance the services, it was also prepared to comply with the department’s preference; and
- its call duration assumption was based on experience and engagement with other offender prevention services and the assumption had very minor implications on estimated costs (and no impact on the 100 and 250 call scenarios).

36 On 16 December 2024, AGD sought legal advice on the ANAO’s findings regarding minimum content and format requirements in regards to pricing set out in paragraphs 2.37 to 2.40 (including Table 2.2 and Table 2.3). Reflecting these instructions, the legal advice of 17 December 2024 addressed the department not obtaining ‘required’ pricing information solely from the perspective of the mandatory content and format requirements. In seeking the advice, the department misrepresented the audit findings. As set out in paragraph 2.37, the ANAO clearly identified that the finding relating to pricing information not being obtained was not in relation to the minimum content and format requirements but related to the pricing schedules of the respective RFTs. Neither the department’s instructions to AGS, nor the resulting legal advice, addressed the terms of the pricing schedules of the RFTs that set out ‘required’ pricing information.

37 The department’s records did not evidence that it had examined the call volumes of similar services.

38 The department’s records did not evidence the basis of the average 30 minute call.

39 The department’s Tender Evaluation Report for NAP 21 identified that, in relation to pricing issues, the department required more information from the preferred tenderer before a contract could be negotiated. The department identified that the preferred tenderer’s longer average call time results in additional call time per day and that this may have had an impact on the staffing costs and have flow on affects for other aspects of the price where staff numbers are a cost driver, including office space, IT Infrastructure and any required licensing.

Table 2.2: Compliance with RFT requirements by tenders received for NAP 21

Tenderer	On time	Minimum content and format	Conditions for participation	Required pricing information
NAP 21 Preferred Tenderer	◆	◆	◆	■
NAP 21 Tenderer 2	◆	◆	◆	◆
NAP 21 Tenderer 3	◆	◆	◆	■
NAP 21 Tenderer 4	◆	▲	▲	■
NAP 21 Tenderer 5	◆	◆	◆	■

Key: ◆ denotes that the requirement was met
 ▲ denotes that the requirement was not met and was addressed by AGD
 ■ denotes that the requirement was not met and was not addressed by AGD

Source: ANAO analysis of AGD records.

2.40 As illustrated by Table 2.3, three of the six tenders received for the NAP 10 procurement did not, on the basis of the department's evaluation records, meet one or more of the RFT requirements. Similar to the NAP 21 procurement, the most common area of non-compliance related to the pricing information, specifically the requirement to provide service pricing for 30 minute calls under three call volume scenarios. This included the preferred tenderer which, rather than providing pricing on the basis of 30 minute calls as required by the RFT, outlined in its tender that it was pricing on the basis of 45 minute calls for the three call volume scenarios. The department, while identifying the issue, did not seek to address it at any stage including during collaboration activities. The highest ranked tenderer against the weighted evaluation criteria (NAP 10 Tenderer 5, with an aggregate score 12 per cent higher than the preferred tenderer) was in full compliance with the RFT requirements. Its evaluated price (under the medium call volume scenario) for the first three phases⁴⁰ of the service was \$8.4 million, which was closer to the \$8.6 million available for service provision the department had outlined in the request documentation whereas the preferred tenderer's evaluated price was lower at \$7.1 million. The assessment of tenders against the price criterion did not reflect that some tenders had not provided all the pricing information the RFT stated was required, or had provided pricing information based on a different call duration assumption.

40 The RFT required pricing information for the first three phases ('Planning and Design'; 'Establishment and Implementation'; and 'Initial Service Delivery'). They were also required to 'provide an outline of the cost principles and methodology it will use to calculate costs for Phase 4 — Standard Service Operations' with the RFT stating that the department 'intends to negotiate costs and payment schedule for Service provision beyond the initial 12 months (i.e. the costs for Phase 4), alongside ongoing performance metrics, before the end of Phase 3.'

Table 2.3: Compliance with RFT requirements by tenders received for NAP 10

Tenderer	On time	Minimum content and format	Conditions for participation	Required pricing information
NAP 10 Preferred Tenderer	◆	◆	◆	■
NAP 10 Tenderer 2	◆	▲	▲	◆
NAP 10 Tenderer 3	◆	◆	◆	◆
NAP 10 Tenderer 4	◆	◆	◆	◆
NAP 10 Tenderer 5	◆	◆	◆	◆
NAP 10 Tenderer 6	▲	▲	▲	■

Key: ◆ denotes that the requirement was met
 ▲ denotes that the requirement was not met and was addressed by AGD
 ■ denotes that the requirement was not met and was not addressed by AGD

Source: ANAO analysis of AGD records

2.41 Also highlighted in Table 2.2 and Table 2.3 is that three tenders did not meet the minimum content and format requirements and the conditions of participation. The three tenders were progressed to evaluations before the department sought to address the non-compliances, an approach that does not satisfy the CPRs (see Appendix 3).

Advisers and consultants

2.42 There was one procurement process to engage an adviser in which a response was excluded from evaluation. The RFQ to engage a contact centre adviser for the NAP 10 and NAP 21 RFT packages was issued to 10 candidates on a panel. Three responses were received, all before the RFQ closing time. One of the respondents had not been issued the RFQ by the department. Following advice from AGD's internal procurement section that this firm had not been approved to participate on the panel, AGD excluded its response from evaluation and advised the firm of its decision.

2.43 In relation to the NAP 10 consultation provider procurement, the department noted in its evaluation that the supplier response form was not used by the one respondent to the RFQ. This was not consistent with the requirements of the RFQ, which stated that the supplier response form must be used. Nevertheless, AGD accepted the response for evaluation.

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

Tenders for the NAP 10 and NAP 21 procurements were not fully and fairly evaluated against each of the criteria. In relation to the price criterion, tenderers were required to provide information under three scenarios (low, medium and high call volumes). The department did not evaluate tenders under each of the three scenarios because not all tenderers provided the required information. For the NAP 21 procurement, the department analysed the high volume call scenario whereas, for the NAP 10 procurement, the medium call volume scenario was used. The department's approach reflects that it accepted for evaluation tenders that had not

provided all the required price information and so it used the call volume scenario in each tender where it had a response from all tenderers. The approach to evaluation did not include any marking down of the evaluation against the price criterion for the tenderers that had not provided all of the required information.

In relation to the evaluation provider procurement, a second evaluation panel had to convene to re-evaluate responses after the department became aware it had not evaluated all four of those received.

For one of the procurements of advisers, the department's evaluation did not address a mandatory requirement such that it had to retract its advice that the candidate assessed as offering value for money was successful after it eventuated that the candidate did not meet the requirement.

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

2.45 The request documentation for both procurements outlined that tenders were to be evaluated to identify the tender that represents best value for money on the basis of:

- for the NAP 10 procurement, seven evaluation criteria, four of which were weighted and the remaining three (including the price criterion) were not weighted; and
- for the NAP 21 procurement, nine evaluation criteria, four of which were weighted and the remaining five (including the price criterion) were not weighted.

2.46 It further stated that value for money would be a comprehensive assessment involving a comparative analysis of the relevant financial and non-financial costs and benefits of the tenders, including risk.

2.47 All six of the tenders received in response to the NAP 10 RFT, and all five of the tenders received in response to the NAP 21 RFT, were progressed for evaluation.

Conduct of the tender evaluation

2.48 As set out in paragraph 2.22, the RFTs for the two procurements included four weighted criteria as well as various unweighted criteria, which included the criterion related to price. The tender evaluation plans for both procurements included a rating scale that Evaluation Committee members were required to use. Risk descriptions included in the rating scales were also to be used for considering the risk profile of each tender for the unweighted criteria.

2.49 The evaluation plans stated that the results of the price evaluation were not to be scored and weighted. Rather, price would be assessed as part of the overall value for money consideration by the Evaluation Committee. The evaluations plans did not reflect that the RFT package for both procurements required tenderers to prepare and submit five pricing tables (see paragraphs 2.60 and 2.61).

2.50 The conduct and results of the evaluation were recorded in individual evaluation sheets completed by each Evaluation Committee member (to varying degrees, see paragraph 2.54), consensus meeting notes recorded by a procurement support team member and the tender

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

evaluation report (which included as an attachment an assessment sheet that recorded the results of the respective Evaluation Committees' consensus meeting). The respective Evaluation Committee members signed and endorsed the tender evaluation reports between:

- 9 May 2024 and 22 May 2024, for the NAP 21 procurement; and
- 5 July 2024 and 29 August 2024, for the NAP 10 procurement.

2.51 External advisers engaged by the department for the evaluations were: a legal and commercial adviser (AGS), a probity adviser (Astryx), a procurement adviser (also Astryx) and a 'contact centre' adviser (MinterEllison Consulting). Also providing advice to the Evaluation Committee was the department's Procurement and Framework Team (as the procurement adviser), and the department's Financial Reporting Team (as the financial adviser).

Errors and flaws in the underlying evaluation records

2.52 There were a number of errors and flaws identified by the ANAO in the department's records of the underlying evaluations (see Appendix 4). The errors and flaws adversely affected the department's ability to demonstrate that all tenders were evaluated fully and fairly against the specified criteria.

Evaluation worksheets of Committee members

2.53 The tender evaluation plan for each procurement required that Evaluation Committee members use the 'evaluation sheets' provided to them. The tender evaluation plans outlined that those sheets 'provide guidance on ensuring both compliance and risk are considered against each Evaluation Criteria [*sic*]'.

2.54 The evaluation sheets used to record the individual evaluations of Evaluation Committee members were generally incomplete and lacked sufficient detail to support the scoring against the weighted criteria, and the risk ratings against the unweighted criteria. This was reflected in the concerns raised by the department's procurement support team with the department's probity adviser about the level of detail provided in the evaluation sheets by some committee members, and the department's request for advice as to whether it was permissible to have such limited detail. The probity advice to the department on 18 April 2024 in respect to the NAP 21 procurement was that:

this is a good lesson learnt to apply to future procurements. Best practice is for workbooks to be uploaded a few days before consensus to enable the secretariat or chair to check them for sufficient detail. Requesting more detail now does not add any value noting the consensus has been. Having sat on the consensus, I'm confident that the members came to an agreed and defensible outcome.

2.55 This lesson was not then applied to the NAP 10 procurement. On 11 June 2024, the department's procurement support team raised similar concerns about the evaluation sheets as had been raised in relation to the NAP 21 procurement two months earlier. In seeking advice from the probity adviser, it was noted that the records 'are significantly less completed than expected'. The probity adviser repeated its earlier advice. In February 2025, Astryx advised the ANAO that

the lack of detail in the individual evaluators worksheets was only brought to the attention of the probity advisor after the consensus meeting was held. It was the responsibility of AGD to ensure these were completed prior to closing of evaluations. To provide necessary clarity in the context of this matter, please refer to the detailed minutes that accurately provides a

written recorded of the consensus meeting discussions. The probity advisor attended these consensus meetings and did not raise any probity concerns as the discussion was compliant with the process detailed in the approved evaluation plan. There was no probity need to retrospectively go back and update worksheets.

Opportunity for improvement

2.56 The key role of a probity adviser is to advise on whether the current procurement is being conducted in accordance with probity principles. This includes whether the issue on which advice is being sought is acceptable in terms of the approach to market documentation and evaluation plan for the particular procurement. While probity advice may add value by identifying lessons to be learned for future procurements, this should not be the main or sole focus of the advice.

Consensus meetings

2.57 Consensus meetings to agree a single score for each tender against the weighted criteria, and to agree whether the tender had satisfied each unweighted criterion and the associated risk rating, were held by the respective Evaluation Committees. For the NAP 21 procurement, the meetings were on 9 and 10 April 2024. For the NAP 10 procurement, meetings were held over three days from 22 to 24 April 2024.

2.58 The Evaluation Committee for the respective procurements agreed⁴² a single score for each weighted criterion for all tenders received, along with an associated risk rating. The evaluation records contained some inaccuracies in relation to those scores.

- There was an inconsistency in the score recorded for NAP 10 Preferred Tenderer's submission against the second criterion for the NAP 10 procurement. The assessment sheet includes a score of '8' (a rating of 'Very Good'). The records of the consensus meeting are internally inconsistent, including scores of both '7' ('Good') and '8' ('Very Good') in different sections. The final score recorded in the tender evaluation report was '7' with a rating of 'Good'.
- In applying the weightings from the RFT to the agreed scores for the weighted criteria, an error was made in calculating the weighted score for NAP 10 Tenderer 6. Against the first criterion (weighted at 50 per cent), which received a score of 5, the department calculated the weighted score to be 2.75 instead of 2.5. This resulted in the aggregate score being recorded as 5.55 instead of 5.3.

2.59 The results of the department's evaluation against the weighted criteria and the resultant ranking of each tender are highlighted in Table A.2 (for NAP 10) and in Table A.3 (for NAP 21) included in Appendix 5.

2.60 The RFT package identified the information tenderers 'must' provide to inform evaluation against each of the criteria. For the price criterion, the RFT package stated that tenderers were 'required' to prepare and submit five pricing tables.

42 In respect of the NAP 21 procurement, an Evaluation Committee member provided a dissenting opinion in relation to the scoring of one tenderer's response to the first criterion and this was recorded in the tender evaluation report.

- The first table related to ‘planning and design’ for the relevant service, with tenderers to submit prices as well as proposed delivery milestones.
- The second table was for ‘establishment and implementation’ addressing matters such as acquiring physical infrastructure and equipment and training of staff.
- Three versions of the third table were ‘required’ to be submitted. That table related to service delivery pricing. The three tables were to address the three call volume scenarios set out in the RFT.

2.61 The evaluation plans for each of the NAP 21 and NAP 10 procurements did not address how the department proposed to approach the evaluation of tenderer’s service pricing under the three different call volume scenarios. The department then did not evaluate tender pricing under each of the three scenarios for which responses were required. For the NAP 21 procurement, the department analysed the high volume call scenario whereas, for the NAP 10 procurement, the medium call volume scenario was used.

2.62 In relation to the evaluation against the ‘pricing and payment arrangements’ criterion, for the initial service delivery phase of the service, tenderers were required to submit three separate responses based on three scenarios (low volume call of 30 to 80 calls per month, medium volume call of 80 to 150 calls per month, and high volume call of 150 to 300 calls per month). One of the six NAP 10 tenderers (NAP 10 Tenderer 6), and two of the five NAP 21 tenderers (NAP 21 Tenderer 3 and NAP 21 Tenderer 4) did not submit responses to all three scenarios.

2.63 Pricing for the three scenarios was to be based on an average call time of 30 minutes. The preferred tenderers for both the NAP 10 and NAP 21 procurements, did not submit prices based on the required average call time. This meant that their tenders did not meet the requirements of the RFT (see Table 2.2 and Table 2.3).

2.64 The approach to evaluation did not evaluate all of the information it had received from those tenderers. The evaluation approach also did not adversely impact the evaluation result for those tenderers that had not provided all of the required information, or had provided it on the basis of a different call duration assumption than that required.

Recommendation no. 2

2.65 When planning procurements, the Attorney-General's Department:

- (a) ensures that potential suppliers are required to provide all the information that is relevant for the purposes of evaluation, and not ask for any information that is not required;
- (b) where data that is required for evaluation is not provided by a tenderer, this should be reflected in the tender either being excluded or a lower score against the relevant criterion (where the missing information relates to the evaluation criteria); and
- (c) where data that is required for evaluation has been provided, the department should have a plan to evaluate this information and it should be evaluated in full by the department.

Attorney-General's Department response: *Agreed*

2.66 *The department will develop additional internal guidance on the planning of procurement processes, including to address:*

- (a) *the requirement of potential suppliers to provide all information relevant for the purposes of evaluation,*
- (b) *instances where data that is required for evaluation is not provided by a tenderer, and how this is appropriately reflected in the consideration of their tender, and*
- (c) *the development of plans to fully evaluate data required for each evaluation.*

2.67 The department's evaluation was limited to a comparison of the prices for the scenarios in which all tenderers provided a response. This meant that the department did not fully evaluate those tenders that provided the required three scenarios. In effect, the tenderers that did not comply with the requirement were unfairly advantaged as the failure to provide the required information bore no consequence.

2.68 For the NAP 21 procurement, the high call volume scenario was used.

2.69 For the two tenderers that did not include responses to all three scenarios in relation to the NAP 21 procurement, it was unclear which scenario was included in the tenders.

- NAP21 Tenderer 3 did not specify which scenario it had included.⁴³
- NAP 21 Tenderer 4's response included as the table header 'Table C - Phase 3: Initial Service Delivery - Scenario A'. However, the reference to 'Scenario A' (the low volume call scenario) is inconsistent with the note below the table which states 'Only one scenario has been provided which assumes high level demand for the service. Other lower level demand scenarios require a complete reworking of the Service with smaller premises, less

43 The contact centre adviser's report provided to the Evaluation Committee and attached to the NAP 21 Tender Evaluation Report noted, along with other issues with the pricing information, that 'The Tenderer has provided a single price only for Phase 3. There is no information in relation to which call volume scenario the price is based on or how the price would be varied due to changes in call volume'.

staff, less physical and digital infrastructure and very limited capacity to offer any service to priority groups'.⁴⁴

2.70 NAP 21 Tenderer 5 also did not provide a compliant tender. Specifically, it did not provide pricing for the 12 month period as required for the service delivery phase. This resulted in the department making adjustments to NAP 21 Tenderer 5's tendered prices to provide for prices to be compared on a common basis. For the Phase 3 prices, the department recorded that it had to 'extrapolate the costs to 12 months' as the tendered prices were for nine months only, and GST also had to be added to the 'Phase 2' and 'Phase 3' costs. However, the total price for Phase 2 was adjusted using the formula to 'extrapolate the costs to 12 months' for Phase 3, instead of adding the GST component to the tendered price. This error resulted in an increase of the total price used for the price comparison (see Table 2.4).

Table 2.4: AGD's summary of pricing used to evaluate NAP 21 tenderer prices (high volume call scenario)

Stage	NAP 21 Preferred Tenderer (\$)	NAP 21 Tenderer 2 (\$)	NAP 21 Tenderer 3 (\$)	NAP 21 Tenderer 4 (\$)	NAP 21 Tenderer 5 (\$)
Phase 1	304,375.92	407,000.00	741,555.86	218,719.20	1,648,159.00
Phase 2	1,284,010.44	1,104,611.00	866,641.59	507,631.14	3,072,524.00 ^a
Phase 3	5,234,530.83	4,072,049.00	2,2775,804.58 ^b	2,763,827.00 ^b	5,094,909.60
Total	6,822,917.99	5,583,660.00	4,384,002.03	3,490,177.34	9,815,592.60^a

Note a: As discussed in paragraph 2.70, the department incorrectly calculated the price for NAP 21 Tenderer 5's Phase 2 price. Based on the tendered price, the amount for Phase 2 should have been calculated as \$2,255,036.30 including GST. The resultant total tender price should have been calculated as \$8,998,104.90.

Note b: As discussed in paragraph 2.69, it was not clear which of the three scenarios the tendered prices were for Phase 3 for this tender submission.

Source: ANAO analysis of AGD records

2.71 The evaluation resulted in a risk rating and a ranking of tenderers (although the tenders were not listed in order of rank in the tender evaluation report) against the pricing and payment arrangements criterion. NAP 21 Preferred Tenderer's submission was the only one to receive a risk rating of 'Low' from the Evaluation Committee. The remaining tenders were assessed as either 'Medium' or 'Medium-High' risk. The 'summary of key findings' in support of the Evaluation Committee's ranking and price assessment included in the tender evaluation report, for one of the five tenderers, focused on the tenderer's financial viability and corporate capacity (which is criterion 6). The tenderer, NAP 21 Tenderer 2, received a risk rating of 'Medium'.

2.72 For the NAP 10 procurement, the medium call volume scenario was used for the price comparison (see Table 2.5). This meant that the evaluation did not consider the full extent of the tendered prices. This deficiency in the evaluation became important at a later stage when, prior to commencing contract negotiations, the department identified that the preferred tenderer's pricing of the medium call volume scenario exceeded the department's budgeted annual amount and that this required 'clarification' with the preferred tenderer in order to achieve 'savings'. The evaluation

⁴⁴ The contact centre adviser's report also noted that it was unclear which scenario the tenderer had included and suggest that it is clarified with the tenderer.

plan for the NAP 10 procurement (and the NAP 21 procurement) had not required that the department evaluate whether tendered prices (under any of the call volume scenarios) exceeded the annual budget available, and no such analysis was included in the tender evaluation reports.

Table 2.5: Summary of pricing used to evaluate NAP 10 tenderer prices (medium call volume scenario)

Stage	NAP 10 Preferred Tenderer (\$)	NAP 10 Tenderer 2 (\$)	NAP 10 Tenderer 3 (\$)	NAP 10 Tenderer 4 (\$)	NAP 10 Tenderer 5 (\$)	NAP 10 Tenderer 6 (\$)
Phase 1	407,996	438,005	495,000	357,000	346,101	622,443
Phase 2	2,495,528	980,815	1,456,985	1,338,978	2,887,298	893,030
Phase 3	4,198,468	2,180,900	3,427,738	2,672,770	5,131,850	2,830,534
Total	7,101,992	3,599,720	5,379,723	4,418,748	8,365,249	4,346,007

Source: ANAO analysis of AGD records.

2.73 The evaluation resulted in a risk rating and a ranking of tenderers against the pricing and payment arrangements criterion. NAP 10 Preferred Tenderer's submission was the only one to receive a risk rating of 'Low' from the Evaluation Committee, while the remaining tenders were assessed as 'Medium' risk. The summary of key findings for the pricing criterion set out in the tender evaluation report to support the risk ratings of NAP 10 Preferred Tenderer and the highest ranked tenderer against the weighted criteria, NAP 10 Tenderer 5, primarily focused on the financial adviser's financial viability assessment, which was unrelated to the criterion. The tender evaluation report did not set out the prices of tenderers.

Selection of preferred tenderers

2.74 The Evaluation Committee for the NAP 21 procurement concluded that the evaluation conducted by the committee indicated that NAP 21 Preferred Tenderer met the requirements of the procurement and recommended that it be selected as the preferred tenderer. As noted in paragraph 2.63, NAP 21 Preferred Tenderer did not submit a tender that met the requirements of the RFT.

2.75 In making its recommendation, the Evaluation Committee also proposed further actions be undertaken before entering into contract negotiations with the preferred tenderer. This involved requesting additional information and taking part in a pre-negotiation workshop. An attachment to the tender evaluation report set out 24 items related to service delivery, the solution/technical issues, legal/contract issues, and pricing issues, for which additional information was required by the department.

2.76 Six items were related to price, including the average call time (see paragraph 2.63). None of these items are reflected in the evaluation as summarised by the tender evaluation report and the financial adviser's report. The only item that was recorded as considered at the consensus meeting (which included the value for money assessment) was related to the tenderer including in its tender that it received pro bono legal advice, which was not reflected in the financial adviser's analysis. The value for money assessment did not conclude with the Evaluation Committee identifying a need to request additional information before negotiations could commence.

2.77 The non-compliant pricing information, along with the nature and extent of the additional information required, meant that the tenderer's offer was not capable of being accepted.

2.78 For the NAP 10 procurement, the analysis set out in the tender evaluation report included criteria used for the purposes of evaluation that were different to those included in the RFT, an approach that does not comply with the CPRs. In this respect, there was no financial viability criterion for the NAP 10 procurement set out in the RFT. While respondents were requested to complete a 'Financial Viability Questionnaire', this was to be considered as part of the evaluation against the 'compliance and risk' criterion (one of four items that were requested for consideration against this criterion).⁴⁵ At odds with the RFT⁴⁶, the evaluation report included a 'financial viability and corporate capacity' criterion and stated that each tender was assessed on the extent to which each tenderer has the financial and corporate capacity to fulfill the contract obligations and the level of financial risk relating to entering into a contract with the tenderer. This was followed by a summary of each tenderer's financial and corporate capacity and the agreed risk rating for each tender.

2.79 In its value for money assessment, the department recorded that 'While [NAP 10 Tenderer 5] received the highest weighted score, concerns around the financial viability of the Tenderer presented a number of significant risks around its ability to deliver a trusted and sustainable service offering. The Evaluation Committee also noted that [NAP 10 Tenderer 5] presented the highest pricing estimate ...'

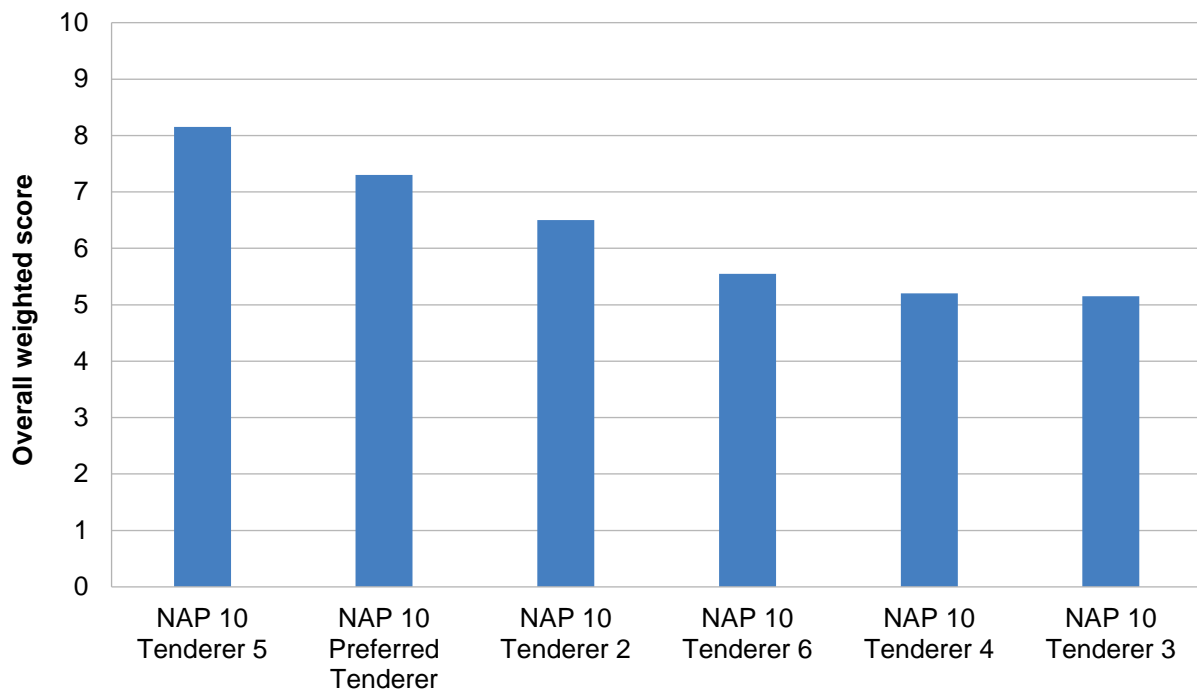
2.80 In considering whether the Evaluation Committee should enter into a 'collaboration activity' with the tenderer to seek further explanation, or to apply mitigation strategies, the department recorded that the Chair 'noted her view that she would be reluctant to make a recommendation to the spending delegate which required the Commonwealth to put financial risk management strategies or guarantees in place with a supplier in order to enter into contract negotiations'. This approach was inconsistent with the RFT package. Specifically, the draft contract included provision of a performance guarantee, which required the service provider to provide the department with a properly executed deed of guarantee within five business days after the commencement date of the contract. The deed of guarantee was to be made between the department and a guarantor for the successful tenderer.

2.81 Figure 2.1 highlights the differences in the aggregate scores against the weighted criteria. NAP 10 Tenderer 5 received the highest score (8 or 'Very Good') against the first ranked criterion (service delivery — 50 per cent weighting) and the highest overall score against the four weighted criteria (8.15 — 'Very Good'). The second ranked tenderer against the weighted criteria was NAP 10 Preferred Tenderer, which received a score of 7 ('Good') against the first ranked criteria, and an overall weighted score of 7.3.

45 The other three items that were requested for consideration were tenderer responses to: compliance with Commonwealth policies and standards; compliance with the draft contract; and tenderer's experience.

46 The RFT included the following statement: 'If any additional criteria are intended to be applied in evaluating Tenders, the Department will notify Tenderers who will be given an opportunity to respond.'

Figure 2.1: Comparison of aggregate scores against weighted criteria



Source: ANAO analysis of AGD records.

2.82 According to the tender evaluation report, in arriving at its recommendation, the department aggregated the risk score for each tender based on its comparative assessment of the tenders. Table 2.6 presents the summary of the scores and risk ratings that were included in the tender evaluation report to support the recommendation. It includes risk ratings against criterion 6 — financial viability, which is inconsistent with the RFT. NAP 10 Preferred Tenderer’s aggregated risk score was assessed as ‘Low to Medium’. The aggregated risk score for NAP 10 Tenderer 5 was ‘Medium-High’, which was higher than all the risk ratings received for the individual criteria, including the rating of ‘Medium’ against the pricing criterion which was actually based on the financial viability concerns (not the ‘extent to which the tenderer’s proposed pricing and payment arrangements will deliver value for money’, as set out in the RFT). The remaining four tenderers all received aggregated risk scores of ‘High’, which was higher than all the risk ratings received for the individual criteria.

Table 2.6: AGD's summary of scores and risk ratings included in the Tender Evaluation Report

Tenderer	Aggregated score for weighted criteria 1–4 (risk score)	Criterion 5 — Pricing	Criterion 6 — Financial viability	Criterion 7 — Benefit to the Australian economy	Aggregated risk score for entire tender determined through comparative assessments
NAP 10 Preferred Tenderer	7.3 (Low to medium)	Low	Low	Very low	Low to medium
NAP 10 Tenderer 2	6.5 (Medium)	Medium	Medium	Low	High
NAP 10 Tenderer 3	5.15 (Medium)	Medium	Low	Low	High
NAP 10 Tenderer 4	5.2 (Medium)	Medium	Medium	Low	High
NAP 10 Tenderer 5	8.15 (Low)	Medium	Medium	Low	Medium to high
NAP 10 Tenderer 6	5.55 ^a (Medium)	Medium	Low	Low	High

Note a: An error was made in calculating the weighted score for NAP 10 Tenderer 6. Against the first criterion, which received a score of 5, the department calculated the weighted score to be 2.75 instead of 2.5, resulting in an increase of 0.25 to the final score.

Source: ANAO analysis of AGD records.

2.83 The first ranked tenderer against the weighted criteria was not afforded the opportunity through collaboration activities to address concerns about financial viability. The second ranked tenderer against the weighted criteria was afforded the opportunity of collaboration activities (see paragraphs 2.99 to 2.103).

Evaluation provider

2.84 Four responses to the RFQ were sent to the department before the revised closing time on 15 March 2024. Three of those responses were acknowledged by the department and accepted for evaluation.

2.85 The evaluation panel of three AGD officers evaluated the three responses against the six evaluation criteria in March 2024. The evaluation panel unanimously recommended that a candidate be contracted for \$894,300.00 (inclusive of GST) to provide the joint evaluation for the two new national services. That decision was based on the evaluation panel's assessment that the offer provided the best value for money outcome for the Attorney-General's Department. Delegate approval to enter into contract negotiations with the preferred candidate was provided on 5 May 2024.

2.86 On 16 April 2024, ARTD Consultants (ARTD) sought the department's advice regarding the status of the procurement process. It was not until 8 May 2024 that the department identified it had not included the ARTD response in its evaluation process, at which stage it decided to run the evaluation process again.

2.87 In May 2024, a second evaluation panel met to re-evaluate the four responses. In addition to evaluating ARTD's proposal, this second evaluation resulted in some changes to the evaluation findings for the proposals of the three candidates previously evaluated, including the ratings against the criteria as well the overall value for money assessment of the proposals. The evaluation resulted in the panel 'unanimously [recommending] that ARTD be contracted for \$543,335 (inclusive of GST) to provide the joint evaluation for the two new national services'.

2.88 Six weeks later, on 5 July 2024, delegate approval was sought to engage ARTD. In the advice to the delegate, the department stated that 'A previous [value for money] process was conducted however the team identified that one response had inadvertently been missed'.

2.89 Delegate approval was provided on 16 July 2024.

Procurements of advisers and consultants

2.90 Of the nine procurement processes to engage the advisers and consultants:

- four involved an evaluation against the specified criteria;
- four did not include any evaluation and value for money was not assessed, including the engagement of Astryx as the strategic procurement adviser (see paragraphs 2.114 to 2.119); and
- one involved an evaluation using criteria that were not the same as the evaluation criteria included in the RFQ (see paragraph 2.32)

2.91 In relation to the procurement process that led to the engagement of MinterEllison Consulting as the contact centre adviser on the RFT packages for NAP 10 and NAP 21, AGD informed respondents that the responses received had been the subject of 'careful evaluation'. This was not

the case given AGD had to retract its advice that the candidate assessed as offering value for money was successful after it eventuated that the candidate did not meet the requirement for its nominated personnel to hold appropriate security clearances (see paragraph 2.34). The evaluation of the responses did not address these mandatory requirements although there was scope to address them against one of the evaluation criteria — the relevant experience of nominated Key Personnel, which included relevant qualifications and certifications required. This was not done.⁴⁷

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

The department did not conduct all tender clarification and collaboration activities in a fair and transparent manner as required by the Commonwealth Procurement Rules.

2.92 The request documentation for both the NAP 10 and NAP 21 procurements provided for the department to seek clarification or additional information from any tenderer for the purposes of tender evaluation, shortlist one or more tenderers and seek further information from them, and conduct ‘collaboration activities’ with one or more tenderers in order to clarify, improve and maximise value for money of tenders (including pricing) for the Commonwealth.

2.93 It also set out that if the department considered that there were unintentional errors of form in a tender, the department may request the tenderer to correct or clarify the error, but any material alteration or addition to the tender would not be permitted.

2.94 The department did not conduct offer definition and improvement activities or best and final offer processes but conducted a ‘collaboration activity’ with one of the NAP 10 tenderers. It also provided opportunities for tenderers for both procurements to correct or clarify unintentional errors.

2.95 The department provided opportunities on 20 March 2024 and 21 March 2024 for three tenderers, after the tenders were progressed for evaluation, to correct or clarify possible unintentional errors and to satisfy the minimum content and format requirements of the RFTs (see Table 2.2 and Table 2.3). In addition, the department also sought clarification from one of those three tenderers in relation to the omission of a statement of compliance with the draft contract.

2.96 No further tender clarification questions were asked.

Collaboration activity

2.97 The department’s procurement framework requires procurements conducted by open tender to use the RFT template available on the department’s intranet. Collaboration activities are not included as one of the additional steps and stages in the template for more complex procurements. Moreover, the department’s framework does not include any guidance or procedures on how to appropriately conduct collaboration activities.

2.98 On 10 July 2023, the department requested that AGS review the clause relating to collaboration activities in the draft RFT noting that it was adopted from the RFT for the

⁴⁷ The candidate’s response to the RFQ stated that all staff ‘either have or have the ability to hold baseline security’.

1800RESPECT procurement conducted by the Department of Social Services (see paragraph 2.4), and that 'it might be at odds with other sections where we say additional information cannot be provided by Tenderers'. AGS responded that 'this process is usually undertaken post an initial evaluation stage with one or two preferred tenderers' and that it 'did not consider that it would be inconsistent with additional information provisions above, noting that the Commonwealth can request additional information for clarity'.

2.99 Following the comparative assessment of the NAP 10 tenders at the Evaluation Committee's consensus meeting on 24 April 2024, the department decided to enter into collaboration activities with NAP 10 Preferred Tenderer, one of two tenderers it considered to be the 'frontrunners' for the NAP 10 procurement (although it had not at that stage been identified as a 'preferred tenderer').

2.100 In relation to the other 'frontrunner', NAP 10 Tenderer 5, which received the highest score against the weighted criteria (8.15 or 'Very Good'), the department noted it 'could not conceive of any Collaboration Activities that could alleviate the serious concerns around [NAP 10 Tenderer 5's] financial stability'. Inconsistent with this, the financial adviser had provided a risk rating of 'Low to Medium' in relation to the tenderer's financial viability. As stated in paragraph 2.83, the tenderer was not afforded the same opportunity to address the department's concerns with its tender response. This is not consistent with conducting a fair procurement, which is what the CPRs require.

2.101 The department issued five questions to NAP 10 Preferred Tenderer on 20 April 2024, the response to which the department advised 'will be evaluated and potentially impact your outcome in regard to this tender'. The questions provided the tenderer with an opportunity to provide additional information to improve its tender response, beyond 'clarifying' its tender response. For example, the tenderer was asked to submit additional information to explain how its organisation would develop a case management practice to deliver the services, given its tender response indicated a lack of prior experience.

2.102 The probity adviser did not express concern about the nature of the request and it assisted with drafting the letter to be sent to the tenderer.

2.103 NAP 10 Preferred Tenderer provided its response to the department on 9 May 2024. The tender evaluation report for the procurement noted that the Evaluation Committee considered that the collaboration activity changed its view of the scoring and assessment of NAP 10 Preferred Tenderer. However, it is not clear from the records what this change involved, which meant that the result of the collaboration activity was not transparent.

Recommendation no. 3

2.104 The Attorney-General's Department improve its procurement framework to address the conduct of additional processes, including collaboration activities to ensure they are conducted in a fair and transparent manner.

Attorney-General's Department response: *Agreed*

2.105 *The department will work to improve the department's procurement framework so that additional processes, including collaboration activities, are conducted in the most fair and transparent manner possible.*

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

The department's procurement processes did not demonstrate ethical conduct as required by the Commonwealth Procurement Rules. This included the approach employed to procuring the probity adviser. The department did not have an effective approach to the declaration, and management, of conflicts of interest.

2.106 Section 15 of the *Public, Governance, Performance and Accountability Act 2013* (PGPA Act) requires the accountable authority to govern the entity in a way that promotes the proper use and management of public resources. The PGPA Act defines 'proper' as efficient, effective, economical and ethical. Officials must also act ethically in accordance with the Australian Public Service (APS) Values and Code of Conduct, as set out in sections 10 and 14 of the *Public Service Act 1999*.

2.107 The CPRs require that procuring entities act ethically throughout the conduct of a procurement process. Ethical behaviour includes recognising and dealing with actual, potential and perceived conflicts of interest, dealing with potential suppliers, tenderers and suppliers equitably and carefully considering the use of public resources.⁴⁸

2.108 In its planning for the NAP 10 and NAP 21 procurements, the department stated that the procurements are 'anticipated to be ethical' as the department had contracted a probity adviser to provide expert advice on any real or perceived conflicts of interest and had worked closely with the probity adviser to develop the probity framework, procurement strategy, and the procurement plans.

Engagement and management of the contract with the probity adviser

2.109 Finance guidance to entities on ethics and probity in procurement is that probity advisers should be independent and free from conflicts of interest, and have a sound knowledge of all relevant government policies and procedures.⁴⁹ In addition, the ANAO has previously highlighted the importance of entities conducting procurement processes to engage probity advisers in a way that is ethical, not engaging the same probity adviser on an ongoing basis and ensuring that the

⁴⁸ Finance, *Commonwealth Procurement Rules*, paragraph 6.6.

⁴⁹ Finance, *Ethics and Probity in Procurement*, Finance, available from <https://www.finance.gov.au/government/procurement/buying-australian-government/ethics-and-probity-procurement> [accessed 11 November 2024].

tasks allocated to the probity adviser do not threaten the independence and objectivity of the probity adviser.⁵⁰ AGD guidance on the use of probity advisers is that they should not have had direct involvement in the proposed procurement activity.

2.110 The department engaged the same firm — Astryx — as the service provider for both ‘expert probity advice’ and ‘strategic procurement advice’, an approach that undermines the independence and objectivity of the probity adviser. It is also an approach at odds with AGD’s guidance.

2.111 In addition, the procurement processes for engaging Astryx were deficient and lacked probity.

2.112 Astryx (as the subcontractor of ServeGate Australia Pty Ltd (ServeGate)) was engaged in May 2022 to provide NOCS, within PM&C at that time, with expert advice on probity matters relating to any procurement undertaken by NOCS to implement measures under the National Strategy. The arrangement is for a period of more than three years, from 15 May 2022 to 30 June 2025.

2.113 Astryx was sourced through a panel arrangement after six (of 285) candidates were approached on 23 March 2022 via a RFQ.⁵¹ Four proposals from three candidates were received on 6 April 2022. ServeGate responded with two proposals, both of which involved using subcontractors to provide the services (one of which was Astryx). The procurement was deficient in a number of respects.

- The criteria for selecting which candidates to approach from the panel were modified or expanded to include more candidates, including one which an evaluation panel member (who was also the delegate for approving the procurement plan and approach to market, but not the delegate who approved the procurement outcome) had ‘strongly recommended’.⁵²
- Although required by the procurement plan, there was no evaluation plan documented.
- Conflict of interest declarations were either not completed or not timely. The evaluation panel signed conflict of interest declarations prior to the ‘group evaluation’ of 11 April 2022 but not before the RFQ was issued and not before receiving the RFQ

50 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 11 November 2024].

51 The department recorded that:

The list of suppliers was initially shortlisted by requiring that all service providers must satisfy criteria ‘SC2 Procurement and Contracting Services’ [of the panel].

This criteria was chosen as NOCS may require probity advice on all aspects of the procurement and contract lifecycle and this requirement will ensure the supplier has this level of expertise. This requirement shortlisted the list of potential suppliers to 99.

Then the list of suppliers was further narrowed to those that were also Indigenous suppliers. This narrowed the list of potential suppliers to just three [including ServeGate]. These three suppliers were added to the list of suppliers to approach with the RFQ.

NOCS then investigated contracts that had been published on AusTender in the last three years, between the value range of \$100,000 and \$5 million, and involved probity advice ... four suppliers [including ServeGate] were identified that are also on the [panel].

This finalised the 6 suppliers NOCS would approach with the RFQ.

52 The candidate that was recommended to be included in the approach to market was not the successful candidate.

responses to be evaluated. Neither of the two officers supporting the procurement, nor the procurement delegate, completed conflict of interest declarations.

- The evaluation of the responses on 11 April 2022 resulted in a different candidate to Astryx being assessed as providing the best value for money. While drafting the work order, the department identified Goods and Service Tax issues with the pricing information in the candidate's response. The pricing issue was treated as an 'unintentional error' and the candidate was provided an opportunity to resubmit its response to the pricing criterion.
- The evaluation panel reconvened on 19 April 2022 resulting in the ServeGate Option 2 (Astryx) being assessed as providing the best value for money after the overall value for money rating for the previous candidate was revised down (notwithstanding this, the scores against the four individual criteria, including price, had not changed). The value for money assessment conducted on 11 April 2022 had concluded that Astryx's proposal 'presents value for money, but did not attain the highest rating for Criterion 1 (which the panel weighted most heavily)'. There were no weightings identified in the RFQ. The value for money assessment conducted on 19 April 2022 concluded that Astryx's proposal 'presents best value for money (which the panel weighted most heavily)'.

2.114 After receiving an offer from Astryx in October 2022 to provide procurement support services in addition to the probity advice it was already providing, AGD engaged Astryx for 'strategic procurement advice' services in February 2023. The key personnel listed in the contract included the probity adviser.⁵³ The contract included an initial term of 10 February 2023 to 31 July 2023, with two extension options of six months each.

2.115 Payment was as 'Per the Astryx retainer model' involving a monthly fee of \$19,800. The department reported the original value of the contract on AusTender as \$120,000, although departmental records did not explain how this was determined. The contract was extended twice, in June 2023 and in January 2024, and the value including the extensions is \$345,000.

2.116 Before exercising the extension options, the department was to assess Astryx based on three criteria. An assessment of Astryx's performance based on the three criteria set out in the contract was not conducted by AGD in advance of either extension.

2.117 The process for the engagement of Astryx to provide strategic procurement advice did not comply with the CPRs. In an email to Astryx on 26 October 2022, AGD confirmed that it 'would like to procure Astryx's services in relation to procurement advice, and in addition to the existing contract for probity services'. Astryx responded with a proposal outlining the proposed resources (including the probity adviser), pricing, the term of the contract, and the process for engaging Astryx through the MAS Panel.

2.118 After several exchanges with Astryx negotiating the pricing arrangement in November 2022 and after receiving internal departmental approvals in December 2022 and January 2023, AGD issued an RFQ to Astryx on 31 January 2023 stating that it is 'comfortable accepting the previous proposal and updated pricing model from Astryx as responses', which were attached to the covering

53 The probity adviser was included as 'specified personnel' in both the contract for probity advice services and for procurement advice services, charged work under both contracts, and was a person who provided some of the procurement advice.

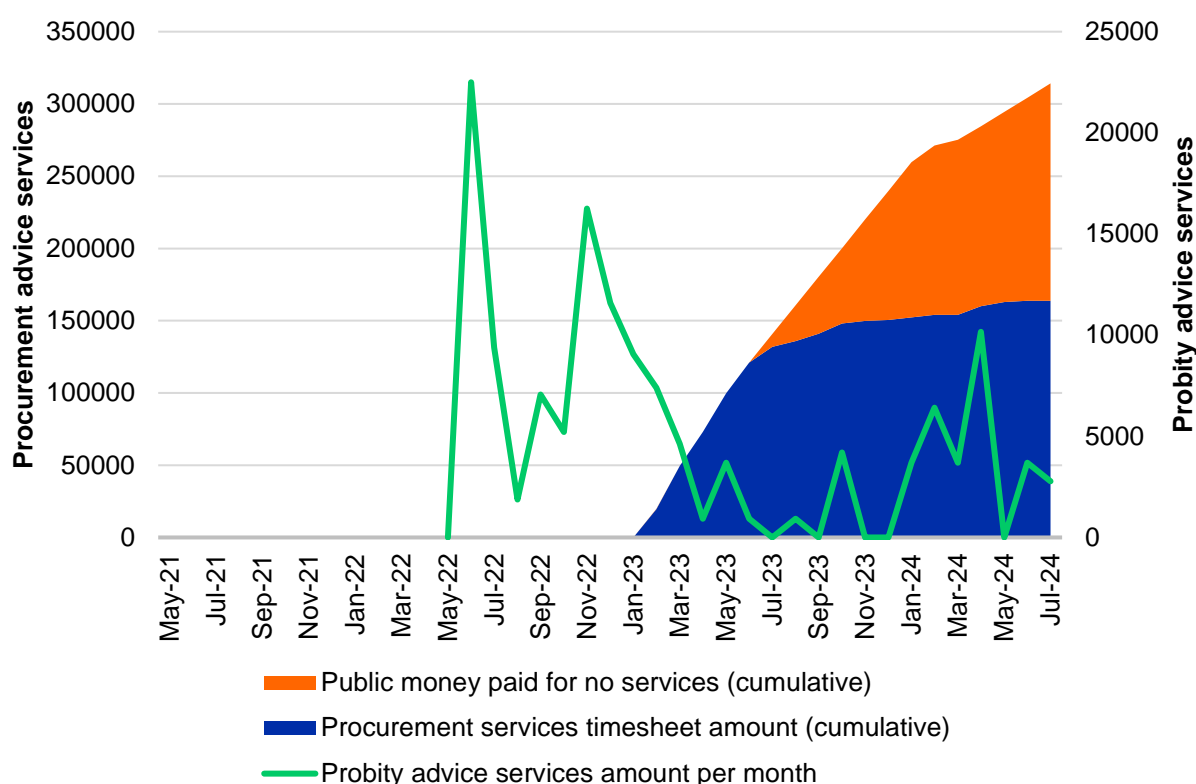
email. The RFQ set out that the responses would be evaluated against five specified evaluation criteria. No other suppliers on the panel were issued the RFQ.

2.119 The following day on 1 February 2023, Astryx submitted a response to the RFQ which combined the original proposal with the retainer fee model. There was no evaluation of the response and overall value for money was not assessed.

2.120 The ANAO's analysis comparing what the department paid to Astryx for its procurement services under the Astryx retainer model with its actual work performed according to its timesheets highlights that Astryx was paid \$150,426 above the work that was performed (see Figure 2.2). During the first six months of the contract, where the work performed exceeded the retainer value, the department paid for those additional services, to the extent that the amount paid exceeded the original approved amount by \$20,792. The first contract variation in July 2023 included an increase in the contract value to include both the excess cost incurred and the cost of the extension (taking the approved value from \$120,000 to \$300,000). The second contract variation to extend the contract by a further six months, approved in January 2024, included a reduction in the retainer fee to \$9,900.

2.121 From July 2023 onwards, the amount of work performed (reflecting a decline in the extent to which AGD requested Astryx advice) was significantly less than the retainer value, such that from:

- 1 July 2023 to 31 January 2024, \$138,600 was paid compared to a value of \$31,291 for the work performed; and
- 1 February 2024 to 31 July 2024, when the contract concluded, \$59,400 was paid compared to a value of \$16,283 for the work performed.

Figure 2.2: Payments to Astryx for probity advice and procurement advice

Source: ANAO analysis of AGD records.

2.122 Also highlighted in Figure 2.2 is that the majority of the expenses on probity services (\$105,617 or 78 per cent) was incurred in the period of May 2022 to October 2023, prior to the release of the RFTs for the NAP 10 and NAP 21 procurements, while the remaining \$30,444 (22 per cent) was incurred in November 2023 (when the RFTs were released) to July 2024. This demonstrates that the work performed involved reviewing and advising on frameworks and planning documents to a greater extent than advising on probity matters concerning the conduct of the procurements, including the conduct of tender evaluation.

Contract management challenges

2.123 In August 2023, AGD recorded that there were contract management challenges with Astryx in its capacity as strategic procurement advisers and that the 'quality of Astryx's work on [NOCS's] projects has been deteriorating and recent work has not been to a satisfactory standard'. AGD also noted that the amount paid to Astryx did not reflect the quality or quantity of Astryx's work and advice.

2.124 There were no records of how the department addressed these contract management challenges.⁵⁴ AGD advised the ANAO in August 2024 that the matters raised were 'an isolated incident, and that the advice received from Astryx across the Branch to date had been useful' and that the 'the concerns raised were not substantiated'.

⁵⁴ In February 2025, Astryx advised the ANAO that 'AGD has not raised any concerns with Astryx regarding its services'.

2.125 Inconsistent with this advice, AGD recorded on 10 July 2024 that it had ‘received inconsistent quality of advice, including advice which has been confirmed to be incorrect, from Astryx. Some sections are advocating for a new provider following a number of incidents of advice not meeting required standards’.⁵⁵

2.126 Although the existing contractual arrangements allowed AGD to continue with Astryx as probity adviser for the NAP 7 procurement with the procurement plan for NAP 7 identifying Astryx as the ‘probity and procurement adviser’, the department had instead conducted a new procurement process and engaged Maddocks as its probity adviser for the NAP 7 procurement.

2.127 In February 2025, AGD advised the ANAO that ‘the department acknowledges that separate providers for expert probity advice and strategic procurement advice were necessary’.

Probity framework

2.128 The *Probity Framework for the National Office for Child Safety (Version 1.3)* (the ‘probity framework’) was developed by the probity adviser, Astryx, and approved by the department on 28 November 2022. It was to be applied from the date it was approved to all NOCS personnel, and any contractors, stakeholders or advisers ‘involved in the delivery of NOCS outcomes’. While the probity framework was to apply to all NOCS procurements, it also set out that additional probity documentation, including probity plans and probity protocols, may be developed for specific procurements on an as-needs basis. AGD advised the ANAO in May 2024, that

Under the Probity Framework, NOCS *may* develop additional probity documentation for specific procurements on an as-needs basis. NOCS worked with our probity adviser on the required documents for the procurements and judged that the NOCS Probity Framework was sufficient for our needs. As a result, we developed detailed risk registers that detailed specific probity risks and how they would be mitigated and managed for the procurements, rather than developing standalone plans.

2.129 One of the requirements set out in the probity framework was for the probity adviser to meet with the department on a monthly basis, or as otherwise agreed, to review current probity risks and the conflict of interest and non-disclosure agreement registers. There is no evidence of these meetings taking place. The risks registers for the procurements also set out that they were to be reviewed monthly after being agreed by the delegate but there is no evidence of reviews occurring. In February 2025, Astryx advised the ANAO that ‘Astryx attempted to initiate regular meeting engagements with AGD from commencement of the services. Initially, AGD worked with Astryx to arrange these meetings to discuss probity risks in forthcoming procurements. We understand AGD maintained a risk register. From mid-2023, Astryx’s requests for meetings were either ignored by AGD or AGD advised they were not necessary’.

2.130 A further requirement was that all NOCS personnel (including contractors, advisers and consultants) must read, understand and comply with the probity framework. There was no evidence, such as a register, to demonstrate that all personnel had acknowledged this requirement.

55 On 8 July 2024, delegate approval was provided for the department to approach eight candidates on the Legal Services Panel to respond to a RFQ for specialist procurement advice services. Astryx was not one of those candidates. In February 2025, Astryx advised the ANAO that ‘it is not a law firm and therefore, is not on the Legal Services Panel’ and that ‘the MAS Panel is the correct and approved panel for engagement of procurement services’.

2.131 The probity framework also set out that the department should maintain a contact register to document any communications that are, or may be perceived as, a probity risk. Contact registers were developed for the NAP 10 and NAP 21 procurements. Not all contacts were appropriately recorded. For example, a meeting held between NAP 21 Preferred Tenderer and the Evaluation Committee Chair and another AGD officer, in which NAP 21 Preferred Tenderer wanted to raise concerns with its interactions with NOCS, was not appropriately documented. While the meeting was recorded in the register, only a 'shell file note' was created, eight months after the meeting, by AGD officers who did not attend the meeting. No file note was created by the participants of the meeting.

Management of conflicts of interest

2.132 Department of Finance guidance to entities on ethics and probity in procurement states that 'persons involved in the tender process, including contractors such as legal, commercial or probity experts, should make a written declaration of any actual, potential or perceived conflicts of interest prior to taking part in the process.'⁵⁶

2.133 The probity framework states that, to help ensure probity is always observed within NOCS, it establishes a framework that 'manages conflicts of interest pragmatically and holistically'. It sets out that conflicts of interest may arise when persons are influenced, or appear to be influenced, by personal or private interests when carrying out their public or professional duty, and includes a non-exhaustive list of instances where a conflict of interest may exist. These instances are where NOCS personnel have:

- any personal financial interest in any potential or actual tenderer of the outcomes of the procurement;
- any immediate relatives or close friends with a financial interest or employment with a tenderer or potential tenderer;
- any personal bias or inclination which would in any way affect an individual's decisions in relation to any procurement or industry engagement activities;
- any personal obligation, allegiances or loyalties that would in any way affect an individual's decision in relation to procurement or industry engagement activities; or
- any professional role that would in any way affect or may be seen to affect an individual's decision in relation to a procurement.

2.134 The probity framework requires that all NOCS Personnel involved in a procurement must complete a conflict of interest declaration, while contractors must also complete a non-disclosure agreement.

2.135 The department maintained a register of conflict of interest declarations for each of the NAP 10 and NAP 21 procurements, which recorded the date an individual completed a declaration, whether or not a conflict had been declared and the treatment of identified conflicts. The registers formed attachments to the tender evaluation reports.

56 Department of Finance, Ethics and Probity in Procurement, available from <https://www.finance.gov.au/government/procurement/buying-australian-government/ethics-and-probity-procurement> [accessed 4 June 2024].

2.136 The ANAO's analysis of the registers as at November 2024⁵⁷ identified that in relation to the:

- NAP 10 procurement, 33 of 58 (57 per cent) conflict of interest declarations relating to 55 individuals had not been maintained on the department's record keeping system; and
- NAP 21 procurement, 20 of 60 (33 per cent) conflict of interest declarations relating to 56 individuals had not been maintained on the department's record keeping system.

2.137 In February 2025, AGD advised the ANAO that:

The ANAO's initial analysis was of the registers and conflict of interest declarations that were available as at November 2024 (50). AGD has since included additional conflict of interest declarations to the registers and its recordkeeping system, reflecting the addition of new personnel involved in the procurements, but not all conflict of interest declarations have been retained. In December 2024 and January 2025, AGD stored and/or made available to the ANAO additional declarations relating to the 55 individuals for NAP 10 and 56 individuals for NAP 21.

2.138 Three individuals declared conflicts of interest. These individuals were the Chair of the Evaluation Committee and an adviser for both procurements, and an Evaluation Committee member for the NAP 21 procurement.

2.139 Department of Finance guidance on ethics and probity in procurement is that

Agencies should in the first instance seek to eliminate actual, potential and perceived conflicts of interest. When this is not possible (such as where it would exclude needed expertise or the conflict is so widespread as to be impossible to avoid completely), effective management strategies should be implemented.⁵⁸

2.140 In July 2023, the Chair of the Evaluation Committee declared an 'apparent conflict of interest' relating to 'professional relationships with organisations in the sector who may tender' for both the NAP 10 and NAP 21 procurements. The declarations were vague and did not provide a transparent record of the nature of the conflict and the decision-making process. The department's records did not explain the nature of the professional relationships with organisations who may tender for the NAP 10 procurement. For NAP 21, the conflict of interest was due to the Chair having been a member of the advisory group for a pilot service that was run by the eventual preferred tenderer.

2.141 The Chair did not accept the initial advice from the procurement team that she should not chair the committee and requested the team to prepare a minute for her signature that detailed advice from Astryx and the risks associated with her chairing the committee, 'mainly to show ANAO

57 The ANAO's analysis was of the registers and conflict of interest declarations that were available as at November 2024. AGD has since included additional conflict of interest declarations to the registers and its recordkeeping system, reflecting the addition of new personnel involved in the procurements, but not all conflict of interest declarations have been retained. In December 2024 and January 2025, AGD stored and/or made available to the ANAO additional declarations relating to the 55 individuals for NAP 10 and 56 individuals for NAP 21. This resulted in:

- for NAP 10, 13 of 58 (22 per cent) conflict of interest declarations relating to 55 individuals not having been maintained on the department's record keeping system; and
- for NAP 21, 4 of 60 (7 per cent) conflict of interest declarations relating to 56 individuals not having been maintained on the department's record keeping system.

58 Department of Finance, *Ethics and Probity in Procurement*, available from <https://www.finance.gov.au/government/procurement/buying-australian-government/ethics-and-probity-procurement> [accessed 17 October 2024].

that we considered the question and that [the Chair] has decided to wear the risk'. While a draft minute was prepared, the minute was not finalised.

2.142 May 2023 advice from the department's probity adviser, Astryx, was that the officer's involvement be limited to providing advice as required on strategy as a subject matter expert. This advice was changed in August 2023 after the department advised Astryx that it was prepared to accept the risk and the Chair had withdrawn from the advisory group for the pilot program on 24 July 2023. Department of Finance guidance on ethics and probity is that, where external probity experts are involved in a procurement, officials should take care not to allow weak advice to form the basis of a contentious decision.⁵⁹

2.143 The department's approach of having decisions about the management approach to a conflict made by the person who had the conflict was not appropriate. While the department did not finalise the minute, it did advise the spending delegate for the procurement of the decision in November 2023, prior to the release of the RFTs. That advice set out reasons that the officer was the most suitable person to chair the committee. The reasons advised to the delegate were different from the earlier reasons that the Chair gave when not accepting the advice of the procurement support team. As discussed at paragraphs 3.25 and 3.27, for periods of the tender evaluation, the Chair's responsibilities were delegated due to leave.

Opportunity for improvement

2.144 The department should ensure it is able to demonstrate that actions and decisions have been made with appropriate consideration by ensuring that the provision of advice is relevant and comprehensive, is not affected by fear of consequences, and does not withhold important facts or bad news.

2.145 The evaluation plans for the procurements stated that it was important that all relevant persons involved in the procurement maintain the currency of their declarations throughout their involvement in the process. Updated declarations were not timely:

- a NAP 21 Evaluation Committee member did not declare an existing conflict of interest with a tenderer until 11 April 2024, after evaluations had commenced and the consensus meeting had been held; and
- the Chair's updated conflict of interest declarations were submitted on 20 March 2024. The declarations identified two tenderers for each of the NAP 10 and NAP 21 procurements (for NAP 10, NAP 10 Preferred Tenderer and NAP 10 Tenderer 4 and, for NAP 21, NAP 21 Preferred Tenderer and NAP 21 Tenderer 4). The department did not apply its planned approach to managing the conflicts of interest. Specifically, the department did not obtain probity advice in relation to the conflicts with the specific

59 Department of Finance, *Ethics and Probity in Procurement*, available from <https://www.finance.gov.au/government/procurement/buying-australian-government/ethics-and-probity-procurement> [accessed 17 October 2024].

tenderers and did not have the procurement delegate make the decision on the course of action to be taken to resolve the conflicts.⁶⁰

2.146 In December 2024, the department advised the ANAO in relation to the Chair's conflict of interest with the entity that was ultimately the preferred NAP 21 tenderer that:

the Chair removed herself from the position which created the potential conflict of interest prior to the procurement, flagged and recorded the potential conflict of interest appropriately and spoke last in each discussion around the relevant tenderer, as recorded in the Tender Evaluation Reports.

2.147 The ANAO does not share the department's view that the Chair removing herself from the position with an entity that tendered (and became the preferred tenderer) meant that the conflict of interest no longer existed.

2.148 The probity adviser's Probity Reports dated 13 May 2024 (for NAP 21) and 10 July 2024 (for NAP 10) made no adverse findings.

2.149 For the other procurements examined as part of this audit, there were none that included a conflict of interest declaration that was completed and held in the department's records for all relevant NOCS personnel involved in the procurement, including each member of the procurement support team, the evaluation panel, the procurement delegate and the probity adviser (if applicable). In relation to the procurements of:

- the probity adviser (see paragraph 2.113) and the evaluation provider, both did not include declarations for the procurement delegate and, in the case of the latter, two members of the evaluation panel; and
- the remaining eight of the 10 advisers and consultants, no conflict of interest declarations had been made and recorded by the department. There was at least one instance where a conflict of interest existed but had not been declared. Specifically, a member of the Evaluation Committee for the procurement of the NAP 21 consultation provider was named as a referee by the successful candidate in its submission.

2.150 In December 2024, the department advised the ANAO that it considers it took 'effective steps to identify and manage conflicts of interest of perceived conflicts of interest'.

60 The evaluation plans for the procurement required that, in the event that the Evaluation Committee Chair declared an actual or potential conflict of interest, the procurement delegate was to decide in consultation with the probity adviser on the course of action to be taken to resolve the conflict in accordance with the probity framework.

Recommendation no. 4

2.151 The Attorney-General's Department strengthen its adherence to recognised principles and processes for conducting procurements ethically, including the identification and effective management of conflicts of interest.

Attorney-General's Department response: Agreed

2.152 *While maintaining that all efforts were made to ensure ethical requirements were met during the procurement processes that have been audited in this report, the department will work to strengthen its adherence to recognised principles and process for conducting procurements ethically, including developing additional internal guidance for the identification and effective management of conflicts of interest.*

3. Demonstrating achievement of value for money

Areas examined

The ANAO examined whether the department's conduct of the procurements to select the preferred tenderers was consistent with achieving value for money, which is the core rule of the Commonwealth Procurement Rules.

Conclusion

The procurements were not timely with the result that selection of preferred tenderers occurred later than planned, no contracts are in place as of May 2025 and services are not being provided. The approach to evaluation was not designed and conducted in a way that enabled the Attorney-General's Department (AGD) to demonstrate achievement of value for money in the selection of preferred tenderers for the National Action Plan Measure 10 (NAP 10) and National Action Plan Measure 21 (NAP 21) procurements:

- Departmental records do not document how the budgeted funding amounts for services were arrived at. Awarding the contracts to tenders that were less than the budgeted funding was an important element of procurement planning yet the price criterion was not one of the weighted evaluation criteria. The budgeted amounts played an important role in the outcome of the procurement process for the NAP 10 procurement.
- While tender evaluation plans were in place prior to the closing date for the NAP 10 and NAP 21 tenders, they did not adequately address how the department planned to evaluate the pricing information tenderers were required to include. The department also admitted into evaluation tenders that had not provided all of the required pricing information (including from the two preferred tenderers).
- The conduct of the tender evaluation for the NAP 10 and NAP 21 procurements was not timely. It was also not consistent with approach to market documents.
- The department's evaluation records do not clearly demonstrate that the preferred tenderers for the NAP 10 and NAP 21 procurements provided the best value for money.

The processes to engage the consultants and advisers to support the NAP 10 and NAP 21 procurements also did not demonstrate value for money. This was due to an absence of competition and/or value for money not being assessed, or the successful candidate not being assessed as providing the best value for money.

Areas for improvement

The ANAO made two recommendations aimed at improving the coverage of tender evaluation plans and improved procurement recordkeeping.

The ANAO also identified opportunities for the department to improve its approach to briefing ministers on procurement processes, the timely conduct of procurement processes when it has limited supplier complaint rights due to timing pressures, and the timeliness of its selection of the members of evaluation teams.

3.1 Achieving value for money is the core rule of the Commonwealth Procurement Rules (CPRs). Officials responsible for a procurement must be satisfied, after reasonable enquiries,

that the procurement achieves a value for money outcome. Procurements should encourage competition, use public resources in an efficient, effective, economical and ethical matter, facilitate accountable decision-making, encourage appropriate engagement with risks and be commensurate with the scale and scope of the business requirement.⁶¹

How were the budgeted funding amounts for services arrived at?

Departmental records do not document how the budgeted funding amounts for services were arrived at.

3.2 The department recorded that the total funding provided by the 2021–22 Federal Budget was \$10.2 million for NAP 10, and \$9.6 million for NAP 21. The department's procurement planning was that the approach to market for the two tenders would include asking respondents to outline what level of service they could provide for the budgeted amounts.⁶²

3.3 After reducing the available budgeted amounts by the proportion that the department had allocated to other expenses⁶³, and by a further 10 per cent to 'provide flexibility during contract negotiations' (as recommended by the department's probity adviser), the department planned to outline in each RFT that there was:

- approximately \$8.6 million available for the NAP 10 service provision for three years⁶⁴; and
- approximately \$7.2 million available for the NAP 21 service provision over the 2023–24 and 2024–25 financial years.

3.4 The purpose of this approach was to avoid tenderers submitting responses that were closer to the \$10.2 million and \$9.6 million available for NAP 10 and NAP 21, respectively.

3.5 The NAP 10 request documentation stated that there was approximately \$8.6 million available for service provision and that tenderers should outline what level of service they can provide within the budget, although it said the funding was available over the 2023–24 and 2024–25 financial years (not three years). However, the planned approach was not adopted for the NAP 21 procurement. In January 2025, AGD advised the ANAO that:

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

62 The rationale for disclosing the budgeted information to tenderers was that this would achieve value for money as an 'economical' use of public resources.

63 The department recorded that it had allocated:

- \$0.6 million of the \$10.2 million budgeted for the NAP 10 service to staffing, travel, consultations, and evaluation; and
- \$1.6 million of the \$9.6 million budgeted for the NAP 21 service to staffing, travel and consultations.

64 The department's procurement plan stated that:

The annual supplier cost budgeted is \$3,161,809 prior to indexation. It is proposed that:

- in Financial Year 2023–24, twice the full annual value (including indexation) be provided to enable service set-up, initiate initial service delivery, and fund service delivery over two financial years until the end of Financial Year 2024–25.
- in Financial Year 2025–26, one years' full annual value (plus indexation) be provided to enable service provision over Financial Year 2025–26 and half of 2026–27.

In sum, funding will total 3 years of service delivery.

The department does not have records for the differing approaches taken in this respect. These were two different procurement [sic] by two different sub-teams, which each received legal, procurement and probity advice through these processes. The Department notes that both approaches are consistent with the CPRs.

3.6 Contributions received by the ANAO to the Citizens Contribution facility for this audit included two from tenderers that raised several concerns around the amount of budget funding announced as available, which created significant hesitancy to tender. Concerns raised related to an apparent assumption of significant existing capacity and experience to develop and implement the services rapidly, the sufficiency of the budget to deliver the service requirements and the sustainability of the service.

3.7 The department's records did not explain how the budgeted amounts were arrived at. In January 2025, AGD advised the ANAO that:

While ideally the budgeting process would be undertaken prior to the creation of the NPPs, there was not the timeframes for this available and the costings were undertaken through the NPP process.

3.8 The budgeted amounts played an important role in the outcome of the procurement process for the NAP 10 procurement, as follows:

- the tenderer that scored highest against the weighted criteria was excluded from participating further in the tender process in favour of the second highest scoring tenderer which had submitted a tender which the department evaluated as having a lower price (see further at paragraph 2.40); and
- before seeking to negotiate an annual service budget for the contract, the department identified that it needed to achieve 'savings' against the costings the preferred tenderer had included with its tender (see also paragraph 3.54).

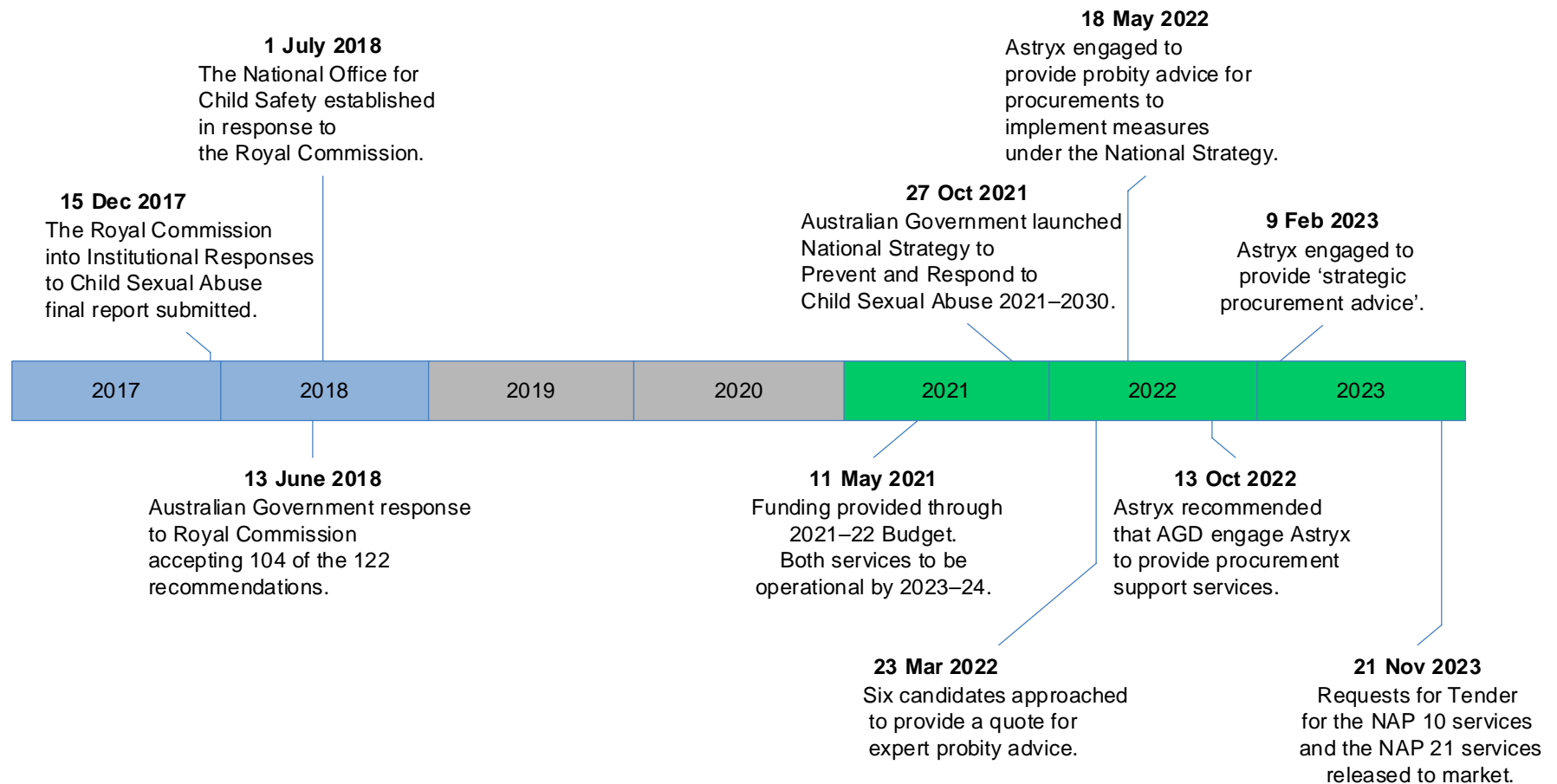
Were the procurements conducted in a timely manner?

There have been significant delays with the department's conduct of the procurements with the result that the services aimed at protecting children from sexual abuse by intervening before an individual offends or re-offends, and at providing nationally available free support to non-offending family members of child sexual abuse perpetrators, are not yet available. The Requests for Tender (RFTs) were issued later than had been planned by the department. It also took longer than planned to evaluate the tender responses, select the preferred tenderers (who were notified in June 2024 and September 2024) and enter into contract negotiations. The offer validity periods expired with substantive matters continuing to be negotiated with each preferred tenderer. Should contract negotiations be successful, the department expects that services will not begin to be provided until mid-2025, which would be four years and eight months after the National Strategy was released.

3.9 The *National Strategy to Prevent and Respond to Child Sexual Abuse 2021–2030* (the National Strategy) was launched in October 2021. Funding was provided for the National Action Plan Measure 10 (NAP 10) and National Action Plan Measure 21 (NAP 21) services through Budget 2021–22 with the expectation that both services would be operational by the start of the 2023–24 financial year. Inconsistent with this expectation, the department's

procurement plans for both NAP 10 and NAP 21 set out that it intended to release the Requests for Tender (RFTs) in August 2023 with services to commence in March 2024. As highlighted in Figure 3.1, the RFTs for the procurements were not released until November 2023, two years and one month after the launch of the National Strategy.

Figure 3.1: Timeframe to release of Requests for Tender



Source: ANAO analysis of AGD records.

3.10 In July 2023, the department advised the Attorney-General that the need to acquire and action procurement and probity advice from Astryx Pty Ltd (Astryx) contributed to the delays in establishing the services. This advice did not provide a complete picture. Of note was that the Attorney-General was not advised that substantive work by the department on preparing the documentation for an approach to the market (including the RFT) did not commence until June 2023. The Attorney-General was also not advised that there had also been delays in the procurement processes for procurement and probity advice, as follows.

- The Request for Quote (RFQ) for probity services was issued in March 2022, six months after the National Strategy was launched, and it took a further two months to enter into a contract with Astryx (through a subcontracting arrangement with ServeGate Australia Pty Ltd).
- It was a further 10 months (and 18 months in total) before Astryx was engaged to provide strategic procurement advice. As discussed at paragraphs 2.114 to 2.119, this advice was procured at the suggestion of the probity adviser, and had not been identified by the department as necessary in its procurement planning.

3.11 The tender evaluation plans for the NAP 21 and NAP 10 procurements each identified that evaluation would be completed by the end of April 2024, with a recommendation provided to the decision-maker within AGD. These were the same timeframes that had been set out in the respective RFTs, with tenderers informed that the NAP 10 contract would be awarded by the end of April, and the NAP 21 contract in May 2024.

3.12 These timeframes were not met.

- The recommendation to the delegate for the NAP 21 procurement was made on 3 June 2024. The recommendation to the delegate for the NAP 10 procurement was made on 10 September 2024.
- The department notified the preferred tenderers in June 2024 (NAP 21) and September 2024 (NAP 10).
- As of January 2025, contract negotiations had not been concluded and no contracts were in place.
- AGD expects the services to be launched in mid-2025, four years and eight months after the launch of the National Strategy.

3.13 On 6 November 2023, AGD issued a public interest certificate (PIC) under subsection 22(1) of the *Government Procurement (Judicial Review) Act 2018* for the NAP 21 procurement.⁶⁵ The PIC states that it is not in the public interest for the procurement to be suspended while any complaints are investigated or while any applications for injunctions are considered. The department's justification for issuing the certificate included that a 'suspension of the procurement could delay the commencement of the Service and timing of the Services is critical as ... there are currently no national child sexual abuse offending prevention services available within Australia'.

⁶⁵ See further discussion of PICs in Auditor-General Report No.19 of 2022–23, *Procurement Complaints Handling*, ANAO, Canberra, 2023, available from <https://www.anao.gov.au/work/performance-audit/procurement-complaints-handling> [accessed 3 December 2024].

Opportunity for improvement

3.14 When the Attorney-General's Department issues a public interest certificate under the *Government Procurement (Judicial Review) Act 2018* thereby affecting the complaint rights of suppliers due to the timing imperative of a procurement, the department should progress its conduct of the procurement in a timely manner.

3.15 The delays were also raised with the ANAO by a number of tenderers who submitted contributions to this ANAO performance audit (the ANAO has a citizen's contribution facility for each performance audit), as well as in contributions from parties that were not tenderers.

- One contributor identified that there had been 'long delays in the tender process and inaccurate information about when the outcomes would be announced' and identified that this had adverse impacts on one of the tenderers.
- A tenderer commented that the tender:
was significantly delayed from initial timing of 2022 then 2023 and finally 2024 - this type of government delay may be par for the course for commercial or for-profit providers that typically respond to open tenders via AusTender but in a practical sense these kinds of delays are devastating to the community specialist service providers who hold the expertise that is vital to meeting community needs. It represents poor form from the agency.
- Another tenderer identified that 'the RFT was not released when I was expecting it' (based on its engagement with the department), 'the evaluation and the announcement of the successful tenderer have been far from timely' and that 'throughout the delays in the RFT and the continued delay in the announcement of the successful tenderer, there has been no national service for non-offending family members since April 2023'.

3.16 No contribution to the audit suggested the procurements were conducted by AGD in a timely manner. The delays, and their impact, have been commented on by Professor Michael Salter, an expert on child sexual exploitation and gendered violence at the University of NSW.⁶⁶

3.17 Similar to the earlier briefing of the Attorney-General (see paragraph 3.10), an October 2024 briefing to the Attorney-General on the tender outcome did not provide a complete picture of the conduct of the procurements.

- NAP 21: The Attorney-General was advised that the Tender Evaluation Committee unanimously agreed on the preferred tenderer, this had been approved by the spending delegate on 11 June 2024, on 26 June 2024 the preferred tenderer had accepted the department's offer and that the department had entered into contract negotiations with the preferred tenderer.
- NAP 10: The Attorney-General was advised that the Tender Evaluation Committee had unanimously agreed on the preferred tenderer, this had been approved by the spending

66 Professor Michael Salter is the Director of Childlight UNSW, the Australasian hub of Childlight, the Global Child Safety Institute, which undertakes research for impact on child sexual abuse and exploitation. Childlight UNSW is based in School of Social Sciences at the University of NSW, where Professor Salter conducts national and international research on child sexual exploitation, gender-based violence and complex trauma.

delegate on 18 September 2024 and on 19 September 2024 the preferred tenderer had accepted the department's offer to provide the Measure 10 service.

3.18 The Attorney-General was not informed that these timeframes were well outside those that had been planned and advised to the market in the RFTs (under which the contracts were to have been awarded in May 2024). The Attorney-General was also not informed that:

- in relation to NAP 21, there had been a delay proceeding to contract negotiations with the preferred tenderer because the tender evaluated by the department was not capable of being accepted.⁶⁷ The evaluation report had identified 24 items related to service delivery, the solution/technical issues, legal/contract issues and pricing issues for which additional information was required by the department before a contract negotiation directive could be prepared; and
- in relation to NAP 10, there had been a significant delay between the evaluation report being finalised and endorsed by Evaluation Committee members between 5 July 2024 and 15 July 2024, the replacement Chair endorsing the evaluation report to enable a recommendation on 29 August 2024 and the delegate decision on that, overall, the timeframes were well outside those that had been advised to the market in the RFT (under which the contract was to have been awarded in April 2024).

Opportunity for improvement

3.19 Consistent with the Australian Public Service Commissioner's Directions⁶⁸, when advising Ministers on the conduct of procurements it is important that the department provide advice that is relevant and comprehensive and does not, for example, withhold important facts that identify shortcomings with the conduct of the procurement.

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

Tender evaluation plans were in place prior to the closing date for the NAP 10 and NAP 21 tenders. The evaluation plans had not been signed off by the probity adviser. The evaluation plans did not adequately address how the department planned to evaluate the pricing information tenderers were required to submit.

Tender evaluation plans

3.20 An evaluation plan should be established before market responses are sought.⁶⁹ Drafting the evaluation plan and RFT together helps to avoid any inconsistencies between the evaluation

67 If a tenderer submits a conforming tender in accordance with the terms of the invitation to treat (RFT), then that tender is capable of being converted into a contract by acceptance.

68 Australian Public Service Commissioner's Directions 2022, section 17, available from <https://www.legislation.gov.au/F2022L00088/latest/text> [accessed 9 December 2024].

69 Auditor-General Report No.23 2017–18, *Delivery of Moorebank Intermodal Terminal*, ANAO, Canberra, 2017, p. 13, available from <https://www.anao.gov.au/work/performance-audit/delivery-the-moorebank-intermodal-terminal> [accessed 1 August 2024].

plan and requirements specified in RFT documentation, and to ensure that the evaluation methodology proposed in the plan is consistent with the RFT.

3.21 The requests for tender for the NAP 10 and NAP 21 procurements were released to the market on 21 November 2023. The closing date for tenders for each was 27 February 2024 and 23 February 2024, respectively.

3.22 The department commenced developing evaluation plans for the procurements in June 2023 based on a departmental template. The evaluation plans were provided to the Australian Government Solicitor (AGS) and Astryx Pty Ltd (Astryx) for review between October 2023 and December 2023.

3.23 The evaluation plans were approved by the procurement delegate on 22 February 2024, prior to the closing periods for both tenders. While advice to the delegate was that the evaluation plans had been reviewed by AGS and Astryx (identified in the advice as NOCS' probity and procurement advisers), the delegate was not informed of which suggestions and changes from AGS or Astryx were or were not taken up by the department. The delegate also did not request that such advice be provided. The probity adviser did not sign off on the evaluation plans.

3.24 At the time the evaluation plans were approved by the procurement delegate, not all positions on the evaluation committees had been filled.⁷⁰ Those positions were confirmed on 26 and 27 February 2024 (the same day that tenders closed for the NAP 10 procurement).

3.25 On 18 March 2024, after the opening of tender submissions, the procurement delegate approved the temporary delegation of the Evaluation Committee Chair's responsibilities to the officer acting in her position during an absence between 20 March 2024 to 8 April 2024, as well as during any other absence between 8 April 2024 and 28 June 2024. Advice from the department's probity adviser was that delegation of the Chair's position was permissible but noted that as the dates were consecutive questioned if was worth changing the chair position permanently, moving the current chair to an advisory position. The department did not consider this change. As discussed at paragraphs 2.140 to 2.143, the Chair had a conflict of interest in relation to the NAP 21 tender that had not been appropriately declared and managed.

Opportunity for improvement

3.26 The full membership of the evaluation committee is important information that should be considered before an evaluation plan is finalised. Best practice previously highlighted by the ANAO is that evaluation teams should be selected carefully and early,

70 Advice to the delegate on 6 February 2024 was that:

- the department was currently procuring a contact centre adviser. The department had issued a direct request for quote to MinterEllison Consulting and was awaiting its response prior to confirming its role, which the department anticipated would be settled prior to the RFT closing periods. MinterEllison Consulting signed the contract on 20 February 2024, prior to the RFT closing dates for both the NAP 10 and NAP 21 procurements. The contract was not signed by the department; and
- for the NAP 10 procurement, the department was yet to confirm the final Evaluation Committee member.

On 23 February 2024, a NAP 10 Evaluation Committee member advised the department that he was no longer available since it had 'been some time' since he had nominated for the role. This meant that the department had two vacancies on the NAP 10 Evaluation Committee to fill.

preferably before the Request for Tender is released, and probity training should be provided to the team as soon as they are identified, not when the evaluation is about to start.⁷¹

3.27 Delegation of the Chair's responsibilities was again approved by the procurement delegate on 27 August 2024, to enable the replacement chair to:

- manage any probity concerns or risks in a timely manner;
- approve any proposed correspondence with tenderers (including to correct any errors in the tender responses);
- approve the NAP 10 tender evaluation report package; and
- manage contract negotiation processes.

Alignment with the Request for Tender

3.28 While the evaluation plans for each of the NAP 10 and NAP 21 procurements included a section specifically on the evaluation of price, this did not address how the department proposed to approach the evaluation of the pricing information that was requested in the RFTs. In particular, the evaluation plans did not reflect that each RFT stated that tenderers were required to submit three separate responses based on three scenarios relating to the volume of calls, and that the average call time to be used as the basis of the calculation of pricing was 30 minutes.

Recommendation no. 5

3.29 When developing evaluation plans, the Attorney-General's Department ensure that the planned evaluation addresses all information tenderers are required to include in submissions.

Attorney-General's Department response: Agreed

3.30 *The department will develop internal guidance to ensure that evaluation plans appropriately address all information that tenderers are required to include in submissions.*

Was the conduct of the tender evaluation timely and consistent with the approach to the market documents?

The conduct of the tender evaluation for the NAP 10 and NAP 21 procurements was not timely and was not consistent with approach to market documents.

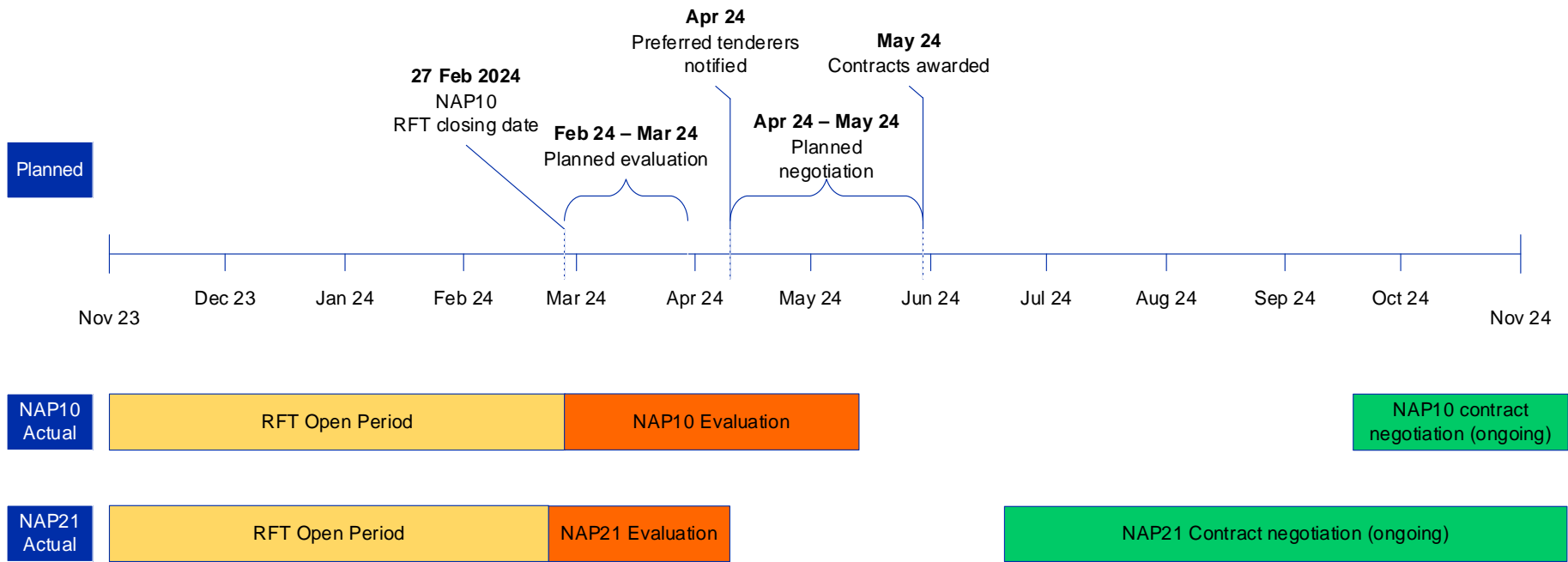
71 See:

- Auditor-General Report No.42 2021–22, *Procurement of Delivery Partners for the Entrepreneurs' Programme*, ANAO, Canberra, 2022, available from <https://www.anao.gov.au/work/performance-audit/procurement-delivery-partners-the-entrepreneurs-programme> [accessed 2 December 2024].
- Auditor-General Report No.34 2022–23, *Procurement of the Permissions Capability*, ANAO, Canberra, 2023, available from <https://www.anao.gov.au/work/performance-audit/procurement-the-permissions-capability> [accessed 2 December 2024].

3.31 Figure 3.2 highlights that the RFTs set out that evaluations were expected to be completed by the end of March 2024 and preferred tenderers notified in early April 2024. These timeframes were not met. The Evaluation Committees responsible for evaluating tenders did not meet until April 2024 for the conduct of consensus meetings to agree the scores and risk ratings for each of the tenders accepted for evaluation.⁷²

72 The consensus meeting was held on 9 and 10 April 2024 for the NAP 21 procurement, while the consensus meeting for the NAP 10 procurement was held over a three day period from 22 to 24 April 2024.

Figure 3.2: Indicative and actual timeline for conduct of tender evaluation



Source: ANAO analysis of AGD records.

3.32 In relation to the NAP 10 procurement, on 30 April 2024, the department provided NAP 10 Preferred Tenderer with an opportunity to provide further detail around how it intended to deliver the service for the NAP 10 procurement (see paragraphs 2.99 to 2.103). The tenderer's response was provided on 9 May 2024 and subsequently circulated with the Evaluation Committee. The Committee met again on 13 May 2024 to consider the response and 'any mitigating factors it presents' and complete its value for money assessment of all NAP 10 tenders.

3.33 There were further delays in finalising the evaluation reports for both procurements resulting in the preferred tenderers being notified.

- For the NAP 21 procurement, the preferred tenderer was notified in June 2024. This was more than two months after the April 2024 consensus meeting identified the preferred tenderer as well as two months after the indicative timeframe (early April 2024) set out in the RFT.
- For the NAP 10 procurement, the preferred tenderer was notified in September 2024. This was more than four months after the consensus meeting identified the preferred tenderer, and more than five months after the indicative timeframe (early April 2024) set out in the RFT.

3.34 The RFT for both procurements set out an expectation that contracts would be awarded in April and May 2024, within three months of the closing dates, and the RFT included an offer period of six months after the closing time (23 August 2024 for NAP 21, 27 August 2024 for NAP 10). As of December 2024 contracts had yet to be awarded, meaning the offer periods had expired. Before the offer periods expired, the department:

- obtained no advice from its legal and commercial adviser, strategic procurement adviser or probity adviser on the implications for the procurements; and
- took no steps to seek agreement from the preferred tenderers to extending the offer period. The expiry of the offer periods for both NAP 10 and NAP 21 had:
 - significant implications for the department's negotiating position. This is because the expiry of the offer periods means it was open to tenderers to not accept contractual terms and conditions that they previously accepted under a competitive procurement process (compliance with the draft contract was assessed as part of tender evaluation to help inform the selection of the preferred tenderers); and
 - exposed the department to increased risk which is reflected in the time it is taking the department to negotiate contracts, and the nature of the matters being negotiated. In effect, the department is now conducting limited tenders with the preferred tenderers, in circumstances that do not satisfy the conditions for a limited tender set out in the Commonwealth Procurement Rules (see paragraph 10.3 of the CPRs).

3.35 In December 2024 the department advised the ANAO that:

The department is continuing to have discussions with both tenderers in good faith while ensuring it is appropriately advised. Discussions are premised on the positions outlined in the tenders, and

neither tenderer has raised issue with the expiry of the tender periods to date.⁷³ The department will seek formal confirmation in the near future in the context of broader discussions.

3.36 Further (January 2025) advice to the ANAO from the department was that, in response to the matters raised by the ANAO, it 'recognised the risk of negotiating contracts outside of the offer period and sought advice' in December 2024 and January 2025 from its legal and commercial adviser, probity adviser and internal procurement team. The department advised the ANAO in January 2025 that:

Following this advice, the department contacted the preferred service provider for NAP21 on 16 January, and NAP10 on 17 January 2025 seeking their agreement to an extension of offer periods. ... The NAP10 preferred provider responded on 16 January 2025, confirming the acceptance of the extension of the validity period of their tendered offer.⁷⁴

3.37 Further advice from AGD to the ANAO in April 2025 was that the preferred tenderers had agreed to extend their offer periods further to 31 July 2025.

3.38 Ultimately the result of the various procurement delays is that the services aimed at protecting children from sexual abuse by intervening before an individual offends or re-offends, and at providing nationally available free support to non-offending family members of child sexual abuse perpetrators, are not yet available.

Consistency with the approach to market documentation

3.39 As set out in paragraph 2.59, tenderers were informed of the information they 'must' provide to inform evaluation against the criteria. For the pricing criterion, tenderers were 'required' to submit three separate responses based on three scenarios relating to the volume of calls. The average call time to be used as the basis of the calculation of pricing was 30 minutes. Not all tenderers submitted pricing based on the three scenarios, and the two preferred tenderers did not use an average call time of 30 minutes as the basis of their pricing (see paragraph 2.61 and 2.63).

3.40 The department did not evaluate tender pricing under each of the three scenarios for which responses were required. Instead, the evaluation was limited to a comparison of the prices of the scenario for which all tenderers had submitted prices (see paragraph 2.67 and 2.72). This approach was inconsistent with the RFT package.

3.41 The RFTs for both of the procurements set out that any significant amendments to the timetable presented in the RFT would be notified to tenderers. Following queries from tenderers, AGD advised NAP 10 and NAP 21 tenderers in April 2024 that it anticipated it would be in a position to notify the successful tenderers in May 2024.

3.42 Further advice was provided by AGD to NAP 10 tenderers on 29 May 2024 and to NAP 21 tenderers on 30 May 2024, which stated that the evaluation process was ongoing and that the department therefore anticipated it would be in a position to notify the successful tenderers in June 2024 or July 2024 (for NAP 21), rather than May 2024. Evaluations had concluded on 10 April 2024 for the NAP 21 procurement, and on 13 May 2024 for the NAP 10 procurement,

⁷³ The department's advice to the ANAO did not recognise that matters being negotiated as part of these discussions included issues that had not been raised during the competitive tender process.

⁷⁴ The preferred tenderer for NAP 21 similarly agreed to extend its offer to 18 April 2025.

meaning that the department's advice to the tenderers was incorrect (see paragraph 3.33 on the delays to finalising the evaluation reports).

3.43 The department advised the unsuccessful NAP 21 tenderers of the outcome on 27 June 2024.

3.44 Following further queries, advice on delays was provided by AGD to NAP 10 tenderers on 1 July 2024, 31 July 2024, and 3 September 2024. Unsuccessful tenderers were notified on 2 October 2024.

Were the successful candidates those assessed as providing the best value for money?

The department's evaluation records do not clearly demonstrate that the preferred tenderers provided the best value for money.

- Each of the two preferred tenderers had not provided all of the information the RFT had identified as being required.
- For the NAP 21 procurement, after it was selected as the preferred tenderer, the department obtained significant additional information from the tenderer related to service delivery, the solution/technical issues and legal/contract issues. The need for this information was not identified in the tender evaluation report.
- For the NAP 10 procurement, the tenderer that scored highest against the weighted criteria was excluded from participating further in the tender process in favour of the second highest scoring tenderer. There were also departures from the RFT in terms of the evaluation criteria that were applied, and the approach taken to putting in place a performance guarantee with the successful tenderer. Further, the tender evaluation report did not identify that the department considered there were areas requiring clarification relating to pricing issues and solution/technical issues, including a concern that the tenderer's pricing for the medium and high call volume scenarios exceeded the budgeted amount for each year of service delivery.

Evaluation Committees' value for money assessments and recommendations

3.45 The Evaluation Committees of the respective NAP 10 and NAP 21 procurements were responsible for assessing the value for money and the ranking of competing tenderers. The evaluation plans for both procurements set out that:

Provided at least one Tenderer meets the requirements of the RFT, taking into account the outcomes of the whole evaluation process, the Evaluation Committee is to determine a ranking of the Tenderers in order of 'value for money' and, if possible, identify a preferred Tenderer.

3.46 To complete the value for money assessment of the competing tenderers and identify a preferred tenderer, the Evaluation Committees met on 10 April 2024 and 14 May 2024 for the NAP 21 procurement and the NAP 10 procurement, respectively. As highlighted in paragraph 3.33, it then took two months, for NAP 21, and four months, for NAP 10, to finalise the evaluation reports for the procurements.

NAP 21 procurement

3.47 The tender evaluation report for the NAP 21 procurement was endorsed by the Evaluation Committee members and Chair between 9 May 2024 and 22 May 2024 and provided to the delegate for approval on 3 June 2024. Further information was sought by the delegate and the report was re-submitted to the delegate on 11 June 2024 along with an updated covering minute to provide further information.⁷⁵ The Evaluation Committee for the NAP 21 procurement ranked all five tenders from best to least value for money. NAP 21 Preferred Tenderer was assessed as meeting the requirements for the procurement and as representing the best value for money for the department. The recommendation to the delegate was that it be selected as the preferred tenderer and the remaining four tenderers be declined.

3.48 The delegate approved the selection of NAP 21 Preferred Tenderer on 11 June 2024.

3.49 In reaching this conclusion, the department:

- did not appropriately manage the Evaluation Committee Chair's conflict of interest with the tenderer;
- did not address the tenderer's nonconformance with the RFT relating to the pricing information; and
- because of the point above, did not evaluate the tender submission in a manner consistent with the RFT.

3.50 Moreover, the department's requirement for additional information from NAP 21 Preferred Tenderer (see paragraph 2.75) following the decision to select it as the preferred tenderer was inconsistent with its assessment that its tender met the requirements of the procurement and represented best value for money. This situation meant that the tender response as evaluated by the department was not capable of being accepted and that there was a resultant delay in commencing contract negotiations (see paragraph 3.17).

NAP 10 procurement

3.51 For the NAP 10 procurement, the Evaluation Committee members endorsed the tender evaluation report between 5 July 2024 and 15 July 2024. The replacement Chair (who was not involved in the evaluation process) endorsed the evaluation report on 29 August 2024 (over six weeks later) after the spending delegate approved the delegation of the Chair's responsibilities on 27 August 2024 (see paragraph 3.27). The evaluation report stated that the Evaluation Committee ranked all six tenders from best to least value for money. This was inconsistent with the records of the value for money assessment conducted at the consensus meeting, which concluded that NAP 10 Preferred Tenderer's tender represented best value for money, NAP 10 Tenderer 5's tender represented value for money, and the remaining four tenders did not represent value for money.

75 The further information requested was in relation to the department's recommendation to not pursue a Deed of Guarantee and Indemnity from the preferred tenderer. As highlighted in footnote 18, the department amended the draft contract to advise tenderers that the department's requirement for a Deed of Guarantee would be determined during negotiations with the preferred tenderer and based on the risk profile with the preferred tenderer's provision of the services. This amendment was made following an enquiry from the NAP 21 Preferred Tenderer in February 2024.

3.52 The recommendation to the delegate was that it be selected as the preferred tenderer and that the department enter into negotiations with the NAP 10 Preferred Tenderer. The delegate approved the selection of NAP 10 Preferred Tenderer on 18 September 2024.

3.53 In arriving at this conclusion, the department's conduct of the procurement was inconsistent with the RFT in a number of respects.

- The department accepted for evaluation two tender responses, including NAP 10 Preferred Tenderer's, that did not conform with the pricing information requirements of the RFT. As a consequence, the department did not evaluate the tenders in a manner consistent with the RFT.
- The analysis set out in the evaluation report to support the Evaluation Committee's recommendation included evaluation criteria that were different to those included in the RFT (see paragraph 2.78), an approach that does not comply with the CPRs. Specifically, a financial viability criterion was included as the Evaluation Committee had placed considerable weight on a financial viability assessment of the tenderer that received the highest score against the weighted criteria, NAP 10 Tenderer 5 (see paragraph 2.79).
- While the tenderer that received the second highest score against the weighted criteria, NAP 10 Preferred Tenderer, was afforded an opportunity to address concerns with its tender as part of a 'collaboration activity', the higher scoring NAP 10 Tenderer 5 was not.
- The department decided that it was not appropriate to put financial risk management strategies or guarantees in place with a supplier. This was inconsistent with the RFT package as a performance guarantee was a requirement of the draft contract (the service provider was required to provide the department with a properly executed deed of guarantee within five business days after the commencement date of the contract).

3.54 On 12 September 2024, after submitting the evaluation report to the delegate for approval, the department sought advice from its contact centre adviser on 'outstanding issues' with NAP 10 Preferred Tenderer's tender response needing to be addressed before commencing contract negotiations. The outstanding issues included areas requiring clarification relating to pricing issues and solution/technical issues. The department's concerns with the pricing included that the pricing for the medium and high call volume scenarios exceeded AGD's budgeted amount for each year of service delivery. The department's evaluation against the criterion related to price had not examined the prices submitted by tenderers under the three call volume scenarios (where this 'required' information had been submitted — see further at paragraph 2.40) was within the department's budget. The department's requirement for additional information and clarification from the tenderer was also not set out in the evaluation report.

Evaluation provider

3.55 As noted in paragraphs 2.85 to 2.87, there were two evaluation processes conducted in March 2024 and May 2024 to assess the responses to the RFQ for the evaluation provider. The second evaluation process resulted in the second evaluation panel 'unanimously [recommending] that ARTD be contracted for \$543,335 (inclusive of GST) to provide the joint evaluation for the two new national services'. On 5 July 2024, six weeks after the second evaluation took place, delegate approval was sought to engage ARTD. In the advice to the delegate, the department stated that:

- while a previous value for money process had been conducted, ‘the team identified that one response had inadvertently been missed’; and
- noting the lack of funding set aside for evaluation and ARTD’s quote of \$543,335, it intended to negotiate the cost down as far as possible ‘while achieving the evaluation outcomes in their proposal’.

3.56 In the latter respect, the department’s approach is inconsistent with an assessment that the ARTD quote represented value for money. In respect to the department considering it should seek to negotiate down the quoted price, the lowest priced proposal (of \$446,532) was assessed as follows by AGD:

while the pricing provided is competitive, the Evaluation Committee considered that these lower costs illustrated a lack of understanding of the project.

3.57 Delegate approval to engage ARTD was provided on 16 July 2024. There were further delays in finalising the contract with ARTD. The contract was signed on 28 October 2024, seven months after the proposed commencement date of 29 March 2024 included in the RFQ issued on 19 December 2023. The initial term of the contract is a period of two years, from 24 October 2024 (before the contract was signed by AGD) to 23 October 2026, at an initial cost of \$405,859. The contract includes an extension option for a further period of up to six months in total. A further approval was provided by the delegate on 13 November 2024 (after the contract was signed). That approval did not reflect the value of the contract but instead was for the amount of \$543,335 proposed in ARTD’s response to the RFQ.

Advisers and consultants

3.58 The successful candidates were those assessed as providing the best value for money for four of the nine procurement processes for advisers and consultants. For two of those four, the successful candidate was the only candidate. As stated in paragraph 2.90, there were four procurements in which the department did not evaluate candidates’ submissions and did not assess value for money. In each of those four, there was one candidate approached.

3.59 There was one procurement where the successful candidate was not assessed as providing the best value for money. This was the procurement of MinterEllison Consulting as the contact centre adviser on the RFT packages for the NAP 10 and NAP 21 procurements. MinterEllison Consulting was one of two candidates that submitted compliant responses. The evaluation of the two compliant responses resulted in the evaluation panel unanimously recommending that the other candidate be contracted for \$161,000 based on the evaluation panel’s assessment that its offer provided the best value for money outcome for the department. MinterEllison Consulting’s proposal was considered to be of ‘low value for money’ and as having a ‘higher risk profile’.

3.60 As stated in paragraph 2.91, AGD had to retract its advice that the candidate assessed as offering value for money was successful after it eventuated that the candidate’s nominated personnel did not hold the appropriate security clearances. Delegate approval to engage MinterEllison Consulting was provided on 9 October 2023 and the contract signed on 10 October 2023. The advice to the delegate included as an attachment the original value for money

assessment, and stated that it ‘determined that MinterEllison had submitted a satisfactory tender’.⁷⁶

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

The roles and responsibilities of individuals involved in the NAP 10 and NAP 21 procurements set out in the evaluation plans provided for an appropriate separation of duties between the spending delegate and the Evaluation Committees. The probity adviser was not independent of the procurement processes as it also performed the role of strategic procurement adviser.

3.61 Probity guidance published by the Department of Finance states that the separation of duties is required ‘to maintain fairness and transparency in a procurement process’. Specifically, ‘officials involved in evaluation of tenders should not be those who are approving the proposal to spend public money’. It also states that probity experts should be independent and free from conflicts of interest, and have a sound knowledge of all relevant government policies and procedures.⁷⁷

3.62 The roles and responsibilities of individuals involved in the NAP 10 and NAP 21 procurements set out in the evaluation plans provided for an appropriate separation of duties between the spending delegate and the Evaluation Committees. The Evaluation Committee for each of the procurements was responsible for evaluating tenders to enable the spending delegate for the procurements to make a decision either to enter into negotiations with the preferred tenderer(s) or to terminate the procurements if no suitable candidate was identified.

3.63 As highlighted in paragraph 2.110, the department’s approach to engaging the same firm, Astryx, to provide both advice on probity issues and procurement support services undermined the probity adviser’s independence and objectivity.⁷⁸ This was evident, for example, when AGD sought feedback in October 2022 from Astryx on its procurement strategy and, while noting that Astryx had sent the department a proposal for it to provide procurement advice, enquired whether Astryx would perform the work under its existing contract for probity advice services. Astryx responded by stating ‘We would be happy to review your strategy under our current arrangement if we are not

76 The value for money evaluation report for the procurement stated that ‘while the quoted price is comparatively low, the Response is considered to be low value for money taking into account the following:

- ‘The Response does not provide an appropriate level of resourcing, having nominated only two personnel. This small team size presents a risk that the Respondent will not have the capacity to complete the project within anticipated timeframes to a high standard. The comparatively low price is likely at least partially attributable to the small team size.’
- ‘The Response nominates key personnel with a comparatively low expertise and experience level, and outlined expertise and experience levels are not well supported. The Respondent also does not have significant experience in providing strategic procurement advice around contact centre requirements for a social service. This introduces risks that the Respondent does not have the capability to complete the project within required timeframes to a high standard.’

77 Department of Finance, *Ethics and Probity in Procurement*, available from <https://www.finance.gov.au/government/procurement/buying-australian-government/ethics-and-probity-procurement> [accessed 17 October 2024].

78 As stated in footnote 53, the probity adviser was included as ‘specified personnel’ in both the contract for probity advice services and for procurement advice services, charged work under both contracts, and was a person who provided some of the actual procurement advice.

yet engaged for procurement services at that time'. In the draft minute referred to in paragraph 2.123, the department stated that the process to develop the procurement strategy 'over September 2022 to March 2023 was protracted and convoluted, and Astryx demonstrated a pattern of sending NOCS new non-redline feedback to action on content that was pre-existing through previous rounds of feedback'.⁷⁹ The department advised the spending delegate in June 2023 that the procurement strategy was drafted in close consultation with NOCS' contracted procurement adviser, Astryx, which had recommended its development. Astryx was not contracted to provide procurement advice until February 2023, after work had commenced on the procurement strategy.

3.64 The importance of ensuring that the tasks allocated to the probity adviser do not threaten the independence and objectivity of the probity adviser has been highlighted in previous ANAO audits.⁸⁰ The department's approach was at odds with Department of Finance guidance on how to conduct procurements ethically, and also with AGD's guidance that probity advisers should not have had direct involvement in the proposed procurement activity.

3.65 In February 2025, AGD advised the ANAO that the department acknowledges that 'separate providers for expert probity advice and strategic procurement advice were necessary'.

Were appropriate procurement records maintained?

Appropriate procurement records were partly maintained. While available records addressed the requirement for the NAP 10 and NAP 21 procurements, evidence to support key decisions was not maintained. In addition, the tender evaluation report did not accurately reflect the evaluation process that was employed or satisfactorily demonstrate that value for money had been achieved. There are no records evidencing how the department arrived at the budgeted amounts for the two services.

3.66 The CPRs state that officials must maintain a level of documentation commensurate with the scale, scope and risk of each procurement.⁸¹ The CPRs require that documentation provides accurate and concise information on the requirement for the procurement; the process that was followed; how value for money was considered and achieved; relevant approvals; and relevant decisions and the basis of those decisions.⁸²

3.67 The requirement for the NAP 10 and NAP 21 procurements was recorded in planning and strategy documents, although approval of those documents was not recorded. The *National Office for Child Safety Support Services Procurement Strategy 2022–2025* was noted by the delegate on 20 June 2023. Approval of the procurement plans has not been recorded. Relevant approvals were endorsed by the delegate, including approach to market documentation and the tender evaluation reports.

79 In February 2025, Astryx advised the ANAO that 'We agree the development of documentation was convoluted and protracted under AGD's distribution of documents in parts and across multiple days, with updated versions sent independently to different stakeholders for advice and feedback without version control'.

80 Auditor-General Report No.42 2021–22, *Procurement of Delivery Partners for the Entrepreneurs' Programme*, p. 14.

81 Finance, Commonwealth Procurement Rules, paragraph 7.2.

82 Finance, Commonwealth Procurement Rules, paragraph 7.3.

3.68 The ANAO has previously highlighted risks associated with using as a template earlier tender evaluation reports that were prepared for other procurements.⁸³ The evaluation report for NAP 10 included errors that resulted from the department having used the NAP 21 evaluation report as the basis for its drafting. For example, there were statements recycled from the NAP 21 evaluation report that do not relate to NAP 10. The substantive issue resulting from this approach was that the evaluation report for NAP 10 included a financial viability criterion, which was not a criterion set out in the RFT for NAP 10 (but was for NAP 21), as noted in paragraph 2.78.

3.69 The ANAO also identified the following deficiencies in the department's record management practices for the procurements considered in this audit.⁸⁴

- AGD did not maintain all necessary records relating to the procurement of its advisers and consultants, including documentation that set out how value for money was considered and achieved.
- Individual evaluations of NAP 10 and NAP 21 tenders were not always complete (see paragraph 2.54).
- Registers were not developed for legal advice and the advice is held in various locations.
- There are insufficient records regarding the probity of the procurement processes. For example:
 - registers were not developed for probity advice. The advice is held in various locations and not all advice has been retained in the department's records management system (see footnote 23);
 - while conflict of interest registers were developed, the registers were incomplete and not all declarations were retained or held in the appropriate file (see paragraph 2.136. While the department provided to the ANAO in December 2024 the Evaluation Committee Chair's detailed conflict of interest declaration of 20 March 2024, the records did not address why the department did not apply its planned approach of getting probity advice in relation to the conflicts with the specified tenderers, and did not have the delegate make the decision on the course of action to be taken to resolve the conflicts (see paragraph 2.145).
- The existing records do not explain how the budgeted amounts were arrived at (see paragraphs 3.2 to 3.7).

83 Auditor-General Report No. 42 2021–22, *Procurement of Delivery Partners for the Entrepreneurs' Programme*, p. 14.

84 In a section on 'Record-keeping failures', the report of the *Royal Commission into Robodebt* highlighted that 'The evidence before the Commission was riddled with instances in which no record could be found to explain why significant action was taken or not taken'. Examples cited in the Royal Commission's report involved instances where draft advice was prepared but subsequent decisions to not proceed with an action or finalise advice were not recorded. The ANAO identified two occasions where draft advice was prepared but subsequent decisions to not proceed with an action or finalise advice were not recorded.

See Catherine Holmes AC SC, *Report of the Royal Commission into the Robodebt Scheme*, 7 July 2023, p. 645, available from <https://robodebt.royalcommission.gov.au/publications/report> [accessed 9 October 2024].

Recommendation no. 6

3.70 The Attorney-General's Department improve its procurement record keeping so that accurate and concise information exists on the process that was followed, how value for money was considered and achieved, and relevant decisions and basis of those decisions.

Attorney-General's Department response: *Agreed*

3.71 *The department is committed to continually improving its procurement record keeping, including records of decisions related to the consideration and achievement of value for money.*

Have the contracts and any amendments been accurately reported on AusTender within 42 days of the contracts being entered into or amended?

Contracts for the two new services have not been signed, meaning the requirement to report on AusTender has not been triggered. The department met its obligation to report the evaluation provider contract accurately within the 42 day deadline. The department was also required to report on AusTender a number of the adviser and consultant contracts it entered into for the purpose of assisting with the main procurements. There were delays and inaccuracies in reporting of six of the eight contracts that required reporting on AusTender.

3.72 The CPRs establish reporting requirements for all relevant entities that enter or amend a contract value at or above the reporting threshold.⁸⁵ AGD (a non-corporate Commonwealth entity) has a reporting threshold of \$10,000 with a reporting deadline within 42 days of entering or amending a contract.

3.73 In relation to the NAP 10 and NAP 21 procurements, as a consequence of the delays to approaching the market, evaluating tenders and finalising the evaluation reports, as well as contract negotiations, as of January 2025, there were no contracts in place and nothing to report on AusTender. In relation to the evaluation provider, the department entered into a contract with ARTD Consultants on 28 October 2024 for a two year term, from 24 October 2024 to 23 October 2026, at a value of \$405,859. AGD met its obligation to report the contract accurately within the 42 day deadline.

3.74 The department was also required to report on AusTender a number of the adviser and consultant contracts it entered into for the purpose of assisting with the main procurements. As set out in Table 3.1, there were delays and inaccuracies in reporting of six of the eight contracts that required reporting on AusTender.

⁸⁵ Relevant entities must report contracts and amendments on AusTender within 42 days of entering into (or amending) a contract if they are valued at or above the reporting threshold: Finance, *Commonwealth Procurement Rules*, paragraph 7.18.

Table 3.1: AusTender reporting of adviser and consultant contracts

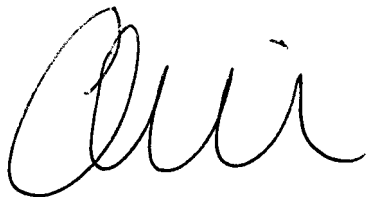
Supplier	Total contract and amendments reported within 42 days ^a	Total contracts and amendments reported accurately
ServeGate (Astryx)	1 out of 1	1 out of 1
Astryx	3 out of 3	2 out of 3
Lonergan Research Pty Ltd (NAP 10)	1 out of 7 ^b	1 out of 7 ^b
Lonergan Research Pty Ltd (NAP 21)	1 out of 5 ^c	1 out of 5 ^c
MinterEllison Consulting (RFT advice)	1 out of 1	0 out of 1
MinterEllison Consulting (Evaluation advice)	3 out of 4	0 out of 4
Broomhall Consulting Psychology	1 out of 2	0 out of 2
Morag McArthur	0 out of 3	0 out of 3

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

Note b: The end date for the contract was 26 July 2022, with an option to extend by one month. AGD accepted the contractor's proposed changes to deliverable dates that extended the term of the contract. The final report was submitted to the department on 21 March 2023, almost 10 months after the contracted date of 30 June 2022 for the final report to be submitted (and nine months after the contract end date of 26 July 2022). AGD has not reported any amendments to the contract on AusTender.

Note c: The end date for the contract was 25 November 2022. There were no extension options available. AGD accepted the contractor's proposed changes to deliverable dates that extended the term of the contract. The final report was submitted to the department on 28 April 2023, more than five months after the contracted date of 7 November 2022. AGD has not reported any amendments to the contract on AusTender.

Source: ANAO analysis of AGD records.



Dr Caralee McLiesh PSM
Auditor-General

Canberra ACT
11 June 2025

Appendices

Appendix 1 Entity response



Australian Government
Attorney-General's Department

Secretary

25#70256DOC

7 June 2025

Dr Caralee McLiesh PSM
Auditor-General for Australia
Australian National Audit Office
GPO Box 707
Canberra ACT 2601

Dear Auditor-General

Thank you for providing the Attorney-General's Department (the department) with the opportunity to comment on the Australian National Audit Office's (ANAO's) proposed audit report on the conduct of procurements related to two new child sexual abuse-related national services.

The department appreciates the opportunity afforded from the ANAO audit process to improve future procurement practices and accepts the ANAO's key finding in the Section 19 Report.

The department recognises the procurement processes being reviewed were complex in nature and made genuine efforts to ensure correct process was followed and ethical requirements were met throughout. The department is committed to implementing the ANAO recommendations and improving our policies and practices. The department has taken steps to improve current procurements being run the by the National Office for Child Safety (NOCS), and is undertaking departmental-wide improvements. This includes actions to improve the department's procurement policies, guidelines and practices for staff to strengthen adherence to the Commonwealth Procurement Rules, increase the level of open and effective competition during procurements, and better allow the department to demonstrably achieve value for money.

The department notes that the audit commenced towards the end stages of the procurement processes, meaning there were few opportunities to evidence process changes that the ANAO might have then observed. The department has applied outcomes from the audit process to the procurement for other services that are not yet open for tender responses and is undertaking a program of work to improve practices across the agency.

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The department is in the final stages of the procurements and remains committed to establishing these two new national services to prevent and respond to child sexual abuse and ensuring services are available as soon as possible.

Attached to this letter are the department's response to each recommendation (Annexure A), and summary response (Annexure B). These constitute the department's formal response to the Auditor-General's Proposed Report.

Please contact Ms Tamsyn Harvey, Deputy Secretary, Justice and Communities Group (Tamsyn.Harvey@ag.gov.au) if you would like to discuss this response.

I would like to thank the ANAO for its work and for providing the department the opportunity to further enhance its future procurement practice.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Katherine Jones', with a stylized, flowing script.

Katherine Jones PSM

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. During the course of the audit, the ANAO did not observe changes in the Attorney-General's Department's (AGD) approach to procurement. In this respect, AGD advised the ANAO that:

The department notes that the audit of NAP10 and NAP21 commenced towards the end stages of the procurement processes, meaning few opportunities existed for the department to evidence changes that the ANAO might then observe... the department made a range of adjustments to its approach to procurement for other services under the National Strategy to Prevent and Respond to Child Sexual Abuse 2021–2030 which are not yet open for tender responses. The department will continue to adjust this process accordingly, as responses to recommendations are implemented across the whole of the department.

Appendix 3 The department's initial screening of tenders

1. The CPRs require that further consideration only be given to submissions that meet minimum content and format requirements.⁸⁶ In recognition of this, AGD's procurement framework sets out that, in the case of an open tender, the evaluation of tenders is to comprise an initial screening process for conformance with the conditions for participation and the minimum content and format requirements, and that all tenderers who do not meet these requirements are to be excluded from further consideration.
2. The request documentation for both procurements stated that the department would exclude a tender from further consideration if it considered that the tender did not comply with the minimum content and format requirements or did not meet any one or more of the conditions for participation.
3. In accordance with the evaluation plans for both the NAP 10 and NAP 21 procurements, the department undertook an initial screening process to 'determine the extent to which' each tender met the minimum content and format requirements, and the conditions for participation. As a result of this process, the department concluded that each tender met the minimum content and format requirements and conditions for participation.⁸⁷ The department's conclusion was not correct.
4. Having reached this conclusion, the department undertook a further process to 'ascertain if any tenders contained unintentional errors of form'. This process resulted in the department identifying that some tenders contained unintentional errors of form. For the NAP 10 procurement, two tenderers submitted a tenderer's deed that was not signed or witnessed, one of which one also did not submit a valid Statement of Tax Record until after the RFT closing time. Similarly, for the NAP 21 procurement, one tenderer did not submit a tenderer's deed and a statement of compliance with the Draft Contract.
5. This is at odds with the conclusion of the initial screening process, as a completed and signed tenderer's deed and a valid and satisfactory Statement of Tax Record were two of the minimum content and format requirements for both procurements. The Statement of Tax Record was also a condition for participation for both procurements.
6. In relation to the omissions in the three tender responses, AGS advised the department that, subject to probity advice, it was open to the department to consider the omissions as an unintentional error of form and, under the discretionary clauses in the RFTs, seek to correct the errors by requesting the tenderers to provide the required documents. Further, the advice stated that the department would need to ensure it follows the process outlined in the evaluation plan, including identifying the errors in the Initial Screening Report and providing it to the Evaluation Committee with a recommendation as to whether the tender should be excluded from the

86 Finance, *Commonwealth Procurement Rules*, paragraph 10.34.

87 The screening identified issues with some tenders across both procurements unrelated to the minimum content and format requirements and the conditions for participation. To resolve these issues without declining any of the tenders, the department relied on discretionary clauses in the request documentation. The issues related to the inclusion of material beyond the specified page limits and the inclusion of hyperlinked references.

evaluation process. This probity advice was not sought in relation to the NAP 10 procurement.⁸⁸ Regarding the NAP 21 procurement, the department had already received advice from its probity adviser but decided to not act on the advice as it contradicted the AGS advice.⁸⁹

7. The department prepared Initial Screening Reports for both procurements, in which it recommended that, in relation to the omissions of documents required to satisfy the minimum content and format requirements, the respective Evaluation Committee exercise the discretion to request a tenderer to correct or clarify any errors that are considered to be unintentional errors of form.⁹⁰ The reports did not make it clear that the minimum content and format requirements of the RFT and the requirements of Division 2 of the CPRs were relevant to the decision.⁹¹ The Evaluation Committee members endorsed the recommendations and the content of the Initial Screening Reports between 12 March 2024 and 25 March 2024 and the procurement delegate noted the reports on 4 April 2024.⁹²

8. To provide opportunities to rectify the suspected unintentional errors, the department issued requests to one NAP 21 tenderer on 20 March 2024 and two NAP 10 tenderers on 21 March 2024 (before one Evaluation Committee member had signed the Initial Screening Report to indicate her endorsement of the recommendations, which she signed on 25 March 2024). Two of the tenderers submitted a signed tenderer's deed and one tenderer submitted a Statement of Tax Record, within the timeframe specified in the request.

9. On 6 March 2024, prior to the three tenderers having satisfied the minimum content and format requirements, the tender responses were provided to the respective Evaluation Committee along with advice that the department would not be recommending that any tenders are excluded, as they had been deemed compliant.⁹³ This approach did not satisfy the requirement of the CPRs that further consideration only be given to submissions that meet minimum content and format requirements.

88 Although the department did request probity advice at the suggestion of the legal adviser in relation to a different matter.

89 The probity adviser recommended that the tenderer be contacted promptly to clarify if the omission was unintentional and if so, it could be corrected through the discretionary clause in the RFT.

90 The request documents for both procurements set out that the department may request tenderers to correct or clarify errors it considers unintentional but would not permit any material alteration or addition to the tender.

91 Rather, the Initial Screening Reports concluded that, as a result of the initial screening process to determine the extent to which each tender satisfied both the minimum content and format requirements and the conditions for participation, 'each tender appears to meet the requirements' (for NAP 10), and 'none of the Tenders were excluded' (for NAP 21).

92 The RFTs for both procurements included proposed dates for the completion of evaluations (end of March 2024); and for the notification of the preferred tenderer (early April 2024). See paragraphs 3.31 to 3.44 regarding the timeliness of the conduct of the tender evaluations.

93 Although one committee member for the NAP 10 procurement had not been granted access to the tender responses as she was going on leave and had not completed her probity briefing.

Appendix 4 Errors and flaws identified by the ANAO in the conduct of the evaluation of tenders

Table A.1: Appendix 4 Errors and flaws identified by the ANAO in the conduct of the evaluation of tenders

Procurement/ tenderer	Criterion	Errors and flaws identified by the ANAO in the conduct of the evaluation of tenders
NAP 10 Preferred Tenderer	2. Leadership, advocacy, and engagement	<ul style="list-style-type: none"> There was an inconsistency in the score recorded for NAP 10 Preferred Tenderer's tender against the second criterion. <ul style="list-style-type: none"> The assessment sheet includes a score of '8' (a rating of 'Very Good'). The records of the consensus meeting are internally inconsistent, including scores of both '7' ('Good') and '8' ('Very Good') in different sections. The final score recorded in the Tender Evaluation Report was '7' with a rating of 'Good'.
NAP 10 Preferred Tenderer	5. Pricing and payment arrangements	<ul style="list-style-type: none"> NAP 10 Preferred Tenderer indicated in its response that it was pricing on the basis of 45 minutes (instead of 30 minutes). The department, while identifying the issue, evaluated the tender but did not seek to address the issue at any stage including during collaboration activities. The summary of key findings that supported the Evaluation Committee's risk ratings for NAP 10 Preferred Tenderer and the highest ranked tenderer against the weighted criteria, NAP 10 Tenderer 5, primarily focused on the Financial Adviser's financial viability assessment, which is unrelated to the 'pricing and payment arrangements criterion'. Errors were identified in the tenderer's pricing but not addressed by the department, including: <ul style="list-style-type: none"> the IT Support costs for Phase 3, Low and Medium Call volumes appear to be incorrect as the Medium Call volume amount is less than the Low Call volume amount. The total calculated for Phase 1 costs was incorrect when the items and sub-items were added up.
NAP 10 Tenderer 5	5. Pricing and payment arrangements	<ul style="list-style-type: none"> The summary of key findings that supported the Evaluation Committee's risk rating for NAP 10 Tenderer 5, focused on the Financial Adviser's financial viability assessment, which is unrelated to the 'pricing and payment arrangements criterion', in addition to it having submitted the highest price.

Procurement/ tenderer	Criterion	Errors and flaws identified by the ANAO in the conduct of the evaluation of tenders
NAP 10 Tenderer 6	1. Service delivery	<ul style="list-style-type: none"> In applying the weightings from the RFT to the agreed scores for the weighted criteria, an error was made in calculating the weighted score for NAP 10 Tenderer 6. Against the first criterion (weighted at 50 per cent), which received a score of 5, the department calculated the weighted score to be 2.75 instead of 2.5. This resulted in the aggregate score being recorded as 5.55 instead of 5.3.
NAP 10 Tenderer 6	5. Pricing and payment arrangements	<ul style="list-style-type: none"> NAP 10 Tenderer 6 did not submit the required responses to all three scenarios for the initial service delivery phase of the service. The department, while identifying the issue, evaluated the tender but did not seek to address the issue at any stage.
NAP 21 Preferred Tenderer	5. Pricing and payment arrangements	<ul style="list-style-type: none"> The tenderer stated it was pricing on the basis of 45 minutes (instead of 30 minutes as requested in the RFT) but the department, while identifying the issue, did not seek to address it at any stage before making its recommendation to the delegate on the preferred tenderer. Instead the department sought to address it and five other pricing issues through a request for information as part of 'pre-negotiation' activities with the preferred tenderer.
NAP 21 Tenderer 3	5. Pricing and payment arrangements	<ul style="list-style-type: none"> NAP 21 Tenderer 3 did not submit the required responses to all three scenarios for the initial service delivery phase of the service. The department, while identifying the issue, evaluated the tender but did not seek to address the issue at any stage. While the department limited its evaluation to a comparison of the 'high call volume' scenario of all NAP 21 tenders, NAP 21 Tenderer 3 did not specify which scenario it had included in its response.
NAP 21 Tenderer 4	5. Pricing and payment arrangements	<ul style="list-style-type: none"> NAP 21 Tenderer 4 did not submit the required responses to all three scenarios for the initial service delivery phase of the service. The department, while identifying the issue, evaluated the tender but did not seek to address the issue at any stage. While the department limited its evaluation to a comparison of the 'high call volume' scenario of all NAP 21 tenders, it was unclear which scenario the tenderer had included.

Procurement/ tenderer	Criterion	Errors and flaws identified by the ANAO in the conduct of the evaluation of tenders
NAP 21 Tenderer 5	5. Pricing and payment arrangements	<ul style="list-style-type: none"> • NAP 21 Tenderer 5 did not provide pricing for the 12 month period as required for service delivery phase. This resulted in the department making adjustments to NAP 21 Tenderer 5's tendered prices to provide for prices to be compared on a common basis. • The tenderer also did not add GST to the Phase 2 and Phase 3 costs. The department adjusted the total price for Phase 2 by incorrectly using the formula it used to 'extrapolate the costs to 12 months' for Phase 3, instead of adding the GST component to the tendered price. • This error resulted in an increase of the total price used for the price comparison (see Table 2.4).

Source: ANAO analysis of AGD records

Appendix 5 Ranking of tenders against the weighted criteria

1. As shown in Table A.2, NAP 10 Tenderer 5 was the first ranking tenderer against the weighted criteria, with an overall rating of 8.15 ('Very Good').

Table A.2: Ranking of NAP 10 tenders against weighted criteria

Rank	Tenderer	Criterion 1 (50 per cent)	Criterion 2 (20 per cent)	Criterion 3 (15 per cent)	Criterion 4 (15 per cent)	Overall weighted score and rating
1	NAP 10 Tenderer 5	8 (Very good) Low risk	8 (Very good) Low risk	8 (Very good) Low risk	9 (Outstanding) Low risk	8.15 (Very good)
2	NAP 10 Preferred Tenderer	7 (Good) Low–medium risk	7 (Good) Low–medium risk	8 (Very Good) Low risk	8 (Very Good) Low risk	7.3 (Good)
3	NAP 10 Tenderer 2	6 (Fair) Medium risk	7 (Good) Low–medium risk	7 (Good) Low–medium risk	7 (Good) Low–medium risk	6.5 (Fair)
4	NAP 10 Tenderer 6	5 (Acceptable) Medium risk	5 (Acceptable) Medium risk	5 (Acceptable) Medium risk	7 (Good) Low–medium risk	5.55 ^a (Acceptable)
5	NAP 10 Tenderer 4	5 (Acceptable) Medium risk	6 (Fair) Medium risk	5 (Acceptable) Medium risk	5 (Acceptable) Medium risk	5.2 (Acceptable)
6	NAP 10 Tenderer 3	5 (Acceptable) Medium risk	5 (Acceptable) Medium risk	5 (Acceptable) Medium risk	6 (Fair) Medium risk	5.15 (Acceptable)

Note a: The department made an error in calculating the weighted score for NAP 10 Tenderer 6. Against the first criterion (weighted at 50 per cent), the score of '5' was calculated to be 2.75 instead of 2.5. This resulted in the aggregate score being recorded as 5.55 instead of 5.3.

Source: ANAO analysis of departmental records.

2. For the NAP 21 procurement, Table A.3 highlights that NAP 21 Preferred Tenderer was the first ranking tenderer against the weighted criteria with an overall weighted rating of 7.3 ('Good').

Table A.3: Ranking of NAP 21 Tenders against weighted criteria

Rank	Tenderer	Criterion 1 (55 per cent)	Criterion 2 (15 per cent)	Criterion 3 (15 per cent)	Criterion 4 (15 per cent)	Overall weighted rating
1	NAP 21 Preferred Tenderer	7 (Good) Low–medium risk	8 (Very good) Low risk	8 (Very good) Low risk	7 (Good) Low–medium risk	7.3 (Good)
2	NAP 21 Tenderer 4	6.5 ^a (Fair) Medium risk	7 (Good) Low–medium risk	6 (Fair) Medium risk	4.5 (Marginal) Medium–high risk	6.2 (Fair)

Rank	Tenderer	Criterion 1 (55 per cent)	Criterion 2 (15 per cent)	Criterion 3 (15 per cent)	Criterion 4 (15 per cent)	Overall weighted rating
3	NAP 21 Tenderer 2	6 (Fair) Medium risk	6 (Fair) Medium risk	5.5 (Acceptable) Medium risk	5 (Acceptable) Medium risk	5.8 (Acceptable)
4	NAP 21 Tenderer 5	5 (Acceptable) Medium	5.5 (Acceptable) Medium risk	6 (Fair) Medium risk	8 (Very good) Low risk	5.7 (Acceptable)
5	NAP 21 Tenderer 3	5 (Acceptable) Medium risk	4 (Marginal) Medium-high risk	4 (Marginal) Medium-high risk	5.5 (Acceptable) Medium risk	4.8 (Marginal)

Note a: One Evaluation Committee member provided a dissenting score of 4.8.

Source: ANAO analysis of departmental records.